

THE ELECTRICITY ACT 2023: A GAME-CHANGER IN THE NIGERIA'S POWER SECTOR REFORM

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Abstract

This paper analyses the Electricity Act, 2023, with a view to detailing its novel provisions aiming at effective, sufficient and efficient power sector reform in Nigeria. The Act is aimed at a total overhauling and developing of the Nigeria power sector in a sustainable way in order to make the country meet its energy requirements and demands. Nigeria requires steady electricity supply for it to realise its goals towards a sustainable economic development. The reality on the ground is that the sector is in a big mess, ranging from very short supply, incessant power failures resulting into power unreliability and inadequate electricity generation. The country, with over 200 Million people, has just around 6000 megawatts of electricity supply, a situation closely linked to varying factors including transmission and distribution losses, generation constraints and load demand. Approximately 40% of the citizens lack access to electricity from the national grid. This translates to roughly 92 million people and this has brought about stagnation, with the country's economy seriously affected. To reverse this trend, the country has, at different times, gone through legislation and regulatory adventures, with the latest efforts being the Electricity Act, 2023.

Keywords: Electricity reform, regulatory and legal frameworks, sustainable development.

I Introduction

Electricity is one of the bedrocks of a viable and prosperous economy. It is very critical to economic and social development as well as poverty alleviation.

¹ The country needs an intentional investment in the power sector to realize its economic goals. The extent to which a country may experience economic growth is dependent on how much they can harness electricity. A lot of economic variables are dependent on electricity and without it they may not see the light of the day. In a nutshell, electricity's importance pervades our daily life, ranging from job creation, house warming, medical services, water heating, house cooling, etc., to powering our offices and industries.

In 1929, the colonial administration established, Nigerian Electricity Supply Corporation (NESCO)² for the country.³ This company was the first body to be established to oversee electricity generation, transmission and distribution.⁴ This was decades after electricity was first generated in Nigeria in 1895⁵. The first legislative instrument to regulate the electricity sector came in 1959. That was the Act of Parliament establishing the Electricity Commission of Nigeria (ECN).⁶ A 1979 Act No. 62 was used to establish the ECN. The said Act 62 was later amended twice, in 1988 and 1989 by Acts 32 and 19, respectively. ECN was made the apex government body with the statutory mandate to take total charge and control of the Nigerian energy sector in terms of policies formulation and execution so as to ensure that the country realises the best of energy provisions and to work towards introduction of other energy sources, alternative to

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¹Erhun, M. O & Johnson, D.O (2018) "A Legal Framework for Sustainable Electrical Energy Industry in Nigeria" (2018) 8,(2) Journal of Sustainable Development Law and Policy.

<https://etenders.com.ng/nigerian-electricity-supply-corporation-nigeria-limited-request-for-proposal-for-installation-of-starlink-for-nigerian-electricity-supply-corporation-nesco-nigeria-limited-bukuru-jos-south-plat/>

³Olushuyi, L " Deconstructing the past reforms and the current structure of Nigeria's electricity sector, Business Day" (2024), <https://businessday.ng/opinion/article/deconstructing-the-past-reforms-and-the-current-structure-of-nigerias-electricity-sector/>

⁴Erhun, M. O & Johnson, D.O (2018) "A Legal Framework for Sustainable Electrical Energy Industry in Nigeria" (2018) 8,(2) Journal of Sustainable Development Law and Policy, *ibid* at 1.

⁵*ibid*

⁶ https://energy.gov.ng/ecn_act.php

electricity for optimal realization of the energy targets of the government.⁷In short, the Acts make the ECN, not only the regulator but also the operator of the country's power sector.

To take charge of the Kainji hydroelectric dam and superintend the irrigation and hydropower activities around it⁸, the Niger Dam Authority (NDA) came into being in 1962, following the ECN.⁹And, subsequently, the military administration, through a Decree, established the National Electric Power Authority (NEPA) through the merger of the NDA and the ECN.¹⁰ On the formation of NEPA, it enjoyed monopoly and non-competition over its control of the Nigerian power sector. It has to be noted that at those periods, there were private power generating plants but NEPA was empowered by the Decree establishing it to oversee, regulate and maintain Nigeria power sector.

