



**Sandra Osinachi-Nwadem**  
Associate Tope Adebayo Lp

## 1. INTRODUCTION

On the 8th of June 2023, the Electricity Act was signed into law by the President of the Federal Republic of Nigeria. The Act in addition to other provisions, revoked and repealed the Electricity Power Sector Reform Act (EPSRA) 2005. The new Act aims to establish a thorough legal and institutional structure for the Nigeria Electricity Supply Industry (NESI), covering aspects such as electricity generation, transmission, system operation, distribution, supply, and trading, as well as promoting the integration of Renewable Energy (RE) into Nigeria's energy mix. The Electricity Act harmonises the laws regulating the NESI and comprehensively addresses the post-privatisation challenges following the enactment of the EPSRA. This article explores some of the key highlights of the Elec-

# NIGERIA'S RENEWABLE ENERGY POTENTIAL: A CLOSER LOOK AT THE NIGERIAN ELECTRICITY ACT 2023



tricity Act, and its far-reaching implications on RE investment.

## 2. Major Highlights in the Nigerian Electricity Act 2023

The Act heralds several novel and notable innovations that are capable of transforming Nigeria's electricity value chain and attracting the much-needed investment that will culminate in solving Nigeria's electricity access deficit.

### 2.1 The Demonopolization of the power sector: The Act<sup>1</sup> bestows

upon states the legislative authority to oversee the generation, transmission, system operation, distribution, supply and retail of electricity in all areas within its borders, whether or not these areas are covered by the national grid. The Federal Government retains the power to exclusively regulate inter-state and cross-boundary electricity activities. This is in line with the recent

<sup>1</sup>Electricity Act 2023, s 2(2).

constitutional amendment.<sup>2</sup> The Act grants state governments the power to regulate their own electricity markets independent of the Nigeria Electricity Regulatory Commission (NERC). It is worthy to note that until a state has enacted its own electricity legislation, and has established its electricity market, the NERC will continue to regulate activities across its electricity value chain.<sup>3</sup> To ensure inter-institutional harmony in the federal and state electricity markets, NERC shall establish an inter-governmental body to develop principles and rules for the reduction of regulatory risk.<sup>4</sup>

## **2.2 Integrated National Electricity Policy and Strategic Implementation Plan:** Another notable

provision of the Act<sup>5</sup> is that the Federal Ministry of Power is mandated to formulate and release an Integrated National Electricity Policy and Strategic Implementation Plan (INIEPSIP) within one year of the commencement of the Act. This plan which shall be approved by the Federal Executive Commission (FEC), will be published in a federal gazette and will serve as a guiding framework for the comprehensive advancement of the nation's electric power sector. The plan's focus will revolve around optimizing the utilization of various resources, including coal, natural gas, nuclear materials, as well as renewable energy sources like solar, wind, hydro, and hydrogen, among others. It will also address aspects such

as establishing mini-grids or standalone systems in rural regions, rural electrification initiatives, bulk power procurement, and local power distribution. The plan will also emphasize the role of public-private partnerships and the implementation of policies, including waivers and subsidies, to stimulate the growth of renewable energy. According to the bill, this policy framework will undergo periodic reviews every five years or whenever deemed necessary by the power minister, in collaboration with relevant stakeholders.

## **2.3 Incorporation and Licensing of the Independent System Operator (ISO)<sup>6</sup>:** The Transmission Company of Nigeria (TCN) will also be made to relinquish its System Operation (SO) role and licence and focus

<sup>2</sup>CFRN 1999 (as amended), 2nd Sch, ss 13(b) & 14.

<sup>3</sup>Electricity Act, s 230(8).

<sup>4</sup>Ibid, s 230(9).

<sup>5</sup>Ibid, s 3.

<sup>6</sup>Electricity Act 2023, s 15.

on the Transmission Service Provider (TSP) licence from NERC for efficiency. TCN will incorporate the ISO with shares and ownership determined by NERC and transfer roles of market and system operations, its license, and its terms and conditions to ISO.

#### **2.4 Disaggregating of Distribution and Supply Licenses<sup>7</sup>:**

In the context of the repealed EPSRA 2005, distribution and supply were fused and carried out under a distribution license granted by NERC. However, with the introduction of the EA 2023 distribution and supply activities will be undertaken under separate licenses within the NESI. The separation between distribution and supply operations will be accomplished by implementing a transfer scheme at a

time determined by NERC. This advancement is expected to draw increased interest and participation in the sector.

