

# NERC Order on the Delineation of Assets and Liabilities of Distribution Licensees

OALP Power Newsletter

## INTRODUCTION

The decentralisation of the Nigerian Electricity Supply Industry (NESI) represents a significant shift in Nigeria's approach to electricity governance, empowering State governments to establish and regulate their own electricity markets. However, this decentralisation has raised several critical operational and regulatory issues, particularly concerning the legal and commercial processes necessary for a seamless transition.

While Section 230 of the Electricity Act 2023 (the **EA**) outlines the procedural steps for decentralisation, a significant challenge persists regarding the incorporation of additional successor distribution companies (**SubCos**) and the transfer of assets and liabilities from the existing distribution companies (the **DisCos** or **HoldCos**) to the SubCos, especially in States that have established their own electricity markets and State Electricity Regulatory Commissions (**SERCs**). While the EA provided a broad framework for the decentralisation of the electricity market, there remained a critical need for a more detailed and robust mechanism to guide the transfer of assets and liabilities in a transparent, equitable, and safeguarded manner against any form of fraud or malpractice.

In this regard, the Nigerian Electricity Regulatory Commission (**NERC**) on 28 March 2025 issued the Order on the Delineation of Assets and Liabilities of Distribution Licensees (the **Order**). The Order was developed following extensive consultations with SERCs and other key stakeholders, who underscored the urgent need for a

uniform, structured, and transparent methodology to govern the delineation and transfer of assets and liabilities.

The framework set out in the Order provides a systematic approach for the apportionment of assets and liabilities between the DisCos and the newly created SubCos. It establishes principles for asset classification and liability allocation, and supports sustainable service delivery, efficient investment planning, and enhanced regulatory compliance in the decentralised electricity market. This Order is thus a critical intervention, ensuring that the decentralisation process is not only orderly but also equitable and commercially viable.

## TRANSITION PROVISION UNDER THE ELECTRICITY ACT

Before delving into the provisions of the Order, it is important to first highlight the relevant provisions of the EA regarding the mandatory requirement for DisCos to incorporate SubCos and transfer their assets and liabilities when a State establishes its own SERC.





Section 230(4) of the EA provides that where a State takes steps to establish its own SERC, the HoldCo responsible for electricity distribution in that State must, upon receiving formal notification from NERC: (a) incorporate a SubCo within two months; and (b) transfer the assets, liabilities, employees, and relevant contractual rights and obligations of the HoldCo in that State (the **Transfer**).

The EA further specifies that the Transfer shall: (a) not constitute fraud on the creditors of the DisCos; (b) be carried out by agreement on the treatment of relevant liabilities between the creditors, the HoldCo, the SubCo, and, where necessary, NERC, SERC, and any other relevant third party; and (c) not impose any obligation on the Government of a State to assume the liabilities of the HoldCo or guarantee their repayment<sup>1</sup>.

While the EA clearly mandates the Transfer, its provisions are generic and do not prescribe a clear methodology for effecting the Transfer in a manner that safeguards the interests of creditors and ensures the agreement of all relevant stakeholders. This lack of specificity highlights the need for a more detailed regulatory framework, which the Order seeks to address.

## OBJECTIVE OF THE ORDER<sup>2</sup>

The Order seeks to:

-  provide further clarity on the purpose for delineation of assets and liabilities of the DisCos as directed in the respective transfer of regulatory oversight orders issued to date.
-  facilitate the delineation of the assets and liabilities of all the DisCos along State lines irrespective of the transition status of each State, thus ensuring a smoother transition process.
-  establish a standard methodology for the delineation of the DisCos' assets and liabilities to ensure fairness, equity and transparency.
-  provide clear timelines for the delineation of assets and liabilities of the DisCos' to enable SERCs that have taken over regulatory oversight of electricity markets in their respective States.

## HIGHLIGHTS OF THE ORDER

Under the Order, delineation will be conducted across four critical areas: **assets, liabilities, contractual obligations**

**and employees.** The Order also outlines how this delineation is to occur, based on factors such as **geographic location, economic value, historical energy consumption** and other relevant considerations.

## Assets

The Order classifies assets into core and non-core assets. Core assets are critical infrastructure and equipment used by the DisCos in delivering electricity to consumers. These include transformers, distribution lines, substations, meters, and safety devices such as switchgear and circuit breakers. Core assets are essential for the efficient, reliable, and safe distribution of electricity, as well as for revenue generation<sup>3</sup>.

