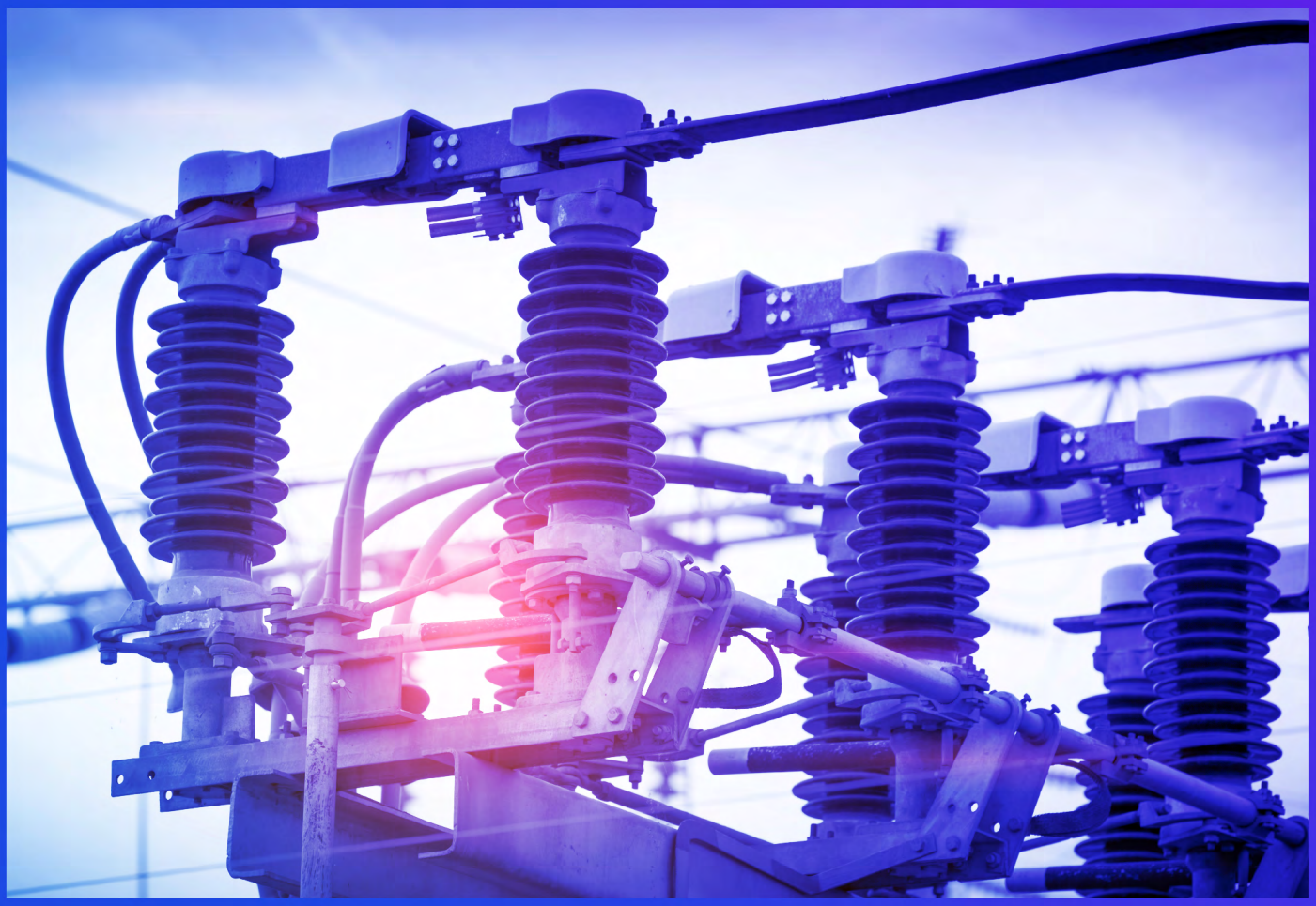
KPMG

Commentaries on the Electricity Act, 2023



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Content

Preface

Nigeria's electricity sector has been plagued with challenges across the various subsectors, despite years of structural reforms and investments aimed at addressing these recurrent issues. Power supply has been epileptic, with frequent national grid collapses and blackouts. The sector has also been plagued with liquidity, profitability challenges and high indebtedness.

On 8 June 2023, His Excellency, President Bola Ahmed Tinubu, GCFR, signed the Electricity Bill 2023 into law as Electricity Act, 2023 ("the Act"). The Act provides a comprehensive legal and institutional framework for the operation of a fully privatized, cost and service reflective tariff, contract and rule-based competitive electricity market in Nigeria, and repeals the following Acts:

1. Electric Power Sector Reform Act, 2005.
2. Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act, No. 7, 2010.
3. Hydroelectric Power Producing Areas Development Commission {Establishment, Etc.) Act, 2010 (Amendment) Act, 2013.
4. Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act, 2010 (Amendment) Act, 2018.
5. The Nigerian Electricity Management Services Agency (Establishment) Act, 2015.

