REVISITING THE NERC ORDER ON THE CAPPING OF ESTIMATED BILLS IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

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INTRODUCTION

On 20 February 2020, the Nigerian Electricity Regulation Commission (NERC) released an Order on the capping of estimated bills in the Nigerian Electricity Supply Industry (NESI) (the Order). The Order was enacted pursuant to the NERC's powers to regulate the NESI, to create, promote, and preserve efficient industry and market structures and to ensure the optimal utilization of resources for the provision of electricity services in Nigeria. In this article, we revisit and discuss important highlights of the Order.

THE ESTIMATED BILLING METHODOLOGY REGULATION, 2012

The NERC's (Methodology for Estimated Billing) Regulations 2012 (Estimated Billing Methodology Regulation) was introduced in 2012 to deter Distribution Companies (DisCos) from issuing to electricity customers arbitrary electricity bills which did not reflect their actual power consumption. The Estimated Billing Methodology Regulation classified consumers who can be issued estimated bills into three (3) basic categories:

1. Customers with faulty meters. This category belongs to those customers which have been issued meters but which are no longer functional.
2. Customers whose meters cannot be read. This category belongs to those customers whose meters cannot be read by the officials of the applicable DisCo due to inaccessibility arising from locked doors, customers who are not on the premises at the time when the officials of the DisCo come to read the meter, the presence of dogs on the premises of the customer etc.
3. Existing customers without meters. This category belongs to customers who have not been issued meters by the DisCo and who are directly connected to the DisCos' distribution network.

However, the Estimated Billing Methodology Regulation achieved little success due to inadequate level of metering and distribution transformers. Over 65% of complaints lodged at the customer centres of DisCos together with the subsequent appeals to NERC are as a result of non-provision of meters and unrealistic billing of unmetered customers. To facilitate the metering of electricity consumers, the NERC introduced the Meter Asset Provider (MAP) Regulations in 2018 with the ambitious aim of metering all customers within 3 years.

THE METER ASSET PROVIDER (MAP) REGULATIONS, 2018

The MAP Regulations introduced by the NERC in 2018, were issued principally to:

1. Encourage the development of independent and competitive meter services in the NESI;
2. Eliminate estimated billing practices in the NESI.
3. Attract private investment in the provision of metering services in the NESI.
4. Close the metering gap through accelerated meter roll out in the NESI.
5. Enhance revenue assurance in the NESI.

As at the end of the fourth quarter of 2019, the NERC had issued permits to twenty-six (26) Meter Asset Providers. However, due to a number of factors, including changes in fiscal policy, limited availability of long-term funding and several other constraints, the MAPs and the MAP Regulations were able to achieve very limited success. Metering thus, still remains a key challenge for the NESI with only two (2) DisCos having been able to meter more than 50% of their electricity customers as at the end of the fourth quarter of 2019 – Abuja and Benin DisCos. Of the 10.3 million registered electricity customers in the NESI, only 37.77% had been metered with the remaining 62.37% remaining on estimated billing at the end of the fourth quarter of 2019.

CLASSIFICATION OF ELECTRICITY CUSTOMERS

The NERC classified electricity customers of the DisCos into five (5) tariff classes:

- Residential (R): customers who use their premises solely for residential purposes.
- Commercial (C): customers who use their premises for any other purpose other than exclusively as a residence or as a factory for manufacturing goods.
- Industrial (D): customers who use their premises for manufacturing goods including welding and ironmongery.

- Special (A): customers such as agriculture and agro-allied industries, water boards, religious houses, government and teaching hospitals, government research institutes and educational establishments.
- Street lighting (S): street lights fall into this category.

The above classes are further divided into subclasses: lifeline customers who consume less than 50kWh in a month, single and 3-phase, low voltage maximum demand and high voltage maximum demand. The lifeline customers who consume less than 50kWh in a month subclass is exclusive to the residential tariff class. In 2016, the NERC ordered the mandatory metering of all maximum demand customers in the NESI by no later than 30 November 2016. This timeline was subsequently extended to 1 March 2017 at the instance of the DisCos. As a consequence, the NERC directed that all electricity customers within the maximum demand sub-class not metered by 1 March 2017 shall not pay any electricity bill presented by a DisCo on the basis of the estimated billing methodology. DisCos were also prohibited from disconnecting any such customers who have not been metered by 1 March 2017 on the basis of the customer's refusal to pay an invoice issued on the basis of the estimated billing.

THE ORDER ON THE CAPPING OF ESTIMATE BILLS IN THE NESI

The NERC issued the Order on the Capping of Estimated Bills in the NESI (the Order) as a response to the failure of the DisCos to meter all registered electricity customers. The objectives of the Order amongst others are to:

(a). introduce parity in the treatment of unmetered single and 3-phase residential electricity customers (R2) and single and 3-phase commercial electricity customers (C1);
(b). protect the unmetered R2 and C1 customers from arbitrary billing;
(c). put a stop to the practice of arbitrary billing of unmetered R2 and C1 customers;
(d). facilitate the metering of unmetered R2 and C1 customers; and
(e). steer the DisCos toward fast-tracking meter deployment under the MAP Regulations or any financing arrangement approved by the NERC.

Prior to capping estimated bills in the NESI, the NERC conducted public hearings and stakeholder consultations to consider methods for determining energy caps for the billing of unmetered customers. Consequently, the NERC adopted the method that imposes an energy cap on the bill of the unmetered customers within a business unit at the average vending of customers of the same tariff class within the same area. Thus, R2 and C1 electricity customers shall be invoiced for the consumption of energy within the cap set out in the Schedule to the Order. The Order capping electricity billing is only applicable to R2 and C1 electricity customers. Other customers on higher tariff classes must be metered by the DisCos on or before 30 April 2020. Customers on higher tariff classes who are not metered on or before 30 April 2020 shall not be liable to pay any estimated billing issued by the DisCos. R1 consumers who consume no more than 50kWh per month shall continue to be billed at NGN4/kWhr and a maximum of NGN200 per month.

LIMITATIONS OF THE ORDER

1. The Order does not penalise the DisCo for situations when the customer is overcharged. This makes the Order at best a regulation with only a persuasive effect.
2. Where a DisCo gives a customer an estimated bill that is far above the cap stipulated in the Schedule to the Order, the process for seeking redress is also not stated in the Order.
3. The Order does not indicate whether the customer who has been arbitrarily charged has the option of refusing to pay the estimated bill, an option similar to that applicable to maximum demand customers.

CONCLUSION

The Order is a credible move by the NERC to limit the regime of impunity arising from the issuing of arbitrary estimated bills to electricity customers by DisCos. However, the Order is not without its limitations which could amount to exploitable loopholes by the DisCos and in essence, limit the success of the Order. An amendment to the Order reflecting the considerations in this article will be a step in the right direction toward fostering the success of the Order.

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