

A review of the
ELECTRICITY BILL 2021



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Introduction

Between incessant grid collapses and an almost bankrupt value chain, many in Nigeria's power sector are seeking an overhaul of the legal and regulatory framework through the Electricity Bill 2022¹ (the Bill) which has just been passed by the Nigerian Senate. The Bill which seeks to repeal the Electric Power Sector Reform Act (EPSRA), 2005, provides a comprehensive legal and institutional framework for the post privatization phase of Nigeria's electricity sector in the areas of generation, transmission, distribution, supply and trading. Below is a review of some of the provisions of the Bill.

NATIONAL INTEGRATED ELECTRICITY POLICY AND STRATEGIC IMPLEMENTATION

The Bill requires the Federal Government through its Ministry of Power, to within one year of the passage of the Bill into an Act, prepare and publish a National Integrated Electricity Policy and Strategic Implementation Plan (NIEPSIP) in consultation with other relevant Ministries Departments and Agencies (MDAs) of government such as the ministries of petroleum, finance and environment; and state and local governments to guide the overall development of the Nigeria Electricity Supply Industry (NESI). The NIEPSIP is to encompass the following aspects:

- (a) optimal utilisation of resources such as coal, natural gas, nuclear substances and materials as well as renewable energy sources such as solar, wind, hydro, hydrogen;**
- (b) captive generation or stand-alone system for generation of electricity in rural areas and use of non-conventional energy systems;**
- (c) rural electrification;**
- (d) public private partnerships for provision of access to electricity to all areas; and**

- (e) overall development of the electricity value chain in Nigeria with emphasis on alignment of expansion of generation, transmission, distribution and supply infrastructure to ensure reliability of supply and minimize losses.**²

The NIEPSIP will require consultation and collaboration with other industry stakeholders and regulators in the oil and gas, finance, environment and technology industries among others in addressing salient issues such as fuel choice allocation based on energy security and environmental considerations; efficient deployment of technologies available to undertake value chain activities; identification of locations for capacity additions; and adequate integration of possible identified locations with the transmission system. The NIEPSIP is to be revised every five (5) years or within such reasonable timeframe as the Minister of Power may determine based on exigencies of the NESI.

INSTITUTIONAL FRAMEWORK

The Bill provides for the creation and obligations of various institutional and regulatory bodies of the NESI.

- a. The Minister of Power:** The role of the Minister is to be limited to formulation and monitoring of policy for the NESI, and supervision over the affairs and operations of the Nigerian Electricity Regulatory Commission (NERC) and other agencies established under the Bill. The Minister's directives to the NERC and other agencies established under the Bill can only be made after prior consultation with the NERC, the system operator and the Energy Commission of Nigeria.³ A number of decisions and/or directives (such as the issuance of directives specifying the class or classes of end-use customers that may form or constitute eligible

¹ Electricity Bill 2021 (SB 511) sponsored by Sen. Suswam, Gabriel Torwua (Benue North East).

² Clauses 3(2) and 4

³ Section 5(1)(b);5(1)(c);5(1)(g)

customers at every market stage and the power to issue directives on the collection of a competition transition charge from eligible customers, the duration of such charge and distribution of such funds) previously within the sole purview of the Minister under ESPRA are now the responsibility of NERC under the Bill.

b. **The National Assembly**: The National Assembly is vested with oversight responsibility over the NESI through its Committees on Power and this oversight is to apply regardless of the supervisory powers of any government Ministry or government-owned enterprises such as the Nigerian Bulk Electricity Trader (NBET). Their oversight function includes the power to investigate compliance or non-compliance with the provisions of the Bill as well as the power to procure evidence or summon for defence of any allegation.

c. **The Nigerian Electricity Regulatory Commission (NERC)**: In addition to its existing powers, the Bill confers on the NERC the responsibility to:

- i. ensure a phased development of a competitive electricity market across the applicable market stages;
- ii. issue directives and measures to ensure the gradual development and effective operation of the various stages of the market; and
- iii. promote the development and utilization of renewable energy and increase the contribution of renewable energy to Nigeria's energy mix.

Unlike the EPSRA, the Bill assigns regulatory oversight of renewable energy to NERC and empowers the regulator to develop a simplified licensing and fee regime for the issuance of licenses; develop technical regulations for the renewable energy sector; provide standards for Power Purchase Agreements for the marketing and trading of renewable electricity; and monitor and enforce compliance with rules and regulations.

