



TOPE ADEBAYO LP



The Lagos State Electricity Bill 2024

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INTRODUCTION

Following the 2023 amendment of the Constitution of the Federal Republic of Nigeria 1999 and the enactment of the Electricity Act 2023 (the “Act”) which provides the framework for the decentralization of regulation within the Power Sector, some States—including Enugu, Ondo, Ekiti, Imo, Oyo, Edo,¹ and more recently, Kogi²—have enacted their own electricity laws, established State regulatory bodies, and fulfilled the notification requirements under Section 230(2) of the Electricity Act, marking the transition to State-level regulation.

Lagos State has long been at the forefront of developing a robust framework for Power Sector regulation at State-level, notably demonstrated by its publication of the Lagos State Electricity Policy 2021³, which outlined the key requirements for establishing a viable Lagos Electricity Market (“LEM”).

Leveraging the recent development within the Power Sector, the Lagos State Electricity Bill 2024 (the “Bill”) has been introduced, seeking to repeal the Lagos State Electric Power Sector Reform Law 2018 and to establish the LEM.



^[1] https://www.linkedin.com/posts/nercng_nerg-electricity-regulation-activity-7234187636569964545-Z5sl?utm_source=share&utm_medium=member_desktop (Last accessed 16th October 2024).

^[2] https://www.linkedin.com/posts/nercng_nerg-electricity-regulation-activity-7242069924238528513-C8pv?utm_source=share&utm_medium=member_desktop (Last accessed 16th October 2024)

^[3] <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024).



HIGHLIGHTS OF THE LAGOS STATE ELECTRICITY BILL 2024

01

REPEAL OF THE LAGOS STATE ELECTRICITY POWER SECTOR LAW

The Bill repeals the Lagos State Electricity Power Sector Law 2018 to provide the necessary legal framework for the establishment and regulation of the LEM.⁴

02

ESTABLISHMENT OF THE LAGOS STATE ELECTRICITY REGULATORY COMMISSION

The Lagos State Electricity Policy 2021⁵ had identified the need for an “autonomous credible regulator” to, amongst other things, oversee licensing of market participants, ensure the safety and reliability of electricity, and collaborate with the State Independent System Operator on market surveillance and monitoring. Towards aligning with Section 230(2)(b) of the Electricity Act, Section 5(1) of the Bill seeks to establish the Lagos State Electricity Regulatory Commission (the “Commission”) with powers including but not limited to the above.⁶ Section 21 of the Bill also seeks to empower the Commission to make regulations and issue guidelines and orders for the effective implementation of the Bill (upon enactment to Law).

The Bill also gives the Commission authority to grant, renew, modify, suspend, or revoke competency certificates for qualified electrical professionals and entities operating in the LEM⁷ and to act as inspecting engineers⁸ responsible for the inspection, certification, and assessment of electrical installations, networks, and equipment within the State—a role assigned to the Nigerian Electricity Management Services Agency (“NEMSA”)⁹ under the national framework, which is a body distinct from the Federal regulator, the Nigerian Electricity Regulatory Commission (“NERC”). Although the Bill seeks to establish the Commission as an autonomous body as prescribed by the Policy, the Commission’s autonomy is made subject to other provisions of the Bill.¹⁰



^[4] Section 142 of the Bill.

^[5] <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024).

^[6] Section 19 of the Bill.