In contrast, non-core assets refer to properties and resources owned by the DisCos that are not directly involved in electricity delivery. These include office buildings, land, non-operational vehicles, warehouses, and IT systems used for non-essential functions<sup>4</sup>.

## Regulatory Asset Value (RAV)

The RAV represents the value of assets on which the DisCos are permitted to earn returns, including profits and depreciation. It encompasses both the core and non-core assets of the DisCos<sup>5</sup>. Typically, RAV is a relevant consideration when determining the electricity tariffs charged by DisCos under the Multi-Year Tariff Order (MYTO) methodology of 2012,

In determining the RAV of an asset, NERC is not bound to accept the economic or accounting book value. Instead, NERC considers key factors, such as the prevailing prudent cost of purchase based on market surveys, and applies the 'Used and Useful' principle<sup>6</sup>.

For the purpose of asset delineation, NERC is guided by the principle that the combined RAV of all constituent SubCos within a DisCo must exactly equal the RAV of the entire DisCo as contained in the most recent MYTO issued by NERC<sup>7</sup>.

To ensure a fair transfer of assets, the RAV of the successor DisCo shall be pro-rated among its constituent SubCos based on the proportion of historical energy consumption in each franchise State between January and December 2024<sup>8</sup>.

1. Section 230 (5) EA

2. Paragraph 12 of the Order.

3. Paragraph 13 of the Order.

4. Paragraph 14 of the Order.

5. Paragraph 15 of the Order.

6. This is a concept that requires energy assets to be physically used and useful

for the provision of services to the current ratepayers before those assets can be included in the rates payable by the ratepayers. See Paragraph 16 of the Order.


7. Paragraph 17 of the Order.

8. Paragraph 18 of the Order.

**Delineation of Asset<sup>9</sup>**

Assignment of assets to SubCo based on location 

Retention of assets by HoldCo 

To be determined by the HoldCo 

S/N	ASSET TYPE	DESCRIPTION	DELINEATION PRINCIPLE
1	Physical assets primarily to be used for the supply of electricity	Transformers, substations and other assets used directly to supply energy.	Assign to SubCos based on location and economic value.
		Lines	Assign to SubCos based on location. That is, a line traversing two or more States shall be prorated based on physical geographical boundaries.  Determination of energy offtake shall be based on the inter-boundary meters at the geographical boundaries of the States.
2	Inventory	Unallocated in-transit and stored assets such as spare parts and consumables.	Assets already captured in the RAV would be allocated to the different SubCos based on historical energy consumption used in the RAV above.
3	Operational vehicles	Cars, trucks and service vehicles used for operations and maintenance.	a) Assign operational vehicles to their operational location.
			b) Pool of unassigned and unserviceable vehicles to be retained as assets of the HoldCo.
4	Information and Communication Technology	ICT infrastructure such as hardware and software communications equipment.	HoldCo would retain ownership of existing ICT infrastructure assets and execute shared services agreements with its SubCos in line with applicable transfer pricing regulations.
5	Meter Acquisition Fund (MAF)	Metering fund sequestered from the tariff paid by the customers.	All uncommitted MAF monies accrued as of 31 May 2025 shall be allocated to the SubCos based on share of energy.
6	Receivables	Amounts owed to DisCos by customers	The gross receivables for a DisCo shall be split among the SubCos based on the location where the receivables originated.
7	Common assets	Assets that are jointly enjoyed by different departments such as head office buildings, pool vehicles, crane and testing equipment.	To be retained by HoldCo with utilisation and associated charges to be based on shared services agreements.
8	Contingent assets	Receivables such as judgment awards.	To be decided at the point of crystallisation. HoldCo is required to seek the approval of NERC on the allocation of contingent assets between the SubCos.

**Liabilities**

Under the Order, liabilities encompass more than just outstanding debts; they refer broadly to all financial, operational, contractual, and regulatory obligations that a DisCo has incurred through its business activities<sup>10</sup>.