The Act also consolidates laws relating to the Nigerian Electricity Supply Industry (NESI) with the aim of reforming the electricity sector, integrating renewable energy into Nigeria's energy mix, and attracting the required investments to develop the industry.

A key objective of the Act, amongst other, is to introduce new policies and regulatory measures that will address some of the current challenges and attract private sector investments across the NESI value chain to achieve a self-sustaining, profitable, and sufficient industry.

This publication highlights some of the key provisions of the Act and its impact on the Nigerian electricity sector.

Glossary

ISO - Independent System Operator

NEMSA - Nigerian Electricity Management Services Agency

NERC - Nigerian Electricity Regulatory Commission

NIEPSIP - National Integrated Electricity Policy and Strategic Implementation Plan

NESI - Nigerian Electricity Supply Industry

N-HYPPADEC - National Hydroelectric Power Producing Areas Development Commission

NIEP - National Integrated Electricity Policy

NPPCC - National Power Policy Coordinating Council

NPTIN - National Power Training Institute of Nigeria

PCAF - Power Consumer Assistance Fund

PPA - Power Purchase Agreements

REA - Rural Electrification Agency

REF - Rural Electrification Fund

TCN - Transmission Company of Nigeria

Chapter One

Objectives, Application, and Scope of the Act

The principal objective of the Act is to consolidate all laws in the power sector and provide a comprehensive framework to guide the operations of sector. The Act also aims to:

(i). provide a suitable legal framework to accelerate growth in power generation capacity and improve utilization of generated power through increased investments in new and existing resources for power generation;

(ii). promote policy and regulatory measures to ensure the expansion of efficient power generation, transmission, and distribution capabilities in Nigeria. This should address the imbalance in the existing transmission infrastructure and help to achieve Nigeria's national electricity access targets and highest per capita power consumption in Africa;

(iii). provide clear guide and legal basis for a phase-wide development of the NESI since the conclusion of the privatization phase as implemented pursuant to the provisions of the repealed Electric Power Sector Reform Act;

(iv). stimulate policy measures that will eliminate barriers to, and attract, investments across the Nigerian electricity value chain while promoting the development of a competitive electricity market;

(v). provide a clear legal and institutional framework for the formulation and adoption of a NIEPSIP;

(vi). stimulate policies to attract sustainable investments in new and efficient power generation technology and revamping existing power plants to address technology limitation and outdated infrastructure that are responsible for value chain losses in the NESI;

(vii). provide a framework to stimulate the development and utilization of renewable energy sources and create an enabling environment to attract investment in renewable energy sources;

(viii). using policy and regulatory measures to eliminate barriers to investments in generation, transmission, distribution, and related sub-sectors in the NESI;

(ix). provide a framework to improve access to electricity in rural, unserved, underserved, peri-urban and urban areas using conventional sources and renewable energy off-grid and mini-grid solutions;

(x). promote indigenous capacity in technology for renewable energy sources through a framework for local content in the NESI; and

(xi). enact laws for the security of electricity infrastructure, with effective punitive measures against electricity theft and other offences peculiar to the NESI; and strengthen the relationship between federal and state electricity markets.

(xii). Strengthen the relationship between the Federal and State electricity markets.

The Act shall apply throughout the Federal Republic of Nigeria and covers all aspects and segments of the power sector value chain in the country. However, the provisions of the Act will not preclude States from enacting laws to address generation, transmission and distribution of electricity within the States, sanction joint collaboration with the Federal Government, Local Government and organised private sectors to facilitate electrification of areas not covered by the national grid within the States, or establish State Electricity Market, State Integrated Electricity Policy and Strategic Implementation Plan (SIEPSIP), and State Electricity Regulatory Authority with powers to regulate the State's electricity markets.

Further, Section 3 of the Act provides that the Federal Government (FG) through the Ministry in charge of power shall prepare and publish the NIEPSIP in the Federal Gazette within a year of commencement of the Act. This will be done in consultation with the relevant government agencies and stakeholders and must be reviewed as required, but not later than every five years. The NIEPSIP is expected to guide the development of Nigeria's electric of existing and potential energy sources, and provide guidance on key matters such as rural electrification, public-private partnerships for provision of electricity access to all areas in the country, power-source specific policies, bulk purchase of power, management of local distribution in rural areas and other aspects of the power sector that the FG may deem fit for guidance through policy direction.

Finally, the Act provides that the NERC will have the continuing responsibility to ensure the development of the Nigerian electricity market from its current transitional electricity market stage to the medium-term and long-term electricity market stages or such stages of the market in accordance with such terms, preconditions or features as may be prescribed in the market rules or amendment to such rules as may be approved by NERC.

