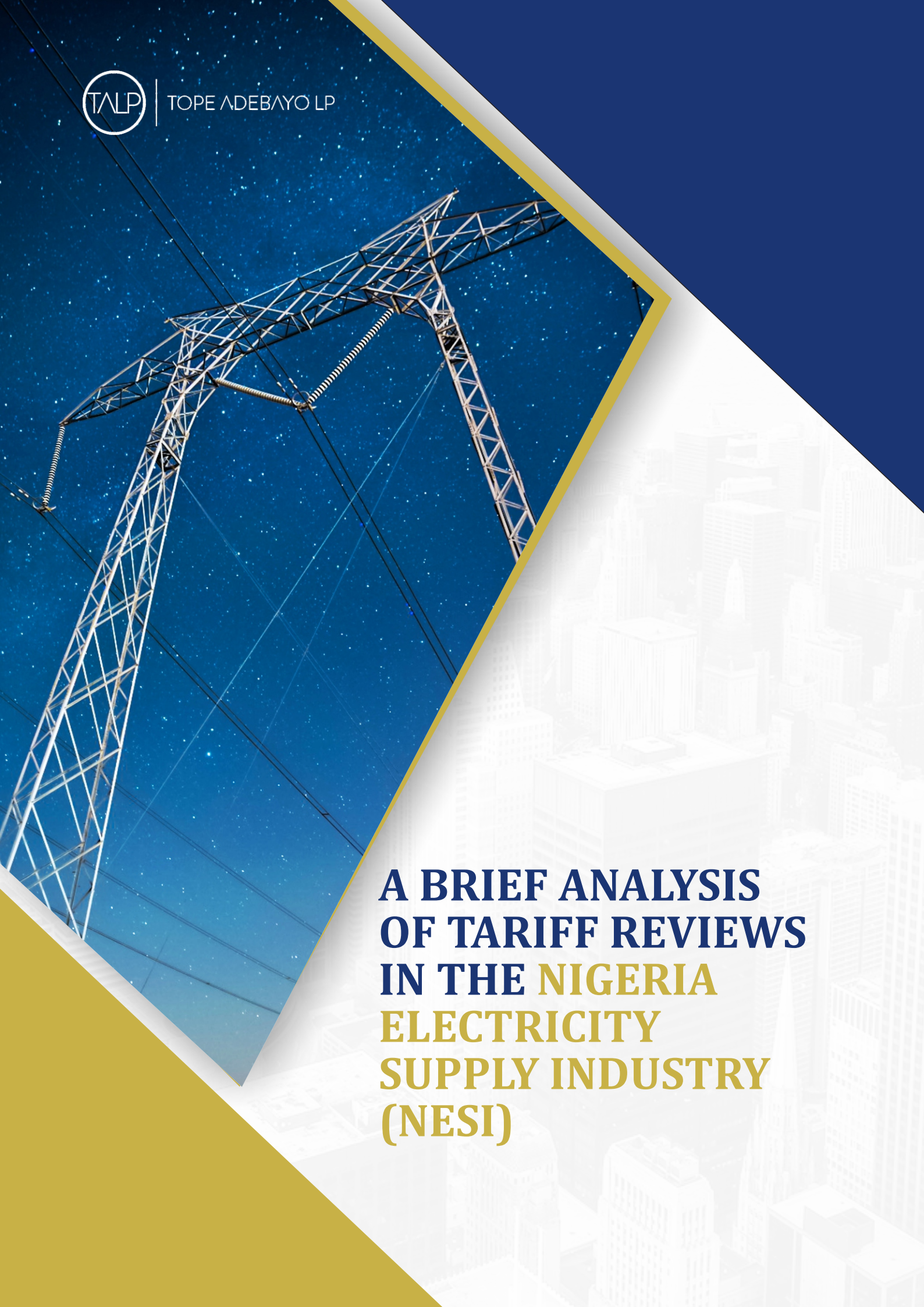




TOPE ADEBAYO LP



**A BRIEF ANALYSIS
OF TARIFF REVIEWS
IN THE NIGERIA
ELECTRICITY
SUPPLY INDUSTRY
(NESI)**

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INTRODUCTION

Recently, the 11 Discos in Nigeria filed an application for rate review with Nigeria Electricity Regulatory Commission (NERC), premised on the need to incorporate changes in macroeconomic parameters and other factors affecting the quality of service, operations, and sustainability of the companies. Following this, NERC invited interested stakeholders for comments on the rate review application.¹ This application by the Discos was made pursuant to the Multi-Year Tariff Order (MYTO) 2022 guidelines² issued by NERC to the 11 Discos. The MYTO 2022 approves a 5-year CAPEX, with relevant assumptions applied to forecast revenue require-

ments and applicable tariffs for the period of 2021-2026 in line with the MYTO Methodology and Regulations on Procedure for Electricity Tariff Reviews in the NESI. The said application for rate review by the Discos has however, attracted criticisms from consumers, and a rejection from the House of Representatives,³ who have labelled this move by the Discos as being inconsiderate in view of the present financial hardship caused by the removal of fuel subsidies by the Federal Government of Nigeria. Against this backdrop, this article discusses the power of NERC to approve a rate review application by the Discos, and the basis upon which such an application can be made.

