

Electricity Sector Investment Guide in Nigeria

OALP P&I NEWSLETTER

INTRODUCTION

Brief overview of the electricity market in Nigeria

The electricity market in Nigeria is a crucial sector that plays an undeniable role in the country's economic development. The market is primarily regulated by the Nigerian Electricity Regulatory Commission (**NERC**), which oversees the generation, transmission, distribution, sale and supply of the commodity in the country at the Federal Electricity Market (**FEM**). At the respective State Electricity Markets (**SEMs**), state regulators have regulatory oversight.¹

Before its privatization in 2013, the Nigerian Electricity Supply Industry (**NESI**) was vertically integrated, owned and regulated by the Federal Government of Nigeria (**FGN**) through the Federal Ministry of Power. This resulted in inefficient operations by the state-owned National Electric Power Authority (**NEPA**). There is currently an active interplay of public and private sector players in the sector and ongoing efforts to attract additional private investment and improve efficiency. However, challenges such as inadequate generation capacity, poor financing, transmission and distribution losses, and limited access to electricity in rural areas persist.²

In 2023, the sector was overhauled by the enactment of the Electricity Act 2023 (the Electricity Act or the **EA**), which repealed the erstwhile legal framework for the sector, the Electric Power Sector Reform Act 2005 (**EPSRA**). It is expected that with the recent enactment of the Electricity Act, the sector will attract further investments into electricity generation, transmission, and distribution at the FEM. To achieve this, the legal, business, political and investment climates in NESI must be stable and favorable to both local and foreign investors.

RECENT DEVELOPMENTS

Recent developments in the sector

Prior to the enactment of the Electricity Act, the EPSRA provided the framework for the unbundling, corporatization, and privatization of NEPA. The Power Holding Company of Nigeria (**PHCN**) was corporatized from NEPA and later unbundled into six (6) generation companies (**GenCos**), eleven (11) distribution companies (**DisCos**) and the Transmission Company of Nigeria (**TCN**). Since then, more GenCos and one DisCo have been brought onstream, and there are plans to unbundle the TCN into an Independent System Operator (**ISO**) and a Transmission Service Provider (**TSP**).³

1. See: Electricity Act 2023. Also see the respective state laws on electricity for Ekiti, Ondo, Enugu and Oyo.

2. Chukwuka Onyekwena Joseph Ishaku and Precious C. Akanonu, "Electrification in Nigeria: Challenges and Way Forward" https://cseafrica.org/wp-content/uploads/2017/10/Nigeria-CSEA-Electricity-Project_-1.pdf

3. Order on the Establishment of the Independent System Operator dated 30th April 2024.

On 9 June 2023, just shy of two weeks after being sworn into office, President Bola Ahmed Tinubu signed the Electricity Act into law. The Electricity Act repeals EPSRA, while saving some provisions in the repealed enactment. The objective of the EA is to provide a comprehensive legal and institutional framework to guide the operation of a privatized, contract and rule-based competitive electricity market in Nigeria.⁴

The EA aims to bring in private sector investments through the implementation of transformative policy and regulatory measures in NESI. It provides a legal and institutional framework for electricity federalism in line with the provisions of the Items 13, 14 and 15 of the Part II, Second Schedule, Concurrent Legislative List of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the promotion of the use of renewable energy in the energy mix, the punishment of offences committed in the sector etc.⁵

Also, in a revolutionary move made in the wake of the general elections conducted last year and prior to the adoption of the Electricity Act, the erstwhile President of the Federal Republic of Nigeria, President Muhammadu Buhari signed nineteen (19) bills into law on March 17, 2023. Significant among the newly enacted legislation were the Fifth Alteration Acts 2023, which made sixteen (16) new amendments to the 1999 Constitution of the Federal Republic of Nigeria (the **Constitution**). One of the landmark amendments to the Constitution is the Fifth Alteration Act No.17, Devolution of Powers, National Grid System (the **Constitutional Amendment**) which now expands the scope of state legislative powers to include generation, transmission, and distribution of electricity in areas covered by the national grid system.⁶

Prior to the Constitutional Amendment, the legal regime only permitted states to make laws for the generation, transmission, and distribution of electricity in areas “not covered by the ‘national grid system’” within the state. Thus, the Constitutional Amendment deletes the above

phrase from the Constitution, which in effect, expands the scope of legislative powers of the State Houses of Assembly in relation to the generation, transmission, and distribution of electric power in on-grid areas.

In response to the Constitutional Amendment and the EA, states like Enugu, Ekiti, Ondo and Oyo have enacted electricity laws, leading NERC to transfer oversight of the electricity market to Enugu, Ekiti and Ondo states.⁷ The Enugu State Electricity Law establishes the state’s electricity regulatory commission, an electricity market, and consumer protection mechanisms.⁸ Similarly, the Ekiti State Electricity Power Sector Law grants the state authority over electricity generation, transmission, and distribution, fostering an enabling environment for private sector investment and participation.⁹ These legislative developments mark a significant step towards a more efficient, competitive, and sustainable electricity market in Nigeria, with potential benefits including enhanced competition, increased private investment, and greater access to modern energy services for all citizens.

