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THE LAGOS STATE ELECTRICITY BILL 2024: CATALYSING THE GROWTH OF THE ELECTRICITY SECTOR IN NIGERIA.

Introduction

The Lagos State House of Assembly recently held a public hearing on the proposed Lagos State Electricity Bill 2024¹ (the “**Bill**”). The Bill which seeks to replace the Lagos State Power Sector Reform Law 2018, is in furtherance of the Electricity Act 2023 (the “**Act**”) signed into law by President Bola Ahmed Tinubu on 8th June, 2023.² The Bill aims to enhance electricity supply in Lagos State by establishing an independent electricity market, that is largely independent of the national grid.³ Once passed into law, the Bill will ultimately facilitate the delegation of regulatory powers from the Nigerian Electricity Regulatory Commission (“**NERC**”) to the State electricity agency thus allowing Lagos State to, regulate, generate, transmit and distribute power for consumers within the State⁴. This move is designed to structure a self-sufficient local electricity market within Lagos State, provide reliable electricity to underserved areas in Lagos State, and attract investment.

This briefing note examines the key provisions of the proposed Bill while identifying its impact and prospects for the State’s electricity market.

¹ <https://punchng.com/lagos-plans-new-electricity-law/>

² Pursuant to the 1999 Constitution of the Federal Republic of Nigeria (Fifth Alteration Act) (Devolution of Powers- National Grid System) 2023 and Sections 2(2), 63(2) & 230(2) of the Electricity Act 2023, States through their respective Houses of Assembly are now empowered to enact State Laws which will create independent electricity markets within the States, and establish State regulators who would be responsible for the State’s power generation, transmission, distribution, supply and trading, inclusive of areas covered by the national grid.

³ As of the 25th of September 2024, the following States have established independent electricity markets with the approval of the NERC: Enugu, Ondo, Edo, Plateau, Imo, Ekiti, Oyo, and Kogi.

⁴ It is necessary to highlight that pursuant to Section 63(7) (b) of the Electricity Act, where the electricity generation, transmission or distribution within the State relies on any part of the national grid for its operations, the NERC will retain regulatory powers over the electricity market within the State.

An Overview of Key Provisions of the Proposed Bill

A. Establishment of the Lagos State Electricity Regulatory Commission and Lagos State Electrification Agency:

While it is within the purview of NERC to offer regulatory leadership to the Nigerian electricity supply industry,⁵ the Bill seeks to establish the Lagos State Electricity Regulatory Commission (the **“Commission”**) to superintend over the legal, commercial and administrative framework of the Lagos State electricity market. The functions and powers of the Commission in the proposed Bill includes the grant, renewal, modification, withdrawal, suspension, cancellation, termination or revocation of licenses & permits for generation, transmission and distribution of power.⁶ Others include setting/adjustment of tariff methodologies, establishment and enforcement of regulations, operating codes and safety, security, reliability and quality standards for the Lagos electricity market, monitoring all significant matters relating to the performance of all licensees and other market participants and the publication of a report titled **“The Lagos Electricity Market Report”** no later than 30th April of each financial year, amongst other functions/powers bestowed on the Commission by the Bill.

The Bill also proposes the establishment of the Lagos State Electrification Agency (the **“Agency”**) which shall replace the Lagos State Electricity Board and shall be under the supervision of the Lagos State Ministry of Energy and Mineral Resources (the **“Ministry”**). The Agency has amongst other functions, the mandate to promote the deployment of environmentally friendly and climate-efficient electricity solutions in the underserved and unserved areas in Lagos State. Some other functions of the Agency include executing and implementing the Off-Grid Electrification Strategy and Action Plan (the **“Off-Grid Plan”**), management of the electrification fund, management of public lighting or power points in any public place, etc. It is expected that with the operationalization of the Agency, the underserved and unserved areas in Lagos State will have access to reliable power supply.