Nigerians had a lot of stories to tell under the NEPA regimes. The period was synonymous with hue and cry over electricity supply; there was erratic power supply at that time ranging from load shedding and non-connection of many towns to the national grids and so on. Under NEPA, the story of the country's power sector was not that good in terms of power generation and distribution with outrages here and there. There were calls, across the county, for a reform of the sector and a disbandment of NEPA. These, amongst others, informed the determination and commitment of the government to look for possible ways to make the electricity market more efficient. And, going by this determination, in 2001, the Olusegun Obasanjo presidency promulgated the National Electric Power Policy (NEPP)¹¹ with the idea of making the power sector a private concern, and privatizing it through a systemic process of handling both ownership and controlling machineries of the sector in the hands of the private individuals. And, to further enhance the power sector and in order to give a statutory backing to the privatization agenda, the government, introduced a new legislation, the Electric Power

⁷ibid

⁸ <https://archive.gazettes.africa/archive/ng/1972/ng-government-gazette-supplement-dated-1972-06-29-no-31-part-a.pdf>

⁹ ibid

¹⁰ See the Military Decree Supplement to Official Gazette No.31, Vol. 59 of June 1972

¹¹<https://www.policyvault.africa/policy/national-electric-power-policy/>

Sector Reform Act (EPSRA).¹² This new Act repealed the decree that established NEPA¹³ and we then had the Power Holding Company of Nigeria (PHCN)¹⁴ replacing NEPA. PHCN had 18 subsidiary companies in the following order:

- i. It has 6 Power Generating Companies
- ii. It has 11 Distribution companies and
- iii. It has a Transmission Company (TCN)

With the provisions of the EPSRA, the Nigerian Electricity Regulatory Commission (NERC)¹⁵ was created as the body saddled with the powers of regulation over the sector. It is important to mention here that as at December 2013, PHCN has gone into extinction. Also remarkable here is the fact that all the six generating companies established sequel to the PHCN, and ten of the eleven distribution companies immediately went into privatization. Before the end of 2014, the last distribution company was also privatized.¹⁶ The only TCN, under the PHCN regime was, for administrative convenience, put under the control of the Federal Ministry of Power and it continues to remain a public entity.

The power sector reform has now led us to the new Electricity Act, 2023 (The Act). The new Act effectively repealed and ended the EPSRA regime in the country's power sector. The new Act is a privatization driven legislation as it allows for individual investors' participation across all the levels in the country's electricity supply chain, once such individuals fulfill necessary prerequisites and obtain requisite licenses.¹⁷ These and more we shall discuss under subsequent headings.

¹²Federal Republic of Nigeria, Official Gazette No. 77, Vol. 92, 8th August, 2025

¹³Atoyebe, O.M "Challenges Following the Privatization of the Nigerian Electricity Sector" (2004), <https://omaplex.com.ng/challenges-following-the-privatization-of-the-nigerian-electricity-sector/>

¹⁴<https://www.developmentaid.org/organizations/view/407784/phcn-power-holding-company-of-nigeria-formerly-nepa-national-electric-power-authority>

¹⁵<https://nerc.gov.ng/>

¹⁶Privatizing these companies effectively made more than 50% of the shares in these companies to be sold to private investors.

¹⁷Olushuyi, L "Deconstructing the past reforms and the current structure of Nigeria's electricity sector, Business Day" (2024), <https://businessday.ng/opinion/article/deconstructing-the-past-reforms-and-the-current-structure-of-nigerias-electricity-secto>

2. The Act at a Glance

A few weeks after assuming office, President Bola Tinubu, on 08 June 2023 assented to the then Electricity Bill, effectively making it an Act.¹⁸ The Act repealed the EPSRA 2025¹⁹ and grants the component states of the country²⁰, juristic persons, i.e, private companies, and interested individuals, the powers of participation at every stage of the energy supply chains, including; power generation, power transmission, and power distribution.²¹ By so doing, the Act stands to promote competitiveness and efficiency in the market.

As earlier discussed, Nigerian power sector, rather than been administered by a single codified document has always been administered by different legislation supported by policy documents. The Electricity Act 2023, however, comes with so many innovative highlights like no other legislation before it. It encapsulates many areas of power enhancement with the main goal of turning the power sector around in the area of generating, transmitting and distributing power. The Act is no doubt a game-changer for the country's power sector; however, its success is dependent on so many other factors and, more importantly, the readiness to do away with the customs of having effective legislation with ineffective regulators to administer it. That has been the case with regulators of statutory bodies round here.

