



HYDROELECTRIC POWER PRODUCING AREAS DEVELOPMENT COMMISSION (ESTABLISHMENT, ETC.) ACT, 2010

EXPLANATORY MEMORANDUM

This Act establishes the Hydroelectric Power Producing Areas Development Commission charged with the responsibility for, among other things, managing the ecological menace due to operation of dams and other hydro-electric power activities in the power producing areas. This Act also establishes for the Commission the Governing Council, Management, Advisory and Monitoring Committees for efficient discharge of the functions of the Commission.

ARRANGEMENT OF SECTIONS

Part I: *Establishment of the Hydroelectric Power Producing Area Development Commission and the Governing Council:*

1. Establishment of the Commission.
2. Headquarters of the Commission
3. Establishment, membership and powers of the Governing Council.
4. Supplementary provisions
5. Powers of the Council

PART V: *Financial Provisions*

14. Funds of the Commission
15. Application of Fund of the Commission
16. Power to accept gifts
17. Borrowing powers.
18. Annual estimates and expenditure
19. Quarterly report.

6. of the office of members of the Council.

7. Cessation of office, etc.

Part II: Functions and Powers of the Commission:

8. Functions of the Commission.

Part III: Structure of the Commission

9. Establishment of the Directorates of the Commission.

i. Management Committee.

ii. Advisory Committee.

Part IV: Staff of the Commission

12. Appointment of the Managing Director.

13. Pension.

20. Annual report.

PART VI: Miscellaneous

21. Establishment of the Monitoring Committee.

22. Office and premises of the Commission.

23. Directives by the President.

24. Limitation of suits against the Commission.

25. Service of documents.

26. Indemnity of officers.

27. Interpretation.

28. Citation.

CITATION

A bill for an Act to Establish the Hydroelectric Power Producing Areas Development Commission charged with the responsibility for managing the ecological menace due to operation of dams; and for related matters.

Enacted by the National Assembly of the Federal Republic of Nigeria:

Part I: Establishment of the Hydroelectric Power Producing Areas

Development Commission and its Governing Council, Etc.

1. There is established the Hydroelectric Power Producing Areas Commission. Development Commission (in this Act referred to as "the Commission") which

(a) Shall be a body corporate with perpetual succession and a common seal; and

(b) May sue and be sued in its corporate name.

2. The Headquarters of the Commission shall be in Minna, Niger State.
Headquarters of the Commission

(1) There is established for the Commission a Governing Council (in this "act referred to as the Council"), which consists of:

Establishment, Membership and Powers of the Governing Council

- (a) A chairman who shall be appointed on part time basis and shall preside over Council meetings;
 - (b) One person each who shall be from the affected communities to represent -
 - (i) Niger,
 - (ii) Kwara,
 - (iii) Kogi,
 - (iii) Kebbi,
 - (v) Plateau, and
 - (vi) Any other State where hydroelectric power is generated;
 - (c) Two persons to represent other Non-Hydroelectric Power Producing Areas or States;
 - (d) One person each to represent Federal Ministry of -
 - (i) Power,
 - (ii) Environment,
 - (iii) Water Resources, and
 - (iv) Finance; and
 - (e) The Managing Director of the Commission.
- (2) The Chairman and other members of the Council shall be appointed by the President, subject to confirmation by the Senate, except the persons

mentioned in section 2 (1) (d) whose appointments shall not be subject to confirmation by the Senate.

- (3) The office of the Chairman shall rotate among the member States of the Commission in the following alphabetical order:
 - (i) Kebbi,
 - (ii) Kogi,
 - (iii) Kwara,
 - (iv) Niger,
 - (v) Plateau, and
 - (vi) Any other State where hydroelectric power is generated.
4. The Supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Council and other matters.
5. The Council shall have the power to-
 - (a) Make broad policy and oversee the affairs of the Commission;
 - (b) Provide policy guidelines for carrying out the functions of the Commission;
 - (c) Enter and inspect premises, project and such place as may be necessary for the purpose of carrying out its function under this Act;
 - (d) Approve the payment to the staff of the Commission such remunerations and allowances as are payable to persons with equivalent grade in the Civil Service of the Federation;
 - (e) Enter into such contract as may be necessary or expedient for the discharge of its functions and ensure the efficient performance of the functions of the Commission.
 - (f) Approve the appointment, promotion and discipline of senior staff of the Commission; and

- (g) Do such other things as are necessary and expedient for the efficient performance of the function of the Commission.
- (1) The Chairman and members of the Council other than ex- officio members shall hold for 4 years, renewable for one further period of 4 years only.
- (2) Members of the Council shall be paid such remuneration and allowances as the Federal Government may determine.

