Outlook For The Nigerian Power Sector In 2021

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Introduction

The Nigerian journey to a competitive and efficient private sector led electricity market is bedevilled with a number of challenges ranging from inadequate electricity infrastructure, insufficient generation capacity, inadequate transmission of power to inefficient distribution of electricity to consumers. Regrettably, the sector is also contending with the negative impacts of the prevalence of the COVID-19 pandemic. The Nigeria power sector suffered a loss of about ₦57 Billion in 2020 due to problems associated with gas supply and grid infrastructure. It is reported that Nigeria’s power grid had 5 (Five) major collapse incidents that plunged substantial parts of the country into darkness during the course of the year 2020.

Notwithstanding that the entire value chain suffered immensely from the pandemic, the Distribution Companies (“DISCOs”) can be argued incurred major challenges arising from as a result therefrom. The most obvious of these being: (a) a huge jump in the electricity demand by end users; (b) unresolved stranded electricity issues; (c) increased customer apathy; (d) low payment response rate; and, (e) inefficient collections rate, challenges with energy load allocation as well as business continuity risks.

In the midst of these, there have been continued collaborations by the Federal Government of Nigeria and other foreign and domestic stakeholders in the power sector, aimed at improving the sector and optimizing its capacity across the power sector value chain. An example of this is the recent collaboration of the Federal Government of Nigeria and Siemens AG backed by the German government to modernize Nigeria’s electricity grid pursuant to the Nigerian Electrification Roadmap, 2019.

Flowing from the foregoing, this writer shall be providing an outlook for the state of affairs across the electric power sector value chain in 2021.

Marginal Improvement in the Distribution of Power:

This writer expects to see the substantial improvement of power distribution in areas where customers pay for electricity services thereby giving the DISCOs additional impetus to provide more stable electricity supply in those areas on the basis of service-based tariffs.

The MYTO 2020 which took effect on 1 September 2020 amongst other things, re-designated the classes of customers in the Nigerian Electricity Supply Industry (NESI), increased the tariff payable by customers in the different classes and introduced a tariff regime that is based on the level and quality of service provided by the DISCOs to their customers in the different classes. As a domino effect of the MYTO 2020, the DISCOs will take advantage of providing better quality of supply to customers paying higher tariffs compared to the tariffs paid by customer classes in areas with poorer quality of supply. This structure enables the DISCOs focus on prime areas with improved areas of collection efficiency to improve their finances and operations.

Sub franchising Regime:

It is envisaged that there would be the adoption of various DISCOs franchising models such as those across the metering, billing, and collection aspects of the power sector. The Nigerian Electricity Regulatory Commission (NERC) Guidelines on Distribution Franchising in the Nigerian Electricity Supply Industry 2020 (the “Franchising Guidelines”) was enacted to enable DISCOs to take advantage of evolving business structures and technology for the purpose of providing adequate safe and reliable services to end user consumers.
The Franchising Guidelines permit a DISCOs to enter into a franchising arrangement with a third party (Franchisee) to authorize the Franchisee to perform some of the specific functions of the DISCOs within the DISCOs licensed area. The total management of the electricity distribution function and distributed generation models as contained in the Franchising Guidelines will assist the DISCOs mitigate some of its present operational challenges particularly in the areas of collections, billing and rehabilitation of distribution infrastructure.

**Improvement in Distributed Energy Resources (DERs)**

In recent years, support for mini-grid development has increased due to improved commercial viability and recognition of the co-benefits of electrification, such as local economic development. Mini-grids are stand-alone power generation systems of up to 1 MW capacity that provide electricity to multiple consumers through a distribution network. They differ from embedded generation, which are independent power plants connected to the centralized grid at the distribution level.

Mini-grids tend to be smaller in capacity compared to embedded generation, and are also intended to operate independently from the local distribution licensee. Today, mini-grids demonstrate greater availability, reliability, and customer value compared to dilapidated and insufficient grid supply in most areas. Although today’s mini-grid tariffs are high relative to distribution companies and the central grid, they fall within the ability and willingness of customers to pay for electricity. Furthermore, the mini grids provide a solid platform for the utilization of renewable energy such as solar, wind, biofuel to diversify Nigeria’s energy mix and increase the nation’s overall generation capacity.