Earlier in the year, President Tinubu signed the Electricity Act (Amendment) Bill, 2024 into law. The Electricity Act (Amendment) Act 2024 seeks to address the development and environmental concerns of host communities by requesting electricity generation companies operating within such communities to set aside five per cent (5%) of the actual annual operating expenditures of the GenCos from the preceding year for the development of their respective host communities.¹⁰

THE LEGAL AND REGULATORY ARCHITECTURE FOR THE SECTOR

The Constitution of the Federal Republic of Nigeria

The Constitution is the apex regulatory instrument that provides the framework for the creation of the FEM and SEM in the country. Item 13 of the Concurrent Legislative List provides for the powers of the Federal Government to legislate on:

4. See: *Electricity Act 2023*.

5. *Ibid.* Section 1.

6. *Fifth Alteration Act No.17, Devolution of Powers, National Grid System*

7. See for instance *Order of Transfer of Regulatory Oversight of the Electricity Market in Enugu State from Nigerian Electricity Regulatory Commission (“NERC” or the “Commission”) to the Enugu State Electricity Regulatory Commission 2024*

8. See: *Enugu State Electricity Law 2023*

9. *Ekiti State Electricity Power Sector Law*

10. See the *Electricity Act (Amendment) Act, 2024*

- electricity and the establishment of electric power stations;
- the generation and transmission of electricity in or to any part of Nigeria and from one state in Nigeria to another state;
- the regulation of the right of any person or authority to dam up or otherwise interfere with the flow of water from sources in any part of the Federation;
- the participation of the Federal Government in any arrangement with another country for the generation, transmission and distribution of electricity for any area partly within and partly outside Nigeria;
- the promotion and establishment of a national grid system; and
- the regulation of the right of any person or authority to use, work or operate any plant, apparatus, equipment, or work designed for the supply or use of electrical energy.

States of the Federation on the other hand are empowered by Item 14 of the Concurrent Legislative List to make laws for the state with respect to –

electricity and the establishment of electric power stations in the states;

the generation, transmission, and distribution of electricity within each state; and

the establishment of any authority for the promotion and management of electric power stations established by the state.

The Electricity Act 2023

The electricity sector in Nigeria is principally governed by the Electricity Act. With the transfer of regulatory authority to three (3) State Electricity Regulatory Commissions (**SERCs**) and the provision of timelines in the Orders issued by NERC to these SERCs, the EA will cease to have applicability in these and other states which opt out of being regulated by NERC.¹¹ The EA provides a comprehensive legal and institution operation of a fully

privatized, cost and service reflective tariff, contract and rule-based competitive electricity market in Nigeria and repeals the EPSRA and other instruments which had an impact on the NESI. The EA establishes NERC and saddles it with the responsibility of ensuring optimal utilization of resources for the provision of electricity services.¹² It also provides for a phased approach towards the introduction of competition in the sector, a fact recognized under the EPSRA, through the unbundling of the TCN and the gradual phasing out of the role of the Nigerian Bulk Electricity Trading Plc (**NBET**) in the market.¹³ The EA further incentivizes the generation of renewable energy backed generation and creates a framework for rural electrification in the country.¹⁴ The institutions created and recognized by the EA include:

- The Minister of Power;
- The Ministry of Power;
- The Nigerian Electricity Regulatory Commission;
- The Rural Electrification Agency;
- The National Hydroelectric Power Producing Areas Development Commission;
- Nigerian Electricity Management Services Agency; and
- National Power Training Institute Of Nigeria.

The Climate Change Act 2021

The Climate Change Act 2021 (**CCA**) which was passed by the National Assembly in October 2021 and seeks to provide a framework for achieving low greenhouse gas emissions (**GHG**) in the electricity and other sectors where GHG is emitted, inclusive green growth and sustainable economic development.¹⁵ Its is also a relevant legislation to the extent that it seeks to provide a framework for achieving low GHG emissions and to mainstream climate change actions into national plans and programmes.¹⁶ The CCA establishes the National Council on Climate Change (the **Council**) with the primary task of

11. See: section 230 of the Electricity Act 2023.

12. Section 33 et seq

13. Section 7(2)(d), section 15.

14. See: section 127 et seq and section 164 et seq.

15. See section 1 Climate Change Act 2021.

16. Ibid.

coordinating the implementation of sectoral targets and guidelines for the regulation of GHG emissions and other anthropogenic causes of climate change in the country.¹⁷ In accordance with its provisions, the Council is the body charged with the power to make policies on all matters relating to climate change in Nigeria.¹⁸