9. Paragraph 19 of the Order.

10. Paragraph 20 of the Order.

**Delineation of Liabilities**

The liabilities of the DisCos shall be delineated in accordance with the following principle<sup>11</sup>:

Assignment of assets to SubCo based on location 

To be determined by the HoldCo 

S/N	LIABILITY TYPE	DESCRIPTION	DELINEATION PRINCIPLE
1	Market shortfall	DisCos' liability to the electricity market for unsettled invoices not covered by tariff shortfall.	Assign market shortfall amongst the SubCos based on historical energy delivered to each State between January - December 2024.
2	Payroll related liabilities	These include accrued pensions and other employee benefits such as gratuity.	Assign employees to SubCos based on employee's location. That is, the SubCo benefitting from the employee's services post delineation shall bear the associated liabilities.
3	Tax liabilities	Existing tax obligations such as property tax, legacy VAT, companies income tax and capital gains tax.	Assign tax liabilities among the SubCos based on historical energy delivered to each State between January - December 2024.
4	Contingent liabilities	These include potential obligations that may arise if certain future conditions are met.	To be decided at the point of crystallisation. The HoldCo is required to seek NERC's approval on its proposed approach for the allocation of contingent liabilities between the SubCos.

**Legacy Commitments and Contractual Obligations**

Legacy commitments and contracts refer to the pre-existing obligations, agreements, and legal relationships that the DisCos have entered into prior to the decentralisation. These legacy contracts and commitments can have significant implications for the Transfer to the newly formed SubCos, and they require careful management to ensure a smooth transition.

The Order outlines specific principles for the delineation and transfer of legacy commitments, including legacy debts and vesting contracts, to the SubCos. These principles aim to ensure a fair and transparent process, safeguarding the interests of all stakeholders while maintaining regulatory compliance and operational continuity within the decentralised electricity market.



**Loans and Advances**

The loans, including short, medium, and long-term loans and advances obtained by DisCos from the Central Bank of Nigeria (CBN), commercial banks, investors, and other financial institutions will be allocated to the SubCos based on the historical energy consumption in each State between January and December 2024. This approach ensures that the loan obligations are fairly apportioned, reflecting the energy demand and usage across the various States<sup>12</sup>.

The Order acknowledges that the repayment and administration of these loans are governed by existing agreements with the CBN and other financial institutions. As such, the mechanism for transferring these obligations and ensuring the smooth continuation of repayment will be determined by the CBN.

11. Paragraph 21 of the Order

12. Paragraphs 22 and 23 of the Order.



**Legacy  
Contracts  
Related to  
Bulk  
Energy  
Purchase**

Prior to the decentralisation of NESI, operations were conducted under a centralised model where the Nigerian Bulk Electricity Trading Plc (**NBET**) acted as the bulk purchaser. NBET entered into Power Purchase Agreements (**PPAs**) with generation companies (**GenCos**) and allocated specific energy offtake volumes to the DisCos through Vesting Contracts.

As contemplated under the EA, once NBET is phased out, DisCos are expected to independently contract with GenCos through bilateral PPAs. Existing NBET PPAs would then be novated to the DisCos in a fair and competitive process<sup>13</sup>.

However, since NBET has not yet been phased out, the Order mandates that DisCos must transfer their entire minimum offtake obligations to the SubCos. This ensures that the DisCos are not left with any stranded capacity after the transfer. The minimum offtake obligation to be transferred to each SubCo must be equal to or greater than the DisCo's existing minimum offtake obligation<sup>14</sup>.

The Order prescribes that the contractual vehicle for this transfer shall be a Vesting Contract. The volume of energy to be transferred to each SubCo will be determined using the following formula:

$$\text{Vested Energy (SubCo X)} = (\text{Energy Delivered to State X [Jan-Dec 2024]} \div \text{Energy Delivered to DisCo [Jan-Dec 2024]}) \times \text{DisCo Offtake Obligation}^{15}$$

It is important to note that the Order anticipates that once bilateral trading commences, DisCos may further novate any existing NBET PPAs, novated to them, to their constituent SubCos<sup>16</sup>.

**Delineation of Employees**

Employees of a DisCo are individuals engaged under a contract of service or employment to perform functions essential to the operation, maintenance, management, and administration of the DisCo's business. They include technical staff, engineers, customer service representatives, administrative personnel, and management staff whose roles directly or indirectly support the delivery of electricity services.

The Order empowers each DisCo to determine the optimal allocation of employees between itself and its constituent SubCos, taking into account operational requirements and ensuring a seamless transition. Essentially, the Order leaves the allocation of employees to the discretion of the DisCos.

