

24/7/14

# **MEMORANDUM OF UNDERSTANDING**

**Between**

**The Federal Government of Nigeria**

**and**

**The Government of the  
United States of America**

**Regarding**

**Power Africa**

**2014**

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# **MEMORANDUM OF UNDERSTANDING**

**Between**

**The Federal Government of Nigeria**

**and**

**The Government of the United States of America**

**Regarding**

**Power Africa**

This Memorandum of Understanding (MOU) is jointly signed by the Federal Government of Nigeria (FGON), acting through its Federal Ministry of Power (FMOP), and the Government of the United States of America ("USG"), acting through the Office of the Coordinator of Power Africa and Trade Africa and the United States Ambassador in Nigeria (collectively, the Participants). U.S. President Barack Obama launched the Power Africa initiative (Power Africa) on June 30, 2013, during his visit to Africa. Power Africa draws on the tools of multiple USG agencies, including the U.S. Agency for International Development (USAID), the Department of State (State), the Overseas Private Investment Corporation (OPIC), the Export-Import Bank of the United States (EXIM), the U.S. Trade Development Agency (USTDA), the Millennium Challenge Corporation (MCC), the Department of Treasury (DOT), the Department of Commerce (DOC), the Department of Energy (DOE), and the U.S. African Development Foundation (USADF), to partner with the private and public sectors to increase significantly the amount of electricity available in sub-Saharan Africa.

WHEREAS, the Federal Government of Nigeria and the Government of the United States of America share a long history of partnership of fostering economic development formalized under the Economic Cooperation Agreement between the United States and the United Kingdom, signed in London July 6, 1948, succeeded to by the Federal Government of Nigeria on October 1, 1960

WHEREAS, the Participants recognize the constraints to the delivery of electrical power throughout Nigeria and seek to expand development cooperation between their Governments;

WHEREAS, Power Africa has set the goal of doubling the number of people in sub-Saharan Africa with access to electricity through a multi-stakeholder partnership among the Governments of Ethiopia, Ghana, Kenya, Liberia, Nigeria and Tanzania (the Power Africa Focus Countries), the Government of the United States of America, the U.S. and African private sectors, and the African Development Bank and the World Bank, as well as other public and private partners;

WHEREAS, Power Africa aims to achieve its goal by accelerating investment in sub-Saharan Africa's power sector through its partnerships over the next five years, adding no less than 10,000 MW of electricity and increasing the number of people with access to electricity by 20 million in the Power Africa focus countries;

WHEREAS, the Participants reaffirm joint commitments made to assist in catalyzing and accelerating investments in Sub-Saharan Africa's power sector over the next five years.

WHEREAS, the Participants aim to help other developing countries to achieve sustainable economic and social development through development cooperation;

NOW, THEREFORE, the Participants express the following intentions:

**FGON Power Africa Commitments:**

The FGON expresses its support for Power Africa, a multi-stakeholder partnership among the Government of the United States of America, the Power Africa Focus Countries, the U.S. and African private sector, and the African Development Bank, as well as other public and private partners (collectively, Power Africa Partners) to accelerate investment in sub-Saharan Africa's power sector over the next five years. The FGON expresses its support for the Power Africa Initiative, which aligns with the FGON's Roadmap for Power Sector Reform in which the FGON commits to

fulfilling the imperative of the Electric Power Sector Reform Act, including removing obstacles to private sector investment, clarifying the government's strategy on the divestiture of the Power Holding Company of Nigeria (PHCN) successor companies; and reforming the fuel to power sector. The FGON understands that this partnership will catalyze the resources and combined commitment of Power Africa Partners in a coordinated effort to bring energy transactions to closure, spur new investment, and build the regulatory, economic and policy foundations to meet Nigeria's increasing demand for electricity.

*General Commitments:*

Accordingly, the FGON commits to take, inter alia, key policy reforms and structural changes with respect to the Energy Sector, including:

- a. Execution of catalytic, sustainable, transparent and non-discriminatory economic reforms to spur rapid broad-based and inclusive economic growth, demonstrating transformational leadership to drive meaningful policy change and institutional reform.
- b. Allocation of adequate resources to address known and emerging constraints throughout the power sector including the removal of barriers to importation of clean energy products related to tax regimes and import duties.
- c. Implementation of legislative, policy and regulatory reforms that increase the share of energy from renewable resources and increase access through clean, off-grid energy solutions.
- d. Implementation of legislative and policy reforms [RC2] that promote gender equality and reduce gender disparities in the development and implementation of activities related to the power sector.

*Specific Commitments:*

- a. **Implement Tariff Reform.** The Multi Year Tariff Order (MYTO) was established by NERC in 2008 and has progressed to MYTO II issued

in 2012, providing a needed incentive for private investment in the power sector. NERC has also established a licensing regime for 25 years. The FGON will continue with its review process for the Multi-Year Tariff Order 11 for 2012 to 2017 in order to enhance cost effectiveness, and will consider a rate case review by the new distribution companies for approval.