^[7] Section 19(2)(b) of the Bill

^[8] Section 19(2)(b) of the Bill^[9] Section 176(d), (h), (j), (k) and (m) of the Electricity Act

^[10] Section 5(3) of the Bill



03

POWER TO MAKE REGULATIONS

Section 21 of the Bill outlines the powers of the Commission to issue regulations, guidelines, and rules on an extensive list of issues, which include:

- a. The establishment of a regulatory sandbox framework, enabling entities to test innovative services, solutions, products and business models. If properly developed and implemented, this sandbox could foster collaboration between the Commission and market participants, particularly in driving technological advancements.¹¹
- b. Fees, levies and other charges payable by market participants (which shall not exceed 1% of the income of any licensee). This shows a deliberate intention on the part of the Lagos State Government to ensure attractiveness and foster profitability.¹²

04

THE LAGOS INTEGRATED ELECTRICITY POLICY AND STRATEGIC IMPLEMENTATION PLAN

Although yet to be developed, Section 3 of the Electricity Act mandates the Ministry of Power, in consultation with relevant authorities and stakeholders, to develop and publish a National

Integrated Electricity Policy and Strategic Implementation Plan within 1 year of the commencement of the Electricity Act, which will provide a blueprint for the development of the National Electricity Market, addressing issues such as renewable energy development, rural electrification, and subsidies for renewable generation. Under Section 39 of the Bill, the Commission is required to develop and publish the Lagos Integrated Electricity Policy and Strategic Implementation Plan (the “Integrated Policy and Plan”) in consultation with relevant stakeholders within 6 months of the commencement of the Bill (upon enactment into Law), to guide the development of the LEM.

The Integrated Policy and Plan will cover issues such as market structure, resource optimization, decarbonization, renewable energy promotion, technology deployment, and value chain development.¹³

The Lagos State Ministry of Energy and Mineral Resources (the “Ministry”) is to oversee the monitoring, administration, revision, and implementation of the Integrated Policy and Plan. A comprehensive review of the Integrated Policy and Plan¹⁴ is to be conducted every five

¹¹ Section 29(d) of the Bill

¹² Section 29(i) of the Bill

¹³ Section 39 (2) of the Bill

¹⁴ Section 41(1) of the Bill



years or sooner, following consultations with the Commission and the Lagos State Independent System Operator.¹⁵

A commendable feature of the Bill is the requirement for alignment of key market decisions with the Integrated Policy and Plan, ensuring consistency in directives of the Commission,¹⁶ regulations,¹⁷ procurement of electricity and ancillary services,¹⁸ and approval of franchising arrangements.¹⁹

05

THE LAGOS ELECTRICITY MARKET REPORT

To enhance monitoring, Section 38 of the Bill provides for the Lagos Electricity Market Report. This will be a report on the implementation of the Bill (upon enactment into Law), activities of licensees and other participants, and compliance and updates on the Bill's provisions on renewables, demand-side management, the Integrated Policy and Plan etc. This Report is to be published by the Commission no later than April 30th of each financial year.



06

LICENSING

Section 44 of the Bill seeks to prohibit the construction, ownership, or operation of any business related to electricity generation, transmission, distribution, trading, system

operation, or supply within the state without a License or exemption granted pursuant to the Bill (upon enactment) or applicable regulations. This provision reinforces the exercise of regulatory oversight within the LEM, which is further supported by the provisions of Sections 63, 66, 69, and 72 of the Bill.²⁰

^[15] Section 42 of the Bill

^[16] Section 6(2) of the Bill

^[17] Section 18(g) of the Bill

^[18] Section 4(3) of the Bill

^[19] Section 51(3) of the Bill

^[20] This is unlike the position under the Lagos State Electric Power Sector Reform Law, which defines "Distribution Companies" as those licensed by NERC to operate within Lagos.



Notably, Section 75 of the Bill provides that the Commission must, within 18 months of the Bill's enactment, prepare a transfer scheme for the separation and transfer of “existing distribution company to a subsidiary company...”. This diverges slightly from Section 230(4) of the Electricity Act, which requires distribution companies to set up subsidiaries within 2 months of formal notification by the State of the establishment of a State Regulator and the enactment of State Electricity Law. This section of the Act does not require or provide for the development of a transfer scheme by the State Regulator for the creation of subsidiary distribution companies.