The power generation from the national grids has been insufficient for the demands of the country's ever-growing population and highly expanding economy; hence, unlike its predecessors, the Act places a very high premium on promoting renewable energy and how the clean energy sources may integrate and enhance the country's energy framework²² by making the sector sufficient and cleaner. No doubt, the power generation

¹⁸Idowu, D., Peregrino T., Oyewole O., and Iwunze, C (2023) "Review of the Electricity Act 2023 and its Implications on the Nigerian Electricity Supply Industry" (2023) (NESI)<https://www.dlapiperafrica.com/en/nigeria/insights/2023/REVIEW-OF-THE-ELECTRICITY-ACT-2023-AND-ITS-IMPLICATIONS-ON-THE-NIGERIAN-ELECTRICITY-SUPPLY-INDUSTRY-NESI.html>. Retrieved on 5/8/2025

¹⁹Electricity Act, 2023, Explanatory Memorandum.

²⁰ These are the 36 states of Nigeria and the Federal Capital Territory (FCT)

²¹Section 2 (2) Electricity Act, 2023. LFN

²²Section 1 (1) Electricity Act, 2023.

from the renewable energy sources will contribute in no small measure to the power generation from the national grids and ancillary hydraulic sources.

The Act has come to change the story of Nigeria power sector, for good, on so many grounds. It is a forward-looking legislative effort with a very wide coverage. It streamlines the various segments of the power sector with proactive rather than reactive measures that could sustain sufficient power generation for the country. It decentralizes the power sector through its seamless embrace of privatization in the sector. The Act has simplified and demystified the mystery surrounding power generation, power transmission and power distribution by allowing willing individuals, incorporated bodies and government of the component states of the federation to get involved in the new energy supply chain. This alone is a departure from the monopoly which the federal government has always been exerting over the sector.²³ Apart from the fact that competition breeds effectiveness, this measure will also allow different states to develop their energy sector at their own pace. The Act also tilts towards new energy sources. It seeks to discourage the use of fossil fuels energy options and incentivizes the use of new energy sources with various benefits including tax holidays, tariffs and so on; it establishes the commission to develop hydroelectric power-producing areas; and most importantly, it allows for embedded generation of energy by requiring power generators to opt for renewable energy sources to augmenting their energy supplies.

In a nutshell, the Act detached system operations from transmission, creating the Nigeria Independent System Operator (NISO)²⁴ to manage the power system independently.²⁵ It also separates distribution and supply operations, allowing for specialized entities to handle each function.²⁶ The Act's focus on decentralization, renewable energy, and

²³Section 2 (2) of the Electricity Act, 2023.

²⁴ The Nigerian Independent System Operator (NISO) is a newly established entity responsible for the operation and management of Nigeria's electricity grid. It was created by unbundling the Transmission Company of Nigeria (TCN) as mandated by the Electricity Act of 2023. NISO's primary functions include generation dispatch, grid coordination, market oversight, and ensuring the reliability and stability of the national grid

²⁵PART IV Section 15 (1) Electricity Act, 2023. LFN

²⁶ PwC's Annual Power & Utilities Roundtable (14th edition), "The Electricity Act, 2023, Powering Nigeria." <https://www.pwc.com/ng/en/assets/pdf/power-roundtable-2024.pdf>. Retrieved on 04/08/24.

attracting investment is ultimately aimed at improving electricity access and reliability for both consumers and businesses.

It is important to note that under this Act, NERC continues to retain that power of regulating the sector pending the adoption of the Act by different states. NERC continues oversight on interstate transactions as well as undertaking processes involved connecting power generation to distribution, with the states so as to ensure that the process of transition is seamless.²⁷

In addition, the National Integrated Electricity Policy and Strategic Implementation Plan²⁸ created by the Act is another new deal. This Plan aims to foster massive development of the power sector by providing for issuance of an Integrated National Electricity Policy and Strategic Implementation Plan, to be published in official gazette after due consultation with all government stakeholders in the industry. The Act stipulates a period of one year for this to be done and to be overseen by the Ministry of Power.

The National Hydroelectric Power Producing Areas Development Commission (NHYPPEDEC)²⁹ puts in place by the Act as a body corporate and vests with the task of policies and guidelines formulation as regards promotion of areas where dams are situated to produce hydroelectric power, amidst the powers of the Minister to issue policy directives and the NERC's general authority over the general regulation of the electricity industry, is another good omen. We must take a particular note of the fact that the NHYPPEDEC is a new Commission which was introduced for the first time, in the Act. The composition of this Commission as well as its seat of operation are as contained in sections 83 and 84 respectively and its statutory responsibilities are contained in section 89(a) – (h) of the Act. The NHYPPEDEC has the powers to research into and dealing with factors affecting the development of the hydroelectric power producing areas as well as helping the component states of the country in the area of policies formulation which

²⁷PwC's Annual Power & Utilities Roundtable (14th edition), The Electricity Act, 2023, Powering Nigeria. <https://www.pwc.com/ng/en/assets/pdf/power-roundtable-2024.pdf>. Retrieved on 04/08/24.