The objectives set out in the Act are commendable as the NESI needs creative and innovative solutions to address the country's power supply problem. The introduction of a consolidated power framework that includes cleaner renewable energy sources in Nigeria's energy mix should facilitate the development and scaling of renewable energy solutions, introduce cutting-edge technology to improve power distribution and monitoring and encourage private sector investment. The proposed reforms are expected to improve the competitiveness, financial viability and service delivery in the sector.

Chapter Two

Administration and Governance

The Act proposes the re-establishment of the following administrative bodies to oversee the efficient operation of the NESI:

2.1 Nigerian Electricity Regulatory Commission

The NERC (or "the Commission") shall independently function as the principal regulator of the NESI. Section 34(2) of the Act empowers the Commission to license and regulate persons engaged in the generation, transmission, system operation, distribution, supply, and trading of electricity. The Commission will also be responsible for promoting competition and private sector participation in the power sector, as well as other related functions outlined in the Act, including intervention in the management and control of the affairs of failing licensees and permit holders to ensure continuity in the provision of electricity services.

The NERC governing board shall consist of seven full time commissioners, each representing one of the six geo-political zones in Nigeria, and the chairman from any zone. The commissioners shall be appointed by the President of the Federal Republic of Nigeria ("the President"), from the public and private sectors, subject to confirmation by the Senate. The chairman's appointment shall last for five years, while the other six commissioners shall serve a four-year tenure, after which they may be re-appointed for a final four-year term.

The Commission will be funded by the fees, charges and other income accruing to it from licensees, excluding fines or penalties recovered, which shall be payable to the Rural Electrification Fund. Other sources of funds include monies allocated to the Commission by the National Assembly based on the NERC's request, and such other monies as may accrue to the Commission. However, where all budgeted expenditure has been met, any surplus funds following an audit of the NERC's accounts shall be paid directly to the Rural Electrification Fund.

2.2 Rural Electrification Agency

Section 127 of the Act establishes the Rural Electrification Agency (REA or "the Agency"), which will have the principal objective of facilitating the electrification of rural, unserved, and under-served markets in an economical manner that would allow for reasonable returns on investment through appropriate tariffs that meets the social, industrial and agricultural needs of rural communities. The Agency shall also support the development of renewable energy sources and provide public education for rural electrification and renewable energy production and consumption.

The Agency shall have a governing board comprising seven members appointed by the President on the recommendation of the Minister. Six of the members will be appointed to represent the six geopolitical zones of Nigeria, while the final member will function as the Managing Director (MD) and Chief Executive Officer (CEO) of the Agency. The board members will hold office for a five-year tenure, after which each member may be re-appointed for another five years and no more.

2.3 Directorates of the Agency

Structurally, the REA will be divided into three directorates, namely: the Rural Electrification Fund (REF) division, the Engineering and Technical Services (ETS) division, and the Corporate Services (CS) division.

a. The REF directorate, established under Section 140 of the Act, will oversee administration of the REF to provide capital subsidies to qualified rural electrification projects at federal, local and zonal levels,

and implement the policies of the Agency in respect of the REF. The REF will also support sustainable and renewable electrification projects for unserved and under-served communities through private and public sector participation. The sources of funding for the REF include;

(i). any surplus funds in the NERC account following annual audits

(ii). fines and penalties collected by the Commission

(iii). donations, grants, gifts, and loans

(iv). special intervention funds provided by any of the three tiers of government

(v). endowments, bequests, gifts of money, movable, or immovable property

(vi). funds appropriated by the National Assembly for the operation of the Agency, and

(vii). 2% of funds accruable to the Commission from the tariff structure as operational cost.

Additionally, Section 145of the Act provides that the NERC shall determine the rate of any contribution payable by eligible customers and licensees into the REF and allocate the resources from the REF based on transparent criteria established in consultation with the Minister. All funds paid into the REF shall be exempt from income tax in line with Section 150 of the Act.

b. The ETS division will be responsible for providing technical support services for the Agency's projects. The division, through its project supports directorate, will also supervise project implementation to ensure compliance with existing standards.

c. The CS division shall be tasked with creating awareness for rural electrification and managing the Agency's internal finance and administrative functions.

The REA, in addition to operating the REF, will be responsible for advocating for tax incentives and low interest loans for local producers of renewable energy products to encourage investment in rural electrification. Further, the REA, for the purpose of effective coordination and monitoring of rural electrification projects nationwide, will collaborate with State Rural Electrification Boards or related agencies to establish Local Government Rural Electrification Implementation Committees to carry out any component of the Rural Electrification Strategy and Implementation Plan in the respective States of the Federation.

