



THE NIGERIAN ELECTRICITY ACT 2023:
**ILLUMINATING THE PATH
TOWARDS POWER SECTOR
TRANSFORMATION IN
NIGERIA**



Introduction

Prior to 2005, the Nigerian power sector was largely government-owned. With the enactment of the Electric Power Sector Reform Act in 2005 ("**EPSRA**"), this monopoly was unbundled and the sector was reformed with the privatisation of the generation and distribution segments of the value chain, the establishment of an independent regulator, and the launch of a framework for a competitive electricity market, amongst other reforms.

With the enactment of the Electricity Act 2023 (the "**Act**"), the Nigerian Government has set out on an ambitious path to further revamp Nigeria's electric power landscape and improve the legal framework, all in a bid to advance the development of the sector. The significance and timing of this legislation are not lost on industry enthusiasts, many of whom are keen on further comprehensive reforms in the sector. The Act aims to create an environment that supports sustainable growth and investment in the power industry by focusing on accelerated private sector involvement, improving regulatory control, and enhancing consumer protection. The Act seeks to do so by promoting public-private partnerships across the electricity market value chain, expanding the scope of the regulatory powers of the Nigerian Electricity Regulatory Commission ("**NERC**"), incentivising the proponents of renewable energy projects and initiatives, and encouraging State participation in areas of the Nigerian Electricity Supply Industry ("**NESI**") which were previously within the purview of the Federal Government.

This legislation is a welcome addition to the recent constitutional amendment, which confers on States the constitutional powers to make laws permitting each State to generate, distribute and transmit electricity in areas within each State's boundaries, including areas previously covered only by the national grid.¹ Additionally, some of the key themes of the Act include emphasising the sector's need for a more transparent, accountable, and competitive electricity market, which aims to attract investments, foster innovation, and ultimately provide Nigerians with reliable and affordable energy.

This article aims to examine the key provisions of the Act, highlighting its potential impact on various stakeholders and exploring how it aligns with Nigeria's broader power goals.

¹ Please see the link to our article on the constitutional amendment:

<https://uubo.org/recent-constitutional-amendments-on-electricity-generation-transmission-and-distribution-a-springboard-for-progress-and-hope>



1. The National Integrated Electricity Policy and Strategic Implementation Plan

- 1.1. The National Integrated Electricity Policy and Strategic Implementation Plan (the "**Plan**") demonstrates how the Government understands the need for a thorough, long-term strategy to direct the growth and transformation of the electricity industry. Section 3(1) of the Act empowers the Federal Government, through the Federal Ministry of Power, to, within one year of the commencement of the Act, initiate the process for the preparation and publication of an Integrated National Electricity Policy and Strategic Implementation Plan.
- 1.2. The Plan is aimed at ensuring that the Government and participants in the NESI follow a well-defined set of aims, objectives, and targets for the power sector and thereby seeks to act as a strategic framework for the overall development of the electricity sector in Nigeria. The Act provides that the Plan shall encompass various areas of the development of the power sector, including the optimal utilisation of resources such as coal and natural gas; the deployment of renewable energy sources; captive generation; rural electrification; public-private partnerships; implementation of policies including waivers and subsidies that will stimulate renewable energy development; and other aspects determined by the Federal Government.²
- 1.3. It allows the Government to lay out a comprehensive strategy that considers social, economic, and environmental elements in addition to technical considerations. By adopting this strategy, the Government can provide the sector with a vision that aligns with global best practices and aspirations for national growth. Notably, the Act recognises the need for the Plan to be refined and updated through a review process every five years.³
- 1.4. Strict adherence to the provisions mandating periodic reviews of the Plan would present an opportunity to resolve evolving issues that emanate from the Plan's implementation.

2. State Participation in the Nigerian Electricity Supply Industry

- 2.1. A substantial change in the dynamics of the nation's electric power sector is evident in the Act's recognition of the right of States in the Federation to pass laws and create markets for different components of the electricity value chain.

² Section 3(2) of the Act.

³ Section 4(1) of the Act.