The Mini-grid Regulations issued by the NERC are designed to promote investments in rural electrification and provide a framework for engagement between mini-grid developers (off-grid electricity) community stakeholders and existing distribution companies. It also allows for private retail tariff arrangements for certain operators and compensation for developers in the event of operational expansion by the distribution company licensed to cover the relevant community.

DERs have changed the power generation sector by disrupting traditional markets and models as there is an evolving landscape for solar, wind, battery storage and other new energy technologies in the power space. It has paved and will continue to pave the way for a two-way flow of energy and allows the incorporation of new, connected technologies for power generation. DERs are both physical and virtual assets that can be deployed virtually across the grid.

A solar power company is developing a solar power system managed and administered through blockchain technology. The intention of the sponsor is to deploy the solar power infrastructure to the customers at no upfront cost. The utility payments shall comprise of the infrastructure as well as energy usage costs. In addition, the blockchain will utilize tokenization to manage and administer the end-to-end aspects of the project from the financing to energy service delivery to the ultimate customer.

The movement towards integrated grid with efficiency and consumption working together for mutual benefit is advancing rapidly and more of this is expected in 2021. Recently, a DISCOs partnered with a power service provider to procure and install grid-tied uninterrupted power supply solution to support the reliability and quality of power from the grid to a federal government agency.

**Improvement in Power Generation and Infrastructure**

Nigeria’s average generation and transmission were 4,000 Mega Watts (MW) (although the generation occasionally hit the 5,000MW mark), with an average of 3,000MW being distributed to end user consumers across the country. This performance was mainly impacted by infrastructure deficits in the electricity value chain. This electricity capacity is grossly inadequate to cater for the power needs of Nigeria’s growing population.

The FG in its budget breakdown for 2021 sought to address some of the issues faced in the power sector by allocating ₦206,746billion (inclusive of ₦160.83 billion for multilateral and bilateral funded projects) to the Ministry of Power (MoP) for capital expenditure in the year 2021.

A significant portion of the MoP’s allocation will be spent on counterpart funding needed to complete the construction of the hydro power projects and other renewable energy solutions, expansion of the transmission lines and rehabilitation of the existing infrastructure. The FG has also earmarked ₦160.83billion for the expansion and rehabilitation of the country’s transmission network. Other notable projects include the ₦1.5billion allocated for the distribution expansion programme projects to utilize the stranded power from the grid and approval of the counter-part funding for the Siemens collaboration which is expected to increase the distribution capacity to 7000MW by the end of 2021.

In 2019, the Federal Government of Nigeria signed a deal with the German government popularly referred to as the Nigerian Electrification Roadmap. The Nigerian Electrification Roadmap involves a five-fold increase in national generating output, the revamping of the power distribution and transmission systems in a massive
construction project that promotes local skills and sustainable technology. The first step of the project which includes: the upgrade and expansion of transmission and distribution structure, the improvement of access to affordable, efficient and reliable electricity and the support of industrial development and economic growth is expected to be completed this year.

Furthermore, the key players in the power sector have associated the frequent collapse of the national grid to the frequent load rejection by DISCOs. In the recently issued Guidelines for Economic Merit Order Dispatch of Generation Capacity and related matters, 2020, DISCOs will henceforth be liable for the rejected load. The objective of the Guideline is to implement a methodology that holds a DISCOs financially responsible for failing to distribute its contracted load allocation due to constraints in its networks. If enforced strictly, this will go a long way in holding Discos accountable in terms of load distribution and thereby reducing stranded energy capacity and serving as to ‘force’ adequate power supply to end consumers.