2.4 Nigerian Electricity Management Services Agency

Section 172 of the Act provides for the transfer of the operations of the Electricity Management Services Plc to the Nigerian Electricity Management Services Agency (NEMSA). NEMSA shall retain its organizational structure pursuant to the NEMSA Act, 2015. NEMSA will, amongst other functions, enforce all statutory technical electrical standards and regulations published by the Commission, issue competency certificates to qualified electrical personnel working in the NESI and carry out periodic inspection, monitoring and assessment of existing power plants or stations, installations, extra high voltage and high voltage transmission lines and associated transmitting or switching stations and distribution networks to ensure that they are fit for purpose.

The ten members of the NEMSA governing board shall comprise a chairperson, six members representing each geopolitical zone, the MD/CEO, and one representative each from the Federal Ministry of Power and Federal Ministry of Finance. The tenure of office shall be three years, after which each member may be re-appointed for a similar period on a part-time basis.

The NEMSA shall be funded from:

(i). fees, charges, and other income accruing to it from certifications and other approved activities, excluding fines or penalties recovered under the Act;

(ii). grants of money or other property provided on terms and conditions consistent with the objectives of the NEMSA;

(iii). funds allocated by the National Assembly; and

(iv). other funds that may vest in or accrue to the NEMSA whether during its operations

or otherwise.

2.5 National Power Training Institute of Nigeria

Section 185 of the Act establishes the National Power Training Institute of Nigeria (NPTIN or "the Institute"), which will be under the supervision of the Minister, to serve as a focal point for human resources development and workforce capacity building, as well as a research centre for matters relating to electric power in Nigeria and Africa.

The NPTIN will collaborate with local and foreign institutions to organize training and professional certificate programmes that will ensure proficiency and global recognition of professionals in the power sector. Further, Section 186(2) of the Act empowers the Institute to utilize its database on manpower development to advise the FG and other relevant stakeholders on matters relating to manpower training in the NESI.

The governing Council of the NPTIN ("Council of the institute") shall be responsible for the general management of the affairs of the Institute and in particular, the control of the property and finances of the institute. Meanwhile, the manpower training, development, and certification functions of the NPTIN will be managed by the Institute's academic board.

Section 207 of the Act empowers the Council of the Institute to make, within the scope of its authority under the Act, Regulations that will guide the internal and domestic matters covered in its functions. The Regulations shall be in writing and will become effective when sealed with the seal of the NPTIN, unless another commencement date is prescribed in the Regulations. The Act also clarified that it is not obligatory for the Council of the Institute to publish its Regulations in the Federal Government Gazette, once it bears the seal of the NPTIN.

The Act further empowers the NPTIN to receive and manage the Power Training Funds and other funds accruing to the Institute. The funds of the institute, which will be used to offset its expenditure, shall be derived from the following sources:

(i). training fees

(ii). charges and dues recoverable by the Institution

(iii). budgetary appropriation by the National Assembly,

(iv). fees earned from consultancy services, subvention, grants-in-aid, endowments, and

(v). donations and legacies that may accrue to the Institute.

The Power Training Fund, as established by Section 202 of the Act, shall receive 40% of the income listed above, while the remainder will be paid into a bank approved by the governing council. Additionally, loans, grants, or voluntary contributions from licensees, development partners, and other monies obtained from sources other than those listed above shall be paid into the Power Training Fund.

2.6 National Power Policy Coordinating Council

Section 229 of the Act provides for the specific functions of the National Power Policy Coordinating Council (NPPCC or "the Power Council") to include coordinating and ensuring policy harmony in the NESI by considering, adopting, and reviewing the NIEPSIP for approval by the National Economic Council. The members of the NPPCC will be appointed and inaugurated by the President following the commencement of the Act. The Power Council shall deliberate on challenges experienced by stakeholders within the NESI, with a view to

developing adequate and practical solutions to the challenges and develop uniform and targeted incentives (whether fiscal or otherwise) to boost investment in the Nigerian electricity market. Further, the NPPCC will serve as a forum for collaboration between Federal and State government agencies for the formulation and review of the NIEPSIP.

The NPPCC will also publish annual performance evaluation reports for the NESI indicating amongst other things, key policy targets, achieved targets, challenges experienced by market operators, participants and other stakeholders in the sector and measures to address the identified challenges.

2.7 National Hydroelectric Power Producing Areas Development Commission

Section 82 of the Act establishes the National Hydroelectric Power Producing Areas Development Commission (N-HYPPADEC) which shall be responsible for formulating policies and guidelines for the development of hydroelectric power producing areas, without prejudice to the powers of the Minister to issue policy directives and the NERC's power to regulate the NESI. Section 89 of the Act outlines the other functions of the N-HYPPADEC.

The N-HYPPADEC shall have a Governing Council to oversee its administration, a Management Committee which shall be responsible for its general operations and administration, and an Advisory Committee which shall be responsible for appraising and advising the President on the activities of N-HYPPADEC at least once a year.