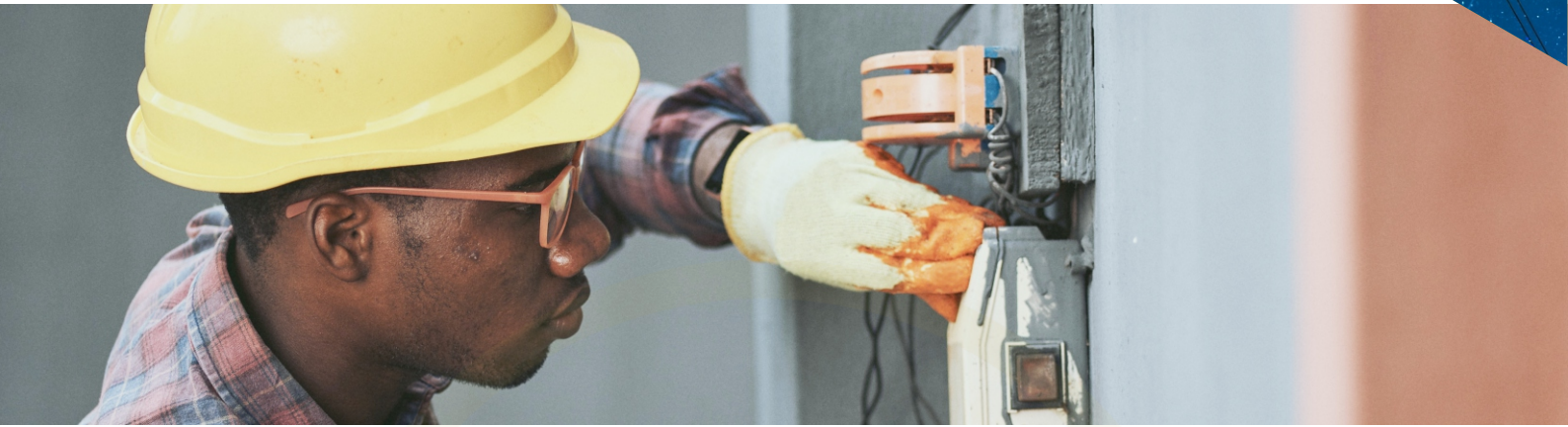


¹<https://dailypost.ng/2023/07/17/electricity-tariff-increment-looms-as-nerc-confirms-applications-for-rate-review/> accessed 25th July 2023.

²<https://nerc.gov.ng/index.php/library/documents/MYTO-2022> accessed 25th July 2023.

³<https://economicconfidential.com/2023/07/lawmakers-reject-tariff-hike/> accessed 30th July 2023.

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Tariff Review by Discos

Distribution Companies (Discos) are empowered to regularly evaluate and review electricity tariffs. This review must, however, be done in accordance with the Electric Power Sector Reform Act 2005 (EPSRA) (now the Electricity Act 2023) and the MYTO Methodology specified and adopted by NERC.⁴ The EPSRA.⁵ provided for activities which come under the scope of tariff regulation as follows:

- a. Generation and trading of electricity in respect of which licenses are required pursuant to the Act, and where NERC considers regulation of prices is necessary to prevent abuses of market power
- b. Transmission, distribution, supply, system operation in respect of which licences are required under the Act.

The Electricity Act 2023, which repeals the EPSRA expands the scope of activities which come under the ambit of tariff regulation by NERC to include, electricity distribution franchising and other activities as determined by NERC.⁶ Unlike the EPSRA, the EA recognises distribution and franchising agreements between distribution or supply licensees and third parties and allows the parties to operate within the franchising terms, models and tariffs as approved by NERC.⁷

⁴Regulations on Procedure for Electricity Tariff Reviews in the NESI2014, Reg. 2.

⁵EPSRA 2005, s 76(1).

⁶Electricity Act 2023, s 116(1)(c).

⁷Ibid, ss 68(4) & (5).

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In determining the tariff methodology to be applied, NERC will ensure that the tariff methodology: allows the licensee to operate efficiently to recover the full cost of its activities and a reasonable return on investment, incentivises continued improvement of technical and economic efficiency, incentivises an improvement in the quality of services provided, circumvents undue discrimination between consumers and consumer category, phases out cross-subsidies over a time frame specified by NERC, and promotes co-generation and generation of electricity from renewable sources. The burden, however, is on the Applicant for rate review (the Discos) to prove that the proposed tariff is just, reasonable and based on prudent cost.

What is a Multi-Year Tariff Order?

