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Weekly Newsletter

February 3, 2020–

POWER SERIES

Contracting and Liquidity in the Nigerian Electricity Supply Industry

Power sector reform in Nigeria was spearheaded by the Electric Power Sector Reform Act of 2005 which unbundled the Nigerian Electricity Power Authority (**NEPA**) and formally privatized the generation and distribution of electricity in 2013. Since this reform, the sale of electricity has been governed by contractual arrangements representing the different transactions cum relationships that emanated from the unbundling process.

Relationships

Under the contracting structure, electricity is sold by Nigerian Bulk Electricity Trading Plc (**NBET**), an electricity bulk trader licensed by the Nigerian Electricity Regulatory Commission (**NERC**), the agency responsible for regulating the electric power industry in Nigeria. NBET is the nexus between the Power Generation Companies (**Gencos**) and the Electricity Distribution Companies (**Discos**). The Gencos sell their generated power to NBET under Power Purchase Agreements (**PPAs**) entered into with NBET and NBET sells this generated power to the Discos by virtue of the Vesting Contracts it entered with the Discos. Transmission of electricity from the Gencos to the Discos is conducted by the Transmission Company of Nigeria (**TCN**) a market participant and regulator of power transmission. TCN enters into Grid Connection Agreements (**GCAs**) with the Gencos and Transmission Agreements with the Discos.

The expectation from this contracting structure is that the Discos will sell the electricity generated to the final consumers. Consumer payments are made to the Discos who will remit these payments to NBET for the settlement of all the invoices along the value chain described above. The contracting structure relies on efficient collection and remittance of tariff payments by Discos to ensure liquidity across the sector. However, this has not been the case and illiquidity has continued to plague the power sector since privatization, with the sector being supported by Federal Government bail out funds.

The illiquidity is however fueled by a few factors at the Disco end of the value chain: a consumer tariff which are not cost-reflective, under collection of electricity bills by Discos and the aggregate technical, commercial and collection (**ATC&C**) losses, which in 2018 amounted to 52.7%. Consumer electricity tariff is set by NERC under Multi-Year Tariff Orders (**MYTO**). In 2018, the operation of a non-cost reflective tariff resulted in a tariff shortfall of NGN384 billion; only 66% of electricity billed was collected in revenue by the Discos; and ATC&C losses averaged at 52.7%. As a result, Discos have largely defaulted in their obligations to make their remittance payments to NBET. This has caused NBET in turn to default in its payment obligations to the Gencos for the power delivered and the TCN as well remains unpaid for its services. Unsettled Genco invoices, which according to the Executive Secretary of the Association of Generation Companies, Dr. Joy Ogaji have reached NGN1 trillion, has meant that Gencos are unable to satisfy their obligations under the feedstock arrangements they entered into including gas sale and gas transportation agreements.

NERC has sought to address the challenges in the sector. In 2019, NERC issued a minor review order of MYTO 2015 to all Discos. The order involved the review of the electricity tariffs chargeable by Discos for all categories of consumers except those in the residential category. The minor review aims to ensure that electricity tariff is cost-reflective and attract investments into the sector by considering key macroeconomic indices such as inflation, the exchange rate, gas price and available generation capacity. NERC has also mandated minimum remittances of the Discos to settle the invoices along the value chain.

The new tariff

The new order was scheduled to come into effect on January 1, 2020 but NERC has stated that it does not expect an immediate increase in end-user tariffs until April 1, 2020. It advised that the Federal government will continue to subsidize electricity consumption in the Interim.

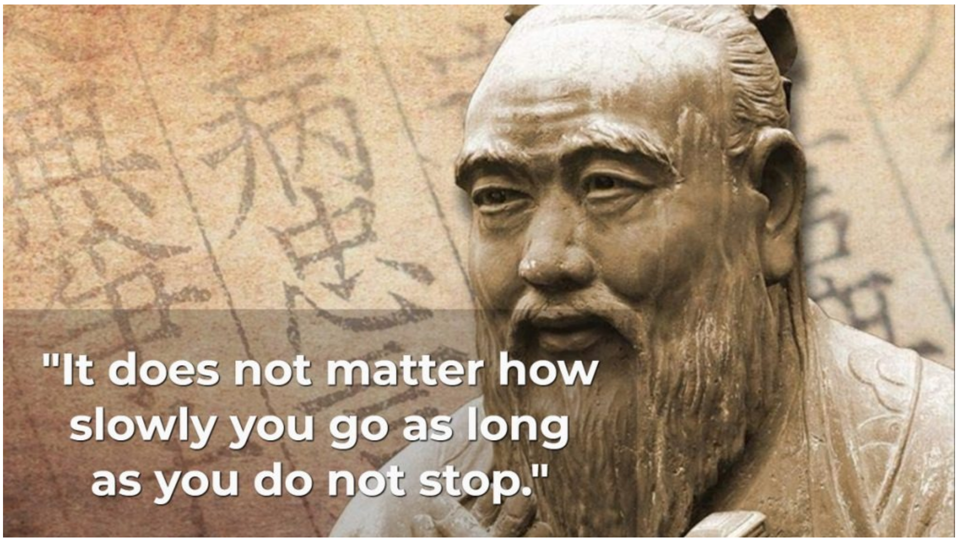
For further information on the Nigerian Electricity Supply Industry or how the new Minor Review Order affects your business, contact Brooks and Knights Legal Consultants. Are you a stakeholder in the Nigerian power sector? Brooks and Knights Legal Consultants provides bespoke legal advisory and policy advocacy services relevant to your business. Contact Us.

DO YOU KNOW?

National blackout looms as electricity workers threaten strike and have issued a 14-day ultimatum to the Federal Government.

DisCos are to repay the N35.06bn loan disbursed under the Central Bank's Nigeria Electricity Market Stabilisation Facility Programme this year.

The Edo State Government has inaugurated a compensation payment committee to take care of the compensation of 1,962 property owners on the right of way of the Azura Transmission Line ProjectThe Federal Government has been advised to create a Ministry of Maritime Resources



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