

LAGOS STATE ELECTRIC POWER SECTOR REFORM LAW 2018:

A CATALYST FOR INVESTMENT
IN EMBEDDED POWER

INTRODUCTION:

On Thursday, February 8, 2018, the Executive Governor of Lagos State, Akinwunmi Ambode signed the Lagos State Electric Power Sector Reform bill into law (the “Law”). The Law establishes an Embedded Power Scheme (the “Scheme”) in Lagos State (the “State”) by creating an enabling environment for Embedded Power investment in the State. The Scheme aims at delivering an estimated **3,000 MW** to homes and industries through accelerated development of various embedded power plants in strategic locations across the State. This note highlights salient provisions of the Law with regards to the Scheme and how the Law seeks to encourage investment in Embedded Power.

The Lagos State Embedded Power Commission:

The Law establishes the Lagos State Embedded Power Commission (the “Commission”), which shall liaise with all participants in the power value chain with regards to the development of power generation and distribution. The Commission is established to be an investment facilitator as it is saddled with the following functions amongst others:

1. Facilitation of the acquisition of land, right of way and other land related matters associated with or in connection to the Scheme;
2. Facilitating the identification and designation of areas of Lagos for deployment of power generated by the Embedded Power Providers;
3. Collaboration with the Embedded Power Providers for the implementation of the Scheme;
4. Initiate the incorporation of other entities for the purpose of implementing the Scheme;
5. Appoint licensed entities to procure aggregate feedstock for utilization under the Scheme;
6. Collaborate with Distribution Companies to pre-qualify Embedded Power Providers under the Scheme;
7. Provide assistance where necessary to Discos for proper customer/end user enumeration and classification to ensure that a cost reflective tariff regime can be sustained;
8. Facilitation of regular engagements with NERC to procure the approval of cost-reflective tariffs which adequately reflects exchange rates, inflation, interest rate and feedstock prices;

It is interesting to note that the Commission plans on making provisions for the proper cross subsidization of the tariffs for low income end users; It is yet to be seen how this would work.

Ministry of Energy to provide Guarantees and Indemnities:

To stimulate investment in the Scheme, the Lagos State Ministry of Energy & Mineral Resources is empowered to provide Guarantees and Indemnities to the Embedded Power Providers and Feedstock Suppliers. Such Guarantees and Indemnities shall be issued through the Lagos State Ministry of Finance and the Debt Management Office subject to the approval of the Governor.

While the law does not stipulate the type of Guarantee to be provided (i.e. whether total or partial), it is expected that the Lagos Ministry of Finance would release guidelines and requirements for the provision of Guarantees

and Indemnities which would contain the type of guarantee to be provided. Also, since the World Bank Group's partial risk guarantee has established a precedent, there is the likelihood that the guarantee terms may follow the pattern of the World Bank Group.

No doubt, the introduction of Guarantees and Indemnities into the Law would encourage investment in the Scheme as both Gencos and their feedstock suppliers are assured of payment for power provided to Discos and feedstock suppliers are assured of payment for power provided to discos and feedstock provided to Gencos respectively.

Rural Electrification

Considering that access to power in rural areas is almost non-existent, the Law in recognizing this, provides that the Commission shall maintain a deliberate policy to foster/promote modalities for rural electrification projects within the State. It is expected that the Lagos State Governor shall through an Executive Order designate certain places within the State as rural areas.

Lagos State Electricity Board

The Law establishes the Lagos State Electricity Board (the “Board”) which has the following core functions amongst others:

- a. Establishment of electric power stations in areas not covered by the Scheme;
- b. Generate, transmit and distribute electricity to areas not covered by the national grid system within the State;
- c. Establish, control, manage, extend and develop such new electrical network and to extend and develop such existing ones as the Board may consider necessary for providing electricity supply to meet the requirement of the general public, agriculture, trade and

industry in all parts of the State;
The tariff for electricity generated under (a) above shall be determined by the Board in Collaboration with NERC. It is expected that all existing installations, liabilities and obligations which belong to the state before the enactment of the Law shall be transferred to the Board.

Offences and Penalties under the Law

The Law makes copious provisions for offences and penalties with prescribed sanctions to include fines and imprisonment. Offences under the Law include

- (i) theft of electricity
- (ii) theft of electricity lines (including transmission lines) and materials
- (iii) damage to electricity infrastructure
- (iv) damage to electricity lines
- (v) harassment or injury to persons lawfully carrying out their duties
- (vi) impersonation or illegal parading as employee of licensee etc.

Conclusion:

While there remains the practical issue of the cost benefit analysis of switching from current power solutions by large power consumers to Embedded Power, we believe the Law would stimulate the much-needed investment into Embedded Power however, this would be subject to proper implementation of the Law by the Lagos State Government.



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