The seeming strengthening and independence of the regulator under the Bill appears to be a case of giving with one hand and taking away with the other. While it appears NERC has been strengthened and made more independent given the limitation of the role of the Minister of Power and the streamlining of the roles of the NERC and NEMSA, its independence is curtailed by the powers vested in the National Assembly under the Bill to investigate compliance and non-compliance by sector participants with rules and regulations.

RENEWABLE ENERGY DEVELOPMENT

In a welcome development and perhaps with energy transition in mind, the Bill champions renewable energy development and utilization by introducing minimum compliance requirements for all electricity generating and distribution companies (gencos and discos) in the country. Gencos and Discos will be required to meet stipulated renewable energy generation⁴ and energy purchase obligations respectively⁵ and the promotion of co-generation, and generation of electricity from renewable sources will become one of the methodologies to be adopted by the NERC in developing tariff methodology.

⁴ Section 81(1)

⁵ Section 89(1)



Renewable Energy

Energy derived from natural sources that are replenished at a higher rate than they are consumed.

Sunlight and Wind, are sources.



A Rural Electrification and Renewable Energy Agency (the REREA)⁶ is also to be established under the Bill to replace the extant Rural Electrification Agency (REA) with the main objective of developing and promoting effective utilization of renewable energy sources. The REREA is to advocate for carbon tax to disincentivize the sale of fossil fuels, encourage reliance on renewable energy and trigger the gradual transition to clean energy. Its activities are to be funded via the Rural Electrification and Renewable Energy Fund (the Fund).

The Fund is to be made up of contributions paid by eligible customers and licensees at a rate not exceeding 5% of the cost of electricity procured by eligible customers from non-renewable generators; all fines and penalties imposed and collected by NERC in the enforcement of the Bill and other regulations; and a tax of 0.05% on the assessable profit of all licensees. This will no doubt increase the operating expenditure of licensees and ultimately result in higher electricity tariffs for customers.

Part XV of the Bill provides the commercial activities for the renewable energy value chain and introduces various tax incentives for the sector participants.⁷ The renewable energy provisions clearly take into consideration the issue of energy transition and the tax incentives for sector participants to attract more private sector participation should lead to more investment and increment in energy access across Nigeria.

⁶ See sections 103 & 104

Development of Competitive Electricity Market

The Bill recognises the unbundling of the NESI following the implementation of the ESPRA and provides for a phased development to a competitive market clarifying the grey areas in the extant ESPRA as it relates to market stages and progression. The Bill confers on NERC, the responsibility of ensuring a phase-wide development of the NESI from the current transitional stage to a Medium Term and Long-Term Electricity Market. The Medium-Term Electricity Market will allow for bilateral contracts and wholesale competition without the presence of a single buyer (i.e. the NBET) while the Long-Term Electricity Market will introduce retail competition allowing for the licensing of retail electricity suppliers.

The NERC is also to be responsible for advising the Minister on the determination of the transitional electricity market and the declaration of the operational dates for the Medium and Long-Term Markets in contrast to the provisions of the ESPRA which vested the powers for such declaration on the Minister. Some of the preconditions that must exist before the NERC can initiate the commencement of the Medium and Long-Term Markets include:

- a. all market operators and participants must have complied with their respective responsibilities under the Bill and Market Rules;***
- b. Submission of annual reports on the market conditions by NERC and advising the Minister as to the end of the transitional electricity market and the establishment of the operational***

⁷ Section 143

dates for the Medium- and Long-Term Markets respectively; and

- c. Cessation of contracts for the purchase and resale of electricity and ancillary services entered by NBET and novation of NBET's existing contractual rights and obligations to other licensees.***

To ensure a seamless market progression as anticipated in the Bill, existing limitations such as capacity shortage and infrastructure constraints and, liquidity issues must be addressed and the current SLA exercise with the Transmission Company of Nigeria (TCN) and the Central Bank of Nigeria's requirement for Discos to remit 90% of their bills to NBET are welcome developments.

Expansion of the License Classes

The licensing classes under the Bill have also been expanded to include electricity supply as a separate activity from electricity distribution creating a new separate license class. The Bill further provides that NERC can at any stage it deems appropriate, issue a directive for the disaggregation of electricity distribution licenses into supply and distribution licensed companies.⁸ There is also a new license category - Independent Distribution Network Operators (IDNOs) who are empowered to construct, own, operate, maintain, or procure the construction and maintenance of independent electricity distribution network, within an area with no existing distribution system or where the existing distribution infrastructure owned by the distribution licensee is unable to meet the demands of customers.