The Governing Council will be presided by a Chairman, appointed on a part-time basis. Other members of the Governing Council will include one representative from the affected communities listed in Section 84(1)(b) of the Act, two persons to represent the other non-hydroelectric power producing areas or States, a representative from the Federal Ministries of Power, Environment, Water Resources and Finance and the Managing Director of the N-HYPPADEC.

The Chairman and members of the Governing Council, other than *ex-officio* members, shall be appointed by the President, subject to confirmation by the Senate, and shall hold office for a tenure of four years, which may be renewed for another four years and no more. In addition to the above, the N-HYPPADEC will consist of Directorates of Finance and Administration, Directorate of Operations, Directorate of Engineering and Technical Services, Directorate of Community and Rural Development, Directorate of Legal Services and Directorate of Planning, Research and Statistics to help drive the mandate of the N-HYPPADEC.

Section 95 of the Act provides for the establishment of the N-HYPPADEC Fund which shall be financed from the following sources:

(i). 10% of total revenue generated by any company or authority from the operations of any hydroelectric dams in any member State of the N-HYPPADEC.

(ii). 50% of money due to member States of the N-HYPPADEC from the Ecological Funds;

(iii). all money raised for the purpose of the functions of the N-HYPPADEC through gifts loans, grants-in-aid, testamentary disposition or otherwise; and

(iv). proceeds from all other assets that may, from time to time, accrue to the N-HYPPADEC.

(v). Contributions by the FG to the N-HYPPADEC Fund through appropriations by the National Assembly.

All administrative bodies, except the NPPCC, are required to submit annual reports to the Minister within stipulated timelines for onward transmission to the President. This is expected to promote transparency and accountability for the various funds and expenditures of the bodies.

The NESI has faced significant market cooperation and governance problems over the years. In the past, experts have opined that the key to unlocking the issues in the sector for end-users to feel the impact of the many reforms in the sector will depend on what progress is made in governance and accountability in the sector. Therefore, the clarification of NERC as the principal regulator of the sector and demarcation of the functions of other regulatory bodies should help to address regulatory responsibilities, ensure clarity of statutory roles for ease of compliance by operators, and improve sector governance and transparency required to drive sustained growth in the NESI.

Chapter Three

Licensing

3.1 Licensing Requirements

The Act regulates the issuance of licenses for the business of electricity generation (excluding captive generation), electricity transmission, distribution, supply, trading, and system operation. Section 63(1) precludes the construction, ownership or operation of any of the above undertakings without an appropriate licence. However, Section 63(2) of the Act allows a person to construct, own or operate an undertaking for generating electricity not exceeding 1 megawatt (MW) in aggregate at a site or an undertaking for distribution for electricity with a capacity not exceeding 100 kilowatts (KW) in aggregate at a site, or such other capacity as the Commission may determine occasionally.

Failure to obtain a mandatory license attracts a penalty of at least ten times the application and license fees for the relevant license, or imprisonment for a maximum of five years, or both, including an order for permanent forfeiture of the undertaking to the Commission.

3.2 Classification of Licenses

Under the repealed Act, the Transmission Company of Nigeria (TCN) possessed the license to administer transmission service provision, market, and systems operation functions. However, Sections 65 to 69 of the Act provide for the following classes of licenses:

i. Generation license

A generation license allows the licensee to construct, own, operate and maintain a generation station for purposes of generation and supply of electricity. The Act permits the NERC to issue multiple generation licenses to independent power producers for generation of electricity from renewable and non-renewable sources.

Section 80 of the Act requires the NERC and the Independent System Operator (ISO) to promote electricity generation from renewable energy sources. Therefore, in granting generating licenses, the Commission shall promote embedded generation, hybridized generation, cogeneration, and the generation of electricity from renewable sources.

ii. Transmission license

A transmission license authorizes the licensee to construct, maintain, and operate a smart grid interconnection in Nigeria and other neighboring countries. Further, a licensed transmission service provider may provide access to its transmission system for use by any successor generating company, independent power producer, consumers, licensees, or other generators upon payment of appropriate transmission charges.

The Act also empowers NERC to issue independent electricity transmission network license where there is no existing transmission facility and there is a need to extend the transmission network to increase electricity access or existing transmission facilities that requires reinforcement of transmission networks to connect to new power generating facilities.

However, the franchise area for the independent electricity transmission network license shall be restricted to only the greenfield sites within the States covered under the license.

Section 108 of the Act provides for the demarcation of transmission control in the

country into a National Control Centre, Supplementary National Control Centre, and Regional Control Centres. The Commission may also issue regulations on private sector investment in the transmission network, including powers to issue directives for supervision and/ or control that will ensure the stable and efficient operations of the national grid under the control of a transmission licensee under Section 66 of the Act.

