Thought Leadership *Perspectives*

February 2021

Electric Power Generation, Distribution And Pegging: Is The New NERC Order On The Capping Of Estimated Bills A Solution?

Blessing Agoruah

INTRODUCTION

Globally, the generation and transmission of electricity has continued to grow rapidly, albeit not keeping pace with population growth in emerging and 3rd World economies. There is no gainsaying that the socio-economic, technological and industrial development of any nation, Nigeria inclusive, is largely dependent on electricity. Nigeria's continuing poor performance in this clearly catalytic sector underpins an indispensable need for speed, discipline and optimality of regulatory actions (all exemplifying *'transaction savviness'*) in our sector reform journey.

Sector growth has been largely stunted *vis a vis* optimism that attended the onset of comprehensive sector reform efforts in the late early 2000s, because of failure to properly implement the enacted/nascent institutional framework resulting therefrom.[1]

Undoubtedly, the electricity demand in Nigeria far outweighs the supply,[2] and the reality is that our electric power networks face significant challenges in generation, transmission and distribution to meet demand, with unpredictable daily and seasonal variations. The supply gap is actually a huge disservice to Nigeria's endowments of rich energy resources, speaking sub-optimality of the human management of other factors of generaion in the sector. As Africa's largest and most populous economy, Nigeria is home to approximately 10% of the 'un-electrified' population of sub-Saharan Africa.[3]

The appalling electricity situation is typified by over 81% of the populace (about 160 million people) generating their own electricity, using alternative off grid energy sources, to compensate for irregular or nil power supply.[4] More worrisome is the fact that the epileptic supply of power is accompanied by arbitrary, outrageous bills.[5]

As noted, we do not seem to be deriving much of the envisaged benefits from the liberalisation meant to 'liberate' the sector from gross underperformance; part of this is because we have also made much strides as envisaged, in terms of public sector divestment and private sector investment. With the Nigerian Electricity Regulatory Commission (NERC) as the regulator, privatisation has only changed the dimensions and posture of the challenges and power supply remains inadequate and unaffordable in the country.

The now privatised Electricity Distribution Companies (DisCos) are notorious for their 'estimated billing' system, which consumers considers largely unfair,[6] and widespread complaints against estimated billing has still not resulted in total eradication of same, *via* universality of installed prepaid meters as at date.

This article discusses the implications of the ***Order on Capping of Estimated Bills in the Nigerian Electricity Supply Industry (NESI) 2020 (the Order)***,[7] as a solution to the perennial problems bedevilling NESI, in the context of NESI's current regulatory and commercial realities.

Background to the Order

NERC was established by ***section 31 Electric Power Sector Reform Act (EPSRA) 2005***,[8] as the sector regulator to champion power sector reform, and NERC has been performing regulatory functions in that regard. ***The Order*** was made pursuant to NERC's powers under ***sections 32** and **96 EPSRA***. Whilst ***section 96 EPSRA***, empowers NERC to issue regulations and guidelines to address the issues of tariffs, meter distribution and downstream revenue assurance between DisCos and their customers, ***section 32 EPSRA*** establishes the objects and functions of NERC.

---

[1] For some discussion, see Helen O. Onyi-Ogelle, ***'The Implications of Legal Reform in the Nigeria Power Sector'***, *African Research Review, (2016) Vol. 10(3), No.42, 279-289:* http://dx.doi.org/10.4314/afrrev.v10i3.18 (accessed 01.01.2021).