**Obligations of DisCos**

Adopting the delineation principles above, DisCos are obligated to fulfill the following obligations:

<p>identify the actual geographic boundaries of its franchise area along State lines and carve out its network in each State as a stand-alone network with the identification and installation of boundary meters at all border points where the network crosses from one State into another;</p>		<p>create an asset register for all its power infrastructure located within each State located within its franchise area;</p>
<p>evaluate and apportion contractual obligations and liabilities attributable to the determined operations of its subsidiary to undertake electricity distribution within each State;</p>	<p>identify and create all the applicable trading points for energy offtake for the operations of a SubCo.</p>	<p>submit to NERC the number of employees that are necessary to provide service to each State as a stand-alone public utility.</p>

13. Paragraphs 22 and 23 of the Order.  
14. Section 68 (3) (c) of the EA  
15. Paragraph 26 of the Order.

16. Paragraphs 26 and 27 of the Order.  
17. Ibid.



Each DisCo is also required to file the following documents within two (2) weeks from the date of the Order:

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a comprehensive fixed assets and liabilities register showing preliminary delineated assets and liabilities along State lines;
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updated staff allocation register between its constituent SubCos and the DisCos;
- 

a single line diagram showing points for installation of boundary meters across all the areas of interstate network connections;
- 

three (3) most recent audited financial statements and management accounts covering 2022, 2023 and 2024.

Upon receipt of the documents above, NERC shall organise a delineation workshop within 21 days to be attended by the DisCos.

DisCos that receive transfer orders for any of their constituent SubCos prior to NERC issuing the final asset and liability transfer order must, within 7 days of receiving the order, notify the relevant SERC overseeing the electricity market in which the SubCo operates.

### OUR THOUGHTS

The Order provides much-needed clarity on how the provisions of Sections 230 (4) and (5) of the EA will be operationalised to ensure a seamless transition with minimal or no service disruptions. However, despite the

anticipated benefits of the Order for NESI, certain critical issues remain unresolved. If not properly addressed at this stage, these gaps could give rise to conflicts in the future.

### *Incorporation and Ownership of the SubCos*

While the EA mandates DisCos to incorporate SubCos, it is silent on the ownership structure of the SubCos. Presently, DisCos are owned 60% by private investors and 40% by the Bureau of Public Enterprises (BPE). However, it is unclear whether SubCos will be wholly owned by the DisCos or if the existing shareholding structure will be replicated at the SubCo level. The Order does not provide clarity on this point. Although many DisCos have begun incorporating their SubCos, it is important that a uniform ownership structure is prescribed to ensure consistency and legal certainty, particularly given that this incorporation is a statutory requirement.

Another significant issue arising from the restructuring is the impact on DisCos that own only a limited number of assets in a neighbouring State. Under the new framework, these DisCos may be required to establish a full-fledged SubCo for such States, leading to increased costs and operational challenges.

The requirement to create a separate legal entity means additional administrative, regulatory, and compliance burdens. Beyond legal incorporation, the DisCo would need to transfer assets to the new SubCo, which could involve complex valuation, legal approvals, and financing arrangements. This process may also introduce inefficiencies, as fragmented operations could result in higher overhead costs, duplicative management structures, and potential disruptions in service continuity.

Moreover, the economic viability of maintaining a separate SubCo for a small asset base is questionable. If the revenue generated from the assets in the neighbouring State is marginal, the cost of running a dedicated SubCo could outweigh the benefits. This raises the question of whether exceptions or alternative arrangements should be considered for DisCos with minimal cross State assets, such as allowing them to operate under a shared-services model rather than a full legal separation.

These issues highlight the practical challenges of the restructuring and the need for a more nuanced approach to implementation, particularly for DisCos with limited interstate operations.

## Transfer of Loan Liabilities

The Order anticipates that the loan liabilities and legacy debts of the DisCos will be transferred to the SubCos, based on the historical energy delivered to the State where the relevant SubCo operates. While the Order acknowledges that the CBN will ultimately determine the specific modalities for such transfers, several important issues require careful consideration to avoid potential disputes in the future.

First, there is the issue of lender consent. Most of the loan obligations currently held by the DisCos are governed by agreements with financial institutions that often include clauses requiring lender approval before any transfer or novation of the debt. Without obtaining the proper consent, there is a real risk of triggering default provisions or, even worse, potential legal disputes that could disrupt the entire transfer process.

An important issue arises when a lender refuses to allow the transfer of its loan to the SubCos. In such cases, the lender may prefer to maintain a central obligor, such as the parent DisCo, to ensure a singular point of recourse rather than potentially having to pursue multiple SubCos. This preference stems from the lender's desire for a unified and easily identifiable party with whom they can negotiate and enforce repayment terms. A situation where loans are transferred to several SubCos may complicate the lender's ability to recover the debt, especially if the SubCos have different financial profiles or are not as creditworthy as the parent company.

