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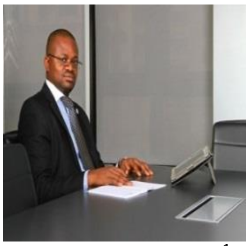 

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Overview of the Metering Assets Provider Regulations 2018

1. INTRODUCTION

Desirous to bridge the metering gap for all distribution licensees which was reported at 4,740,275 meters as at the end of 2017, the Nigerian Electricity Regulatory Commission ("the Commission") pursuant to its power to make regulations by Section 96(2) of the Electric Power Sector Reform Act, (ESPRA) 2005 and all enabling laws released the Meter Assets Provider (MAP) Regulations.[3] The Regulations which was signed by Sani Garba, the Vice Chairman of the Commission shall be enforceable from the 3rd day of April 2018.

The Regulations is expected to enhance operations of the electricity market and attract viable private investors who will partner with the electricity distribution Companies (DISCOs) to procure meters in cooperation with the concerned DISCOs to recoup fees through charges built into the end user's electricity bill. The Regulations comprise of 9 chapters, 34 sections and 2 schedules and we review the key provisions as below.

2. KEY HIGHLIGHTS OF THE REGULATIONS

2.1 **Objectives of the Regulations:** As provided in chapter I, the Regulations which are intended to provided standard rules for meeting the metering gap of the Nigerian Electricity Service Industry (NESI) clearly spelt out the objectives which it intends to fulfill as follows:

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3 (No. NERC-R -112) - released on 8th March, 2018.

a. Encourage the development of independent and competitive meter services in NESI;

b. Eliminate estimated billing practices in NESI;

c. Attract private investment to the provision of metering services in NESI;

d. Close the metering gap through accelerated meter roll out in NESI; and

e. Enhance revenue assurance in NESI.

In achieving the aforementioned objectives, the Commission will require the cooperation of all relevant parties affected by the regulations which include the Distribution licensees (DISCOs) who up till now have not shown keen interest meeting their metering obligations or in opening the market space for metering, the MAPs and the consumers of electricity who have always clamoured for an efficient metering system.

2.2 **Metering Obligation**: Keen to reduce the metering gap for all Distribution Licensees which was reported at 4,740,275 meters as at December 31, 2017, the Regulations places metering obligation on the Distribution Licensees (the DISCOs) as they remain responsible for meeting their metering targets as specified by the Commission from time to time as restated in chapter IV of the Regulations. Furthermore, they are obliged to engage the services of MAPs in accordance with the provisions of these Regulations towards meeting their metering targets specified by the Commission. Apart from the DISCOs, Eligible Customers being served under the Eligible Customer Regulations[4] may also engage MAPs to ensure proper energy accounting.

The metering gap in the market is projected to significantly increase upon the conclusion of the ongoing customer enumeration exercise embarked upon by the Commission. Clearly, we believe that a successful implementation of the lofty goals of these Regulations will open up the vast market space, create value chain for end users of electricity and lead to significant changes in accounting for the supply of electricity which is vital for the sustenance of not only the NESI but the entire economy.

2.3 **Obtaining MAP License**: Every person/entity interested in a MAP license must submit the following documents to the Commission as set out in the Regulations:

a. Completed application form;

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[4] Eligible Customer Regulations 2017, Regulation No. NERC-R-111 permits electricity customers to buy power directly from the generation companies in line with the provisions of Section 27 of the Electric Power Sector Reform Act 2005 whereby such eligible customers are permitted to buy power from a licensee other than electricity distribution companies.

b. Certificate of incorporation and memorandum and articles of association;

c. Tax clearance certificates;

d. Certified audited financial statements for 3 consecutive years prior to the year in which the application is made;

e. Detailed resumes of Applicant's board of directors, management and technical staff;

f. Ten-year Business Plan; and

g. Applicant's relevant experience in asset finance, metering and other relating business.

We believe the intendment of the Regulations to keep the application procedure for MAPs simple, as outlined in chapter III of the Regulations, is to encourage willing participants to join in the process of liberating the procurement and supply of meters to the end users as this will, no doubt, boost investments in the sector as parties will be willing to participant and to seek licenses that are not cumbersome and difficult to obtain.

2.4 **Procurement Process and Grant of Permit:** In a bid to hasten the procedure for the procurement process and grant of permit, the chapter III of the Regulations further mandates the Distribution Licensees to conclude the procurement process for the engagement of the first set of MAPs within 120 days from the 3rd day of April 2018. The engagement process for subsequent MAPs shall be completed within 120 days from the commencement of the procurement. The regulation further mandates the commission to approve all Meter Service Agreement entered into between the Distribution Licensee and a successful applicant.

The tenure of entities that obtain a Meter Asset Provider Permit shall be for a period of 15 years in the first instance effective from the date of issuance by the Commission.

The Regulations further prohibits the Distribution Licensee, its core investors, subsidiaries, affiliates, directors and their relatives from setting up, owning shares or holding directorships and senior management positions in the MAP. This is done essentially to open the market space and allow for a level playing ground for new entrants whose activities will act as a check on any perceived excesses of the DISCOs regarding billing of consumers.