[2] See also ***'Roadmap for Power Sector Reform'***, *at p.66* which in stating *"the projected generating capacity of grid-connected power plants between Dec 2010 and Dec 2013"* set 2011 as the year Nigeria will generate 10,000 MW. Unfortunately as at 2020, Nigeria has not reached the said 10,000 MW target. Currently, Nigeria generates about 3,500 to 4,000 MW which is insufficient with its *circa* 200 million population. Meanwhile, according to the NERC's website, *'By implementing reforms, Nigeria targets 40,000MW generating capacity by 2020 and will need to spend approximately $10bn per annum on the power sector for the next 10 years to achieve this."* See NERC, ***'Generation: Power Generation in Nigeria'***: https://nerc.gov.ng/index.php/home/nesi/403-generation (accessed 27.02.2021). The statement appears to be a direct reproduction from the FG's ***'Roadmap for Power Sector Reform'***, *August 2010 (Executive Summary at p.4):* https://www.proshareng.com/admin/upload/report/Roadmap%20for%20Power%20Sector%20Reform%20Full%20Version.pdf (accessed 27.02.2021). See also generally, Sunday O. Oyedepo *et al*, ***'Towards a Sustainable Electricity Supply in Nigeria: The Role of Decentralized Renewable Energy System',*** *European Journal of Sustainable Development Research, 2018, 2(4), 40:* https://doi.org/10.20897/ejosdr/3908 (accessed 01.01.2021).

[3] María Yetano Roche *et al*, ***'Achieving Sustainable Development Goals in Nigeria's Power Sector: Assessment of Transition Pathways'***. *Climate Policy, 17.09.2019, 20:7, pp.846-865, 2019:* https://doi.org/10.1080/14693062.2019.1661818 (accessed 01.01.2021).

[4] ***Ibid.***

[5] Kehinde Olatunji, ***'Consumers Lament Outrageous Electricity Billing Despite Benchmark',*** *The Guardian, 07.07.2020:* https://guardian.ng/business-services/consumers-lament-outrageos-electricity-billing-despite-benchmark/ (accessed 01.01.2021).

[6] Estimated billing mostly results in unmetered customers being slammed with outrageous bills for unused electricity, and failure to pay results in unfair disconnection and blackout for consumers.

[7] NERC, ***'Orders, Directives and Decisions':*** https://nerc.gov.ng/index.php/home/consumers/how-much-do-i-pay-for-electricity (accessed 01.01.2021).

[8] ***Cap. E7,* Laws of the Federation of Nigeria (LFN), *2004.***

Relevant Predecessor NERC Regulatory Interventions

In order to fully set the context to the ***Order***, below are some of its relevant predecessor NERC regulatory interventions:

- The ***Meter Reading, Billing, Cash Collection and Credit Management for Electricity Supplies Regulations 2007***,[9] required DisCos to bill customers on the actual reading of meters on the customer's premises and base an unmetered customer's bill on estimated energy consumption in accordance with a method approved by NERC.

- Subsequently, the ***Methodology for Estimated Billing Regulation, 2012***[10] (the ***Methodology***) was introduced as a means of ensuring that customers were not issued arbitrary bills that were unrelated to actual consumption. The ***Methodology*** made provisions for categories of customers to be issued estimated bills.[11] Unfortunately, the successful implementation of the Regulation was hindered by the inadequate level of metering of feeders and distribution transformer which forms the source data for effective application of the estimated methodology transformers.[12]

- NERC's ***Credit Advance Payment for Metering Implementation (CAPMI) Scheme Order, 2013***,[13] was introduced to allow customers pay for meters and get refunded through a deduction of amount paid from electric bills. Notwithstanding, the metering gap continued to increase due to the non-cost reflective tariff which hindered DisCos from fulfilling their metering obligations.

- The Commission progressed by issuing the ***Meter Asset Provider (MAP) Regulations 2018***.[14] The ***MAP Regulations*** was issued to fast-track the closure of the metering gap in NESI through the engagement of third party investors (MAPs) for a financing, procurement, supply, installation and maintenance of meters with a target of metering all customers within three (3) years and to address the severe revenue shortfall of power DisCos (arising mainly from the Aggregate Technical, Commercial and Collection (ATC&C) losses of the DisCos) and the public outcry about the overcharging of end users for electricity under the estimated billing system. However, some constraints led to a limited success in NERC's target of installing meters for all customer through the ***MAP Regulation***.

X-raying the Order

The Order[15] repealed the ***NERC (Methodology for Estimated Billing) Regulations 2012***, and took effect from 20th February 2020. The major objectives of the ***Order*** are to introduce uniformity in the treatment of unmetered electricity customers, protect customers from arbitrary billing, expedite the metering of unmetered customers possibly, through the *Meter Asset Provider (MAP) Scheme*, and improve customer satisfaction.