The CCA also establishes a Climate Change Secretariat, and a Climate Change Fund to be used in funding innovative climate change mitigation and adaptation projects, subject to the approval of the Council to support climate change advocacy and information dissemination.¹⁹ The CCA imposes on the Federal Ministry of Environment in consultation with the Ministry of Budget and National Planning, the responsibility of setting a carbon budget for Nigeria, keeping average increases in global temperature within 2°C and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.²⁰ Also, the CCA requires the Secretariat to develop an Action Plan in consultation with the Federal Ministry of Environment and the Ministry of Budget and National Planning which will serve as a basis for identifying the activities aimed at ensuring that the national emissions profile is consistent with the carbon budget goals, and establishing national goals, objectives and priorities on climate adaptation.²¹

The Environmental Impact Assessment Act

The Environmental Impact Assessment Act 1992 (the **EIA Act**) sets out the general principles, procedure, and methods to enable the prior consideration of environmental impact assessment on certain public or private projects in Nigeria. The EIA Act provides that:

1. The public or private sector shall not undertake or embark on or authorize projects or activities without prior consideration, at an early stage, of their environmental effects;
2. Where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of the EIA Act;

3. The criterion and procedure under the EIA Act shall be used to determine whether an activity is likely to significantly affect the environment and is therefore subject to an environmental impact assessment;
4. All agencies, institutions (whether public or private) except if exempted pursuant to provisions of the EIA Act, shall, before embarking on a proposed project, apply in writing to the National Environmental Standards and Regulations Enforcement Agency (**NESREA**) so that its activities can be quickly, and surely identified and environmental assessment applied as the activities are being planned.²²

Electricity projects could have potential significant impact on the environment. Accordingly, these projects, from generation to transmission and distribution require an environmental impact assessment before they come onstream from project conception to decommissioning. Renewable energy projects also require such environmental impact assessments.²³

NERC Regulations, Orders, Guidelines etc.

NERC Regulations are veritable sources of subsidiary legislation which impact the activities of participants in the FEM. These include:

- a. Regulations for the Granting of Permits for Captive Power Generation 2008;
- b. Application for Licences (Generation, Transmission, System Operations, Distribution & Trading) Regulations, 2010;
- c. Regulations for Embedded Generation 2012;
- d. Regulations for Independent Electricity Distribution Networks 2012;
- e. Regulations on National Content Development for Power Sector 2014;
- f. Nigerian Electricity Supply and Installation Standards Regulations 2015;
- g. Regulations for the Investment in Electricity Networks in Nigeria 2015;

17. Section 4

18. The National Council on Climate Change, 'About the National Council on Climate Change' <https://natccc.gov.ng/about-the-council/>

19. Section 15(2)(f) & (g).

20. Section 19(1)(a)

21. Section 20(4)

22. Section 2

23. Enerdatatics, 'Assessing Environmental Impact: Renewable Energy Projects' <https://enerdatatics.com/blog/assessing-environmental-impact-renewable-energy-projects/>

- h. The Nigerian Electricity Health and Safety Standards Manual;
- i. Meter Asset Provider and Mass Metering Regulations 2021;
- j. Consumer Protection Regulations 2023;
- k. Mini-Grid Regulations 2023;
- l. Eligible Customer Regulations 2024.

These Regulations and other subsidiary legislation issued by NERC are only deemed valid if not inconsistent with the provisions of the Electricity Act.²⁴

ELECTRICITY GENERATION



Background of Electricity Generation in Nigeria- Ownership Structure, Types, Key Players, Whether There are Any Foreign Participants, and the Extent of Penetration or Diffusion of Renewable Energy in the Energy Mix.

Electricity generation in Nigeria in the FEM is governed by the Electricity Act. The Electricity Act provides that NERC shall maintain regulatory oversight over grid-connected generation plants in the country. In the third quarter of 2023 (Q3 2023), there were twenty-seven (27) grid-connected power plants. These consisted of nineteen (19) gas power plants, four (4) hydro power plants, two (2) steam plants, and two (2) gas/steam-powered plants. During this time, the average available generation capacity was 4,922.26MW.²⁵

At the time of the privatization of the electricity sector in 2013, NERC licensed the successor generation companies (Successor GenCos) to construct, own, operate and maintain generation stations for purposes of generation and supply of electricity in accordance with the provisions of the EPSRA. Six (6) generation companies were unbundled and privatized from PHCN, consisting of four (4) gas fired plants and two (2) hydro plants. While the gas

fired plants were fully privatized, the hydro plants were concessioned to private investors. The key players in the generation sector include Successor GenCos, the Niger Delta Power Holding Company (NDPHC) power plants, Licensed Independent Power Producers (IPPs) and others.²⁷ These comprise both on-grid and off-grid, thermal and renewable energy generators.

Regarding the diffusion of renewable energy in the energy mix, section 80 of the Electricity 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 is required to promote embedded generation, hybridized generation, cogeneration, and the generation of electricity from renewable sources. NERC also encourages the development and utilization of renewable energy by issuing permits and registration certificates for mini-grid development in the country.²⁸ A new Mini-Grid Regulations 2023 was issued in December 2023 and further to section 165(1)(m) of the Electricity Act, NERC is required to award license of mini-grid concessions to renewable energy companies to exclusively serve a specific geographical location indicating aggregate electricity to be generated and distributed from a site with obligation to serve customers.