The MYTO is a framework NERC uses to determine electricity tariffs in the NESI. The MYTO was established in furtherance of NERC's overarching statutory objects under the EPSRA to, amongst other things ensure; the fairness of retail tariff rates to the customers; and that the tariffs are sufficient to allow Discos who operate efficiently to

recover costs and make reasonable returns on the capital invested.⁸ It provides guidelines for a structured approach to calculating and reviewing tariffs to ensure transparency, cost recovery, and sustainability in the power sector. The MYTO provides a 15-year tariff path for the NESI with limited minor reviews twice each year in the light of economic changes such as inflation, gas prices, exchange rate etc, and major reviews every five years, after receiving and reviewing all inputs, objections and comments of the public, stakeholders, and any affected party.⁹

Principles Adopted by NERC in Determining the Appropriate Methodology¹⁰

NERC considers the following principles in determining the appropriate methodology to be adopted:

- i) Produces outcomes that are fair;
- a. Encourages outcomes that are efficient, in that it involves the lowest possible costs to Nigeria, and encourages investment in electricity

⁸EPSRA 2005, ss 32 & 76.

⁹Revised MYTO 2007, s 1.

¹⁰Ibid, s 1.1.2.

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generation; and

- ii) Is simple, transparent and avoids excessive regulatory costs.

The Act¹¹ mandates NERC to give notice in one or more newspapers or official gazettes of its proposed establishment of a tariff methodology. In preparing a tariff methodology, NERC shall consider representations made by licence applicants, other licensees, consumers, eligible customers, consumer associations, associations of eligible customers, and other necessary persons, and obtain evidence from persons with expert knowledge in preparation of methodology. After which NERC will fix 30 days from the publication of the notice for comments, objections, and representations on the tariff methodology. The final methodology after proper consultation with the above-mentioned stakeholders is issued by NERC in the form of a decision.

The NERC in reaching its decision, must balance the interest of all parties and consider that the objectives of both stakeholder groups are joined by the common need to ensure that the electricity supply system is viable, adequate, reliable and safe. NERC

shall ensure that the prices charged by the Discos are fair to customers, and at the same time sufficient to allow the Discos fully recover the efficient cost of operation, including a reasonable return on the capital invested in the business. NERC will also put into consideration indices not within the control of licensees, e.g., the transmission loss factor (TLF), inflation rates, foreign exchange rate (NGN/USD), gas price, available generation capacity, and unutilized CAPEX provisions so that the tariffs can be cost reflective. Another consideration by NERC may be the availability of generation capacity which can be obtained from the periodic reports from the system operator. In deciding on tariff regulation, NERC shall also consider subsidies provided by the government, e.g., the Power Consumer Assistance Fund (PCAF) which is contributions from persons specified under the Act to be used to subsidise underprivileged power consumers as specified by the Minister in consultation with NERC.¹²

By virtue of the amendment of section 14 of the 1st Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as

¹¹EA 2023, s 116(6-10).

¹²Ibid, ss 116(4), 122(3).

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amended) and Section 2(2) of the Electricity Act, States are now equally empowered to create State regulators who are empowered to adopt their own tariff methodology pursuant to their electricity laws and MYTO guidelines.

CONCLUSION

The MYTO 2022 guidelines provide for a bi-annual review after considering the indices stated in this article, such as the Nigerian inflation rate, the exchange rate, etc, and this is in line with the MYTO Methodology. After a rate review hearing, an aggrieved person may apply to have the decision or ruling of NERC reviewed, and the panel may reconsider or vary its decision within 30 days from the date of receipt of such request by con-

ducting a rehearing.¹³ The recent application by the Discos for a rate review is contingent on this because rates were last reviewed in December 2022, and the macroeconomic parameters have changed since then. In December 2022, the Nigerian inflation rate was 21.34%, while the exchange rate was ₦446.46/1\$. But the Nigerian inflation rate in July 2023 is 22.79%, a 1.45% increase from December 2022, while the exchange rate is now ₦773.40/1\$.¹⁴ NERC has stated that the rate review process has been stopped, perhaps due to the rejection of the application of the Discos by the House of Representatives. While acknowledging the plight of consumers, one must consider the best interest of all parties involved. The Discos also need to recover their capital expenditure and get a favourable return on their investments, having put the indices enumerated above into consideration, as this is germane to the quality of service delivery by the Discos, the achievement of the Performance Improvement Plan by the FGN and the achievement of the objectives of the MYTO Methodology.

¹³Regulations on Procedure for Electricity Tariff Reviews in the NESI2014, Reg. 21.

¹⁴<https://www.nigerianstat.gov.ng/> accessed 30th July 2023.



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PRACTICE KEY CONTACTS



ADEREMI FAGBEMI
PARTNER



OLUWASEUN FAPOHUNDA
SENIOR ASSOCIATE



SANDRA OSINACHI-NWANDEM
ASSOCIATE



EYITAYO AJISAFE
ASSOCIATE TRAINEE

Brought to you by TALP's Energy & Natural Resources Department.

For further enquiries, log onto www.topeadebayolp.com

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Please contact us using any of the details provided below:

TOPE ADEBAYO LP

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria
p: +234 (1) 628 4627
e: info@topeadebayolp.com
w: www.topeadebayolp.com