The ***Order*** specifically focuses on the **R2** (Residential-single and three-phase meters

who consume more than 50 kilowatt/hour per month) and ***C1*** (Commercial-single and three-phase meters, small businesses) electricity customers,[16] who shall not be charged for the consumption of energy beyond the tariff capped in the schedule.[17] Any customer whose present estimated bill is below the capped price shall remain so until the installation of a meter by DisCos. Also, any customer who rejects installation of a meter would be disconnected until one is installed.[18]

Consequent on the above, it is discernible that the activities of NERC in terms of providing standards and regulation for the electricity industry appear to be heading in the right direction. However, this effort is yet to translate into adequate power generation and distribution as expected by Nigerians.

Benefits: Pros of the Order

- The ***Order*** puts a cap on the amount customers without pre-paid meters can be billed, pending when they will be provided with meters.[19] This would incentivize DisCos to provide meters as quickly as possible, because the cap means that some customers will pay less than the power they consume, representing lost revenues to Discos.

- Disputes arising from excessive billing for inadequate power supply will reduce, thereby, saving DisCos and

[9]NERC, ***'Orders, Directives and Decisions':*** https://nerc.gov.ng/index.php/component/remository/func-download/34/chk,49c8853b2330090fda5c90554e4f0307/no_html,1/?Itemid=591 (accessed 12.02.2021).
[10]NERC, ***'Orders, Directives and Decisions':*** https://nerc.gov.ng/index.php/component/remository/func-download/104/chk,5f10db39f78703f3cacbf99170471911/no_html,1/?Itemid=591 (accessed 12.02.2021).
Section 3, Estimated Billing Regulations 2012.
[12]Adetola Sademosi ***'NERC Halts Estimated Billing Methodology As Over Five Million Consumers Remain Unmetered',*** *Nigerian Tribune, 26.02.2020:* https://tribuneonlineng.com/nerc-halts-estimated-billing-methodology/amp/ (accessed 12.02.2021).
[13]NERC, ***'Orders, Directives and Decisions':*** https://nerc.gov.ng/index.php/media-library/public-notices/533-notice-onoutstanding-meter-installations-under-capmi (accessed 12.02.2021).
[14]NERC, ***'Orders, Directives and Decisions':*** https://nerc.gov.ng/index.php/library/documents/func-download/608/chk,610cf4dc6646783772af175d2c91ae44/no_html,1/ (accessed 12.02.2021).
[15]***Order No/NERC/197/2020 of 20th February, 2020.***
[16]***Section 15, the Order.***
[17]***Ibid. Section 16,*** provides methods which would be used to arrive at an amount DisCos would charge *R2* and *C1* unmetered customers.
[18]***Ibid. Section 18(H).***
[19]***Ibid. Section 18;*** Discos are not to bill *R2* and *C1* customers beyond the price capped in ***Schedule 1*** of the ***Order***.

customers unnecessary stress, distractions and waste of resources.

- It would fast-track the DisCos metering of unmetered customers, especially, the R2 and C1[20] customers and customers whose meters are faulty or were disconnected from electricity supply because of their inability to pay outrageous estimated bills. If that is achieved, customers would have power supply for their vital and varied needs, and DisCos will have basis to collect electricity bills from them.

- Many customers on outrageous estimated bills are torn between making a report to NERC, laying complaints to the DisCos or risk being disconnected. The implementation of the ***Order*** will reduce the number of these complaints.

Nuances and Gaps: Cons of the Order

As laudable as the provisions of this ***Order*** could be, there are also some downsides as discussed below.