Furthermore, under Section 63(2) of the Electricity Act, entities generating electricity up to 1MW in aggregate at a site or undertakings for electricity distribution with capacity not exceeding 100KW in aggregate at a site, do not require a License.²¹ Section 44(4) of the Bill provides that licensing will only be required where an undertakings' aggregate production or distribution capacity each exceed a 500KW threshold.



The Bill also anticipates interstate electricity transactions. Sections 64(1)(b) and 67(2)(a) provides that the Commission may permit a licensed transmission company to connect with the national grid or grids in other States and may also permit trading Licensees to engage in bulk purchases from generating companies licensed by other regulators outside Lagos. This framework aligns with Paragraph 3.22 of the Lagos State Electricity Policy 2021,²² which acknowledges Lagos State's limited geographical size and envisages the sale of electricity by Independent Power Producers (IPPs) located outside Lagos into the LEM.

Also, while Section 44(1)(e) of the Bill provides for the licensing of electricity supply operations, Section 70(1)(c) indicates that distribution licensees will continue supplying electricity

With the distribution licensing threshold set lower than as prescribed under the Act, this may encourage the growth of smaller-scale distribution operations within the State.

²¹ or such other capacity as may be prescribed by NERC.

²² <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024)



until a transfer scheme is implemented. This mirrors Section 68(6) of the Electricity Act, which allows for the disaggregation of distribution and supply Licenses.

07 TARIFF METHODOLOGY

By Section 137(4) of the Bill, any tariff, price, or levy chargeable within an area before the Bill's commencement is to remain in effect until the Commission makes alternative provisions on applicable tariffs. Furthermore, in line with Paragraph 3.19 of the Lagos State Electricity Policy 2021,²³ Section 83 of the Bill requires stakeholder consultation meetings to be held before determining a tariff methodology, allowing for input both prior to and during the meetings.

Under section 17(2)(c) of the Lagos State Electric Power Sector Reform Law, the Lagos State Electricity Board was mandated to ensure "proper cross-subsidization of tariffs for low-income end users." In contrast, Section 82(c) of the Bill emphasizes avoiding cross-subsidies across customer categories where feasible, whilst still providing a lifeline tariff to protect vulnerable customers.

08 COMPULSORY MEETING

Towards eliminating billing and collection issues which plague the National Electricity Market, Section 76(1) of the Bill makes it an offence to supply electricity without a meter upon the expiration of the transitional period for State Regulation. It will be interesting to see how compliance is ensured at State level, given the various initiatives employed by Federal Government towards closing the metering gap in Nigeria from privatization till date.

09 THE LAGOS INDEPENDENT SYSTEM OPERATOR

The Lagos State Electricity Policy 2021²⁴ (the "Policy") envisions a ramp-up of gas supply from both onshore and offshore sources, alongside electricity generation from the national grid and home-based energy systems within the State. The Policy²⁵ further highlighted the necessity of an Independent System Operator (ISO) to ensure efficient, non-discriminatory scheduling and dispatch of electricity and to oversee the timely administration of trading and settlement

²³ <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024)

²⁴ <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024)

²⁵ <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024)

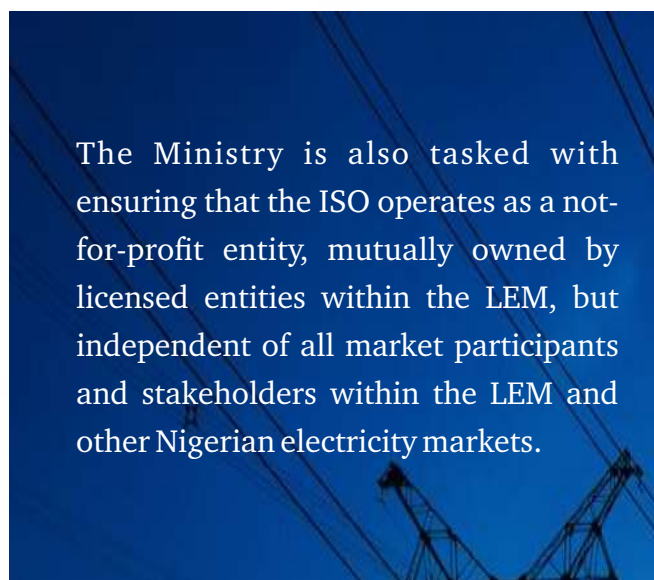


systems among market participants. The Policy²⁶ also proposed that the ISO be mutually owned and should operate as a not-for-profit entity.