²⁸Part II Section 3 (1) Electricity Act, 2023, LFN

²⁹Part VIII Section 82 Electricity Act, 2023 LFN

could lead to purposeful utilization of the resources of the hydroelectric power producing areas and dealing with environmental concerns which could result from overloading of dams in such areas as well as issuing advisories to both the federal and state governments on preventive measures for floods and other forms of environmental hazards.

Another key component of the Act is that it establishes the Nigerian Electricity Management Services Agency ("NEMSA");³⁰ and vests it with the powers, to among others; work with the Standards Organization of Nigeria (SON) and other government agencies, in ensuring that the electricity appliances used in Nigeria power installations are not substandard and compromised materials, and, to ensure that all power networks and projects are executed with precision before being put into use so that such installation would guarantee safety for users, reliability in standard and foster a satisfactorily and enduring enjoyments to the power consumers. The power of the Agency in terms of quality control and safety requirements cut across; the national grids, all transmission systems and electrical installations.³¹ Over the years, Nigerians have contended with power shortage due to poor and substandard electrical materials being deployed for electricity projects. This measure, as being championed by the NEMSA under the Act aims at putting an end to that era of compromise and business as usual, in project execution in the sector. However, the success of this noble idea and provisions is depended on further measures which may be necessary and required for effective implementation.

Also introduced in the Act is a transmission and distribution network. This, without any doubt introduces a new set of opportunities for would be investors, in the areas of substations, smart systems, transmission lines and distribution networks systems.³² This provision will no doubt aid the economy of the country in so many ways as it would create reciprocal opportunities for new forms of investment and aid the country's local manufacturing stride in the areas of manufacturing of electrical materials and also

³⁰Part XVIII Section 125 Electricity Act, 2023 LFN

³¹Part XVIII Section 176 (a-e) Electricity Act 2023, LFN.

³²Part XIX Section 121 Electricity Act,2023,LFN.

enriches the local markets in terms of supplies of such electrical equipments. And, ultimately, it will promote local content in the power sector.

Moreover, it needs to be emphasized at this juncture that after the successful amendment of items listed at the 2nd schedule to the 1999 Constitution, and particularly, the listing of power distribution, transmission and generation, and sales, as matters upon which both the federal and state have powers over. The Constitution and the Act have adopted a decentralized power sector in the country, and this would ensure greater achievements in the sector. Each state may now develop its own electricity in its own pace. The onus now lies on the states to make electricity sufficient for their people as they want. We hope that this brings about healthy competition among the states wherein at the long run, stable and affordable electricity would be made available to the consumers at different states.

Finally, ample provisions are contained in the Act, for offences and penalties thereof. For any person who taps an electric connection or illegally loops, bypasses a meter or tampers with a meter in any way or destroys it in a way that it affects the normal metering system, or deploys the electricity to unauthorized use with compromised metering will be subjected after, conviction, to a fine as provided under this section or to a three year imprisonment or both. And, for electric line and material theft, a person on conviction is liable to a fine not less than N500,000.00 only, or at least a 3-year imprisonment term and a maximum of up to 5 years imprisonment, or both. An offender who had been convicted before is liable, after conviction, the second time, for a fine not less than N1,000,000.00 only, or a sentence of 5 years imprisonment. Other offences stipulated under the Act include deliberate power disruption, breaking or destruction of electricity materials negligently, wanton destruction of street lights, intentional connivance in false declaration, impersonation and obstruction of officers in carrying out their duties and so on.

The Act vests the Chief Law Officer of the country and of each state, that is, the Attorney-General of the Federation and Attorneys-General of the 36 states, the powers over prosecution of all crimes created under the Act. And, these powers may also be exercised by the relevant security agencies with the consent of the respective Attorney-

General, first obtained. And rightly so, both the states and federal High courts have jurisdiction over the Act.³³

3. Promotion of Renewable Energy under the Act

Prior to the enactment of the Act,³⁴ renewable energy has not had a streamlined legal regime advancing it; rather, it had always been administered under series of legislation and policies rather than a single comprehensive document. The Environmental Impact Assessment Act, 1992,ⁱ for instance, which mandates the prior ecological assessment before project execution so as to determine the likely environmental effects of the conceived project on the environment where it will be sited. It goes without mentioning that this provision also includes renewable energy projects. This mandatory provision therefore requires that any power developer who plans to make do with renewable energy sources for power generation must register their projects with the Federal Ministry of Environment for an environmental impact assessment, as mandated by section 2 of the Act.