Further, Section 112 of the Act provides for a public-private partnership arrangement between the Federal or State governments and private companies for investment in the transmission network in line with the provisions of the Act and the relevant framework on infrastructure concessions and public-private partnerships in Nigeria.

iii. Systems operation license

Section 15 of the Act requires the TCN to incorporate an entity that will serve as the Independent Systems Operator (ISO). The ISO shall be licensed by the NERC to take-over the administration of market and system operation functions as stipulated by the Act. Consequently, the TCN will transfer the assets and liabilities relating to its market and system operation functions to the ISO, while retaining only its transmission license. Based Section 67 of the Act, the ISO shall perform the following functions:

- generation scheduling, commitment and dispatch;
- transmission scheduling and generation outage coordination;
- transmission congestion management;
- international transmission co-ordination;
- procurement and scheduling of ancillary services and system planning for long term capacity;
- administration of the wholesale electricity market, including the activity of administration of settlement payments, in accordance with the market rules; and
- such other activities as may be required for reliable and efficient system operation.

Based on the above, the TCN will focus on functions as are relevant to the development and maintenance of the power transmission infrastructure.

iv. Distribution and supply license (DSL)

A DSL shall authorize the licensee to operate a distribution system that will facilitate the following activities:

- connection of customers to receive electricity supply;
- installation, maintenance and reading of meters, billing and collection;
- expansion of the distribution network in the licensed areas, and
- such other functions as may be prescribed in the Act.

Section 68 of the Act provides other responsibilities and functions of DSL holders. Further, the NERC and ISO will be responsible for the promotion and distribution or supply of electricity from renewable energy sources.

The Act also requires the Commission to carry out a review every two years to assess the condition of the distribution system and the licensee's performance in meeting the average annual demand in its area of service. The Act further provides for the establishment of a forum for redress of customers' grievances in accordance with the guidelines as may be specified by the Commission which will be assessed by the Commission during its scheduled periodic reviews.

Finally, the Act provides that licensees must supply electricity to customers through installed meters duly certified by the NEMSA. Consequently, Consumers who refuse the installation of electricity meters on their premises shall be disconnected until the supplier is permitted to install the electricity meter.

v. Trading license

A trading licensee shall be permitted to purchase, sell and trade in electricity, subject to the NERC's stipulated terms and conditions. The Commission shall specify in the trading license issued, the technical requirements, capital adequacy requirements, credit worthiness and such other terms and condition as the Commission may deem adequate.

3.3 Application for & Renewal of Licenses

An application for a license shall be made in a form prescribed by the NERC, accompanied by the required documents and fees. Within 30 days of application, the applicant shall publish a notice of application in a newspaper circulating in the area in which it intends to operate as a licensee, and in a separate national circulation newspaper, in accordance with the directions provided by the Commission. Further, the Commission shall notify the applicant of its decision on the license application within 6 months from the date of receipt of a satisfactory application.

Based on Section 72(10) of the Act, the duration of a license will be determined by the NERC which can be renewed upon application before the expiration of the valid date. Specifically, Section 73(3) of the Act provides that *"the provisions of Section 71 of this Act shall apply, mutatis mutandis, to the renewal of licenses".* Meaning that the renewal of licenses will be subject to the same conditions stipulated for the initial application, with consideration of the necessary differences.

3.4 State Licensing

Section 63(2)(b) allows persons to operate an undertaking for generation, transmission, distribution, supply, and sale of electricity within a State, pursuant to the law enacted by the House of Assemble of the relevant State, provided that such a license does not permit the licensee to provide inter-state or transnational distribution of electricity in Nigeria.

Further, Section 63(7) of the Act empowers the State Electricity Board to grant and provide the framework for the operation of the following:

(i). mini-grid licenses,

(ii). Independent Electricity Distribution Networks (IEDN),

(iii). IEDN Operators (IEDNO),

(iv). Independent Electricity Transmission Networks (IETN), and

(v). IETN Operators (IETNO).

However, the Commission shall retain and exercise regulatory powers over on the above licenses and related electricity services where a State has no legal and institutional framework for the regulation of the licenses or related electricity services, and/or the State relies on the national grid for its electricity operations.

The Act also outlines administrative provisions regarding the amendment of licenses, intervention powers in failing licenses, and sale of undertakings of failed licenses, amongst others.

Chapter Four

Tarrifs and Subsidies

4.1 Tariffs

Section 116 of the Act governs the tariff regulation of the following activities in the NESI:

(i). generation and trading activities for which licenses are required and related activities which the Commission considers regulation of prices necessary to prevent abuses of market power;

(ii). transmission, distribution, supply, and system operation, for which licenses are required; and

(iii). electricity distribution franchising or other activities that the Commission may determine as being subject to tariff regulation.

The applicable prices for these activities will be regulated by tariff methodologies adopted by the NERC. The methodologies will be formulated to promote the economic efficiency of licensees, provide incentive for continued improvement of quality of services, promote co-generation and generation of electricity from renewable sources, while duly informing customers about the actual cost of consumption.