Another crucial concern is the alignment of the transfer process with existing financing structures. The allocation of debt based solely on historical energy consumption may not correspond with the original credit assessments or the security structures established by lenders when the loans were first provided. This misalignment could expose both the SubCos and the lenders to new risks, potentially undermining the financial stability of both parties.

Furthermore, allocating financial liabilities based solely on historical energy consumption may not be an ideal approach, as it raises significant concerns about the ability of the relevant SubCo to generate sufficient revenue to meet its obligations. The core issue here is the uncertainty regarding the SubCo's capacity to generate the necessary income to service the liabilities transferred to it.



Given that energy consumption patterns can fluctuate and may not always correlate with the SubCo's ability to generate stable revenue, there is a risk that the SubCo might face financial strain. The viability of the SubCo depends not only on its historical energy delivery but also on factors like market conditions, operational efficiency, and customer payment behaviours, all of which could impact its revenue stream. Without adequate guarantees or safeguards in place, there is a risk that the SubCo might struggle to meet its financial obligations, potentially leading to further complications in the debt repayment process.

An additional concern is whether the tariff methodology used in the relevant State will account for the legacy debts of the SubCo. If the tariff does not reflect the financial liabilities transferred to the SubCo, this could result in an imbalance between the revenue the SubCo generates and the amount it is expected to repay. It is essential for the tariff structure to incorporate provisions that recognize the inherited financial obligations, ensuring that the SubCo is adequately compensated for these liabilities through its pricing model. Without this adjustment, the SubCo may face difficulties in meeting its debt obligations, undermining the financial stability of the decentralised structure and potentially triggering disputes or regulatory challenges. On this point, NERC may in the implementation of this Order, liaise with the SERCs to ensure that transferred financial obligations are factored into tariff methodologies.



### **Transfer of Assets**

Another significant issue that demands careful attention is the transfer of assets from the DisCos to the SubCos. It is important to note that many of the assets currently held by the DisCos have been charged in favour of lenders as security for loans and other financial obligations. Under most security arrangements, any transfer, assignment, or disposal of these assets without the prior consent of the lenders would constitute an event of default. This would entitle the lenders to exercise their enforcement rights, including the right to seize or sell the secured assets. Such enforcement actions could de-stabilise the affected DisCo and SubCo and pose broader risks to the sector.

In addition to the risk of triggering an event of default, there are several other critical concerns regarding the transfer of assets. First, the consent of the lenders would likely be required before any such transfer can be validly effected. Proceeding without obtaining the necessary consents could not only breach the terms of the existing financing agreements but could also erode lender confidence in the electricity sector.

Second, an uncoordinated transfer of assets could disrupt the security structures that lenders have relied upon. The fragmentation or weakening of these security packages could make it more difficult for both the DisCos and SubCos to attract future financing, particularly where lenders perceive an increased risk of loss.

Third, there is the issue of asset valuation and allocation. The Order provides that physical assets primarily used for

the supply of electricity excluding the lines shall be delineated based on location and economic value, but the Order does not provide for the methodology for the valuation of these assets. Without a transparent and objective process for determining the value of assets and allocating them between the DisCos and the SubCos, disputes could arise, potentially delaying or complicating the decentralisation process.

Lastly, the proper transfer of title must not be overlooked. If title is not appropriately updated and perfected in the name of the SubCos, it could create legal uncertainties over ownership, particularly if third parties, such as lenders, assert competing claims.

Given these risks, the transfer of assets must be approached with caution and handled in strict compliance with the terms of the underlying financing and security documents. The involvement of lenders and relevant regulatory authorities will be critical to ensuring that the process does not inadvertently create further instability within the NESI.

### **The Current Escrow Arrangement in NESI**

The privatization of the Power Holding Company of Nigeria (PHCN) in 2013 led to the creation of DisCos, which inherited high Aggregate Technical, Commercial, and Collection (ATC&C) losses, tariff shortfalls, and liquidity constraints. To mitigate these challenges, the CBN introduced the Nigerian Electricity Market Stabilization Facility (NEMSF) and the Power Sector Recovery Programme (PSRP).

These interventions placed a first charge over DisCos' market revenue, managed through Principal Collection Accounts (PCAs) under NESI Stabilization Securities Limited (NESI-SSL). This framework is a financial mechanism that ringfences revenues from the DisCos to ensure that critical market participants are paid before DisCos use their revenue for other expenses.