Supplementary provisions:

SCHEDULE

Powers of the Council

Tenure of office of members of the Council

7. (1) a person ceases to hold office as a member of the Council if - (a)
- He becomes bankrupt;
- (b) He is convicted of a felony or an offence involving dishonesty or fraud;
 - (c) He becomes of unsound mind or incapable of carrying out his duties;
 - (d) He is guilty of a serious misconduct in relation to his duties;
 - (e) In the case of a person possessing professional qualification, he is disqualified or suspended, other than his own request, from practicing his profession in any part of the world by an order of a competent authority made in respect of that matter; or
 - (f) He resigns his appointment by a letter addressed to the President.
- (2) A member of the Council may be removed by the President if it is not in the interest of the Commission or of the public that the member should continue in office.
- (3) Where a vacancy occurs in the membership of the Council', it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, and the successor shall -

- (a) Represent the same interest; and
- (b) Be appointed by the President as provided in this Act.

Part II

Functions and Powers of the Commission

3. (1) The Commission shall:

- (a) Formulate policies and guidelines for the development of hydroelectric power producing areas;
- (b) Conceive, plan and implement, in accordance with set rules, projects and programs for the development of hydroelectric power producing areas;
- (c) Carry out a survey of hydroelectric power producing areas in order to ascertain measures which are necessary to promote its Cessation of office, etc.

Functions of the Commission:

Physical development;

- (d) Prepare schemes designed to promote the physical developments of the hydroelectric power producing areas and estimate the cost of implementing such schemes;
- (e) Implement all measures approved for development of hydroelectric power producing areas by the Federal Government;
- (f) Identify factor inhibiting the development of the hydroelectric power producing areas and assist States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the hydroelectric power producing areas;
- (g) Assess and report on any project being Funded or carried out in the hydroelectric power producing areas and ensure that Funds released for such project are properly utilized;

- (h) Tackle ecological problems that arise from overloading of dams in the hydroelectric power producing areas and advice Federal and State Governments on the prevention and control of floods
 - (i) Execute such other work and perform such other functions which, in the opinion of the Commission, are required for the development of the hydroelectric power producing areas and their people; and
 - (ii) Carry out such other functions as the President may direct.
- (2) In exercising its functions under this section, the Commission shall have regard to the varied and specific contributions of each Member State of the Commission.

Part III: Structure of the Commission

9. There shall be established in the Commission the following Directorates
Establishment of Directorates of the Commission:

- (a) Directorate of Finance and Administration;
- (b) Directorates of Operations;
- (c) Directorates of Engineering and Technical Services;
- (d) Directorates of Community and Rural Development;
- (e) Directorates of Legal Services; and
- (f) Directorates of Planning, Research and Statistics.

10. (1) there shall be for the Commission a Management Committee which shall consist of:

- (a) The Managing Director who shall be the Chief Executive Officer and Head of the Management Committee; and
 - (b) Directors responsible for the Directorates established under section 9 of this Act.
- (2) The Management Committee shall be responsible for the general operations and administration of the Commission.

11.(1) there shall be established for the Commission an Advisory Committee which shall consist of- (a) All Governors of member States of the Commission; and

(b) One person from each of the member States and five other persons from the remaining five geo- political zones of the Federation excluding the North Central Zone.

(2) The advisory Committee shall appraise and advise the President on the general activities and functions of the Commission at least once every year.

(3) The Advisory Committee shall regulate its own proceedings.

Management Committee

Advisory Committee

Part IV: Staff of the Commission

12. (1) there shall be a Managing Director for the Commission who shall be -

(a) Appointed by the President subject to confirmation by the Senate;

(b) Be a competent Nigerian; and

(c) Hold office on such terms and conditions as may be specified in his letter of appointment and in accordance with this Act.