While the erstwhile debate between the Federal and State Governments regarding power generation, transmission and distribution in Nigeria appears to have been settled with the enactment of the Fifth Alteration to the Nigerian Constitution, the Act doubles down on this position by expressly recognising the State Governments' rights over power generation, transmission and distribution within the confines of each State. Thus, one of the profound objectives of the Act is to strengthen the relationship between the Federal and State electricity markets.⁴

- 2.2. Additionally, the Act recognises the distinction between the powers of the NERC and any subsequent regulator created by any State. Various provisions of the Act recognise the authority of States to take a more active part in the generation, transmission, system maintenance, distribution, and supply of electricity within the respective States.⁵
- 2.3. The Act, however, precludes interstate and transnational electricity distribution. This prohibition can be found in section 63(2)(b), which provides that a person may construct, own, and operate an undertaking for the generation, transmission, distribution, supply and sale of electricity, including the construction, ownership and operation of mini-grids and independent electricity distribution networks within a State under a law enacted by the House of Assembly of a State, provided that such a licence does not permit the licensee to provide inter-state or transnational distribution of electricity in Nigeria.
- 2.4. By doing so, the Act recognises the distinct requirements and goals of each Nigerian State and encourages the enactment of State-level legislation pertaining to the electricity industry. This enables State Governments to make laws and policies that suit their particular needs, thereby encouraging a more decentralised approach to the development of the electricity sector in Nigeria. Additionally, the Act recognises the authority of State Governments to issue licences for activities connected to electricity markets within each State.⁶ Accordingly, the relevant State regulator would have the power to grant licences to organisations wishing to undertake power generation, distribution, and supply, among others, within their respective States.
- 2.5. While recognising the State's powers with respect to electricity generation, transmission and distribution, the Act also encourages a more cooperative and participatory approach towards the administration of the NESI. Notably, only a few States in Nigeria presently have State electricity laws and regulators,⁷ and the expectation is the keenness of other States to pass laws on the subject.

⁴ Section 1(s) of the Act.

⁵ See sections 2(2), 63(1), 63(7), 230(2), (3), (6) and (8) of the Act.

⁶ Section 63(1) of the Act.

⁷ Lagos, Edo and Kaduna States.

3. Promotion of Renewable Energy in Nigeria

- 3.1. The Act acknowledges the vital contribution that renewable energy makes to the country's sustainable growth and energy transformation. The Act seeks to create a conducive environment for stakeholders to participate in the adoption and utilisation of renewable energy sources, with several measures intended to encourage and promote the development and utilisation of renewable energy sources as part of Nigeria's energy mix.⁸
- 3.2. Section 80(1) of the Act provides that the NERC and the Independent Systems Operator (the "**ISO**")⁹ shall have a continuing obligation to promote the generation of electricity from renewable energy sources. The NERC is also tasked with implementing various measures aimed at increasing the contribution of renewable energy to the country's energy mix. These measures include simplifying the licensing procedure and fees for renewable energy service companies; issuing regulations for connectivity to the grid and distribution network; setting technical standards and certification procedures, and providing guidelines for power purchase agreements.¹⁰
- 3.3. The Act outlines requirements for connecting renewable energy generators to transmission and distribution systems and emphasises the importance of local content in the renewable energy industry, such that any entity carrying out operations in the renewable energy subsector shall ensure that local content is a component of its renewable energy activities.¹¹
- 3.4. The Act also provides tax incentives for the facilitation and implementation of renewable energy projects, which will serve as a catalyst for investment, thereby accelerating the growth and development of renewable energy projects in Nigeria.¹²
- 3.5. To encourage investment and participation in renewable energy projects, the Act incorporates feed-in tariff provisions¹³ and other mechanisms to incentivise the development and deployment of renewable energy generation capacity. This is in addition to NERC's Regulations on Feed-In Tariff for Renewable Energy Sourced Electricity in Nigeria 2015, which introduced feed-in tariffs for renewable energy to encourage renewable energy adoption in Nigeria. Feed-in tariffs provide a guaranteed price for electricity generated from renewable sources, ensuring a stable and attractive revenue stream for project developers.

⁸ See sections 1(i), (n) and (o), 34(1)(i) and 80 of the Act.

⁹ See below on the establishment of an Independent Systems Operator.

¹⁰ Section generally section 164 of the Act.

¹¹ Section 171 of the Act.

¹² Section 166 of the Act.

¹³ Sections 168 – 170 of the Act.

- 3.6. The elaborate provisions of the Act on renewable energy generation are, without doubt, a welcome addition and, if properly implemented, will pave the way for sustainability in the NESI.