With the establishment of SubCos (independent bodies with separate bank accounts), it is important to consider whether there is any value for ringfencing the bank accounts of the parent DisCos. since revenue from the assets will now be housed with the SubCos. Another query is whether NERC, being a federal agency can give directions on the bank accounts of the SubCos, since they are fully regulated by the State.

While we acknowledge that the Order has specifically tasked the CBN with developing a structure to address this issue, it is essential that the CBN establishes a framework that ensures alignment between the SubCos, the relevant SERCs, and the overall electricity market. This coordination is crucial for the SubCos to effectively contribute to the PCA and ensure that all the legacy debt are repaid.

### **Delineation Principle on Lines Traversing Two or More States**

The proration of lines based on geographical boundaries may give rise to significant disputes over what constitutes the exact boundaries of each State in relation to electricity infrastructure. In many areas, especially where infrastructure such as transmission lines or distribution networks crosses State borders or where boundaries are historically unclear, there could be overlapping claims of jurisdiction. This ambiguity could result in disagreements not only between DisCos and SERCs but also between States themselves. In cases where multiple States assert authority over the same infrastructure, determining the prorated value of assets and energy offtake could become highly contentious, undermining the decentralisation objectives. To mitigate this risk, it is essential for NERC and the SERCs to work collaboratively – possibly in conjunction with national mapping and survey authorities to establish clear, standardized, and legally binding definitions of State boundaries for regulatory and operational purposes.

While the adoption of inter-boundary meters at the geographical boundaries to measure energy offtake is a positive step towards transparency, it is not without challenges. These meters must not only be sophisticated and tamper-proof but must also be capable of delivering high levels of precision over long periods without significant degradation. Inaccurate or unreliable readings could distort billing, revenue allocation, and liability sharing among SubCos, leading to fresh rounds of disputes and revenue losses. Furthermore, robust mechanisms for regular calibration, independent verification, and dispute resolution around metering



discrepancies should be built into the system from the outset to maintain the integrity of market operations.

### **Transfer of Employees**

However, DisCos must be mindful of critical legal considerations in effecting these transfers. For professional employees who are not governed by the Labour Act, the transfer must be conducted strictly in accordance with their existing contracts of employment. In many cases, the transfer may necessitate a renegotiation of the employment terms, as no employee can be compelled to accept a transfer outside the provisions of their contract. Simply put, the transfer of such employees can only occur on the terms agreed between the employer and the employee.

For employees who are governed by the Labour Act, that is, workers<sup>17</sup> engaged in manual labour or clerical work, the transfer must comply strictly with Section 10 of the Act. The section provides that a contract of employment cannot be transferred from one employer to another without

**the consent of the worker and**

**the endorsement of the transfer by an authorised labour officer.**

Before endorsing the transfer, the labour officer must:

- ascertain that the worker has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as a result of misrepresentation or mistake;

17. Section 91 of the Labour Act that a worker is a person who has entered into or works under a contract with an employer, "...whether the contract is for manual labour or clerical work..." Section 91 of the Labour Act further stipulates that the definition of worker does not include- (a) any person employed otherwise than for the purposes of the employer's business; or (b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise; or (c) members of the employer's family; or (d) representatives, agents and commercial travellers in so far as

their work is carried on outside the permanent workplace of the employer's establishment; or (e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or the material; or (j) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply



- where the transfer would result in a change in the nature of employment (for instance, moving from agricultural work to non-agricultural work) or a material change in working conditions, the officer may require the worker to undergo a medical examination or re-examination.

It is critical that DisCos comply with these legal requirements to avoid potential employment disputes, liability claims, or regulatory sanctions. DisCos should therefore take steps to structure the staff transfer process carefully, ensuring full contractual and statutory compliance for each category of employee.