- The ***Order*** is bereft of penalty provision to deter DisCos from going beyond the prescribed cap. Unsurprisingly, some months after the ***Order*** came into force, estimated bills have continued to be above and beyond the cap prescribed.[21] Consequently, DisCos effectively see the Order as a mere advisory that they could accept by way of compliance or reject (by disregarding same).[22] It is rudimentary that a law that prohibits an action ought to prescribe proper penalty, or sufficient deterrence to enforce disobedience.[23]

The ***Order*** appears to be 'anti-DisCo' from cost- revenue recovery viewpoint, as the unmetered customer's tariff are capped at the expense of the DisCos. Considering the macro-economic challenges of doing business in Nigeria and the responsibilities of the DisCos *vis a vis* the background of investors' acquisition of the DisCos, maybe the 'subsidised cost' of ensuring that customers are not over charged and that the cost of providing prepaid meters should be shared between the Government, DisCos and the customers. However, DisCos complained that the cap on the estimated billing would lead to increase in revenue losses to their businesses and would discourage customers from acquiring meters. Following the complaints, some DisCos made representation to NERC to review the cap on the bills of unmetered customers.

NERC has eventually issued an ***Amended Order on the Capping of Estimated Bills in NESI 2020,***[24] which became effective on 1st November 2020.[25]

Conclusion

The necessity of a good electric energy sector in ensuring and enhancing sustainable economic growth cannot be overemphasized. The high cost and epileptic nature of electricity in Nigeria is indeed limiting the country's economic growth. ***The Order*** is consequently a welcome development but will be best implemented after the metering of unmetered customers.[26]

Constrains like insufficient funding, changes in fiscal policy, inflation, amongst others, have posed as a challenge in metering electricity consumers. However, DisCos should ensure the fast tracking of meter installation through the best possibly means approved by NERC.[27] This is the first step to ensure proper customers access to electricity and fair play in NESI.[28]

[20]R2 customers are part of the *"Residential Customer Class"*, who use the grid connected premises exclusively for residential purposes. These customers are entitled to an energy cap of 78KWhr per month. *C1* customers are part of the *"Commercial Customer Class"*, who use the grid connection premises for any purpose other than exclusively as a residence or as a factory for manufacturing goods.

[21]Emmanuel Addeh, ***'NERC Reviews Discos' Responses to Queries on Estimated Billings',*** *This Day, 08.07.2020:* https://www.thisdaylive.com/index.php/2020/07/08/nerc-reviews-discos-responses-to-queries-on-estimated-billings/amp/ (accessed 11.01.2021).

[22]Seyi John Salau, ***'Estimated Billing: Nigerians in Tale of Woes',*** *Business Day, 14.06.2020*: https://businessday.ng/features/article/estimated-billing-nigerians-in-tale-of-woes/amp/ (accessed 12.02. 2021).

[23]***Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)***, states that a person shall not be punished for an offence unless there is a written law, a defined offence in the written law and a penalty prescribed in the written law. This legal provision means that punishment for an offence should be stated in clear and precise terms in a written law that prohibits an action or omission, it is necessary to do so in order to enforce the law and to ensure the law binds persons who violates it. See also: ***Abidoye v. Federal Republic of Nigeria (2013) LPELR-21899 (SC).***

[24]***Order N0/NERC/220/2020 of 1st November, 2020.***

[25]The amended ***Order*** would help in revenue recovery especially for DisCos who operate efficiently, it would also bring uniformity between unmetered customers and those that have been metered but whose tariff have been increased as a result of NERC's ***Multiyear Tariff Order (MYTO) 2020****,* which took effect on 1st September 2020 and would be in force until a new tariff review Order is issued by NERC. The amended Order was issued to: Eko, Ikeja, Ibadan, Port-Harcourt, Kaduna, Kano and Yola Electricity DisCos.

[26]New deadline for DisCos to meter unmetered customers is 31st December 2021.

[27]Femi Asu, ***'Electricity Consumers get 611,231 Meters under Map Scheme',*** *Punch, 26.02.2021:* https://punchng.com/electricity-consumers-get-611231-meters-under-map-scheme/?amp=1 (accessed 12.02. 2021).

[28]Electric power metering and billing of customers have been a challenge in Nigeria, even before the privatisation of the power sector. NESI can be efficient if electricity bills are issued based on actual consumption which can only be properly achieved through meters. The writer suggests that unmetered customers who can afford to acquire meters should do so and have it installed by DisCos, while the FG and DisCos continue to work towards providing and installing meters to other unmetered customers.