Under Section 77(1) of the Bill, the Lagos ISO must be established within 18 months of the Bill's commencement (upon enactment into Law) or as determined by the Energy Commission, in consultation with the Commission and relevant stakeholders. The ISO will be incorporated as a company limited by

guarantee, with the Ministry responsible for determining the eligibility of initial members and overseeing the nomination process for the governing body.



The Ministry is also tasked with ensuring that the ISO operates as a not-for-profit entity, mutually owned by licensed entities within the LEM, but independent of all market participants and stakeholders within the LEM and other Nigerian electricity markets.

The Lagos ISO's responsibilities will include generation and transmission scheduling, managing transmission and distribution congestion, procuring and scheduling ancillary services, administering trading and settlement systems, and developing and updating Market Rules. It will be required to operate in an open, fair, and non-discriminatory manner. Until the

^[26] <https://memr.lagosstate.gov.ng/wp-content/uploads/sites/57/2021/12/BROCHURE-SINGLE-PAGE-VIEW-LASG-Electricity-Policy-1.pdf> (Last accessed 16th October 2024)



Lagos ISO becomes operational, the System Operations Unit within the Commission will temporarily perform system operation functions.

10 RENEWABLE ENERGY, DEMAND-SIDE MANAGEMENT, EMISSIONS REDUCTION AND ENERGY EFFICIENCY

Section 92(2) of the Bill seeks to empower the Commission to promote renewable energy, energy efficiency, and demand-side management within the State through measures such as simplified permitting procedures, stable and favourable tariff methodologies, net-metering, and renewable energy purchase obligations for trading and distribution licensees.

Furthermore, Section 93 of the Bill seeks to address emission reduction by introducing an emission limit system, which is a welcome development aimed at supporting Nigeria's Energy Transition Plan. It provides that the Commission may, by regulation, require generating plants exceeding prescribed emission levels to obtain permits under specified terms and conditions. Plants with emissions above the set limits may, by regulation, be required to pay an emissions levy into the Electrification Fund, with the Commission determining the method for calculating the emissions fee.²⁷



11 RING-FENCING ARRANGEMENTS

Section 84(3) of the Bill proposes to provide the legal framework for ring-fencing arrangements within the LEM, allowing a consumer or group of consumers to agree to a higher tariff in exchange for enhanced supply or performance.²⁸ Such arrangements, if well implemented, will encourage improved service delivery within the LEM and foster technological development.

12 THE LAGOS STATE ELECTRIFICATION AGENCY, THE LAGOS STATE ELECTRICAL FUND AND THE SPECIAL PURPOSE FUND

The Lagos State Electricity Board (“Board”) was established under Section 5 of the Lagos State Electricity Power Sector Law to liaise with and support government agencies within the Power

^[27] Section 93(2)(d) of the Bill

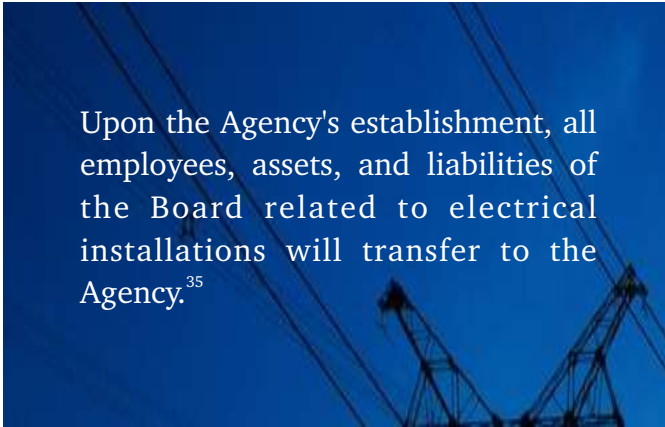
^[28] Also see Section 81(2)(a), 82(f)(i) of the Bill



