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## **THE CURRENT DISCONTENT BETWEEN THE DISCOS AND NIGERIAN ELECTRICITY CONSUMERS OVER NON-COMPLIANCE WITH THE PERFORMANCE AGREEMENT ON METERING**

### **1. Introduction**

Recently, 3 persons who are close to the writer shared their respective experiences with their electricity distribution companies (Discos) concerning lack of electricity meters or lack of proper metering of their respective premises and the attendant consequences; and their stories inspired this piece. The said stories have similar trajectory – featuring irrational estimated billing, accumulation of disputed electricity bills (electricity not used and bill not scientifically-computed), sharp disagreement on electricity usage, loss of time and money on the parts of both parties, the Discos' insistence that the customer should clear the outstanding (though disputed) bills as presented by the Discos, and finally cessation of relationship whereby the customer's premises is disconnected by the Discos or the customer disconnected himself from electricity supply.

By the way, the stories capture a diversified demography of the electricity consumers in Lagos, Nigeria. One is a residential premise, the second is a place of worship (a church) and the third is a commercial/industrial customer of a Disco. The first was not metered for a long time, and though was paying an average of ₦5,000.00 per month to the Disco, the Disco continued to issue bills ranging from ₦12,000.00 to ₦18,000.00 per month depending on which amount they 'estimated'. When the meter was later procured, the Disco insisted the customer should pay (or bring a plan for payment of) the over **₦350,000.00** allegedly accumulated before the customer could buy and load credit on the metering card to have access to electricity. The customer

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simply could not understand the commercial 'arm-twisting' involved and has been relying only on his small generating set since January 2019 till now, the Disco having since disconnected him from supply.

The second is a commercial/industrial customer who was paying between ~~₦80,000.00~~ to ~~₦90,000.00~~ per month based on the actual reading of the old meter on the premises before the said meter got damaged by fire. The customer applied for another meter and was ready to buy a replacement outright but a meter acceptable to the Disco was not available, hence the Disco was happy to resume estimated billing of the premises. Two to three months of estimated billing later, the Disco has so far billed an average of **₦250,000.00** per month and the premises that had no outstanding bill had suddenly accumulated over **₦804,000.00**. Of course, the proverbial 'center could no longer hold', and the commercial/industrial customer had to go and raise money to buy industrial generator having been disconnected with the connection cables taken away by the Disco. The third customer, a parish of a popular Pentecostal church was adjudged by the Disco to have accumulated over **₦450,000.00** on their bill. It should be noted that the church as a place of worship clocks in about a maximum of 2 hours service twice during the week and 3 hours of service on Sundays (using only worship instruments and does not have a bakery or other energy consuming facility in the church) and had consistently paid about ~~₦10,000~~ a month. Yet, the Disco continued to serve an estimated bill in the neighborhood of **₦45,000.00** per month on them because there was no prepaid meter. The Disco subsequently alleged that the church had accumulated a bill of over **₦450,000.00** on the account. In short, the church has also been operating only on diesel generator from January 2019 till now.

The above summarized stories speak to the experience of an average electricity consumer in Nigeria without prepaid meter, and people can relate to the stories. The tragedy of the situation appears to be that estimated billing does not take cognizance of the period electricity was not supplied to the premises (a very rampant occurrence), the time the transformer did not work or was switched off for repairs, the time the premises was unoccupied, the time when the customer used minimal electricity because most occupants of the premises were unavailable, or even the time the customer used maximum electricity etc. Apart from the fact that the **sections 4, 5 and 6** of the **Methodology for Estimated Billing Regulations in August 2012** published as Federal Government Official **Gazette No. 113 in Volume 99 of 2012** are not being followed to the letter by the Discos, the methodology itself (particularly **section 6** thereof) seems not to be scientific or fair, despite the detailed provisions, and the consumers are now being overcharged. There is general hostility

between the field staff of the Discos who serve estimated bills on customers and those who disconnect electricity from premises and the customers, who feel cheated out of their hard-earned money to pay for electricity not consumed. The consequence is that the relationship between the Discos and the customers is fast breaking down with a level of discontent that requires a great deal of attention from the regulator.

**It is still the Discos Obligation to provide prepaid meters for their Customers:**

By the Key Performance Indicators (KPIs) embedded in the Performance Agreement (PA) executed by the Discos when they took over the electricity distribution business in the Nigerian Electricity Supply Industry (“NESI”) in 2013, the obligation to progressively bridge the metering gap remains that of the Discos. By the PAs commenced on 1<sup>st</sup> January 2015 with a 5-year lifespan, for most Discos (which is due for review in December 2019, with the exception of the Kaduna Disco), the obligation to meter the customers remains that of the Discos. Under the now rested **Credited Advance Programme for Metering Implementation (CAPMI)** introduced by **Order No. NERC/05/0001/13** which became effective by **14<sup>th</sup> May 2013** and was aimed to close the huge metering gap in the NESI and help the Discos meet their PA on metering, the obligation was that of the Discos. The scheme only gave the customers who wanted to pay the meter cost upfront and then have the Disco amortize the cost of the meter via electricity supplied to the customer over a period of time.

Although, the obligation to meter the customers has not been taken away by the latest regulation of NERC on metering – i.e. the Meter Assets Provider (**MAP Regulations (No. NERC-R -112)**), the fact that the customer is expected to pay for the meter provided by the MAP either outrightly or over a period of time ought to attract some compensation from the Discos. **Section 24 of Chapter of the MAP** regulation scheme underscored the responsibility of the Discos to ensure that their customers are metered.