The National Energy Policy, 2003³⁵ aims at utilizing and deploying all the country's energy resources to better the life of the citizenry. The policy spells out these beautiful objectives and states the plans and strategies which the country intends to adopt to realise this. The EPSRA is tailored towards these objectives by bringing significant changes to Nigeria's electricity supply through its decentralization and the powers vested in NERC. The Act, in its section 88(1) establishes the Rural Electrification Agency (REA). It also establishes a fund to promote electricity access for the rural areas, most importantly, through renewable energy sources. Additionally, section 96 of the ESPRA, empowers the NERC to issue from time to time, regulations that are necessary to enhancing the power sector of the economy. Sequel to the provisions of section 96, NERC issued regulations on feed-in Tariffs for the promotion of renewable energy in 2015 and to encourage private generators of renewable energy in 2017. The coming of the Act has led to a repeal

³³Section 223 Electricity Act 2023,LFN

³⁴ Environmental Impact Assessment Decree No 86 of 1992 Laws of the Federation of Nigeria

³⁵ https://rea.gov.ng/wp-content/uploads/2017/09/National_Energy_Policy_Nigeria.pdf

of all the regulations hitherto made by NERC among others and they have been codified and accommodated under the new Act.

The REMP, 2005 opines that, to maximize optimal growth of the power sector and to support the country's drive for a net-zero emission reduction through gradual drop of the fossil fuels makes case, for the new energy sources, craves for the campaign and promotion of new energy sources including solar, biomass, ocean, among others, as quite essentials to achieving the country's sustainable energy goals. The plan shows that these objectives could only be achieved when a designated funds is established and deployed for that promotional effort under a well structured agency. Hence, the establishment of the Renewable Energy Fund (REF) which is being administered by the National Renewable Energy Agency (NREA). Interestingly, provisions concerning REF and NREA are also now, accommodated under the Act.

The Nigeria's 2016 Renewable Electricity Policy Guidelines encapsulates the whole essence of renewable energy sources and, in particular, the onerous objectives of the government aiming at promoting renewable energy sources at all cost are well detailed in it. The aims of the government to integrate renewable energy into the country's energy framework in order to improve electricity supply as well as ensuring a reduction in greenhouse gases emission are fully highlighted. The guidelines align in totality, with the United Nations Sustainable Development Goal 7, which seeks for a global provision of new energy sources, devoid of climate change induced elements, for all. Good as these new energy options seem to be, financial constraints, technical challenges and so on are identified as some of the core obstacles in achieving the objectives.³⁶

The Act has therefore come to address the renewable energy's importance in the power sector with all the necessary attention and full legislative backings. The Act generously promotes the new energy options and its inclusion into Nigeria's power framework. This is very clear and the Act reveals this, even from its Long Title. The Act grants the Minister for Power the authority to be deliberative in this regard by formulating policy

³⁶Ater Solomon Vendaga, "An Appraisal of the Role of the Electricity Act, 2023 in the Actualization of Renewable Energy Adoption in Nigeria".

directives aimed at nurturing the renewable energy sector. Additionally, the Act empowers the Nigerian Electricity Regulatory Commission (NERC) to promote the growth of renewable electricity actively.³⁷

A close perusal of the Act shows that when electricity is generated from the new energy sources, the generator of such electricity will be supported by the government. This, without an iota of doubt reveals the focus of the government in terms of the intendment of the Act. Also, the Act is deliberative in ensuring that all barriers in the way of renewable energy sources are removed to pave way for its integration into the country's energy framework. Having proven over time that many citizens are unaware of the benefits inherent in the new energy options over the traditional fossil fuels, the Act emphasises on public education initiatives to enhance investor confidence and promote the power sector growth.³⁸

In a very novel initiative, the Act puts in place the National Integrated Electric Policy and Strategy Implementation Plan (NIEPSIP),³⁹ and empowers it to drive renewable energy development across the country. At section 3 of the Act, new energy sources like coal, solar, biomass and so on are meant to be promoted towards realising the overall objectives of the Act. It also provides for financial succor to address financial problems required for renewable energy infrastructures, through waivers and subsidies.⁴⁰ This, no doubt, is a legislative breakthrough for renewable energy development.