#### **2.5 Intervention in failing licenses<sup>8</sup>:**

NERC may upon its own initiative or upon a complaint made by a customer, eligible customer, association, or shareholders of the licensee inquire into the conduct of the licensee. If it discovers that the licensee is in a grave position, it may make one or more of the following decisions:

- Give an interim order dissolving the Board and appointing administrators for a specific period;
- Give an order requiring the licensee to take or not to take any action;

- Employ any other regulatory intervention tool as it may deem fit
- If after exercising these powers, the affairs of the licensee do not improve, NERC shall invoke the power to revoke the license, unless the licensee can prove exceptional circumstances.

Aside from providing a comprehensive legal and institutional framework for the power sector, a major highlight of the Act is that it provides a holistic, integrated resource plan that compels the utilization of renewable sources for power generation. Fundamentally, the provisions that will be discussed below aim to create a market for RE, thereby stimulating investments in the sector.

<sup>7</sup>Ibid, s 68(6-8).  
<sup>8</sup>Ibid, s 75.



### **3. Specific Provisions of the Act for the Utilization of RE**

#### **3.1 National Integrated Electricity Policy and Strategic Implementation Plan<sup>9</sup>:**

The Ministry of Power shall develop the Policy within 1 year of the commencement of the Act and it shall encompass the optimal utilization of resources from both non-renewable and renewable sources like solar, wind, hydro, hydrogen etc. The plan shall also specify policies for waivers and subsidies aimed at stimulating the development of RE.

#### **3.2 Obligation on NERC & ISO to Promote Re<sup>10</sup>:**

The Act imposes a continuing obligation on NERC and ISO to promote the generation, distribution, and supply of electricity from RE sources such as solar energy, wind, small hydro, biomass etc., by granting licences that promote

embedded generation, hybridised generation, and co-generation.

#### **3.3 Implementation Measures by NERC to Promote RE:**

Part XVII is dedicated to the promotion of RE & energy efficiency. The Act stipulates the following measures to be taken by NERC to increase the contribution of RE to Nigeria's energy mix:

- Simplified licensing and fee regime for the issuance of licenses to RE service companies.
- Issuance of commercial and technical regulations for easy connectivity to the grid and distribution network for sale of electricity

from RE sources

- Provide standards for marketing & trading Renewable electricity for power purchase agreements.
- Enforce compliance with RE purchase obligations
- Award of licenses for mini-grid concessions to RE companies to exclusively serve a specific geographical area
- Implement rates chargeable for the purchase and wheeling of electricity from RE sources by

<sup>9</sup>Electricity Act 2023, s 3.

<sup>10</sup> Ibid, ss 80 & 113(1).

- Obligate the bulk customer to purchase a specific percentage of its total purchase of electricity from RE sources.<sup>11</sup>
- Obligate an electricity distribution utility to buy or negotiate power purchase agreements in accordance with the feed-in tariffs rates approved in NERC's guidelines.<sup>12</sup>
- Ensure that generators of electricity from RE sources within a

coverage area have easy connectivity to the grid. And that an operator of a transmission and distribution system shall not unreasonably withhold the request of RE generators to feed in electricity.<sup>14</sup>

innovative mechanisms to attract investments like private-public partnerships (PPPs), but it also affords the Federal Government of Nigeria an opportunity to address the challenges affecting optimal electricity supply, while at the same time keeping its commitment to climate change mitigation. The provisions on RE utilisation, if properly implemented can quickly ramp up energy access, especially in underserved areas in the country, and attract investors in the RE space.

Renewable Energy Incentives and Standards.<sup>15</sup> The Act mandates the Federal Ministry of Finance to introduce tax incentives and standards necessary to facilitate the generation and consumption of energy from RE sources, and in accordance with the provisions of the Industrial Development (Income Tax Relief) Act.

#### 4.0 CONCLUSION

The Electricity Act not only gives states the chance to explore

## Our Mission:

At Tope Adebayo LP, our mission is to be an innovative firm rendering the highest quality legal services and building enduring strategic relationships with our clients.

*Find out more about us and tell us how we can be of service to you by visiting [www.topeadebayolp.com](http://www.topeadebayolp.com).*

PLEASE NOTE THAT THIS ARTICLE IS ONLY INFORMATIONAL AND DOES NOT CONSTITUTE LEGAL ADVICE

Do you need to get in touch with us, to know more on how we can help you and your business? Kindly contact us by using any of the details provided below:

<sup>11</sup>Ibid, s 164.

<sup>12</sup>Electricity Act 2023, s 167.

<sup>13</sup>Ibid, s 168.

<sup>14</sup>Ibid, s 171.

<sup>15</sup>Ibid, s 166.