(2) The Managing Director shall -

(a) Be an indigene from among the member States of the Commission, whose appointment and tenure shall rotate among member States in alphabetical order provided that the Chairman and Managing Director shall not be indigenes of the same State;

(b) Be responsible for the general supervision of the employees of the Commission;

- (c) Be the Chief Accounting Officer of the Commission; and
- (d) Hold office for a term of 4 years and renewable for another term of 4 years and no more.
- (3) The Director of the Directorate of Legal Services shall be the Secretary of the Commission and shall, subject to the general direction of the Council, be responsible for:
 - (a) The administration of the Secretariat of the Council; and
 - (b) Keeping the books and proper records of the proceedings of the Council.
- 13. (1) Service in the Commission shall be permanent and pensionable for the purpose of the Pension Reform Act and persons employed in the Commission shall be entitled to such pensions, gratuities and other retirement benefits as are prescribed in the Act.

Appointment of the Managing Director

Pension Act No.2 of 2004

- (2) Nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity as in respect of that office.
- (3) For the purpose for the application of the provision for the Pensions Reform Act No.2 of 2004 Act, any power exercised by the Minister or other authority of the Government of the Federation other than the power to make regulations is hereby vested in and shall be exercisable by the Commission and not by any other person or authority.

Part V

Financial Provisions

Funds of the

- 14. (1) The Commission shall establish and maintain a Fund from which shall Commission be defrayed all expenditure incurred by the Commission.

(2) There shall be paid and credited to the Fund established pursuant to subsection (1) of this section -

- (a) 30 per cent of the total revenue generated by any company or authority from the operation of any hydroelectric dams in any member State of the Commission;
 - (b) 50 per cent of money due to member States of the Commission from the Ecological Funds;
 - (c) All money raised for the purpose of the functions of the Commission by way of gifts, loans, grants-in-aid, testamentary disposition or otherwise; and
 - (d) Proceeds from all other assets that may, from time to time, accrue to the Commission.
- (3) The Federal Government shall contribute to the Fund by way of appropriations, through the National Assembly, a sum not less than 40 percent of the Commission's annual budget.
- (4) The Fund shall be managed in accordance with the rules made by the Council, and without prejudice to the generality of the power to make rules under this subsection, the rules shall in particular contain provisions(
- a) Specifying the manner in which the assets of the Funds of the Commission are to be held and regulating the making of payments into and out of the Fund; and
 - (b) Requiring the keeping of proper accounts and records for the purpose of the Funds in such form as may be specified in the rules.

15. The Commission shall apply the proceeds of the Fund established pursuant to section 11 of this Act

to-

- (a) The cost of administration of the Commission;
- (b) The payment of salaries, fees, remuneration, allowances, pensions and gratuities payable under this Act;

- (c) The payment for all contracts, including mobilization, fluctuations, variations, legal fees and cost on contract administration;
 - (d) The payment for all purchases; and
 - (e) Undertake such other activities as are connected with all or any of the functions of the Commission under this Act.
16. The Commission may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift provided that such condition is in accordance with the laws of Nigeria.
17. The Commission may, with the consent of the President, borrow, on such terms and conditions as the Commission may determine, such sum of money as the Commission may require in the exercise of its functions under this Act.
- 18.(1) The Council shall, not later than 31st October in each year, submit to the President an estimate of the expenditure and income of the Commission during the next succeeding year.
- (2) The Council shall cause to be kept proper accounts of the Commission Application of Fund of the Commission, Power to accept gifts borrowing powers. Annual estimate and expenditure in respect of each year and proper records in relation to the Fund and shall cause the accounts to be audited not later than 6 months after the end of each year by Auditors appointed from the list and in accordance with the guidelines supplied by the Auditor General for the Federation.
19. The Commission shall, at the end of every quarter in each year, submit to Quarterly report the President a report on the activities and administration of the Commission.
20. (1) The Council shall prepare and submit to the President, not later than Annual report 30th June in each year, a report in such form as the President may direct on the activities of the Commission during the immediately preceding year, and shall be included in the report a copy of the audited accounts of the Commission for that year and the Auditors report.
- (2) The President shall, upon receipt of the report referred to in subsection (1) of this section, cause a copy of the report and the audited accounts of

the Commission and the Auditors report to be submitted to each House of the National Assembly.

Part VI: Miscellaneous

21. (1) there is established for the Commission a Monitoring Committee which shall consist of such number of persons as the President may deem fit to appoint from the Public or Civil Service of the Federation.

Establishment of the Monitoring Committee

(2) The Monitoring Committee shall:

- (a) Monitor the management of the Funds of the Commission and the implementation of the projects of the Commission; and
- (b) Have access to the books of accounts and other records of the Commission at all times, and submit periodical reports to the President.