As mentioned earlier, the Act gives NERC the regulatory authority over the country's power sector. It also puts it in charge of renewable electricity projects across the country. NERC is mandated under the Act to ease licensing procedures for promoters of renewable energy projects. Additionally, NERC is obliged, in administering its pricing mechanisms, to be considerate, considerable and lenient with promoters and consumers of renewable energy sources over and above others.

³⁷See the Long Title, Electricity Act, 2023, LFN

³⁸Part XIX Section 185 Electricity Act, 2023, LFN

³⁹Section 3, Electricity Act, 2023.

⁴⁰Section 3 (2) (e) Electricity Act, 2023.

The Act establishes the REF to address the issue of high cost of renewable energy sources infrastructure and it puts in place the REA⁴¹ to monitor the disbursement and general management of the funds.⁴² To fully address and facilitate more incentives for the renewable energy investors and consumers alike, the Act provides for an affordable interest loans regime, for local renewable energy producers, which undoubtedly will further encourage investment in the new energy sector.⁴³

Section 82 of the Act establishes the NHYPPADEC to ensure promotion of hydroelectricity development collaboratively between the federal and state governments. The NHYPPADEC, as afore-discussed, has the mandate to promote and support all initiatives aiming at hydroelectricity development and at the same time to address the ecological challenges that surface in the course of hydroelectric power production.⁴⁴

In order to shift the people's attention towards the renewable energy options, the Act introduces financial mechanisms in terms of tariffs and obligations to purchase renewable energy sources.⁴⁵ The Act does this by making it compulsory for bulk buyers/traders of electricity to ensure that when they buy electricity, more concentration of their purchase must be on renewable sources. This is another way to encourage investment in the sector.

The Act has come to enhance and strengthen the new energy sources to complement the power generation from the national grid and to also support the country's drive of energy shift from the fossil fuels to the cleaner energy sources as encapsulated in renewable energy. How far this will succeed is yet dependant on NERC and other regulators, and most importantly, the readiness of the governments of the thirty states to embrace these legislative breakthroughs in the sector.

⁴¹Section 129, Electricity Act, 2023, LFN

⁴²Part XVI Section 142 Electricity Act 2023, LFN

⁴³Part XVII, Section 164-170 Electricity Act 2023, LFN

⁴⁴Part VIII, Section 89, Electricity Act, 2023, LFN

⁴⁵Section 164 Electricity Act, 2023, LFN

4. Decentralization of the Power Sector and the Act

To understand how the Act has impacted the power sector administration in Nigeria, let me first explain the movement of power supply from the generators to individual households or any other places where it is being consumed. And this will represent the power supply chain in Nigeria. The process is captured thus:

From power Generation – To power Transmission –

Then to power Distribution – and finally to Consumption

The Generating Companies of electricity, known as (GenCos) generate electricity through different media from their plants. After power has been generated, then the aggregated power would be harvested and set forth for transmission across the country through the Transmission Company of Nigeria (TCN) which trades these powers to the distribution companies otherwise known as the DisCos. Many who consume power in the country only relates with the DisCos as they are the only entity in the supply chain that deals directly with the people in term of power supply, billing and payment for power supply. Nigeria presently has eleven DisCos and each of them is assigned to handle power supply to different parts of the country.

In discussing the trajectory of decentralization of the Nigeria power sector, we must first agree that decentralization of the sector becomes necessary to mitigate and address the question of inadequate power supply. According to NERC, most of the generated power is not being deployed to use. The reason for this is not far-fetched; there are a lot of challenges facing gas supply and the power sector contends with numerous commercial challenges. This, in turn hinders the power distribution drives in the country. Hence, the decentralization of the NESI.⁴⁶ The argument that the federal government should not be left alone to address electricity gaps gained traction after all. The new order is for the state government to also have a say in it and put in place necessary machineries for its implementation.

⁴⁶ Onojason J., Ole C. O. and L. U. Alliance Law Firm, “The Electricity Act 2023 and the Constitutional Amendment: Implications for the Power Sector”, (2023) Alliance Law Firm. www.lexicology.com. Retrieved on 01/08/25.