The Act provides for the differentiation of consumers based on differences in total electricity consumption, timing, load factors, power factors, voltage levels, location within the country and other relevant criteria that may affect the cost of providing a service. However, the methodologies will not promote undue discrimination between consumers and consumer categories. To aid this, Section 116(6) provides that the proposed tariff methodology will be published in newspapers and the official gazette to enable stakeholders to raise objections or representations to the Commission. Additionally, the Commission will issue a notice to relevant stakeholders to submit their inputs within a timeframe determined by the Commission for consideration before the Commission may update the tariff methodology. However, stakeholders will be duly notified of all proposed changes to the tariff computations.

4.2 Subsidies

The Act allows the subsidization of tariffs by the Federal and State Governments, as well as cross-subsidization (i.e., subsidization of the tariffs by one class or group of consumers by another class or group of consumers). However, such subsidy or cross-subsidies shall be implemented within the Power Consumer Assistance Fund (PCAF) which will be established in line with Section 122 of the Act. The PCAF will serve to subsidize power supplied to underprivileged consumers as specified by the Minister in consultation with the Commission.

NERC shall determine the contribution rates to be paid by eligible customers and consumers into the PCAF, with due consideration to the impact of the additional financial burden on such contributors which will be factored into the tariffs. All contributions received by distribution licensees shall be compiled and paid into the PCAF in accordance with the guidelines that will be issued by NERC.

Subsidy payments from the PCAF will be disbursed to distribution companies (DisCos) for electricity supplied to designated consumers at the rates and durations specified by the Commission. Further, the Commission shall ensure strict implementation of cross-subsidies and facilitate its gradual reduction with the aim of eliminating it completely before the declaration of the commencement of a long-term market stage under the Act.

Chapter Five

Renewable Energy and Efficiency

The development and utilization of renewable energy is at the forefront of the NERC's objectives under the Act. Consequently, the Act promotes the embedded generation, hybridized generation, co-generation, and the generation of electricity from renewable sources such as solar energy, wind, small hydro, biomass, and other defined renewable sources.

Based on Section 165 of the Act, the commercial activities considered in the renewable energy industry include generation, distribution, sales, and installation activities. However, the Commission may amend the scope of activities through available regulatory instruments.

5.1 Implementation Measures

Section 164 of the Act requires the NERC to implement multiple measures to increase the contribution of renewable energy to Nigeria's energy mix. Some of the key measures include:

(i). simplification of licensing and fees regime for issuance of licenses to renewable energy service companies;

(ii). provision of regulations specifying the role of generation licensees, transmission service providers, and ISO distribution licensees in the integration of renewable energy generated capacity into the national grid and distribution network;

(iii). provision of mini-grid regulations on renewable energy to cater for installation, metering, Acting, and other requirements for renewable energy mini-grid Systems;

(iv). review of the extant National Content Development Regulations for the power sector to address local content requirements for local skills acquisition, local production, and assembly of solar photovoltaics (PV) components, deep cycle batteries, electromechanical components of small hydropower technology, wind power, boilers, and turbines for cogeneration of less than 30MW or other components specified by the Commission for local contents requirements;

(v). ensuring stable and long-term favorable pricing mechanism for renewable energy;

(vi). introduction of feed-in tariffs for all small hydro schemes, all biomass co-generation power plants, solar and wind-based plants irrespective of their sizes, within the terms of the tariffs to be up to 20 years, to guarantee buyers under standard Power Purchase Agreements (PPAs) and provide return on investments;

(vii). provision of support to the REA towards efficient implementation of rural electrification using renewable energy sources specified under this Act;

(viii). issuance of renewable energy standards on installation, decommissioning and Disposal of renewable energy accessories and monitor compliance in conjunction with other relevant ministries, departments, and agencies with mandates on product safety and standards; and

(ix). Issuance of guidelines on net-metering for roof -top solar PV systems, small wind power in line with the provisions of this Act regarding the procedure for adoption of guidelines or other regulatory documents by the Commission.

5.2 Renewable Energy Incentives

Section 166 of the Act provides that the Federal Ministry of Finance shall introduce tax

incentives to promote and facilitate generation and consumption of energy from renewable energy sources. The incentives shall be in accordance with the provisions the Industrial Development (Income Tax Relief) Act or such other fiscal policy frameworks that incentivize the implementation of renewable energy projects in Nigeria.

5.3 Feed-in Tariffs Rates

Section 168 of the Act precludes distribution utilities from buying or negotiating PPAs with a generator of electricity from renewable energy sources ("renewable energy generator"), unless they are in accordance with specific guidelines provided by the Commission. Therefore, NERC is required to publish the approved feed-in-tariff rates for electricity generated from renewable energy sources in the Federal Gazette and the mass media.

5.4 Connection to transmission and distribution systems

In its efforts to encourage electricity utilization from renewable sources, the Act precludes transmission and distribution systems (TDS) operators from unduly rejecting requests of renewable energy generators to connect to a TDS within the coverage area.