See our previous articles on MAP at: <http://www.spaajibade.com/resources/wp-content/uploads/2018/04/Overview-of-the-Metering-Assets-Provider-Regulations-2018-Olalere-Matthew.pdf> and on metering of the Nigerian electricity customer at: <http://www.mondaq.com/Nigeria/x/818682/Consumer+Law/Minimising+The+Incident+s+Of+Litigation+On+Wills+In+Nigeria>.

MAPs are to charge a maximum of ₦36,991.50 for single phase meters and ₦67,055.85 for three phase meters by **Order No./NERC/181/2019** - (NERC Order on the Implementation of the Meter Asset Provider Scheme in the NESI). These costs are inclusive of supply, installation, maintenance and replacement of meters over its

technical life, and any customer who pays outrightly is not obliged to pay any further charge.

## **2. Renewed interest in cost-reflective tariff**

The PA executed between the respective core investors and the Federal Government of Nigeria (FGN) remains in place and all Discos are expected to continue to comply with their obligations to meter the customers by virtue of same. The Discos are expected to have achieved a high rate of efficiency with the metering gap significantly closed at the review of the PAs on metering by December 2019. It should be noted that as the December 2019 date designated for the review draws near, the NERC has recently issued a minor update of the multiyear tariff structure (MYTO) to take into consideration the necessary variables for all the Discos. This is also in preparation for the review and to ensure that all customers are metered, and every customer pays a fair price for all electricity supplied and utilized. At this time when there is real push to meter the consumers and review the tariff to make it cost-reflective, the disputes between the Discos and the customers regarding estimated and accumulated bills are bound to be in the front burner as depicted by the stories shared have.

## **3. The Dispute Resolution Mechanism**

The Customers too should be familiar with the dispute settlement procedure from the point of submitting their complaints to the point of its resolution, to avoid resorting to self-help and reduce discontent in the industry. By **section 3** of the **NERC Customer Complaints Handling: Standards & Procedures Regulation, 2006** made pursuant to **section 96 (2) (c) & (d) of the Electric Power Sector Reform (“EPSR”) Act, 2005** every Disco is obliged to set up the Customer Complaints Unit (CCU) within its premises to which an aggrieved customer will submit his/her/its complaints, including the one on ‘irrational’ estimated billing. By **section 3 (6)**, the complaint can be submitted by email and the Disco’s CCU is obliged to resolve same within **15 days**. It is only when the CCU is unable to satisfactorily resolve the complaint that same is submitted to the NERC Consumer Forum (“the Forum”). See **section 3 (8) (9) and (10)** thereof. **Section 6** empowers the Forum to resolve all disputes, except the ones relating to **section 93 and 94** of the EPSRA, within 2 months of receiving the complaint.

The procedure of lodging a complaint before the Forum is by filing the **Form 1** provided by **section 8** and attached to the resolution, and this can be submitted via email as well. **Section 9** mandates the NERC Forum’s secretariat to acknowledge the complaint within three days, and where complaint is rejected, the complainant

must be informed within five days. **Section 10** provides for fair hearing of the complaint at a date to be fixed by the Forum and of which both the complainant and the Disco would have been pre-notified to come and present their respective cases. **Section 12** also further gives any party not satisfied with the Forum's decision to appeal same to the NERC within 10 working days of the decision. It is only when NERC is unable to resolve the complaints to the satisfaction of the parties that the party not satisfied can approach the Federal High Court for resolution. See also **Section 50 of EPSR Act, 2005**, and **Chapter II of the NERC Business Rules of the Commission Regulation, 2006** made pursuant to **section 96 (2) (a) of EPSR Act, 2005**.

Electricity Customers also need to be aware of their right to petition the Consumer Protection Council of Nigeria without necessarily waiting for the NERC's dispute resolution mechanism to play out. This is another practical way of keeping the Discos on their toes and ensuring that the customer is not cheated but receives quality service at a fair price. The Federal Competition and Consumer Protection Act 2019 has adequate provisions in this regard<sup>2</sup>.

#### 4. **Conclusion**

We note that NERC continues to consult the stakeholders in preparation for issuance of regulation for **Capping of Estimated Billing for Unmetered Electricity Customers**, but this needs to be concluded on time. Also, while the bill to amend the EPSRA, and to proscribe estimated billing (**Electric Power Sector Reform Act (Amendment) Bill, 2019**) is still pending before the National Assembly or with the office of the President awaiting assent, it is important that the Discos are made to do their best in providing value to the customers in their services delivery. In view of the renewed interests in issuing the order on cost-reflective tariff to the Discos, and given that the customers have literally gone through 'hell' with most paying for electricity not consumed, buying transformers for themselves and paying for the meters for their premises, it is important that customers make effort to be familiar with the dispute resolution procedure to enable them take advantage of available options to reduce their burdens and resolve the discontents. It is even much more important that the Discos remember that as private businesses, they need to thread softly in the

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<sup>2</sup> For example, by Sections 88 and 104 and 105 of the Federal Competition and Consumer Protection Act (FCCPA) 2019, the price of electricity is regulated, and the industry itself is regulated. The rule against unfair and unreasonable or unjust contract terms ensures protection of the benefit of the consumer by virtue of section 127 of FCCPA while sections 130 and 131 provide for consumer's rights pertaining to quality and safety of goods and services. Section 146 empowers the consumer to seek enforcement of his rights, including by way of suing the service provider.

manner they push for collection of the estimated bills for electricity (sometimes not supplied to or consumed by the customers) either at the point where the customer purchases the prepaid meter or at any other time. The most important thing though, is that the regulator must be willing to step in to resolve all the ensuing discontents to the satisfaction of the parties.

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