The first challenge was the exclusiveness of the federal government with all the powers to superintend the power sector. The 1999 Constitution provides for this until the recent amendments which now make matters concerning the administration of the power sector an item under the concurrent list to the effect that both the federal and state governments would have power over. Under the concurrent list of the amended 1999 constitution, paragraph 13(a) and (b), and paragraph 14(a) and (b) respectively grant the federal and state government the power over the power sector while the state may only exercise its own power to areas not covered by a national grid system within that state. The restriction imposed on the state to ‘areas not covered by the national grid’ later informed a further amendment of the concurrent list.⁴⁷

The paragraph 14(b)⁴⁸ was later amended where the restriction, ‘areas not covered by the national grid’ was removed, thus effectively removing the earlier restriction placed on the states and donating to them unfettered powers over the power sector within their states. Hence, as the federal government has powers over the power sector, so as the state governments have.

The amendment also encourages private sector investments that would in turn drive the growth of electricity markets under a state driven and well structured regime. This will also better protect and support some of the states in Nigeria, such as Lagos, Oyo, Ekiti, Edo and Kaduna States, that had previously taken steps towards a state electricity market within their states.

The amendment has addressed the concurrency of both the federal and state government’s power over the power sector. The Act is in total agreement with this new order introduced as it also reinforces a decentralized power sector. The Act allows state authorities to grant licenses to willing investors in the sector who may also be interested in investing and operating mini-grids and power plants in the state. It needs to be mentioned that an investor in the sector may choose to invest in any of the power supply chain or in more than one of them.

⁴⁷ibid.

⁴⁸ Part II of the Second Schedule to the 1999 Constitution in March 2023

The Act allows individuals that are interested, to undertake a construction and operation of personally generated electricity, provided the generated electricity is not more than one megawatt of electricity at one single site, without a license. Also, it allows individual willing investors to undertake power distribution of not more than one hundred kilowatts on a single site, without a license, except the commission otherwise allows for more.

With the Act decentralizing the country's power sector, opportunities have presented themselves for healthy competition, which will ultimately result in productivity. The decentralization of the Nigerian communication sector by the Obasanjo administration is a good example of when competition can bring about efficiency and service delivery. With the state governments now empowered to have their respective power markets, private investors would find the power sector more lucrative to invest in and outshine their co-competitors in the industry.

5. Powers of the Nerc under Theact

The Act, as earlier pointed out, puts the NERC in a position to ensure a smooth operation of the NESI and by extension, its overall regulator.⁴⁹ NERC exercises various powers granted it under the Act and these include; the power to issue licenses and oversight over investors in the sector.⁵⁰ NERC is also empowered to exercise monitoring powers of activities going on in the electricity markets and it may issue warnings and when deserving, it may sanction any person in the power sector. The oversight powers of NERC extends to its powers to enter the premises of persons operating without a license or suspected to have committed an offence under the Act and it may seal the business undertakings of anyone found wanting.⁵¹ NERC ensures that all players in the sector keeps to regulations issued by it from time to time and it performs quasi-judicial functions by helping in resolving disputes within the sector. It ensures due diligence in

⁴⁹Part V, Section 33 Electricity Act,2023, LFN

⁵⁰Section 34 (2) (d) Electricity Act 2023,LFN

⁵¹Section 34 (2) (f) Electricity Act 2023,LFN

the power sector operation and focuses on the effective realisation of objectives of the Act.⁵²

The procedure for the application for a license is set out in the Act⁵³ to be initiated through an application to the Commission. The format for the application process is prescribed in the Act. An application for a license attracts the payment of prescribed fees and relevant documents as may be required by the Commission. It goes further to provide that an applicant must ensure the publication in national dailies, notice of his application to the Commission and the time frame for the publication is within thirty days of making the application. At least one of the two newspaper publications must be on a newspaper popular in the area where the licensee seeks to operate. Also, the notices must allow for the raising of objections to the application within the time prescribed by the Commission, and the Commission shall not issue any license until all objections or representations received by it have been addressed one way or the other. A licensee has the privilege of asking for a renewal before the expiration of a license.⁵⁴

The Commission is always minded of the intendment of the drafters of the Act in terms of encouraging new energy sources over the traditional energy sources. In its *modus operandi*. The Commission gives preferences to licenses who intends to generate their power from renewable energy sources as well as embedded power generators and hybridized generators.⁵⁵The reason for this is not far-fetched.