- b. **Continued Liberalization of the Power Sector as authorized in the Electricity Sector Power Reform Act of 2005 (ESPR).** The Act authorized creation of the Nigerian Electricity Regulatory Commission (NERC), Electricity Management Services Limited (EMSL), National Power Training Institute of Nigeria (NAPTIM), Nigerian Electricity Management Company (NELMCO), the Nigerian Bulk Electricity Trading Company (NBET), the Transmission Company of Nigeria (TCN), the Market Operator, and the System Operator, and provides for takeover of generation and distribution through a privatization process and establishment of Independent Power Producers (IPPs). While the Federal Ministry of Power plans to undertake a review of the Act, especially to update it for post-privatization issues, significant implementation is underway.
- c. **Fulfill the Roadmap for Power Sector Reform, adopted in 2010.** As the FGON completes the privatization of the PHCN Successor Companies and Niger Delta Power Holding Company of Nigeria (NDPHCN) plants, it will continue to ensure that accountability and transparency measures that comply with global best practices are in place,.
- d. **Review and Update the Renewable Energy Master Plan** produced in 2006 which outlines FGON plans to diversify energy sources.
- e. **Support the newly reconstituted Rural Electrification Agency** to implement the Rural Electrification Policy.
- f. **Review and update the Renewable Energy Feed-in-Tariff.** NERC will continue to review and revise the blanket tariff to better reflect the range of circumstances and specific tariff agreements



within an established framework as provided for in the NERC Regulation Tariff Review Process.

- g. **Reduce Gas Flaring.** The Gas Master Plan addresses the need for further development of the gas sector. The FMOP will continue to collaborate with the Federal Ministry of Petroleum Resources (FMPR) and the Federal Ministry of Environment (FMOE) to prioritize a systematic approach to reduce gas flaring.
- h. **Develop Strategy and Pricing Framework for Natural Gas and Gas to Power.** FGON, with the support of Power Africa and other donor agencies, will continue to develop a comprehensive strategy to optimize allocation of gas resources and develop a pricing framework for gas to power and other uses.
- i. **Establish Plans and Financing Strategy for Power Transmission.** Demand for power will soon exceed transmission capacity. The FGON should include support to the Transmission Company of Nigeria and adequate financing for the timely addition of transmission capacity to keep pace with power generation and accommodate FGON objectives to achieve 6,000 MW of electricity by 2014 and 20,000 MW of electricity by 2020.
- j. **Establish Contract and Rule-based Transitional Electricity Market.** The successes recorded through the reform and privatization of the Power Sector are all conditions precedent for the commencement of the contract- and rule-based Transitional Electricity Market (TEM). The Federal Government will continue to monitor the said conditions to determine the earliest appropriate time to commence the aforesaid Transitional Electricity Market.

### **USG Power Africa Commitments:**

#### *General commitments:*

- a) The USG, through the DOC, intends to participate actively in the Power Africa initiative. DOC's U.S. and Foreign Commercial Service



intends to work to facilitate and promote commercial opportunities for U.S. companies as such opportunities are developed by Power Africa teams on the ground. The Commercial Service has an active working relationship with U.S. Government funding agencies, including EXIM, OPIC and USTDA. Utilizing this working relationship, Commercial Service staff assist U.S. exporters to package their products with attractive financing, often helping to overcome obstacles and deliver successful results.

- b) The USG, through USAID and DOC through its Commercial Law Development Program, intends to continue working with African and international legal experts including experts from the relevant governmental entities of the Federal Government of Nigeria, to develop standardized, annotated Power Purchase and other legal agreements that offer to reduce significantly the amount of time it takes to negotiate and close energy transactions.
- c) The USG, through EXIM, intends to endeavor to mobilize up to \$5 billion in support of U.S. exports for the development of power projects across sub-Saharan Africa.
- d) The USG, through OPIC, will commit to \$1.5 billion in financing and insurance to support energy projects in sub-Saharan Africa.
- e) The USG, through USAID, intends to commit an estimated \$285 million over five years to support Power Africa activities in the Power Africa Focus Countries. Illustrative regional activities that benefit all Power Africa Focus Countries include, but are not limited to:
  - a. An initial \$5 million contribution to the African Development Bank's Sustainable Energy Fund for Africa, a multi-donor platform for accelerating private sector investment in renewable energy in Africa, providing needed policy support and technical assistance to develop national renewable strategies. These strategies will address several of the key constraints to energy sector development in the region, including a lack of bankable projects coming to market, limited access to finance for small and medium size power

projects, and challenging policy environments for private sector energy investment.