4. **Post Privatisation to a Medium and Long-Term Electricity Market**

- 4.1. While the EPSRA included a framework for regulating the pre- and post-privatisation stages of the Nigerian electricity market, the Act only includes post-privatisation activities. Section 6 of the Act recognises the legal validity of the actions undertaken during the privatisation process under the EPSRA, including the unbundling of the defunct National Electric Power Authority into 18 companies; the licensing of 18 new successor companies; the introduction of the National Integrated Power Projects (NIPP); the establishment of the Nigerian Electricity Management Company LTD/GTE (NELMCO); the incorporation of the National Power Training Institute of Nigeria (NAPTIN); and the establishment of the Nigerian Bulk Electricity Trading Plc (NBET). Notably, the Act confirms the establishment of NAPTIN,¹⁴ thereby giving this existing institution a statutory flavour.
- 4.2. There is a noteworthy acknowledgment in Section 7(1) of the Act that the NESI is currently in the post-privatisation stage and, therefore, the NERC has the continuing responsibility of ensuring that the development of the Nigerian electricity market from its current transitional electricity market stage to the medium-term and long-term electricity market stages is realised.
- 4.3. As part of this post-privatisation transition, the Act recognises and provides for a transfer¹⁵ of the market operations and system operations functions from the Transmission Company of Nigeria ("**TCN**") to an ISO to be created under section 15 of the Act. The ISO, which assumes the market operator and system operator functions of the TCN, shall be a distinct entity functioning independently of the TCN, with assets and liabilities transferred to it by the TCN upon completion of the incorporation and licensing process.
- 4.4. With the creation of an ISO,¹⁶ potential conflicts of interest may be reduced by isolating the operation of the transmission system from TCN's purview. This will facilitate fair competition practices and foster a regulatory environment which stimulates collaboration in the industry and cooperation with the transmission sector.

¹⁴ See section 185-207 of the Act.

¹⁵ This process shall be undertaken in accordance with a written directive of the NERC which takes into account the current stage of the electricity market at the time the transfer occurs.

¹⁶ The Act does not specify a timeline for the creation of the ISO. Section 15(1) of the Act provides for the creation of the ISO "within such stage or period of the market as the NERC may in a written directive specify".

Allowing the ISO to concentrate on system administration and operation will potentially allow the grid's efficiency, flexibility, and dependability to be maximised. This not only encourages a more transparent and competitive electricity market but also complies with global best practices in power sector regulation.

5. **NERC's Power of Intervention**

- 5.1. The Act has also expanded the powers of the NERC by granting it power over the affairs of failing or failed licensees and permit holders. Section 34(2)(g) of the Act provides that the NERC shall exercise power to intervene in the management and control of the affairs of its licensees and permit holders which it considers has failed, is failing, or is in crisis, including entering the premises of such entities and doing whatever the NERC deems necessary to maintain continuity in the provision of electricity service and ensuring the integrity of the NESI.
- 5.2. In furtherance of this power, section 75 of the Act permits the NERC to, on its own initiative or upon a complaint from any consumer, eligible customers, customer associations, a shareholder in a licensee company or a licensee, inquire into the conduct or affairs of any licensee. While the Act does not define what constitutes a "failed", "failing", or "in crisis" licensee or permit holder, section 75(3) provides for four instances where the NERC shall invoke its powers of intervention under section 75(2).¹⁷
- 5.3. Other powers of intervention of the NERC can be found in section 75(2), which empowers the NERC to issue an interim order for the dissolution and removal of the Board of Directors of a licensee company and the appointment of administrators and special directors to manage the company's affairs; mandate the licensee to take certain specific actions; and undertake any other regulatory intervention steps as the NERC may deem fit including the revocation of the licensee's licence¹⁸ and the subsequent sale of the undertaking of the concerned licensee.¹⁹
- 5.4. These provisions give the NERC the power to step in and take any necessary measures if a licensee is experiencing financial, operational and other related difficulties. The Act acknowledges the importance of resolving problems with licensed businesses to ensure a stable and effective energy market.

¹⁷ The instances are where the licensee (a) informs the NERC that it is unable to discharge its obligations under the Act and its licence; (b) is in prolonged default in carrying out anything required of it under the Act, regulation or directives of the NERC and its licence; (c) has been plagued by such a protracted management crisis that it has become detrimental to the interest of shareholders, consumers and the overall operations of the undertaking; (d) has insufficient assets to cover its liabilities to lenders and it is in eminent risk of receivership from lenders.

¹⁸ See sections 75(2) and 75(4) of the Act.

¹⁹ See further sections 77 – 79 of the Act.



- 5.5. The powers granted to the NERC are similar to the powers granted to the Central Bank of Nigeria over failing and failed banks in Nigeria. Depending on the efficiency with which the NERC exercises this power of intervention, it holds the potential to promote stability in the industry.