Improved Liquidity
The Central Bank of Nigeria established the Solar Connection Intervention Facility to complement the Government’s effort of producing affordable electricity to rural dwellers through the provision of long-term low interest credit facilities to the Nigeria Electrification Project. The Nigerian Electrification Project is a federal government initiative that is private sector driven and seeks to provide electricity access to households, micro-small and medium enterprises in off-grid communities across the country through renewables power resources.

The Nigerian Electrification Project is being implemented by the Rural Electrification Agency in collaboration with the World Bank, the African Development Bank and other partners. This initiative will in the long run promote the deployment of solar power solutions and mini grids around the country. The main objective is to sustain liquidity in the power sector. This has enabled most DISCOs to carry out projected capital expenditure through issuance of Letters of Credit for a number of projects.

Change in the Role of the Nigerian Bulk Electricity Trading Company Plc (NBET)
With the several controversies rocking NBET, it is expected that there will be a change in its role in the power sector. One of such controversies is its transfer from the Ministry of Power to the Ministry of Finance contrary to the provisions of the Electric Power Sector Reform Act. However, notwithstanding the purported controversial change of supervision of the NBET, it is the opinion of this writer that this move may improve NBET’s liquidity in view of the current role being played by NBET as market intermediary between the Gencos and the Discos. This may therefore foster investor confidence in on-grid generations projects which had hitherto been abandoned as a result of NBET financial illiquidity.

Concluding Remarks
It is pertinent to state that the Federal Government needs to address the issues around infrastructure deficits in the transmission, distribution subsectors and overall sector governance. Efforts should be made to develop and enforce regulatory framework to address the key challenges facing sector. It is also hoped that the Government’s planned interventions in 2021 will attract significant private sector capital that will help to address the financial, technical and infrastructural challenges of the sector. The Federal Government should put in place more power sector specific fiscal incentives to encourage these private investments.

For more details on anything oil, gas and power, read my new book- Understanding Petroleum Transactions and the Nigerian Electricity Market.

Based on the foregoing, there should be reasonable confidence that the year 2021 would witness significant developments in the Nigerian electric power sector.
Is It Time To Establish A Parallel Electricity Market? (Part II)
Fadekunayo Adeniyi- Energy and Climate Change Specialist

Introduction
A liquidity crisis has persisted in the Nigerian electricity supply industry (NESI) since privatisation in 2013. This liquidity crisis has constrained new investments across the entire sector, including over 1,000 megawatts of private sector-led on-grid renewable energy investments. As explained in the previous publication, three specific challenges have sustained the liquidity crisis and constrained new investments in the electricity market so far. To tackle the liquidity crisis, this article recommends the introduction of a Parallel Electricity Market (PEM) – an electricity exchange for Nigeria.

How the PEM Works
The PEM is an electricity exchange – a marketplace to buy and sell electricity. In the PEM, Generation Companies (GenCos) will sell electricity to a select category of productive, high-consuming credit-worthy customers without going through NBET. The PEM will provide 24-hour reliable electricity to its customers. Only large productive credit-worthy customers will initially be allowed to buy electricity from the PEM, making the PEM operate at near-zero commercial losses and improve liquidity in the entire sector with an increasing proportion of sales occurring profitably. Other credit-worthy customers in the existing market would be allowed to join the PEM in phases.

Unlike the Eligible Customer Regulation (ECR), the PEM focuses exclusively on developing the on-grid market. In the PEM, electricity will be delivered using the grid alone, avoiding the risk of underutilising the grid infrastructure as would be the case with regulations that promote off-grid generation in grid-connected areas. Within the PEM, the system restricts the Transmission Company and distribution companies (DisCos) to transporting electricity alone; however, they may continue trading electricity in the existing conventional electricity market. Within the PEM, the Transmission Company will charge a transmission use of service (TUoS) fee for operating the grid and transmitting electricity from power stations to the distribution end of the network as it currently does. The DisCos will not sell electricity to customers in the PEM; instead, they will only be transporters of electricity, receiving a distribution charge and competition transition charge (CTC). The distribution charge will cover the costs of electricity distribution in the PEM, and the CTC will be used to compensate the DisCos for losing electricity sales to their prime customers. These prime customers will move in phases to the PEM.