Sector,²⁹ manage electrical installations owned by the State Government,³⁰ and promote rural electrification,³¹ among other responsibilities. However, Section 96 of the Bill proposes replacing the Board with the Lagos State Electrification Agency (“Agency”), which will assume similar functions, including managing electrical installations owned by the State³² and promoting electrification of unserved and underserved areas³³ and bearing responsibility for the execution of the Off-Grid Electrification Strategy and Action Plan.³⁴

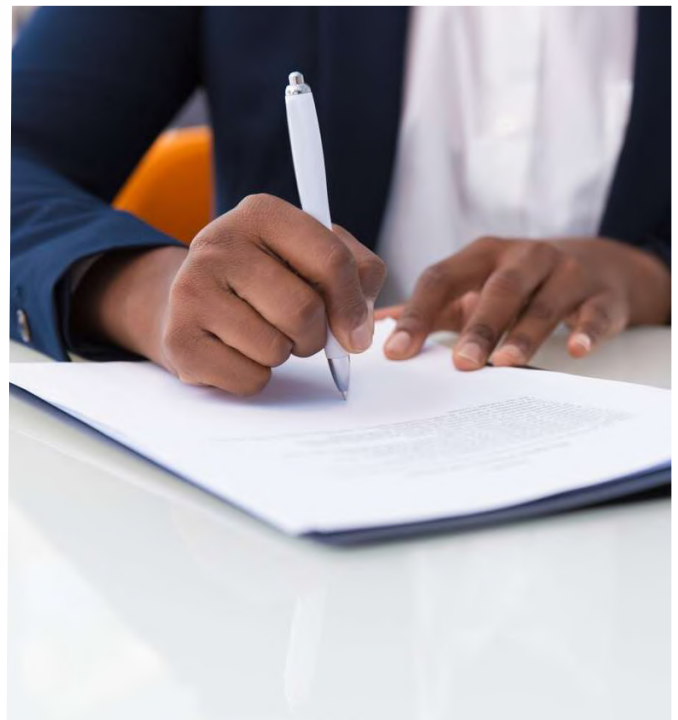
energy Commissioner.³⁸ The Fund may only be used for purposes specified in the Bill, such as expanding electricity access to underserved and unserved areas, extending the State grid, and covering the administrative and operational costs of the Fund.³⁹

Furthermore, with the Governor's approval, the Agency's Board may enter into agreements with development partners to establish a Special Purpose Fund for developing off-grid solutions within the State.⁴⁰ This structure is commendable, as it has potential to help prevent the commingling and diversion of funds to unrelated projects.



Upon the Agency's establishment, all employees, assets, and liabilities of the Board related to electrical installations will transfer to the Agency.³⁵

Additionally, Section 114 of the Bill introduces the Lagos State Electrification Fund, which the Agency will manage. The Fund's sources include electrical levies imposed by the Commission,³⁶ as well as fines and penalties collected by the Commission.³⁷ The Agency's Board will develop an annual plan outlining proposed activities and projects to be financed by the Lagos State Electrification Fund, subject to approval by the



^[29] Section 17(1)(b), (c), (d), (f), (h), (i), (j) etc. of the Lagos State Electricity Power Sector Law