- b. An estimated \$7 million contribution to support Geothermal activities such as the African Union's Geothermal Risk Mitigation Facility which helps develop and advance geothermal energy transactions. USAID's funds are expected to improve the region's long term geothermal enabling environment and to build technical and institutional capacity.
- c. Financial and technical support for both on-grid and off-grid electricity projects, through the hiring of full-time Transaction Advisors based in Africa, who are to focus on advancing energy transactions.
- d. A \$3 million contribution to the African Legal Support Facility to help provide legal services and legal capacity building to Power Africa host governments to help advance Power Africa transactions.
- e. Technical and advisory services to support and guide government partners, national and regional institutions to identify and implement key policy and regulatory reforms necessary for the success of key transactions and sustainability of the power sector.
- f) **The USG, through OPIC and USTDA** ,intends to provide up to \$20 million in project preparation, feasibility and technical assistance grants to develop renewable energy projects. These efforts are expected to be coordinated through the U.S.-Africa Clean Energy Finance Initiative (US-ACEF) and supported by the U.S.-Africa Clean Energy Development and Finance Center (CEDFC) in Johannesburg, South Africa.
- g) The USG, through USTDA, intends to support Power Africa activities in Power Africa Focus Countries by providing funding for analysis of major energy infrastructure investments to achieve successful project

financing and implementation; pilot projects to demonstrate the effectiveness of U.S. technological solutions; trade missions to the United States for overseas project sponsors to observe American products, practices and services that can help achieve their development goals; and technical assistance to support legal and regulatory reforms for infrastructure development.

- h) The USG, through the DOE, intends to provide assistance to help resolve technical impediments to the deployment of power projects and to expedite projects. This assistance can occur through bilateral engagement in policy reform, analytical evaluation of energy markets, or through a formal engagement of the national laboratories that can be hired for their expertise on Research and Development to resolve technological constraints.
- i) The USG, through The Embassy, intends to consult with USAID, USTDA, MCC, U.S. Department of Energy and other USG agencies to explore how a variety of U.S. Government resources can strengthen our government's contribution to Power Africa.

*Specific Nigeria Commitments:*

- j) In Nigeria, USAID intends to provide an estimated \$28 million in support to the privatization of Nigeria's electricity sector, reform of the gas sector, and development of renewable electricity generation, to be disbursed based upon the sequential achievement of these actions to be further jointly defined in writing by the Participants. Illustrative USAID activities include, but are not limited to:
  - i. Providing embedded advisors, other technical support and advisory services to selected FGON entities, including BPE, NBET, FMOP, TCN, and PTFP. Such technical support is expected to include assisting the Nigeria Bulk Electricity Trading Company to complete a set of Independent Power Producer (IPP) transactions; supporting the privatization of Niger Delta Power Holding Company power plants; and supporting expansion of transmission capacity of the Transmission Company of Nigeria.

- ii. Regulatory technical assistance to NERC including advisory support, study tours, assessments and internships to support the effective regulation of privatized distribution companies.
  - iii. Potential capital expenditure loan guarantee facility for the power sector.
  - iv. Supporting gas sector reform and support to efforts to create and implement a gas flaring reduction strategy.
- k) In Nigeria, the USG, through USTDA, intends to provide at least \$3 million in support of gas fired independent power production and modernization of the electricity distribution sector as well as other activities in the power sector. Further, USTDA intends to also actively search for renewable energy activities primarily through the U.S. ACEF initiative. Under the U.S. ACEF initiative, USTDA intends to leverage its project planning expertise to support clean energy activities eligible for and currently in OPIC's pipeline for private-sector transactions.
- l) In Nigeria, FCS intends to provide assistance with collecting and disseminating information on projects appropriate for U.S. company involvement and in meeting with private sector power project developers to pursue opportunities as early as possible.

### **General Terms and Conditions:**

- m) The Participants intend to enter into one or more agreements for each project that would further describe the project and its implementation among the Participants.
- n) The Participants intend to meet on a jointly determined and regular basis to discuss existing and new potential opportunities for cooperation and progress towards meeting the intentions expressed in this MOU.
- o) The Participants intend to cooperate towards giving appropriate publicity to any cooperation provided.



- p) This MOU is intended to become effective on the date of signature by both Participants and to remain in force through December 31, 2018, unless: (i) earlier discontinued by either Participant through written notice to the other Participant, or (ii) extended in writing by the Participants. The terms of this MOU may be made modified in writing by the Participants.
- q) All potential actions of the Participants under this MOU are subject to the availability of funds. Nothing in this MOU should be construed to constitute an obligation or commitment of the Participants' funds; any such obligations or commitments are expected to be effected through separate agreements.
- r) Nothing in this MOU should be construed as superseding or interfering in any way with any agreements or contracts entered into by either Participant, either prior to or subsequent to the signing of this MOU. This MOU is neither a binding agreement nor does it constitute a treaty or create any rights and obligations under international law, the laws of Nigeria, or the laws of the United States.

Signed at Abuja, on 24<sup>th</sup> Day of July 2014.

FOR THE FEDERAL GOVERNMENT  
OF NIGERIA:

\_\_\_\_\_  
Professor Chinedu Nebo OON, NPOM  
Minister, Federal Ministry of Power  
Date:

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

\_\_\_\_\_  
James F. Entwistle  
U.S. Ambassador to Nigeria  
Date: