Energy & Natural Resources
6th April 2020.

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RECENT ORDER ON THE CAPPING OF ESTIMATED BILLS IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY: A TIMELY REGULATORY SCALE-BALANCING ORDER.

Introduction

For a vertically integrated Nigerian Electricity Supply Industry ("NESI") where the generation, transmission and distribution companies operate as a monopoly in their respective areas of license, the difficult job of balancing the interests of all stakeholders including the final consumer falls on the regulator, the Nigerian Electricity Regulatory Authority ("NERC"). The NERC's job is not an enviable one as it involves attracting investments to a newly privatized NESI and the obligation of protecting the interests of the customers at the same time. While NERC can be said to have done an excellent job of protecting the services providers, (the Generations Companies "Gencos", Distribution Companies "Discos" and the Transmission Companies), many people will agree with this writer that the electricity consumers in Nigeria have generally not received similar attention as is expected under **sections 80 and 81**, *inter alia,* of the **Electric Power Sector Reform ("EPSR") Act**, **2005** (**Act No. 6 of 2005**).

With a view to ensure that market develops a robust investment environment; NERC had issued pro-business regulations and orders a whole lot more than it has issued

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directives or regulations to protect the final consumers of electricity. This writer is persuaded that if a survey is instituted on this, it will be found to be the accurate truth.

Background to the New Order

Having carefully reviewed the implementation of all the regulations relating to the metering of customers vis-à-vis the price of electricity, the NERC has finally made the hard choice of capping the amount the Discos can charge or collect from the electricity consumers via the introduction of the **Order on the Capping of Estimated bills in the Nigerian Electricity Supply Industry**[2] with effect from **20th February 2020**. The preamble to the order bears out the previous and current efforts of the regulator to ensure that the Discos supply meters to their customers.

Coming at this time, the Discos themselves cannot complain because NERC has done more than enough to encourage them to meter their customers but to no avail. On the other hand, the customers have suffered under the weight of estimated billings, paying for power not consumed for too long. Customers have carried placards on several occasions across several/almost all the Discos' jurisdictions/areas of operations. As indicated in our last intervention (accessible at https://www.mondaq.com/Nigeria/Energy-and-Natural-Resources/854416/The-Current-Discontent-Between-The-Discos-And-Nigerian-Electricity-Consumers-Over-Non-Compliance-With-The-Performance-Agreement-On-Metering or at http://www.spaajibade.com/resources/the-current-discontent-between-the-discos-and-nigerian-electricity-consumers-over-non-compliance-with-the-performance-agreement-on-metering-peter-olalere/) in respect of this very important downstream distribution sector of the NESI, some customers had even removed themselves from supply, or have been removed by the Discos, over issues of lack of agreement on the amount of electricity used, paid for or to be paid for. In fact, the metering issue attracted the attention of the National Assembly when the House of Representative introduced a bill to amend the EPSRA, and to proscribe estimated billing (**Electric Power Sector Reform Act (Amendment) Bill, 2019)** - essentially to criminalize the collection of tariffs based on estimated bills from customers. Yet the Discos do not appear to appreciate that in the current age, metering of customers is the only sustainable way to go.

2 (Order No/NERC/197/2020).

To reiterate, despite the fact that the responsibility to procure, pay for and install prepaid meters for customers is that of the Discos, NERC set up **Credited Advanced Payment for Metering Installation ("CAPMI")** but the Discos did not take full advantage of same. Under CAPMI the customer was to provide fund for the meter and be paid back with electricity supply by the Disco – a scheme that ensures that the Discos get soft loan without interest. Notwithstanding this effort not much mileage was achieved as the Discos were simply not interested in taking active steps to provide meters for the customers. From that position, and after the failure of CAPMI to cure the issue, NERC set up the **Meter Asset Providers ("MAP")** by which ultimately the customer has the option of payment for the meter upfront, or paying for installation and maintenance of the meter in arrears through the MAP Provider who funds the meter acquisition and maintenance. Again, NERC must have noticed the reluctance of the Discos in making the MAP scheme to work hence, the current regulation could not have come at a better time.

<u>Contents of Order No/NERC/197/2020</u>

The **Order No/NERC/197/2020** was signed into law to replace the repealed **Nigerian Electricity Regulatory Commission (Methodology on Estimated Billings) Regulation 2012** with commencement date of **20th February 2020** as enacted by **section 2** thereof. As earlier emphasized, the NERC had provided orders and regulations for managing the downstream side of the NESI as it concerns billings, metering, and payments of electricity bills and ancillary issues. As the new order narrates in its preamble; the NERC had enacted: (i) Nigerian Electricity Regulatory Commission's Connection and Disconnection Procedure for Electricity Services 2007; and (ii) Nigerian Electricity Regulatory Commission's Meter Reading, Billing and Cash Collection and Credit Management for Electricity Supply Services 2007 in addition to, and before the Estimated Billing Methodology Regulations. See **section 4** of the new order.

Upon discovering that despite all efforts, the metering update still stood at an abysmally low figure of about 52% as at December 2019, the NERC has now come up with the new order. Other situational reports of the NERC's efforts leading to the enactment of the order include, inadequate level of metering of feeder and distribution transformers; inadequate data required for estimation of unmetered customers as borne out by 65% of complaints at the Discos' customer care centers and Forums; and the level of customers' dissatisfaction as stated in **sections 7, 8** and **9** of the new order.