6. **The Consolidation of Electricity Laws in Nigeria**

The consolidation of Nigeria's electricity legislation in the Act is a noteworthy innovation because it provides a streamlined and complete set of laws by harmonising the legislative framework regulating the Nigerian electricity industry. The Act repeals²⁰ the Hydroelectric Power Producing Areas Development Commission Act 2010 and the Nigerian Electricity Management Services Agency (Establishment, Etc.) Act 2015 and reenacts their provisions, with some minor modifications, as part of the Act. By doing this, the Act streamlines the regulatory environment, thereby minimising overlap, inconsistencies, and gaps in the legal framework while also improving clarity and enabling industry participants, investors, consumers, and regulatory agencies to understand their respective rights, duties and obligations in the NESI.

7. **Innovative Provisions on Transmission, Distribution and Supply of Electricity**

- 7.1. Another notable introduction by the Act is the inclusion of special provisions concerning the transmission of electricity. It is well-documented that the NESI has had issues regarding the transmission and distribution of electricity, and several provisions in the Act seek to address them. Firstly, to facilitate interconnections and coordination of efficient transmission, section 108 of the Act allows for the demarcation of the operating system of a transmission licensee into a National Control Centre, Supplementary National Control Centre, and Regional Control Centres in different locations and with the necessary transmission infrastructures for efficient transmission of electricity.
- 7.2. Private sector investment in the national grid is allowed under section 109, albeit in accordance with regulations issued by the NERC, and section 112 seeks to promote public-private partnerships between the Federal and State governments and private companies for investment in the transmission network. With respect to the distribution and supply of electricity, the Act provides for the disaggregation of distribution licences into supply and distribution licences, subject to NERC's determination of the appropriate timing for such disaggregation to occur.²¹

²⁰ See section 231(2) and the Third Schedule to the Act.

²¹ See sections 68(5), (6) and (7) of the Act.

- 7.3. In addition, section 114(1) provides that, from the commencement of the Act, no licensee shall supply electricity after the expiration of the date appointed by the NERC except through the installation of a meter in accordance with the regulation made by the NERC. This provision compels the installation of a meter for every consumer, failing which the consumer risks being disconnected from accessing power.²² Similarly, the Act imposes a mandatory obligation on all customers to pay electricity bills. A customer's non-compliance with this obligation, after the receipt of a notice from a licensee, would entitle the licensee to disconnect the customer's electricity supply until all outstanding sums and the expenses associated with the disconnection and reconnection are paid.²³

8. The Rural Electrification Agency and the Rural Electrification Fund

- 8.1. Although the Rural Electrification Agency ("**the Agency**") and the Rural Electrification Fund (the "**REF**") were established under the Electric Power Sector Reform Act 2005, the Act includes more robust provisions on the affairs and structure of the Agency.²⁴ The Act provides for the objectives and functions of the Agency, which include the electrification of rural areas in Nigeria and also outlines the management of the Agency. The Act provides that the chairman of the board of the Agency is appointed for a 5-year period and may be reappointed for another term of 5 (five) years. The Act also establishes the role of a managing director for the Agency and provides for three divisions, namely the Rural Electrification Fund Division, the Engineering and Technical Services Division and the Corporate Services Division. Each of the divisions is to be headed by an executive director under the direct supervision of the managing director.
- 8.2. Furthermore, the Act promotes coordination and collaboration between the Agency and State rural electrification boards or related State agencies to establish local government rural electrification committees or similar institutions to carry out any component of the rural electrification strategy and implementation plans in their respective States.²⁵ In relation to the REF, section 150 of the Act provides that all funds paid into the REF, as specified in section 146(1) of the Act, shall be exempt from income tax.

²² See sections 114(5) and 114(6) of the Act.

²³ Section 115(1) of the Act.

²⁴ See generally Part XVI of the Act.

²⁵ See sections 152 and 153 of the Act.