Electricity Pricing in the PEM
Two trading markets will exist in the PEM: a spot market and a derivatives...
market. In the spot market, PEM customers bid in an auction system for available electricity advertised by GenCos up to thirty minutes before delivery. The spot market price of electricity will change with demand and supply in the PEM, creating a transparent reference price for electricity in Nigeria. In the derivatives market, PEM customers can enter longer-term contacts with GenCos to hedge against volatility in the spot market. Parties to derivatives contracts could agree on a fixed long-term price with put-call options that allow GenCos to sell at an agreed minimum price and the customer to buy at an agreed maximum price.

In its pricing regime, the PEM differs from the recently introduced service band pricing. While the MYTO 2020 sets retail prices based on service bands and cost of service, the pricing regime in the PEM will depend on demand and supply in the PEM. Such a system will introduce productive competition in the wholesale market and prepare the market for time-of-use pricing. Non-PEM customers would not need to pay PEM prices until they join the PEM.

Customers in the spot market of the PEM will pay an auction clearing price, transmission cost, distribution cost, taxes plus two extra charges as (CTC and reliability charges). The reliability charge includes two components. The first component covers capacity payments for unplanned supply shortage in the PEM. The second component covers grid upgrades to enable 24-hour supply to premium customers.

The incentive for these large customers to pay a cost-reflective tariff plus two extra charges will be the opportunity to avoid the even higher costs of self-generation through expensive diesel-fuelled electricity generation systems.

**Figure 1:** Proposed Electricity Price Structure for PEM.
Benefits of the PEM

There are three critical arguments for the PEM. First, in the PEM, NBET will not bear the risk of low bill payment, reducing the fiscal burden on NBET. PEM customers will initially be large credit-worthy customers, who have bankable credit letters. And as credit-worthy customers move in phases from the existing market into the PEM, less trade will occur in the existing market, allowing the market to wean off NBET sustainably.

Second, creating a prioritized and separate market does not just improve liquidity; it will have a profound demonstration effect by showing stakeholders what the rest of the market should aspire to. Reliable supply in the prioritized PEM would also show customers the benefits of paying a sustainable price for electricity and make those who can afford it more willing to move to the PEM. The PEM will help to build trust between the DisCos and customers as participating customers receive 24-hour reliable electricity and pay their bills with near-zero commercial losses. Such a reality could make non-participating customers more willing to pay higher electricity prices to join the PEM in subsequent phases. This assumes that consumers’ willingness to pay is constrained primarily by a trust deficit, rather than financial constraints.

Finally, current efforts by the government will go a long way to solving the liquidity crisis; however, the PEM provides a more efficient way of upgrading the grid infrastructure. Grid upgrade investments can simply be directed towards projects that facilitate and expand profitable trade in the PEM. This approach would mean directing NESI operators’ investments towards parts of the grid that allow qualifying PEM customers to receive electricity simultaneously and reliably. Earnings from the prioritised and liquid PEM will inevitably improve liquidity in the sector, and allow NESI operators to access capital more easily for investments.

Additional Benefits of the PEM

<table>
<thead>
<tr>
<th>Feature</th>
<th>PEM</th>
<th>ECR</th>
<th>MYTO 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholesale pricing</td>
<td>Promotes a transparent wholesale electricity price regime through a spot market and a derivatives market.</td>
<td>Promotes bilateral trading with no transparent reference electricity price, creating an inefficient pricing regime.</td>
<td>N/A</td>
</tr>
<tr>
<td>Time of use pricing</td>
<td>Facilitates time of use pricing, which is essential to meet Nigeria’s on-grid renewable energy targets.</td>
<td>Cannot facilitate time-of-use pricing due to the decentralised nature of consumption.</td>
<td>Does not support time-of-use trading.</td>
</tr>
<tr>
<td>Grid utilisation</td>
<td>Promotes on-grid electricity trading exclusively, avoiding underutilisation of the grid and unnecessary increase in grid electricity price.</td>
<td>Promotes on-grid and off-grid electricity trading. Taking prime customers off the grid raises the price of grid electricity for customers left on the grid Nigeria.</td>
<td>N/A</td>
</tr>
<tr>
<td>Efficient expansion of the electricity markets</td>
<td>Promotes a more efficient expansion of the electricity market and provides a more efficient way of upgrading the grid infrastructure.</td>
<td>Promotes an efficient way for individual customers and GenCos to expand their energy trade; however, missing out on the opportunity to optimise expansion on a system-wide level.</td>
<td>N/A</td>
</tr>
<tr>
<td>Demonstration effect</td>
<td>Creating a prioritised and separate market does not just improve liquidity; it will have a profound demonstration effect, showing stakeholders what the rest of the market should aspire to.</td>
<td>Reminiscent of business-as-usual, where undersupplied customers who can afford it, go off-grid with diesel or gas generators.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Conditions for the Success of the PEM