The renewable energy sector in Nigeria has several key players including Engie SA, TotalEnergies SE, Starsight Energy, Enel S.p.A, and North South Power Co Ltd. These entities have played a significant role in advancing the industry through technological innovations and large-scale projects.

In addition to industry leaders, the Nigerian government is also actively promoting renewable energy generation through favorable policies. These efforts, along with advancements in renewable energy technologies, are projected to drive market growth. However, the increasing use of natural gas for power generation may present a challenge to the renewable energy market. Nonetheless, ongoing advancements in solar PV manufacturing are expected to create profitable opportunities for companies operating in Nigeria's renewable energy market.²⁹

24. Section 230(1)(b)

25. Section 63(7)(b)

26. See: NERC Quarterly Reports (Q3/2023), p. viii

27. See First Schedule to the Electricity Act 2023.

28. NERC Quarter Report, Q4/2023, p. 37

29. Mordor Intelligence, 'Nigeria Renewable Energy Companies' <https://www.mordorintelligence.com/industry-reports/nigeria-renewable-energy-market/companies>



The Legal Framework for Investment in Electricity Generation- Licensing, Tariff, Authorization Requirements, Etc. in Nigeria.

Licensing

The legal framework on investment in electricity generation is largely governed by the Companies and Allied Matters Act 2020 (CAMA) and the provisions of the Electricity Act. The first step towards investing in electricity generation is incorporating a company in Nigeria to carry on the business of electricity generation. This is especially so for foreign entities which are interested in carrying on business in the sector, unless otherwise exempted.³⁰ To participate in electricity generation, incorporated entities require a license or permit from NERC. Further to section 63 of the Electricity Act, to construct, own or operate an undertaking for generating electricity exceeding 1 megawatt (MW) in aggregate at a site requires the license of NERC³¹ and in connection with this, NERC may issue various kinds of electricity generation licences. These include on-grid generation licence, off-grid generation licence and embedded generation licence. The Electricity Act has also vested in NERC the powers to issue co-generation licences.

Authorizations

Besides NERC, the National Environmental Standards and Regulations Enforcement Agency (NESREA) plays an active role in granting permits for projects which have the potential to significantly impact the environment. These include Air Quality Permit, which is granted for air and noise pollution, and Waste and Toxic Substances Permit which is granted for waste generation, restricted chemicals, sludge disposal and effluent discharge.³³

Tariff

All activities, including electricity generation, are subject to tariff regulation in NESI.³⁴ However, NERC may also

establish methodologies that reflect the terms and conditions of a contract between a GenCo and its off-taker.³⁵ Accordingly, the practice is for NERC to review and approve the terms of power purchase agreements (PPAs) entered between a GenCo and its off-taker prior to commercial operations. On-grid GenCos are remunerated based on the prices for wholesale electricity tariffs set in MYTO.³⁶

Levies

GenCos which operate in Hydroelectric Power Producing Areas are required to make contribution to the National Hydroelectric Power Producing Areas Development Fund in the following percentage:

Hydroelectric power GenCos are to make a 10% contribution to the total revenue generated from the operations of any hydroelectric dams;

Other GenCos are to make 5% of the annual operating expenditure for the proceeding financial year to the Fund for the development of the respective host communities.³⁷



Restrictions on Foreign Ownership or Participation in Electricity Generation?

Nigeria's national policy on foreign investment permits foreign investment in all sectors of the economy except specified industries or enterprises designated as being on the "negative list" in the Nigeria Investment Promotion Commission Act 1995 (NIPC Act) in which both local and foreign investments are prohibited. Section 17 of the NIPC Act provides that a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria subject to the provisions of section 18, which provides that the provisions of section 17 shall not apply to the negative list. The Electricity sector is not included in the negative list and hence foreign participation is permitted.

30. section 78 & 80 CAMA.

31. Section 63(2)(a)

32. NESREA, 'Permits', <https://www.nesrea.gov.ng/publications-downloads/permits/>

33. Section 116(1) of the Electricity Act 2023.

34. Section 116(4)(b)

35. See MYTO 2024 for electricity distribution which sets the prices DisCos are to remunerate GenCos for wholesale electricity prices.

36. See section 95(2) of the Electricity Act 2023, and the Electricity Act (Amendment) Act 2024

ELECTRICITY TRANSMISSION

Background of Electricity Transmission in Nigeria-Ownership Structure, Key Players, Whether There are Any Foreign Participants.