#### **Allocation of Uncommitted Meter Acquisition Fund (MAF) Monies**

The Meter Acquisition Fund (MAF) scheme was developed and approved by the Commission, primarily to address the challenge of DisCo creditworthiness inhibiting the deployment of end-use meter in NESI by creating a credible revenue stream from the market funds on the back of which long term financing may be secured by the utilities.<sup>18</sup> The MAF is a fund typically collected by DisCos to finance the acquisition of meters for customers. These funds are intended to ensure that DisCos have sufficient resources to install meters, improve revenue collection, and ensure that electricity consumption is accurately measured. In June 2024, NERC announced the approval of NGN21 billion Presidential Metering Initiative under the framework of MAF to enable the 11 DisCos to provide meters for customers. The fund was apportioned pro rata to contribution by the DisCos, with Ikeja DisCo receiving the highest amount of money in the sum of NGN4,358,122,421.<sup>19</sup>

The uncommitted MAF monies refer to funds that have been collected but not yet used or allocated to specific

projects for meter acquisition as of 31 May 2025. These funds will be redistributed by DisCos to their SubCos based on each SubCo's share of energy, that is, the proportion of electricity each SubCo distributes or sells within the overall distribution area. The allocation of funds based on each SubCo's share of energy could lead to disputes over how the energy share is calculated. If the energy data used to determine the share is incorrect, inconsistent, or subject to different interpretations, it could result in conflicts between SubCos and the DisCo. There may also be ambiguity regarding what qualifies as 'uncommitted' funds. Some DisCos may argue that certain funds, although not yet allocated, are already earmarked for future projects and should not be redistributed. In addition, DisCos or SubCos with smaller energy shares may argue that the formula based on energy consumption does not take into account their specific metering needs or the existing infrastructure challenges they face.

Accordingly, to address these issues, it is important for NERC and State regulatory commissions/bureaus to stipulate clear guidelines on the determination of each SubCo's share of energy, including providing a clear definition or criteria for determining what constitutes 'uncommitted' funds for the purpose of distribution to the SubCos. It is also important for NERC and the State regulatory commissions/bureaus to introduce a needs-based component to the calculation of the SubCos' share of energy for the purpose of ensuring that the MAF monies are distributed in an equitable manner.

#### **Delineation of Contingent Assets**

The Order provides that contingent assets such as receivables (judgment awards) and liabilities are to be allocated upon crystallization. However, this principle may pose several challenges particularly in relation to the timing of when a contingent asset or liability crystallizes, or different interpretations by stakeholders on when exactly a contingent asset or liability has crystallized and is eligible for recognition. These factors could lead to delay in the allocation of such assets and liabilities to the relevant SubCos. To address these issues, it is important for NERC and the various State regulatory commissions/bureaus to provide clear and standardized guidelines on the criteria for crystallization to minimize ambiguity while temporary or provisional allocations could be made until the final crystallization occurs.

18. Order-on-Operationalisation-of-MAF.pdf

19. NERC announces take off of N21bn electricity meters MAF scheme - P.M. News

### Delineation of Market Shortfall

The Order provides that market shortfall – that is, a DisCo’s liability to the electricity market for unsettled invoices not covered by tariff shortfalls will be allocated among the SubCos based on the historical energy delivered to each State between January and December 2024. To enable the SubCos to meet these liabilities, it is expected that funds held in the Secondary DisCo Account Escrow (SDA)<sup>20</sup> should likewise be apportioned fairly among the SubCos using an established and transparent methodology.

However, while using historical energy delivery as the basis for delineation may seem practical, it may not accurately reflect the current or future commercial viability of each SubCo. SubCos operating in States with historically higher consumption may not necessarily maintain that performance post-decentralisation due to operational or regulatory changes. As such, there is a risk that this approach could saddle some SubCos with disproportionate liabilities relative to their actual revenue-generating capacity, thereby undermining their financial sustainability from the outset. A more dynamic and forward-looking model may be necessary to ensure a balanced and equitable allocation.



### Need for Regulatory Clarity to Support Bilateral Trading in Nigeria’s Electricity Market

The Order conflicts with NERC’s earlier Order on Bilateral Trading issued in July 2024, which granted DisCos the ability to enter directly into PPAs with GenCos. While the earlier Order was intended to liberalise the market, promote competition, and enable better price discovery, the current Order introduces uncertainty by implying that NBET would maintain its role in the market and continue performing its obligations under the existing PPAs with GenCos. This inconsistency creates ambiguity around the transition to bilateral trading and could undermine investor confidence in the sector.



This inconsistency risks causing confusion, discouraging investment, and weakening market confidence. Without clear direction, stakeholders may hesitate to engage fully in the transition toward a decentralised market. To restore stability and support the market’s growth, it is important for NERC to officially clarify the status of bilateral trading and set out clear guidelines for the novation of power purchase agreements.