B. Lagos State Electrification Fund:

The Bill also seeks to establish the Lagos State Electrification Fund (the **“Electrification Fund”**). This Electrification Fund is to be managed by the Agency for the development of the State grid, execution of the Off-Grid Plan, amongst others. The Electrification Fund is made up of allocated funds from the Government's annual budget, a [determined] percentage approved by the Governor of Lagos State of any excess of the Commission's revenue of any year over the approved expenditure for that year; fines and penalties collected by the Commission in enforcing any provisions of the Bill, any electricity levy

⁵ Section 33(2) of the Electricity Act 2023.

⁶ See section 19 (1) & (2) of the Lagos State Electricity Bill 2024.

introduced by the Commission pursuant to the Bill; earnings, interest accruing from investments, donations, contributions, gifts, loans, grants, etc.

The Agency through its Board shall at the beginning of every financial year but no later than February, prepare an annual plan setting out the proposed activities and projects with their financial estimates which will be funded with the Electrification Fund for approval by the Lagos State Commissioner in-charge of Energy.⁷ The Board of the Agency in consultation with the Commissioner in-charge of Energy and other stakeholders are required to develop guidelines for the management and utilization of proceeds from the Electrification Fund.⁸

C. The Lagos Integrated Electricity Policy and Strategic Implementation Plan:

The Bill introduces an Integrated Electricity Policy and Strategic Implementation Plan⁹ (the “Plan”) to guide the development of Lagos State’s electricity market. The Plan outlines the State’s vision for a reliable, affordable, and sustainable power for its consumers/populace. The Plan seeks to implement some laudable initiatives which include: (i) the optimal utilization of power generation resources¹⁰; (ii) the priority given to in-State resources¹¹; and (iii) the promotion of renewable energy alternatives. The Plan will also address supply and demand management, exploring innovative solutions to meet projected electricity needs. Public-private partnerships will be encouraged to ensure the security and reliability of power supply. Additionally, the Plan emphasizes on decarbonization efforts to create a sustainable electricity market. The Ministry responsible for Energy will oversee the implementation and monitoring of the Plan. By developing a robust electricity policy, Lagos State seeks to establish a well-structured and efficient electricity market that meets the growing energy demands of its residents and businesses. The Plan will serve as a roadmap for achieving the State’s energy goals and contributing to Nigeria’s overall power sector development.

D. OFF-GRID ELECTRIFICATION STRATEGY AND ACTION PLAN:

The Lagos State government through the proposed Bill aims to provide electricity to all residents through the Off-Grid Plan¹². This Off-Grid Plan involves identifying unserved and underserved areas, developing strategies to promote off-grid solutions, and creating enabling environment for private sector investments. The Lagos State government will also provide incentives, education, and capacity building programs to support the growth of

⁷ See Section 115 (1) of the Lagos State Electricity Bill 2024.

⁸ See Section 115 (3) of the Bill.

⁹ See section 39 of the Bill.

¹⁰ Such as fossil fuels, renewable sources, etc.

¹¹ Prioritizing the utilization of resources within the State while also considering and incorporating out-of-State and national grid-based resources as needed for optimal efficiency and reliability.

¹² See Section 95 of the Bill.

the off-grid sector. A comprehensive Off-Grid Plan will be developed outlining short, medium, and long-term targets for off-grid solutions. This Off-Grid Plan will be reviewed every three years to ensure its effectiveness. The government will also make regulations for off-grid solutions & e-waste management and implement strategies to promote gender & social inclusion in the electrification process. The Off-Grid Plan will include a comprehensive monitoring and evaluation framework to track progress, measure the impact of the Off-Grid Plan's implementation, and conduct annual reviews, audits, and reporting on relevant measures introduced by the State. The Lagos State Commissioner in-charge of Energy will have the authority to issue directives to the implementing agency to ensure the successful execution of the Off-Grid Plan.



E. RENEWABLE ENERGY, ENERGY EFFICIENCY AND DEMAND-SIDE MANAGEMENT (DSM) STRATEGY AND ACTION PLAN:

In alignment with Nigeria's 2060 Net Zero target¹³, Lagos State is spearheading a transition to clean and sustainable energy sources through the proposed Bill which aims to accelerate this shift by promoting renewable energy, energy efficiency, and demand-side management ("DCM")¹⁴. The Bill encourages private sector involvement by creating

¹³ The 2060 Net Zero target is Nigeria's commitment to achieve net-zero carbon emissions by 2060. This commitment was announced by the Federal Government of Nigeria at the United Nations Climate Change conference held in Glasgow from 31st October to 13th November 2021. It equally aligns with Nigeria's Climate Change Act of 2021 and the Energy Transition Plan released in August 2022 both of which seek to provide a framework for attaining the 2060 Net Zero target.