The PEM provides a powerful option to solve the liquidity crisis. However, the following factors must be in place to ensure its success:

1. Electricity price structure in the PEM must include distribution use of system (DUoS) and CTC.
2. The power system must be modelled to identify the technical constraints to reliably supplying all prospective PEM customers simultaneously. The removal of these constraints would present profitable transmission and distribution network investment opportunities.
3. The regulator must enforce infrastructure upgrades by requiring operators, who participate in the PEM, to submit investment plans that facilitate and expand the PEM itself.
4. The government must re-adopt the strategy of facilitating industry-wide technical working groups to address pertinent issues that affect the liquidity and performance of the sector.
5. Stakeholders must consider potential political opposition to the PEM from non-qualifying customers. There is the potential for non-qualifying consumers to perceive the PEM as an act of economic discrimination. However, careful and transparent stakeholder engagement will help to mitigate this potential risk to the PEM.

Next Steps

It is important to note that the PEM still needs to be modelled, but here is the strong suspicion: while the percentage of the remittance shortfall from NBET will inevitably increase with the establishment of the PEM, the absolute size of the shortfall from NBET will decrease. Here’s why: in a prioritised PEM, GenCos are more likely to earn better revenue from credit-worthy consumers at near-zero loss, requiring less from NBET. In addition, NBET will no longer be effectively subsidising electricity for credit-worthy consumers. NBET will now only be paying the shortfall from the existing market and the electricity subsidy for non-PEM consumers.

As the government and labour unions debate the fate of the electricity sector, the PEM offers a suitable and effective option to improve liquidity in the sector sustainably. PEM’s effectiveness can be easily modelled to determine the rate at which it will improve liquidity and accept new customers. To develop the PEM, stakeholders need to invest resources into modelling it from a social and technical perspective. After this, stakeholders can pilot the PEM in pre-identified zones.
Needed: A Clear Path For Metering Electricity Customers

The Editorial Board, Businessday.

Seven years after national electricity assets were sold to private operators, more than half of electricity customers still do not have meters, thereby hemorrhaging cash in the sector and feeding customer discontent.

While the government stumbles from one policy to another, we urge the Nigerian Electricity Regulatory Commission (NERC) to provide a clear mandate for metering customers as this charade has become too painful to watch.

Providing meters to customers was supposed to be among the performance agreement power distribution companies (DISCOs) were obliged to fulfill. Metering was a significant commitment towards reducing their commercial losses.

Shortly after taking control of the assets, the DISCOs reneged, arguing that NERC’s inability to allow a biannual review of electricity pricing template, called the Multi-Year Tariff Order (MYTO), as agreed led to a cash crunch impacting their ability to spend on capital assets including meters. The regulator acquiesced and started on a path of ruinous policies that did everything but provide customers more meters.

Under Sam Amadi as NERC Chairman, the Commission began the Credit Advance Payment for Metering Implementation (CAPMI), which allowed electricity consumers to self-finance their meter acquisition and installation. This capitulation, an obvious aberration, was accepted by customers who were eager to free themselves from the pain of controversial estimated billing practices of DISCOS. It soon became a norm.