9. The National Power Training Institute

- 9.1. The Act re-establishes the National Power Training Institute of Nigeria ("**NAPTIN**") as a body corporate with the purpose of developing human resources, conducting research, and providing training programs in the electric power sector.²⁶ The NAPTIN aims to enhance workforce capacity, maintain technical standards, disseminate new technologies, and offer customer-focused learning solutions.²⁷ It is empowered to perform various functions, including establishing training centres; collaborating with local and foreign institutions in organising local and foreign training, tours and seminars in respect of the electricity industry; offering engineering, technical and other training or certificate programmes; and undertaking project consultancies for generation, transmission, and distribution companies or related matters.²⁸
- 9.2. The NAPTIN's governing council, appointed by the President, is responsible for managing the NAPTIN, while the Academic Board oversees training and certification. Financial statements, annual budgets, and reports are prepared and submitted to the Minister of Power. The NAPTIN's funds are derived from fees paid to the NAPTIN for its training activities; dues recoverable by NAPTIN; budgetary appropriation by the National Assembly; fees earned from consultancy services, subvention, grants-in-aid, endowment; and donations and legacies accruing to NAPTIN, and are utilised for administrative costs, remuneration, property acquisition, and other expenditures.²⁹ The Power Training Fund is also established to support skills acquisition and capacity development in the power sector.³⁰

10. Recognition of Host Communities Entitlement to the National Hydroelectric Power Producing Areas Development Commission ("N-HYPPADEC") Fund

The Act re-establishes a specific fund under the N-HYPPADEC that shall be set aside for the development of the N-HYPPADEC host communities. While the N-HYPPADEC and the N-HYPPADEC Fund were established under the Hydroelectric Power Producing Areas Development Commission Act 2010, the Act introduces additional functions and provisions for these initiatives, including the introduction of an additional levy for the development of concerned host communities. As part of the Fund established by the N-HYPPADEC, section 95(2)(c) provides that there shall be paid and credited to the Fund 5% of all revenue accruing from power generated by

²⁶ Section 185 of the Act. The NAPTIN is an institute that was originally established on 23rd March 2009.

²⁷ Section 186 (1) of the Act.

²⁸ Section 186(1)(a)-(k) of the Act.

²⁹ Sections 200 – 201 of the Act.

³⁰ Section 203 of the Act.



the various Power Generating Companies in Nigeria (“**GENCOs**”) from the member State.

This payment by the GENCOs to the N-HYPPADEC Fund is required to be administered by the N-HYPPADEC and shall be set aside for the development of the respective host communities in the N-HYPPADEC member State.³¹ This provision aims to address the concerns of host communities and promote the development of communities that host electricity infrastructure, including power generation plants. The special Fund is intended to support the socio-economic development of host communities, ensuring that they receive tangible benefits from the electricity infrastructure located in their vicinity.

11. **Creation of New Electricity Offences**

The Act significantly expands and provides a comprehensive list of offences which were not as explicitly defined in the EPSRA. The offences outlined in the Act encompass various actions, including electricity theft, theft of electric lines and materials, receipt of stolen electricity, meter tampering, unauthorised connections, damage to electrical equipment, intentional disruption of power supply and non-compliance with regulations.³² The severity of the penalties, which range from fines to imprisonment, depends on factors such as the amount of electricity stolen, the financial gain obtained, and the specific offence committed.

12. **Protection of Investments in the Power Sector**

A subtle yet notable provision of the Act is Section 228, which guarantees asset protection, the right to sell or transfer a licensee’s undertaking in the event of revocation of licences or compensation in the event of any forceful takeover in the interest of national security. By this provision, the Act aims to reinforce investors’ confidence and provide them with the necessary assurances to make long-term commitments in the Nigerian electricity sector. It signals the Government’s commitment to protect investments while fostering a supportive and predictable regulatory environment.

³¹ See section 95(2)(c) & (d).

³² Sections 208 – 215 of the Act.



Conclusion

The Act creates a foundation for an electricity industry that is innovative, sustainable, and consumer-oriented, which sets Nigeria on the pathway for a future of dependable, affordable, and environmentally conscious electricity supply while encouraging transparency, competition, renewable energy integration, State participation, and regulatory empowerment.

The innovative strategies outlined in the Act reflect the intention of the Nigerian Government to revolutionise the electricity industry, and this represents a critical turning point for the country's power industry.

By taking this decisive step towards power sector reform, Nigeria aims to unlock the immense economic potential inherent in reliable electricity supply. The successful implementation of the Act has the potential to reshape the country's electric power landscape, stimulating industrial growth, creating job opportunities, and improving the standard of living for millions of Nigerians.

This update has been provided by Nicholas Okafor, Adeola Sunmola, Godson Iwuzozo, and Omeiza Alao of the Energy & Infrastructure team at Udo Udoma & Belo-Osagie. For more information about our Energy & Infrastructure practice group offerings, please visit our website at www.uubo.org or email us at uubo@uubo.org.

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