### Regulatory Overlap on the Principles for Determining RAV

Given the fact that many States have enacted their own electricity laws and are overseeing their electricity markets, there could be potential conflicts between SERC and NERC’s national policies. In this instance, State laws may have different definitions, calculation methods, or principles for RAV based on its local context, such as distinct energy consumption patterns, or infrastructure investment, compared to the MYTO.

One of the aims of the MYTO framework is to create a more competitive electricity market by ensuring fair and equitable distribution of assets among DisCos. If the delineation of assets is disrupted due to State-level regulatory actions, it could undermine efforts to promote competition in the electricity sector. The transition to a competitive market could be delayed or undermined by inequities in the distribution of assets and tariffs. The transfer of RAV from successor DisCos to SubCos is supposed to be pro-rata based on historical energy consumption. However, the distribution of RAV based on historical energy consumption may not be reflective of the quantum of infrastructure needed by that SubCo to be viable, because it means those with high historical energy consumption will get more RAV over those with lower energy data. Some exceptions may be considered to allow for optimal distribution to ensure viability which may not necessarily be based on historic data.

20. The SDA is a special arrangement set up under the Guidelines for Secondary Escrow Account Management for Bilateral Transactions by Electricity Distribution Licensees which provides for an arrangement by which DisCos may directly enter bilateral transactions with generation and or trading licensees. This arrangement was established due to the challenges posed by the payment waterfall set out in the Multi-Year Tariff Order 2022 (MYTO 2022) and the Principal Collection Account (PCA) set up and managed by the NESI Stabilization Securities LTD (NESI-SSL).

To address the potential legal issues arising from the conflict between State electricity laws and the NERC MYTO framework in relation to the delineation of assets, some mechanisms could be put in place. Such mechanisms include:



NERC and State regulatory bodies should establish formal mechanisms for coordination and consultation. These mechanisms could include joint committees, regular consultations, and memorandums of understanding that ensure that both State and Federal laws align where necessary and avoid conflicting interpretations;

NERC should work with State regulators to develop standardized methodologies for the calculation of RAV and energy consumption, ensuring consistency across the country;



NERC could consider reviewing and amending the MYTO and other relevant regulations to account for the evolving State-level autonomy in electricity regulation. This could involve incorporating flexibility into the national framework that allows States to implement specific regulations without undermining the overall goals of the MYTO; and

NERC and State regulators should prioritize transparency in the asset delineation process by making all relevant data and methodologies publicly available.



## CONCLUSION

The Order marks an important milestone in providing much-needed clarity on how DisCos will integrate their assets across State lines, particularly as more States move to establish their own electricity markets. It is commendable that NERC has issued this guidance to minimize the risk of disputes and promote a more orderly transition, thereby laying the groundwork for a more structured and predictable decentralisation process. By offering clear directions on asset delineation, the Order helps to prevent the kind of disorderly integration that could otherwise destabilize the market at this critical stage.

However, as outlined in this newsletter, certain inconsistencies and gaps remain, particularly in relation to transfer of the assets and liabilities of these DisCos. These issues, if left unaddressed, could create uncertainty for market participants and undermine investor confidence. Careful and meticulous planning, along with consistent regulatory actions, will be essential to close these gaps and ensure that the goals of decentralisation are fully realized.

Going forward, it is important for NERC to provide further clarity where needed, work collaboratively with stakeholders to smooth out areas of overlap or confusion, and adopt a phased, strategic approach to implementation. Only by doing so can the Nigerian electricity market truly transition into a decentralised, competitive, and efficient system capable of meeting the growing demands of consumers and supporting long-term sector growth.

FOR MORE INFORMATION, PLEASE CONTACT :



**Wolemi Esan SAN,**  
Deputy Managing Partner  
[wesan@olaniwunajayi.net](mailto:wesan@olaniwunajayi.net)



**Ibi Ogunbiyi,**  
Partner  
[iogunbiyi@olaniwunajayi.net](mailto:iogunbiyi@olaniwunajayi.net)



**Abisola Odeinde,**  
Partner  
[aodeinde@olaniwunajayi.net](mailto:aodeinde@olaniwunajayi.net)



**Chinenye Ajayi,**  
Managing Associate  
[cajayi@olaniwunajayi.net](mailto:cajayi@olaniwunajayi.net)



**Zion Odinaka,**  
Associate  
[zodinaka@olaniwunajayi.net](mailto:zodinaka@olaniwunajayi.net)



**Olabisi Ekundayo**  
Associate  
[oekundayo@olaniwunajayi.net](mailto:oekundayo@olaniwunajayi.net)