TCN was established due to the merger of the Transmission and Operations sectors of the defunct NEPA on 1st April 2004. It became incorporated in November 2005 as one of the 18 unbundled Business Units under the PHCN. TCN received its transmission license on 1st July 2006, followed by two additional licenses for electricity transmission and system operations on 10th June 2013.³⁸ In 2012, the TCN signed a three-year Management Contract for the TCN with Manitoba Hydro International (MHI) Ltd. of Canada to enable MHI manage TCN's electrical power transmission, system operation and market operation undertakings, as well as train TCN personnel. In 2015, the contract was extended for an additional one-year term.³⁹ The Federal Government of Nigeria (FGN) maintains its shareholding and ownership in the TCN through the Ministry of Finance Incorporated (MOFI) and the Bureau of Public Enterprises (BPE).⁴⁰

The Legal Framework for Investment in Electricity Transmission in Nigeria.

Even though there were perceived disputes over the renewal of the Management Contract with MHI, TCN has since been handed back to the FGN for management. In accordance with TCN's license, the TCN has been licensed by NERC to perform the following three functions. These include the provision of:

a	b	c
Transmission Services;	System Operation Services;	Market Operation Services. ⁴¹

As Transmission System Provider (TSP), the TSP is primarily tasked with the responsibility of building, maintaining, and expanding the transmission network, and admitting users of the transmission network in accordance with the Grid Code and Market Rules. As

System Operator (SO), TCN dispatches generators in accordance with the Grid Code at least cost, based on nomination by generators. In its capacity as Market Operator (MO), the TCN performs market administration functions and implements provisions of the Market Rules to ensure a proper administration and settlement of market payment.⁴²

Further to section 15 of the Electricity Act, following an order issued by NERC, the TCN is required to incorporate an Independent System Operator (ISO) to which its System Operator function will be transferred and shall retain its TSP functions. Following this, on 30th April 2024, NERC issued Order on the Establishment of the Independent System Operator mandating the TCN to transfer its ISO functions to the Nigerian Independent System Operator of Nigeria Limited no later than 31st August 2024.⁴³

NERC regulations for investment in electricity networks provides a framework for investing in the transmission network in Nigeria.⁴⁴ Also, the Electricity Act provides that investors interested in investing in the transmission networks may do so further to section 109(2) and section 112 which provide for the following arrangements for investments:

- a long-term concession of old or new transmission lines under any concession or commercial arrangement with the TSP as may deem necessary;
- any concession or commercial arrangement between concessioners and successor transmission licensee for expansion of the transmission network;
- project finance by private investors whereby such investors finance, build, own and maintain parts of the transmission network;
- public-private partnership arrangement between the Federal Government or State Government with private companies for investment in the transmission network.

38. Transmission Company of Nigeria, "About Us" <https://tcn.org.ng/>

39. Nigeria System Operator, "Federal Government Extends Management Contract with Manitoba Hydro Intl" <https://www.nsong.org/MediaPublicity/NewsDetails?NewsID=33>

40. *Ibid.*

41. TCN, "About Transmission Company of Nigeria" https://tcn.org.ng/page_history.php

42. *Ibid.*

43. Order on the Establishment of the Independent System Operator dated 30th April 2024.

44. Regulations for Investments in Electricity Networks in Nigeria 2015

Although the TCN has the major responsibility to develop the transmission network, the Electricity Act permits private investors to enter various arrangements for investment in the transmission network. NERC may also grant an independent electricity transmission network (IETN) licence to independent operators of transmission licences where the IETN relies on any part of the national grid for its operations.⁴⁵

Any Restrictions on Foreign Ownership or Participation in Electricity Transmission?

While foreign entities cannot own the transmission network, such entities may enter various arrangements for investing in the transmission network.

Rules on Third Party Access to the Transmission Grid

Users of the transmission grid are entitled to non-discriminatory open access to the transmission grid, subject to payment of appropriate transmission charges. In connection with this, transmission use of service charge (TUoS) is paid by users of the transmission grid in accordance with the framework provided under the Multi-Year Tariff Order for the Transmission Company of Nigeria Plc 2024.

ELECTRICITY TRADING



Background on Electricity Trading in Nigeria- Ownership Structure, Types, Key Players, and Whether There is Any Restriction in Foreign Participants.

Trading in electricity in Nigeria involves any form of marketing, brokering or intermediation in the sale of electricity, whether or not it entails the purchase of electricity for resale, or whether or not title is taken to the electricity sold.⁴⁷ In accordance with section 69(1) of the Electricity Act, NERC has the powers to issue a trading license which permits its licensee to engage in the purchasing, selling, and trading of electricity.

The Nigerian Bulk Electricity Trading Plc (NBET) holds the license for bulk trading and resale of electricity. Further to its licence, NBET purchases electricity in bulk from GenCos and IPPs and resells the same to distribution

companies (DisCos).⁴⁸ However, the existence of NBET is to be a transitional arrangement in the NESI as according to section 7(2)(d) of the Electricity Act, by its directive and within such period as it may specify, NERC may direct to NBET, in accordance with its license, cease to enter into contracts for the purchase and resale of electricity and ancillary services and novate its existing contractual rights and obligations to other licensees in NESI.