Yet, even CAPMI failed. DISCOs soon found a way to game the system by keeping customers on endless waiting lists, claiming meters were unavailable even as they continued to accept deposits for meters from customers. Some DISCOs had contracts with foreign meter manufacturers to supply them meters but when the creaking economy under Buhari slipped into recession in 2016, fallen oil production and lower oil prices reduced dollars available in Nigeria hence these deals fell through. Many customers lost their money.

Babatunde Fashola, former minister of Power, Works and Housing, threw out the policy in 2016 and told customers to enter negotiations with their DISCOs on meter provisions. On March 8, 2018, NERC created the Meter Asset Provider (MAP) regulations, which allowed DISCOs to outsource meter provision. The policy was meant to create over N70bn worth of market for local meter manufacturers as they were supposed to supply 30 percent of the required meters according to NERC.

But even that policy soon after creation started careening off a cliff, starting off with DISCOs unwillingness to key into it. NERC, in March 2018, issued a deadline of August 1, 2018, to the eleven Discos to engage the services of MAPs, this was ignored, and NERC rather than sanction them extended the deadline to the next year.

In 2019, the Federal Government announced a 35 percent duty on meters purportedly to encourage local meter production. This led to millions of meters being stranded at the ports until the policy was rescinded last year.

In October 2020, the Federal Government in a bid to stave off a strike action by labour groups over an increase in electricity tariff under a Service Reflective Tariff order said it was delivering 6 million free meters to customers across the country.

This was a decision taken without due regard to the MAPs and two months after it was announced, no meter is yet to be delivered while operators under the MAPs are clearly aggrieved by this development.

From the foregoing, it is easy to see that the problem with the power sector in Nigeria is largely due to policy inconsistency stemming from a regulator that is weak and dependent on the government. This failure is manifested in the inability to respect contracts, enforce policy provisions and this has resulted in the inability to create a thriving market for the power sector.

While Nigerians desire free meters, should this government neck-deep in debt, be offering to distribute 6 million free meters estimated to cost over N260 billion at this time? What happens to meters contracted under the MAPs arrangement? Two months after the government announced this plan, Nigerians are still not getting this meter, a clear indication that there was no forethought or strategy behind it.

This is why we urge NERC to start justifying its pay and take seriously its responsibility of regulating the power sector. About 60 percent of electricity customers lack meters and many are being billed through what many consumers will term a fraudulent estimated billing system.

Some customers complain that many of the new meters installed since last year have been developing fault at an alarming rate. Seven years after privatisation, metering should not be the problem of a serious sector.

1 This article was first published in BusinessDay on January 4, 2021.
Electricity Tariff Regulation In Nigeria: Need For Effective Independent Regulation

Kester Oyiibo, AMEI, MCIarb. and Michael Uche Ukporu, MCIarb.

Introduction
This article aims at assessing the regulatory independence of the Nigerian Electricity Regulatory Commission (NERC) in retail electricity price regulation. The scope of NERC’s regulatory functions, in the context of independent regulation, is to align the objectives of both public and private sector stakeholders. This is because the electricity industry is characterized by high capital, economies of scale, and is considered critical in the provision of essential services to the public.

In recent times, NERC has introduced different regulatory frameworks which have effectively reviewed the tariff structure of the retail sector in the Nigerian Electricity Supply Industry (NESI). Following these regulatory interventions, there have been several comments regarding the increase in electricity tariffs payable by end-users. For instance, the electricity Distribution Companies (DISCOS) applauded the actions of NERC, as a step in the right direction towards achieving the requisite transition to a cost-reflective tariff system. On the other hand, the consumers as well as some political and labour stakeholders feel differently.

The authors, in this piece, discuss the basis of these divergent views and how strengthening the independent powers and functions of NERC is essential towards the implementation of a cost-reflective tariff in the NESI.