Sections 10 and **11** *inter alia* reviews the MAP which came into effect on 8th March 2018 and the verdict is that there is limited success on that too. In line with the categorization of customers to ensure adequate collection of revenue/tariffs, the NERC had segmented the customers from the beginning of the privatization efforts. NERC had also earlier directed Discos to provide meter to all the Maximum Demand users by 30th November 2016. That deadline was later extended to 1st March 2017. NERC had also subsequently directed Discos in 2019 to migrate all the Residential ('R3')[3] class of residential customers, and industrial and commercial maximum user customers to cashless settlement platforms. The direction also covered other matters relating to revenue protection in NESI with 30th November 2019 as deadline. All the efforts were and still are geared towards revenue assurance for the Discos.

The objectives of the new order as stated in its **section 15** are to address the perceived and real injustices and unsatisfactory service provision by the Discos in the NESI. These include bringing parity to **R2 (Customers with consumption above 50 kilowatt)** and **C1 (Small businesses e.g. small barbing and hair dressing saloons)** metered and unmetered customers; stop arbitrary billings of the R2 and C1 unmetered customers; expediting metering of R2 and C1 unmetered customers - including via MAP; and improve customer satisfaction and reduce the incidences of high collection losses in the NESI.

Section 16 of the new order provides 3 methods of arriving at capping of the tariff to arrive at an amount the Discos can charge R2 and C1 unmetered customers; and these are; (i) energy cap on the basis of projected average monthly consumption of each tariff class in the MYTO model, (ii) imposition of energy cap for the billing of unmetered customers on the basis of average consumption of each tariff class on a franchise area, and (iii) imposition of energy cap on the bill of unmetered customers within a business unit at the average vending of the customer on the same tariff class within the area. With the benefit of experience and the objective of the new order in mind as narrated by

3 See Nigerian Electricity Regulatory Commission Customer Classification in Nigerian Electricity Supply Industry by Emeka O. (Asst. Manager) Market,Competition & Rates Division Sept, 2010 accessed on 9th March 2020 at https://pubs.naruc.org/pub.cfm?id=538EAEE0-2354-D714-514E-E6911D4E9E72.

sections 17 and **18**, NERC directed Discos to meter all **A1** (Schools, Churches and Mosques) customers by 30th April 2020.

The main purpose of this, as clearly spelled out in section 18 of the order, is to freeze the amount of energy that an unmetered R2 and C1 customer can be charged for by the Disco during the transition period and until such a customer is metered. The total amount billable for unmetered R2 and C1 customer as depicted in the example contained in **section 18D** of the order is only a demonstration of what the Discos can charge going forward, and does not mean all unmetered R2 and C1 customers must be charged that amount. The example is reproduced below:

78KWhr x NGN24/KWhr =₦GN1,872.00 for unmetered R1 customer and 50KWhr x NGN200/KWhr = ₦GN10,000 unmetered R2 and C1 customer between 20th February to 30th April, 2020 when the customer in that category must have been metered.

The amount that each such unmetered customers on R2 and C1 will pay the Disco is determined by the cap applicable to them as stated in the schedule to the order as provided by **section 18 (C)** of the order. Beyond this shall no Disco invoice any customer. All other customer category of electricity consumers must be metered not later than 30th April 2020 and no customer may reject installation of meters on their premises. The consequence of rejection of prepaid meter is disconnection from supply. See **section 18 (H)** of the order. Where any installed meter is faulty and same cannot be replaced by the Disco within 2 working days, the Disco can only bill the customer an average of the last 3 months billing or vending.

In concluding the operative part of the order, **section 18(J)** leaves no one in doubt as to what the NERC wants to achieve with the order. It provides that NERC will periodically review the meter deployment targets achieved by the Discos and on a quarterly basis review the data on vending records and supply availability for the purpose of reviewing the energy caps provided in the order.

4. <u>Some Benefits of Order No/NERC/197/2020.</u>

This writer is of the view that the Order No/NERC/197/2020 can achieve the following benefits, among others, to the NESI:

a. Counterbalances the increase in tariff which is expected to take off by April;

b. Will provide more reliable data for the NESI;

c. Introduces a more scientific approach to calculation of estimated billing;

d. Provide a better deal for the R2 and C1 customers who have suffered untold hardship hitherto;

e. Reassures the R2 and C1 customers that in the Nigerian Electricity monopoly market, NERC has the capacity to be fair to all stakeholders;

f. Reassures the Discos that NERC still has their best interests at heart;

g. Has the capacity to provide motivation for the Discos to meter all their customers which is the only 21st century way of selling utilities to the people;

h. It will help the Discos to operate like proper private-sector service providers;

i. It will help the R2 and C1 customers, who had thought that being prepaid customers would cause them to spend more on electricity, to have a rethink;

j. It will help Discos to reduce their energy collection loses as almost every customer should be able to pay the capped energy consumption rate;

k. It will reduce energy theft and help the Discos to isolate and deal with customers with tendency to steal electricity;

l. With better data in the NESI, the much-needed investments will come;

m. It will reduce the escalating confrontation between Discos' officials and customers who were hitherto served with 'crazy' estimated electricity bills; and

n. It will help restore customers who have either voluntarily removed themselves or have been compulsorily removed from supply to the electricity supply grid; and ultimately add to the bottom-line of the Discos.

<u>Conclusion</u>

With proper implementation of this order and deployment of a robust and improved dispute resolution mechanism, the customers may finally have some sigh of relief. If the Discos implement the order and change the current mind-set where they do not see the urgency in providing meters for their customers, it may be the day when we gather to look at what cost-reflective tariff is and what it should be - a conversation that will not be ripe until customers have meters in place. Order No/NERC/197/2020 is a timely regulatory scale-balancing Order.

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