The Legal Framework for Investment in Electricity Trading- Licensing, Requirements Etc.- in Nigeria.

The Electricity Act 2023 governs electricity trading in Nigeria. As stated above, an entity which wishes to trade in electricity must obtain a licence from NERC and meet other requirements of registration or incorporation to do business in Nigeria in line with the provisions of the CAMA



Any restrictions on Foreign Ownership or Participation?

No, there are no restrictions on foreign participation in electricity trading in Nigeria.

ELECTRICITY DISTRIBUTION

Provide a Background on Electricity Distribution in Nigeria- Ownership Structure, Types, Key Players, and Whether There are Any Foreign Participants.

In 2013, eleven (11) distribution companies were privatized from the PHCN which had been corporatized from NEPA. At present, there are twelve (12) DisCos connected to the transmission grid. There also exist other independent electricity distribution networks (IEDN) in the country. The key players in the distribution value chain in the FEM include: Aba Power Limited Electric (APLE), Abuja Electricity Distribution Company Plc (AEDC), Benin Electricity Distribution Company Plc (BEDC), Enugu Electricity Distribution Company Plc (EEDC), Eko Electricity Distribution Company Plc (EKEDP), Ibadan Electricity Distribution Company Plc (IBEDC), Jos Electricity Distribution Company Plc (JEDC), Kaduna Electricity Distribution Company Plc (KAEDC), Kano Electricity

45. Section 63(7)(b) of the Electricity Act 2023

46. Section 232 of the Electricity Act 2023

47. Section 6(f) of the Electricity Act 2023

48. See: NERC Quarterly Reports, Q4/2023.

Distribution Company Plc (**KEDC**), Port Harcourt Electricity Distribution Company Plc (**PHEDC**), Yola Electricity Distribution Company Plc (**YEDC**).⁴⁹

Description of the Legal Framework for Investment in Electricity Distribution- Licensing, Tariff, Authorization Requirements, Etc.- in Nigeria.

Licensing

To participate in the electricity distribution business, an entity must incorporate and obtain a distribution licence from NERC. A distribution licence permits the holder of the licence to construct, operate and maintain a distribution system and facilities, including the following activities as may be specified in the license-

- the connection of customers for the purpose of receiving a supply of electricity;
- the installation, maintenance and reading of meters, billing and collection;
- expansion of the distribution network in the licensed areas; and
- such other distribution service as may be prescribed for the purposes of section 68 of the Electricity Act.⁵⁰

Incumbent DisCos have licences which permit these entities to distribute electricity within their franchise areas. Even though these licences do not grant the DisCos exclusivity over their franchise areas, there must be compelling reasons for NERC to grant a distribution licence in favour of other investors, such as due to non-performance of an incumbent DisCo.⁵¹ Electricity distribution within a state is now a matter reserved for state legislation.⁵² However, NERC by virtue of its Franchising Guidelines and in accordance with the provisions of the Electricity Act, may approve a request for electricity distribution franchising at any time during any of the market stages recognized under the Electricity Act and the Market Rules.⁵³

Tariff

The regime for electricity tariff in electricity distribution is

governed by the MYTO 2024 for each distribution company. A major review was seen in the distribution or end-use tariffs in January 2024, and we have seen minor reviews in April, May and June this year. Key innovations introduced by the MYTO 2024 regime include the fact that this is the first time NERC is making an order for automatic monthly adjustments of electricity tariffs in Nigeria.⁵⁴

In accordance with the MYTO issued by NERC, minor reviews were expected to be undertaken semi-annually, and major reviews once every five (5) years.⁵⁵ MYTO 2024 also imposes an obligation on DisCos to procure power from alternatives sources of suppliers beside NBET, and obtain sufficient bilateral contracts to smoothly transition from NBET's vesting contract regime. Thus, beginning in January 2024, DisCos will not be able to seek compensation for revenue losses caused by generation shortfalls.⁵⁶ Also, in April 2024, NERC completely liberalized the tariff regime for Band A customers in DisCos' franchise areas. Since January 2024, electricity tariffs have been adjusted thrice to account for changes in macroeconomic conditions which are outside the control of DisCos.⁵⁷

Are there any restrictions on foreign ownership or participation?

No, there are no restrictions on foreign ownership or participation in electricity distribution.

Rules on Third Party Access

By section 113(3) of the Electricity Act, where any person, whose premises is situated within the area of supply of a distribution licensee requires supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, enter into a distribution use of system agreement with the distribution licensee to wheel such electricity in accordance with regulations made by NERC and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

49) See: NERC Quarterly Reports, Q4/2023.

50) Section 68 of the Electricity Act 2023

51) *Ibid.* See section 75 et seq

52) See section 230 of the Electricity Act 2023.

53) See section 68(5) of the Electricity Act 2023.