^[30] Section 17(1)(u) of the Lagos State Electricity Power Sector Law

^[31] Section 17(1)(k) of the Lagos State Electricity Power Sector Law

^[32] Section 97 of the Bill

^[33] Section 97(2) (b) of the Bill

^[34] Section 97(2)(c) of the Bill

^[35] Section 141 of the Bill

^[36] Section 114 (2)(d) of the Bill

^[37] Section 114 (2)(c) of the Bill

^[38] Section 115(1) of the Bill

^[39] Section 115(2) of the Bill

^[40] Section 116 of the Bill



13

POWER ENFORCEMENT UNIT AND ELECTRICITY THEFT

Section 122 of the Bill proposes the establishment of a Power Enforcement Unit (“PEU”) within the Ministry, to be tasked with, amongst other things, addressing electricity theft, investigating whistleblower reports, and collaborating with the Ministry of Justice to prosecute offences under the law. Similar to the Power Task Force created under Section 47 of the Lagos State Electric Power Sector Reform Law, the PEU is to also have the authority to make arrests.⁴¹

The Bill further includes comprehensive provisions to combat electricity theft and the theft of electrical materials, even at the transmission level.⁴² It encourages whistleblowing by guaranteeing confidentiality and protecting fundamental human rights. It also mandates the Commission to introduce an incentive scheme offering monetary rewards to whistleblowers.

14

HOST COMMUNITIES DEVELOPMENT TRUST FUND

Section 136 of the Bill mandates the creation of a Host Communities Development Trust Fund to support the development of host communities within the State, which shall constitute 2% of

the annual operating expenses of licensed power generation companies. The Fund is to be managed by a Trustee, jointly appointed by the power generating company and representatives of the host communities. Any dispute concerning the Fund is to be referred to the Commission for resolution.⁴³

15

TRANSITIONAL PROVISIONS

Section 137 of the Bill seeks to ensure that pre-existing Licensees retain the right to operate under any licence, permit, authorization, approval, consent, direction, permission, or certificate issued prior to the Bill's commencement (upon enactment into Law). These pre-existing approvals will be deemed as issued by the Commission and remain valid for their specified duration, subject to necessary modifications to align with the State's electricity policy and the Bill (upon enactment into Law).

The Bill also vests⁴⁴ the Commission with the authority to issue interim Licences to pre-existing Licensees where required in the public interest and to grant new Licences or authorizations to such Licensees upon request. Finally, the Energy Commissioner and the Commission are required to collaborate with NERC, NEMSA, other relevant federal entities, and pre-existing Licensees to ensure a smooth transition.

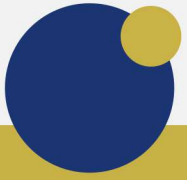
⁴¹ Section 122(2) of the Bill
⁴² Section 125, 126, 127, 128, 129,131 of the Bill
⁴³ Section 136(5) of the Bill
⁴⁴ Section 137 of the Bill



CONCLUSION

The Lagos State Electricity Bill 2024 seeks to establish a robust framework for the Lagos Electricity Market and provide comprehensive measures to ensure a smooth transition to State Regulation. The Bill emphasizes clean energy generation and distribution through provisions such as emissions regulation and introduction of purchase obligations. To enhance the attractiveness of investments within the LEM, the Bill introduces laudable provisions such as a cap on levies imposed and lower licensing threshold for distribution operations within the State. Notably, the inclusion of a regulatory sandbox demonstrates the State Government's commitment to fostering technological innovation, which will invariably drive the growth and efficient operation of the LEM.

^[44] Section 137 of the Bill



PLEASE NOTE THAT THIS ARTICLE IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE

PRACTICE KEY CONTACTS



ADEREMI OGUNBANJO
PARTNER



OLUWASEUN FAPOHUNDA
SENIOR ASSOCIATE



SANDRA OSINACHI NWANDEM
ASSOCIATE



EYTAYO AJISAFE
ASSOCIATE

TALP's Energy and Natural Resources Team.

For further enquiries, log onto www.topeadebayolp.com

Do you need to get in touch with us, to know more about how we can help you and your business?
Please contact us by 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