The TDS operator shall promptly upgrade the TDS at reasonable economic expense to feed-in the electricity from the renewable energy generator. Subsequently, the TDS may share the agreed cost of upgrade between itself and the renewable energy generator. However, the cost of installing the metering point shall be borne by the renewable energy generator.

The Act accords necessary attention to the development and utilization of energy from renewable sources. Nigeria's rapid economic and population growth has resulted in a significant increase in energy demand in the country, which cannot be sustainably met through the finite fossil fuel sources such as crude oil and natural gas. As renewable energy gains importance as a part of Nigeria's energy sector, the creation of appropriate regulations to facilitate the growth of the renewable energy sub-sector has become imperative.

Although Nigeria's energy composition consists almost entirely of fossil fuels and biomass, renewable energy is projected to account for a major chunk of total power generation capacity in the next 10 years. Therefore, the promotion of renewable energy as the driving force for rural electrification, under the Act, is a welcome development.

Chapter Six

Offences and Penalties

6.1 Contravention of regulations, orders, etc.

Failure to comply with the orders, rules, decisions, licenses, permits, codes, standards, directions in the Act or any other subsidiary legislation issued pursuant to the Act, within the stipulated timeframe amounts to an offence. Accordingly, such offender shall be punishable by imprisonment for a term of not more than three months or with a fine of ₦500,000, or both. However, in the case of a continuing failure or contravention, an additional penalty of not more than ₦100,000 per day of the continuing failure to comply with such subsidiary legislation shall apply.

6.2 Theft of electricity and electric materials

Illegal connection of electricity, tampering with electric meters, unauthorized usage of electricity and similar offences are punishable, upon conviction, by imprisonment for a term of at least three years or with a stipulated fine, or both. Further, the theft of electric lines, meters, and other materials is punishable by imprisonment for a minimum of three years and a maximum of five years, or a fine of at least ₦500,000, or both.

Meanwhile, persons who knowingly receive stolen electric materials shall be punishable upon conviction with an imprisonment of fourteen years, or a fine limited to three times the value of the stolen material, or both.

6.3 Intentional disruption of power supply

The intentional disruption of electricity supply lines or works, attracts a fine upon conviction of not less than ₦300,000.

6.4 Other offences

The Act stipulates the relevant punishments for offences such as false declaration, abatement of punishable offences, obstruction, and impersonation of licensees, etc.

Additionally, Section 116(13) of the Act prevents any licensee that has been levied a fine or penalty under the Act or any other law or regulation from recharging the levy to the licensee's customers.

Conclusion

Since 2005, Nigerian power reforms have focused on privatizing the generation and distribution assets and encouraging private investment in the power sector. The Act becomes the first comprehensive legal framework that addresses key statutory and operational challenges in the NESI. The novel provisions of the Act, especially in areas of decoupling of distribution and retail functions and statutory recognition of electricity distribution franchising will open new frontiers in retail competition and increase third party investments in the distribution subsector.

The codification of the periodic review of tariff mechanism by NERC is a positive development as the existing pricing mechanism has provoked conflict between consumers and electricity providers as Nigeria aims to promote a cost-reflective tariff regime in the NESI. This will also curtail disputes with customers when tariffs are reviewed by the regulators. Therefore, it is expected that the proposed system for tariff methodologies will include appropriate economic variables such as inflation and foreign exchange differences to ensure a sustainable tariff plans for both the providers and consumers.

Further, the stipulation of penalties for various offences in the NESI will discourage the high incidences of energy theft and consumer apathy in electricity bill payment which has left the electricity sector with significant market shortfalls. It is expected that the penalties should curb such malicious practices by both the providers and consumers alike. However, the Commission must ensure adequate provisions of meters to customers to avoid incidences of estimated bills and put other regulations that will discourage energy providers from takin undue advantage of consumers. This will promote equity and transparency in the NESI and minimise collection losses due to disagreements between the DisCos and consumers.

However, there appears to be confusion in Sections 95(2)(c) and (e) regarding the levy to be administered by N-HYPPDEC for host community development for communities where hydroelectricity is generated in Nigeria. On one hand, Section 95(2)(c) imposes a 5% levy of all revenue accruing from power generated by various GenCos in the affected communities, while Section 95(2)(e) on the other hand, exempts hydroelectric GenCos from the application of the levy. This appears to be a contradiction given that the Section relates to hydroelectric power producing areas in Nigeria. Therefore, it is expected that subsequent amendment to the Act will clarify this error to avoid any ambiguity in the application of the levy to affected companies.

Finally, there is no doubt that the power sector will continue to be under a lot of focus given the significant role electricity plays in national development. Therefore, the Act is an important step in the right direction towards achieving a competitive and self-sustaining power sector market in Nigeria.

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