54) See para 23 of MYTO 2024

55) <https://nerc.gov.ng/index.php/media-library/public-notices/511-notice-of-review-of-the-multi-year-tariff-order-myto-methodology-2017>

56) See MYTO 2024, para. 17

57) April 2024 Supplementary Order to the Multi-Year Tariff Order- 2024 (April 2024 Supplementary Order) and the May 2024 Supplementary Order to the Multi-Year Tariff Order – 2024 (May 2024 Supplementary Order).



ELECTRICITY SUPPLY

Background on Electricity Supply in Nigeria- Ownership Structure, Types, Key Players, and Whether There are Any Foreign Participants.

Electricity supply in Nigeria is currently being undertaken by the twelve (12) DisCos dispersed across the country. In contrast to the EPSRA, the Electricity Act creates a separate category of electricity supply licence.⁵⁸ A supply licence permits the holder to undertake the supply of electricity based on the terms and conditions of the licence as imposed by NERC. In accordance with section 68(6) of the Electricity Act 2023, NERC is mandated to recognize electricity supply as a separate activity from distribution and accordingly issue a directive for the disaggregation of distribution licenses into supply and distribution licensed companies in accordance with the provisions of the Act.

Describe the Legal Framework for Investment in Electricity Supply- Licensing Etc.- in Nigeria.

The subsidiary legislation for licensing electricity suppliers will be issued by NERC in due course. But it is important to note that participants in the FEM are currently being licensed under NERC's Application for Licences (Generation, Transmission, System Operations, Distribution & Trading) Regulations, 2010.

Are There Any Restrictions on Foreign Ownership or Participation?

No, there are no restrictions.

RENEWABLE ENERGY

What is the Legal Framework for Renewable Energy in Nigeria?

The Electricity Act is the main legal framework for renewable energy. Although, the National Renewable Energy and Energy Efficiency Policy (the Policy) 2015 also provides a general regulatory framework for renewable energy in Nigeria, the Electricity Act promotes the integration of renewable energy sources into the national grid and encourages the development of off-grid solutions to reach rural undeveloped communities. The Electricity Act incentivizes investments in renewable energy projects, including feed-in tariffs and tax incentives, and sets renewable energy targets to reduce reliance on fossil fuels.⁵⁹

One of the key mandates of NERC under the Electricity Act is to facilitate electricity in Nigeria through conventional and renewable sources. The Commission is also charged with the promotion, development and utilization of renewable energy services to increase the contribution of renewable energy to Nigeria's energy mix.⁶⁰ The Electricity Act also charges the Ministry of Power with the task of preparing the National Integrated Electricity Policy and Strategic Implementation Plan which will include provisions for the optimal utilization of renewable sources.⁶¹

Are There Any Incentives for Renewable Energy Projects?

Yes, there are. The Electricity Act champions tax incentives, investment capital allowance and low interest loans for local producers of renewable energy products for electrification.⁶² By section 166(1), the Electricity Act also mandates the Federal Ministry of Finance to introduce tax incentives as are necessary to promote and facilitate the generation and consumption of energy from renewable energy sources and in accordance with the provisions of the Industrial Development (Income Tax Relief) Act or such other fiscal policy framework foster such tax reliefs that would incentivize the implementation of renewable energy projects in Nigeria.⁶³

57) April 2024 Supplementary Order to the Multi-Year Tariff Order- 2024 (April 2024 Supplementary Order) and the May 2024 Supplementary Order to the Multi-Year Tariff Order – 2024 (May 2024 Supplementary Order).

58) Section 63(1)(d)

59) See section 164 et seq of the Electricity Act 2023.

60) Section 34(i) of the Electricity Act 2023

61) See Part II of the Electricity Act 2023.

62) Section 129 (1)(g)

63) Section 166 of the Electricity Act 2023.

The Electricity Act also mandates NERC to impose renewable purchase obligations (RPO) on licensees in the FEM.⁶⁵ By the April and May Supplementary Orders to MYTO 2024, NERC has mandated DisCos to procure a minimum of 10% of their load allocation for 2024 from embedded generation. Fifty percent (50%) or half of this capacity must be procured from renewable energy sources. DisCos have been given until 1st April 2025 to fulfil this mandate.⁶⁶

Additionally, the National Renewable Energy and Energy Efficiency Policy (NREEEP) provides various incentives to promote renewable energy. These incentives include

1

Customs duty exemptions: Imported equipment and materials used in renewable energy projects are granted a two-year exemption from customs duties, reducing the upfront costs of importing such items.

2

Tax holidays for manufacturers: Manufacturers engaged in renewable energy production benefit from a five-year tax holiday, starting from the commencement of their manufacturing activities. This helps to reduce their tax burden during the initial years of operation.

3

Tax holidays on dividend incomes: Investments in domestic renewable energy sources enjoy a five-year tax holiday on dividend incomes. This encourages investment in the renewable energy sector and enhances returns for investors.

4

Soft loans and low-interest loans: The Power Sector Development Fund provides soft loans and special low-interest loans specifically dedicated to supporting renewable energy projects. This financial support facilitates access to affordable financing for renewable energy initiatives.