2.5 **Local Content policy:** In order to guarantee and strengthen government's resolve to encourage participation of local entities in the sector, section 9 of the Regulations stipulates that MAPs shall source a minimum of 30% of their contracted metering volumes from local meter manufacturing companies in Nigeria. Further changes to the minimum local content thresholds shall be as specified in the NERC Local Content Regulations.[5]

This position taken by the regulation is highly commendable as the participation of the local business entities in critical sectors of the economy is vital in increasing the capacity, sustenance and localization of technical knowledge of the sector and minimizing the appropriation of crucial resources that would have been spent to import such services.

2.6 **Technical and Technological Requirement:** With a view to ensure maximum standard and quality service delivery by the MAPs and the DISCOs, the Regulations provides for basic technical and technological requirements which MAPs must fulfill to include: compliance with the Metering Code, the Guidelines for Certification of Metering Service Provider and Related Matters and other relevant Regulations, deployment of minimum technology and back-office systems that are capable of maintaining and retrieving records of financial, inventory, customer data and monitoring usage of deployed infrastructure in real time. The provision of section 33 of the regulation mandating all parties to comply with all health and safety regulations is also commendable.

2.7 **Rights and obligations of the Parties:** The Regulations has also clearly spelt out in chapter IV the rights, obligations and duties of the major stakeholders in the critical aspects of metering and evaluation of electricity consumption. The roles of the DISCOs, MAPs and even the consumers are provided in the Regulations to enable parties know the extent of the rights and corresponding obligations placed on them as relevant stakeholders in the NESI.

2.8 **Applicability:** Chapter VII containing section 24 of the Regulations clearly states the extent of its applicability to be extended to all Distribution Licensees, MAPs, Customers and all types of end-user customer meters in the NESI. However, the Regulations shall not override metering contracts entered into by Distribution Licensees prior to its coming into effect. Hence, earlier arrangements or contracts already signed by the DISCOs for the provision of meters to its consumers are still subsisting and enforceable by parties.

[5] Nigerian Electricity Regulatory Commission Regulations on National Content Development for the Nigerian Electricity Supply Industry 2013.

It is expected that this provision of the regulations will calm the already frayed nerves of DISCOs and parties already in a business arrangement over fears that the regulation would invalidate these pre-existing contracts. The provisions of all other Regulations, Rules and Codes of the Commission shall also be applicable to the extent of their relevance. However, the provisions of the MAPs Regulations shall prevail in the event of conflict with any other Regulation or Code with respect to the subject matter of these Regulations.

2.9 **Dispute Resolution**: In anticipation of any dispute that is likely to emanate from the agreement between parties pursuant to the Metering Service Agreement and in line with best practice, section 27[6] in chapter IX of the Regulations stipulates that all agreements entered into by parties shall contain appropriate dispute resolution clauses for settlement of disputes by arbitration.

It is clear that the Regulation chose arbitration as a mode of resolving disputes among parties due to the inherent advantages of speedy resolution of commercial disputes through the arbitration process to ensure that investments are not hindered with its attendant effects on a sector yearning for huge financial injection by investors.

3. <u>COMMENT/CONCLUSION</u>

On the whole, the enactment of the Regulation is timely and commendable. If well implemented with the cooperation of all relevant stakeholders, it will be beneficial to all stakeholders and hopefully achieve the intended objectives.

However, one major displeasure or opposition which the Regulations will likely face from consumers is the introduction of a monthly meter service charge which is to be borne by the electricity consumers with the likely increase in the bills to be paid by consumers who still grapple with the problems of epileptic power supply and the harsh economic situation in the country. It is our hope that NERC will be alert to review and ensure the fee that will be set as the ‘recovery of cost of meter asset plus a reasonable return over a period of 10 years’ in the Meter Service Agreement between the DISCOs and the MAPs will be reasonable as the consumer ultimately pays this fee.

Also, in order to ensure smooth operation of the lofty objectives of the Regulations, the Commission must devise a means to facilitate a viable working relationship between the Distribution Licensees and the MAPs to create a synergy in ensuring timeous supply and provision of smart meters to consumers which will boost their confidence

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6 Note that Section 27 was wrongly numbered as section 28 in the table of arrangement of sections, because section 25 dealing with ‘*Transitional Arrangements’* was listed twice.

in the industry and improve the value chain of electricity supply. The regulator must sensitize and if need be incentivize the DISCOs to ensure that this policy does not endure the same fate the Credited Advance Programme for Metering Implementation (CAPMI) suffered from the DISCOs, who either half-heartedly implemented it or wholly ignored it.

It is our hope that the implementation of these regulations in the NESI will create jobs for some of the teeming unemployed youths, build indigenous technical expertise, inspire other segments of the Nigerian economy with its effects, and reduce the problematic issue of estimated billing system which has eroded the confidence of consumers in the service providers as they feel exploited having been made to pay for the inefficiencies of the DISCOs and the entire NESI. It is also our hope that this will deepen the participation of smaller entities in the sector.

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