The Challenge in the Regulation of Electricity Tariff
The Nigerian Electricity Supply Industry (NESI) witnessed a structural reform which was the outcome of intense planning and implementation of several policy initiatives as far back as 2005. Prior to the reform process, the NESI was dominated by a vertically integrated state-owned monopoly, plagued with supply shortages and low investments in the sector. These were generally linked to the poor financial performance of electricity utilities at the time, which arose from low
commodity prices, inefficient operations and excessive losses. The goal of the reform was to provide for private sector participation, make the provision of electricity services financially viable and facilitate efficient recovery of the cost of providing the service.

The introduction of competition to the electricity market implies and necessitates a deregulation of the market. However, absolute deregulation of the sector is not practicable in order to achieve economic efficiency and avoid unfair prices driven by the possible exercise of market power. Regulatory intervention hence became imperative, for instance, to ensure fair competition for access rights and prices for use of network systems, which are natural monopolies.

In Nigeria, the pre-reform mindset still pervades the populace where electricity is viewed as a social commodity to be provided by government. As such, any attempt to account for the actual cost of electric power production is usually met with stiff opposition. To avoid losing popularity and acceptance amongst the public, the government is often reluctant to allow NERC to implement the needed regulatory steps that will enhance the efficiency and viability of the NESI.

Notwithstanding the above, there is a need for the emerging regulatory framework to essentially incentivize investors and protect them from political and/or regulatory risks. This is because investors need to be assured that they will be able to recover their huge capital investments under the electricity tariff structure to be adopted in the regulatory system. There should be some guarantee or assurance that future prices will be set at a sufficiently remunerative level to justify investments made, based on objective economic considerations. Consequently, Independent Regulation is required to avoid regulatory capture, correct market failures, protect investors and generally promote economic efficiency within the Sector.

In order to achieve these key objectives, NERC ought to largely function independent of the Government, Private sector participants and the electricity consumers while remaining formally and informally accountable to the stakeholders. This is particularly important as it relates to end-user electricity tariff regulation.

Under the current regulatory framework, NERC has adopted the Multi-Year Tariff Order (MYTO) formula for tariff setting. It was first issued in 2008 and provided for periodic minor reviews and a major review within 5 years after its issuance. This methodology takes into consideration certain macroeconomic indicators like gas price, exchange rate, inflation rate and generation capacity, in arriving at the electricity price for the end-user. Since 2008, there has been one major review in 2012 and two minor reviews in 2015 and 2019.

Notwithstanding the far-reaching powers donated to NERC with regards to tariff regulation and the subsequent adoption of MYTO, NERC has been quite inconsistent in following through with timeous periodic reviews necessary to produce the required changes in the macroeconomic indices. Such regulatory lapses, somewhat attributable to a lack of political will and constant agitation by some stakeholders, have led to negative impacts on the growth of the NESI since the reform process began.

This is particularly because, most attempts by the NERC to implement an upward review of electricity tariff where an economic case for it was made by the DISCOs, have been met with firm opposition from the political institutions and organised labour and consumer groups. These groups are purportedly acting in the interest of the masses, who perhaps for justifiable reasons believe that an increase in electricity tariff ought to be complimented with increased power supply and standard of services by the DISCOs. Thus, the shortcomings of NERC in implementing a cost-reflective tariff in line with the phased transition to a competitive retail NESI is not unconnected with acts of regulatory capture particularly on the government and consumer side.

While these government interventions may be justified on some notable grounds, they effectively constrain the regulatory independence of the NERC and affect investors’ confidence in the sector. The Federal Government has on certain occasions influenced or directly ordered the suspension of regulatory orders of NERC at the ministerial level in matters of electricity tariff. This is so despite the clear provisions of the EPSRA donating such powers to NERC exclusively.

Now, this level of control is not surprising, given that the Federal Government is yet a major player in the electricity value chain (for instance its ownership of the monopolised transmission company) and continues to provide consistent financial bailout and unsustainable subsidy programs within the sector. As such, NERC is naturally inclined to take substantial cognisance of the Federal Government’s policy objectives in its efforts to set the appropriate electricity tariffs, even where it tramples on its independence and investors’ confidence.