Further, under the Pioneer Status Incentive, established by the Industrial Development (Income Tax Relief) Act 1971, companies which operate power generation facilities (including renewable energy facilities), transmission and

distribution systems are eligible for a tax holiday which grants relief from payment of corporate income tax for an initial period of three years, extendable for one or two additional years. Also, the FGN has exempted the sale of renewable energy equipment from the application of value added tax in the VAT (Modification) Order 2021.

To What Extent are Small Scale Renewable Energy Projects Such as Solar Home Systems Regulated?

Solar homes systems are not regulated at the moment. Nevertheless, the Electricity Act 2023 does provide that NERC shall provide standards and sitting guidelines for solar homes systems, standalone solar PV, micro hydro, and wind power.⁶⁷

Authorization Requirements for Renewable Energy Projects

Consents and permits required are issued by the NERC. NESREA also issues the relevant permits for the development of renewable energy.

CLIMATE CHANGE MITIGATION

Besides the Renewable Energy Regulation, are There Any Other Carbon Abatement Strategies in the Sector?

Yes. The CCA Act provides the legal framework for achieving low GHG emissions as well as promoting sustainable economic growth, and sets a target for year 2050-2070 for the attainment of a net-zero GHG emissions in Nigeria. The CC Act however does not make any reference to specific technologies such as Carbon Capture and Storage but provides a framework for facilitating the coordination of climate change action needed to achieve the long-term climate objectives of Nigeria, and the nature of CCS situates it within the options available for achieving the long-term climate objectives of Nigeria. The CC Act established the National Council on Climate Change which is required to inter alia, approve and oversee the implementation of the National Climate Change Action Plan, which sets the climate adaptation goals and prescribes the mechanisms for achieving Nigeria's climate change goals.

60) Section 34(i) of the Electricity Act 2023

61) See Part II of the Electricity Act 2023.

62) Section 129 (1)(g)

63) Section 166 of the Electricity Act 2023.

64) 167(1) of the Electricity Act 2023.

65) *Ibid.* Section 167(1)

66) Paragraph 11, Supplementary Orders.

67) Section 164(n) of the Electricity Act 2023.



In order to aid in the economic recovery following the COVID-19 pandemic, the Federal Government of Nigeria, through its implementing Agency, the Rural Electrification Agency (REA), launched the Solar Power Naija Initiative on December 1, 2020. This initiative is a part of the Economic Sustainability Plan (ESP) and aims to roll out 5 million new solar connections in off-grid communities. Generally speaking, the objectives of the ESP are to support the impoverished through social investment initiatives, invest in information technology, roads, bridges, and other infrastructure, and generate jobs in industry, services, and agriculture.

Also, in 2022, the Nigeria Energy Transition Plan (the **Nigeria ETP** or **the Plan**) was unveiled as part of the Nigerian government's efforts towards an attainment of a net-zero economy by 2060 in the key sectors of power, transport, oil and gas, cooking and industry while setting the goal of lifting 100 million Nigerians out of poverty. In the power sector, 27% of emissions are mostly from diesel generators. The goal is to ramp up gas production until 2030 to deal with baseload capacity; attainment of universal access to electricity; the replacement of diesel generators with 6.3 GW off-grid and 42GW on grid capacity, and by 2060, deploy 250GW of PV and 112 GWh of storage.⁶⁸

In January 2023, the Renewable Energy Roadmap (REMAP) was introduced at the Abu Dhabi Sustainability Week in Abu Dhabi, United Arab Emirates, by the Nigerian

government (via the Energy Commission of Nigeria) and the International Renewable Energy Agency (IRENA). IRENA is expected to guide Nigeria in her quest to meet her energy demands through the instrumentality of renewable energy with renewable energy sources expected to account for nearly sixty (60) percent of Nigeria's energy demand in 2050. The roadmap aims to help Nigeria solve its energy deficit crisis whilst also meeting its net emission targets.

On 14th December 2023, the World Bank approved the Nigeria Distributed Access through Renewable Energy Scale-up (DARES) project, which is financed by an International Development Association (IDA) credit of \$750 million and will leverage over \$1 billion of private capital and significant parallel financing from development partners. The DARES program will help states obtain technical support to establish institutional capacity and policy frameworks for rooftop solar, and it will empower the Federal Government of Nigeria to oversee and fund all off-grid electrification initiatives.



LOOKING FORWARD

What are the anticipated developments in the market for the foreseeable future?

In the foreseeable future, it is anticipated that the electricity market will gradually open to further state competition in the sector. The unbundling of the TCN is already in the works, and the likely phasing out the role of NBET in the FEM. We are likely to see the onboarding of more investors both at the FEM and SEMs. In view of very clear legal framework and support schemes backed by law for renewable energy projects, Nigeria might soon become a leader in Africa for renewable energy projects, a number of which are in the works already.

68) Nigeria Energy Transition Plan <https://energytransition.gov.ng/>

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