The introduction of the retail competition to the NESI will further complement programmes such as the Nigeria Mass Metering Programme (NMMP) and the Meter Asset Provider (MAP) in ensuring energy access and metering of customers across the country.

An Independent System Operator

The Bill also seeks to unbundle the Transmission Company of Nigeria (TCN) the monopoly transmission company by providing that the TCN is to incorporate a company, the Independent System Operator (ISO) under the Companies and Allied Matters Act, 2020 to take over all the assets and liabilities held by the TCN relating to its market and system operation functions.⁹ The ISO upon formation will be able to enter into and negotiate contracts for the procurement of ancillary services with independent power producers and existing gencos. The TCN is to be issued a transmission service provider license and will be responsible for the development and maintenance of the power transmission infrastructure as is applicable in countries such as Canada and the United States of America where the transmission operators (TOs) own, maintain, and expand the transmission system with the ISOs providing grid reliability by overseeing outage coordination and transaction support services such as billing and collections and transaction settlements.

The Governance structure of the ISO will be a 'Government owned' and 'Government/Stakeholder led' ISO, as at the time of its incorporation, the subscribers to its constitutional documents will be as directed by the NERC in consultation with relevant stakeholders. The true independence of the ISO will be critical for greater grid efficiency as grid dispatch should be more organised and non discriminatory to users of the network..

Without prejudice to the rights of the TCN and the distribution companies, NERC retains the power to issue independent electricity transmission network licenses, independent electricity distribution network licenses and independent electricity distribution network operators licenses where it is of the opinion,

⁸ Section 64(1) of the Electricity Bill. Also see Section 69(6)

⁹ Section 16

that there is no existing transmission facility and there is need for extension of the transmission network to increase electricity access; or there are existing transmission facilities which requires reinforcement of transmission network to connect new power generating facilities;¹⁰ or where it is of the opinion that there is no existing distribution system within an area or where the existing distribution infrastructure owned by the distribution licensee is unable to meet the demands of such customers.¹¹

State Participation in Electricity Value Chain

While the Bill states that its provisions is to apply to all aspects and segments of the power sector value chain across the entire country, it goes further to state that its provisions will not invalidate any electricity law passed by a State House of Assembly:

- with respect to generation, transmission, and distribution of electricity within a state;
- regarding the establishment of state electricity power stations or a State Electricity Board or any authority for the promotion and management of electric power stations in areas not covered by a national grid system within that State;
- sanction joint collaboration between the Federal and State Governments; or between the Federal and State Governments and the organized private sector; or between the State Government and the organized private sector for the purpose of facilitating electricity projects within the State especially through the exploitation of renewable energy sources;
- sanction any collaboration between States and Local Governments and the Federal Government for rural electrification, or between the States

and Local Governments and distribution licensees to ensure electricity access to rural, unserved and underserved areas, promote investments in electricity or provision of electricity within States or Local Government Areas; and

- sanction the establishment of a State electricity market and State Integrated Electricity Policy and Strategic Implementation Plan.

The recognition of state participation in the design, operation and regulation of the electricity sector will further compound the issues plaguing the Nigeria Electricity Supply Industry as parallel electricity market structures developed by the states may emerge. States such as Lagos,¹² Edo, Ondo¹³ and Kaduna have already taken the initiative to introduce policies and enact laws to govern electricity sectors in their States. This provision may be counterproductive as investors will require greater clarity around the legal and regulatory framework that will be applicable to their investment. With this development it is imperative that the NIEPSIP effectively factors involvement by the States into its plan and is introduced as soon as practicable to ensure market alignment.

¹⁰ Section 67(2)

¹¹ Section 69(9)

¹² <https://laws.lawnigeria.com/2019/05/06/lagos-state-electricity-sector-reforms-law-2018/>

¹³ Ondo State Power Sector Law 2020

CONCLUSION

Overall, the Bill has provides a solid framework for the further development of the NESI by taking cognisance of the need for better and more effective regulation, inclusion and introduction of clean energy, and codifying applicable incentives for sector participants, to attract more investors to leverage and the modest gains of the privatized electricity industry in Nigeria.

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