To attain this independence, the powers and duties of NERC to regulate electricity tariff and must be clearly articulated and delineated in a legal framework. This is to avoid undue interference by the government in its regulatory activities by overriding its decisions. This criterion seems to have been largely satisfied through the laudable provisions of the Electric Power Sector Reform Act, 2005 (EPSRA). Section 76 of the EPSRA provides that NERC is empowered to adopt one or more methodologies to regulate the prices for the activities which are subject to tariff regulation under the Act. This includes the regulation of electricity prices for end-users to be collected by the DISCOs. However, it is essential to include provisions stating the clear exceptions when the Government may interfere or override the decisions of NERC. Such that outside the stipulated exceptions, the NERC can exercise its powers with full independence. This is expedient to give certainty and security to stakeholders and potential investors.
Informal accountability is relevant to achieve effective independent regulation by NERC and this would require a clear description of the degree to which the regulatory process encourages debate and engagement of the stakeholders. It is also important for NERC to clearly set out the justification or basis for its decisions and methodologies. Such informal procedures (which may not necessarily be required by legislation), would be useful to improve the regulatory process and provide a long-term foundation for sustainable regulations introduced by NERC.

Consequently, NERC would need to improve on its consultative process with all the stakeholders in carrying out its functions, particularly as it relates to tariff regulation, as doing so meets a salient feature of regulatory independence. For instance, robust engagement of all the stakeholders including labour unions, other pressure organisations and influential members of the National Assembly, prior to the introduction of regulations on tariffs would be an important step towards avoiding instances of suspended tariff orders on the grounds of social or political concerns. As such, NERC is expected to not just engage all the stakeholders prior, but also ensure that a justification for the approved tariff methodologies and orders to be introduced have been proactively set out.

Conclusion
It is the consideration of the authors that despite the valid concerns of the Nigerian populace and political class against the implementation of increased (cost-reflective) electricity tariff, NERC has to be strategically strengthened and positioned to take critical actions where necessary, even where it portends some foreseeable burden on the general public.

Regulatory independence driven by a well-positioned regulator is required to seamlessly transit the NESI into a fully competitive market that is contract-based. Thus, a sustainable strategy, in our view, is to strengthen the regulatory powers and independence of NERC to take the desired regulatory steps driven majorly by commercial and technical considerations, free of political sentiments.

Lastly, there is a need to decentralize the regulation of the power sector so that the regulatory burden on the behemoth NERC will be whittled down. This is essential in order to effectively address the challenge of access to electricity in the NESI and improve the quality of service delivery, particularly in the rural areas. Hence, the State Electricity Boards can have a considerable share of the electricity regulatory space, in what could be called ‘competitive regulation’ across the different States in Nigeria.

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The first book on electricity is written from my over 15 years advising on several electric/ power sector related transactions from grid connected to off-grid projects. I look at transactional, pure legal and due diligence related issues. I have also highlighted practical issues for consumers and provided an investors’ guide for business people. The book covers almost all issues which can potentially arise in transactions in the electric power sector, from due diligence at the commencement of a transaction, financing transactions as well as key regulatory compliance issues including environmental compliance. The book also highlights the effects which the COVID-19 pandemic has had on the electric power sector in Nigeria and my outlook of the electric power sector during and post-COVID-19.

The second is a book on petroleum transactions and as the title suggests, the book covers issues in the petroleum sector from due diligence, acquisitions, divestments and project development in both the upstream, midstream and downstream sectors. As stated above, it highlights both the theoretical legal issues which affect these transactions, as well as practical issues which will be faced and must be addressed during each stage of transactions. The book also looks at recent policy changes in Nigeria and their potential effect on the petroleum sector, including the most recent version of the PIB(Petroleum Industry Bill). The petroleum text also details creative ways to raise finance and reviews the most recent financing modes used by the NNPC.

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- Full Version: 20th May, 2021
- Decision Date: 2nd June, 2021
- Publication Date: 30th June, 2021

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20, Adetokunbo Ademola Street,
Victoria Island, Lagos, Nigeria

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