NERC may on its own discretions or acting upon a report made to it, question the performance of any player in the country's power sector. Its focus is the people and it would take any matter hindering the efficient use of the power infrastructures personal against any investor or stakeholder in the industry.⁵⁶Where, base on the Commission's findings, after investigating a complaint against a licensee, and the commission is

⁵²Section 34 (2) (b) Electricity Act 2023,LFN

⁵³Section 71 (1-8) Electricity Act,2023, LFN

⁵⁴Section 73, Electricity Act, 2023,LFN

⁵⁵Section 80 (2) Electricity Act 2023, LFN

⁵⁶Section 75 (1) Electricity Act, 2023, LFN

convinced about the liability of the licensee, the Commission may issue sanctions as may be necessary.⁵⁷

The success or otherwise of the Electricity Act, 2023 is dependent upon the resilience, readiness and disposition to the statutory responsibility placed on the NERC. The Minister of power only has superficial, supervisory and ceremonial roles to play, the key operator of the power sector is the NERC, and hence, the responsibility placed on it in the Act must not be treated with disdain.

6 Conclusion and Recommendations

The enactment of the Act is no doubt a positive and progressive step towards solving the many problems confronting the country's power sector. It is also a game-changer in the Nigeria power sector development by decentralizing and promoting competition in the sector. The question regarding the likely clashes of the provisions of the Act with the Nigerian Constitution on the power of state governments to set up their own electricity outfits have also been put to rest through constitutional amendments. There is now a smooth field to operate the Act, and particularly, under which the states can on their own pace, develop and match up with their energy needs. The Act is a very good starting point for power stability and sufficiency in the country and, in view of its supports for renewable energy sources; it is well positioned to helping Nigeria meeting its net-zero emission targets by 2060 as per the Paris Agreement. By decentralizing the power sector, the Act seeks to encourage competition to enhance service delivery through collaboration among the competing parties and productivity. And, it promotes and incentivized electricity obtained through renewable energy sources to complement electricity supply from the hydro-electric source. The Act is far from being perfect but it is a good starting point and definitely a game-changer in the country's efforts to efficiency and adequate power developments. The recommendations set herein-under would definitely help to improve the implementation of the Act and at the same time provide areas of focus when opportunities arise for legislative improvements on it.

⁵⁷Section 75 (2) (a-c)

Firstly, the states governments must put in place their electricity markets so as to maximize the advantages presented by the Act in terms of decentralizing the power sector and increasing both efficiency and improved service delivery which ultimately will bring about stable electricity to the people. Without the states putting in place their respective power markets, the utmost goals of the Act will be a myriad. Hence, each state is urged to put up necessary measures for setting up necessary entities in replica of NERC which is at the federal level.

Secondly, there is need for NERC to streamline the various regulators established by the Act, with a view to working within the extant regulatory and legal frameworks to ensure orderliness in operation to avoid clumsiness in the system. We do not envisage this could pose problems from the way the Act is arranged, however, NERC requires experts in various segments of the energy sector for proper coordination and implementation of the *corpus* of the Act.

Thirdly, the Act creates the REA and saddles it with various functions including managing the REF in order to promote electricity supply and renewable energy sources in the rural areas. No doubt, the rural areas are backyards of the state governments; each state must re-create these agencies in their respective states' Electricity Laws and support them to function towards power efficiency, sufficiency and promotion of renewable energy sources.

Moreover, to avoid a situation of operational overlapping among the component states of Nigeria, the newly created regional development commissions, could be used in building synergy among the states under the same region to work in relation to power generation, transmission and distribution under their respective regional development commission, instead of each state running its different entity. For instance, the South-West Development Commission could spearhead a regional electricity market for the South-West States of Nigeria. A future amendment to the Electricity Act could consider this, most especially, since the focus of these regional commissions is the social and infrastructural development of their regions.

Lastly, it is our humble view that the overall objectives of the Act will be more felt if the 774 local government areas, being the third tier of government and the closest to the grassroots are assigned roles under the Electricity Act, 2023. The local government areas are in best position to champion promotion of renewable energy sources and being the next to the people, grassroots mobilization, awareness creation and value orientation would be better served by the local government areas.

Overall, the success of the Act depends on the readiness of the political class, each of the Nigeria thirty six states and the Federal Capital Territory (FCT) must refocus their legislative arsenal and tune it in tandem with the extant constitutional provisions which now puts power generation, transmission, and distribution on the concurrent list and effectively making it possible for State Houses of Assembly to legislate over them. The Act will only meet up with the intended objectives of decentralizing the power sector when each state through their Houses of Assembly enact their respective Electricity Laws and constituting regulatory bodies like the NERC in various states to midwife the power sector at the state levels.