22. (1) For the purpose of providing offices and premises necessary for the performance of its functions under this Act, the Commission may, subject to the Land Use Act-

Office and premises of the Commission (Cap L5 LFN, 2004)

- (a) Purchase or take on lease any interest in land, or other property; and
- (b) Construct offices and premises and equip and maintain same.

(2) The Commission may, subject to the Land Use Act, sell or lease out any office or premises which is no longer required for the performance of its functions under this Act subject to the approval by the President.

23.(1) Subject to the provisions of this Act, the President may give to the Commission directives of a general nature or relating generally to matters of policy with regards to the performance of its functions and the Commission shall comply with the directives.

(2) The Commission shall, with the approval of the President Make regulations generally for the purpose of giving effect to this Act.

24. (1) Subject to the provisions of this Act, the provisions of Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Commission.
- (2) Notwithstanding anything contained in any other law or enactment, a suit shall not-
- (a) Lie against any member of the Council or the Managing Director for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in execution of this Act or such law or enactment, duty or authority, and
 - (b) Be instituted in any court unless-
 - (i) It is commenced within three months next after the act, neglect or default complained of, or
 - (ii) In the case of a continuation of damage or injury, within six months next after the ceasing of such damage or injury.
 - (3) A suit shall not be commenced against a member of the Council, the Managing Director, officer or employee of the Commission before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Commission by the intending plaintiff and the relief which he claims.

Directives by the President

Limitation of suits against the Commission

- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state:-
- (a) The cause of action;
 - (b) The particulars of the claim,
 - (c) The name and place of abode of the intending plaintiff; and
 - (d) The relief which he claims.

25. A notice, summons or other documents required or authorized to be served upon the Commission under the provisions of this act or any other law or enactment may be served by delivering it to the Managing Director or by sending it by registered post and addressed to the Managing Director at the principal officer of the Commission.
26. A member of the Council, the Managing Director, any officer or employee the Commission shall be indemnified out of the assets of the Commission against any proceeding, whether civil or criminal in which judgment is given in his favor or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Council, the Managing Director, officer or employee of the Commission
27. in this Act -

"Chairman" means the Chairman of the Council appointed under Section 3(1)(a) of this Act;

"Commission" means the Hydroelectric Power Producing Areas Development Commission established under section 1 of this Act;

"Council" means the Governing Council established for the Commission under section 3(1) of this Act;

"Indigene" means a person from Kebbi, Kogi, Kwara, Niger, Plateau and any other State where hydroelectric power is generated;

"Member" means a member of the Council and includes the Chairman;

"Member States" means Kebbi, Kogi, Kwara, Niger, Plateau and any other State where hydroelectric power is generated; and Service of documents.

Indemnity of officers

Interpretation

"President" means the President and Commander-in- Chief of the Armed Forces of the Federal Republic of Nigeria.

28. This Act may be cited as Hydroelectric Power Producing Areas Citation. Development Commission

(Establishment Etc.) Act, 2010
SCHEDULE: Section 4

Supplementary Provision Relating to the Council, Etc

Proceedings of the Council

1. (1) Subject to this Act and section 27 of the Interpretation Act, the Council may make standing orders regulating its proceedings or those of any of its committees.
- (2) The quorum of the Council shall be the Chairman or the person presiding at the meeting and four other members of the Council, and the quorum of any committee of the Commissions shall be as determined by the Council
- (3) The Council shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so by notice given to him by less than four other members, he shall summon a meeting of the Council to be held within 14 days from the date on which the notice is given
- (4) At any meeting of the Council, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at the meeting.
- (5) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him for such period as it deems fit but a person who is in attendance by virtue of this subparagraph shall not be entitled to vote at the meeting of the Council and shall not count towards a quorum.
- (6) The validity of any proceeding of the Council or of a committee shall not be adversely affected by:
 - (a) A vacancy in the membership of the Council or committee;
 - (b) A defect in the appointment of a member of the Council or committee; or
 - (c) Reason that a person not entitled to do so took part in the proceedings of the Council or committee.

Committees

- (7) The Council may appoint one or more committees to carry out, on behalf of the Council, such functions as the Council may determine.
- (8) A committee appointed under this paragraph shall consist of the number of persons as may be determined by the Council and a person shall hold office on the committee in accordance with terms of his appointment.
- (9) A decision of a committee of the Council shall be of no effect until it is confirmed by the Council.



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