¹⁴ See Section 91 of the Bill.

a favourable investment climate. It also streamlines administrative processes, guarantees grid access for renewable energy, and introduces incentives to boost energy efficiency. To ensure a clean energy market, the Bill establishes emissions standards, levies on polluting power plants, and a robust monitoring system. Revenues from these levies will fund electrification projects. The Ministry in consultation with relevant stakeholders within eighteen (18) months of the commencement of the Bill is expected to develop a Renewable Energy, Energy Efficiency and DSM Strategy and Action Plan for the State, which will be a roadmap to a cleaner energy utilization in the State. By implementing this legislation, Lagos State positions itself as a leader in sustainable energy, contributing significantly to Nigeria's overall energy transition and improving the lives of its citizens.

F. LAGOS INDEPENDENT SYSTEM OPERATOR:

Mirroring the national power sector's unbundling¹⁵, Lagos State through the proposed Bill will establish an Independent System Operator (the **"Lagos ISO"**) to enhance grid reliability and market efficiency. The Lagos ISO, to be operational within eighteen (18) months of the Bill's enactment, will assume responsibility for system operations, including generation scheduling, transmission management, and market administration. As a not-for-profit entity, the Lagos ISO will operate independently of market participants, ensuring impartiality. It will develop and implement market rules, subject to regulatory approval, to foster fair competition among market players. By separating system operations from market activities, Lagos State aims to improve power supply reliability, stimulate competition, and attract investments in the State's electricity sector.

G. POWER ENFORCEMENT UNIT:

Pursuant to its Sections 122 – 124, the Bill seeks to introduce a specialised unit known as the Power Enforcement Unit (**"PEU"** or the **"Unit"**). The Unit is a forward-thinking initiative that addresses the critical issue of electricity theft and infrastructure damage, which is one of the challenges bedevilling the electricity industry in Nigeria. By granting the PEU the powers of arrest and, in conjunction with the Lagos State Ministry of Justice, the power to prosecute offenders, the Bill takes a significant step towards addressing electricity theft. The Bill provides that the PEU will be chaired by a serving Magistrate, ensuring judicial oversight and legal guidance with other members of the PEU drawn from the Ministry, the Lagos State Ministry of Justice and law enforcement agencies in Lagos state.

This approach is commendable as stakeholders have long advocated for stricter measures and specialised courts to combat electricity theft. While the PEU represents a positive development, its effectiveness will depend on adequate resources, training, and

¹⁵ For a detailed analysis of the unbundling of the power sector, please see our article on NERC's establishment of an ISO- <https://ao2law.com/charting-the-future-of-nigerias-electricity-sector-evaluating-the-implications-of-nercs-order-on-the-establishment-of-an-iso-for-the-nesi/>

cooperation between the Unit, the judiciary, and other relevant stakeholders. The Unit's role in public sensitization and the protection of whistleblowers as envisaged in Section 123 (c & d) of the Bill, encourages community involvement while the requirement to publish an annual list of prosecuted offenders adds a layer of transparency and accountability, likely aimed at deterring potential offenders.

Be that as it may, it is crucial to establish clear guidelines and procedures for the PEU's operations to safeguard against potential abuses of power. Regular monitoring and evaluation of the Unit's performance will be essential to ensure its effectiveness and accountability.



H. Host Communities Development Trust Fund:

A very prominent provision of the Bill is the establishment of the Host Community Trust Fund (the **"Trust Fund"**), which is to be used for the development of host communities of the Power Generating Companies (**"GENCOs"**). The Bill in Section 136 stated that two percent (2%) of the annual operating expenditure for the preceding financial year shall be set aside by GENCOs licensed by the Commission for the development of the host communities where they operate. The Bill defined host communities as communities situate or appurtenant to the area of operation of GENCOs which arguably exempts transmission and distribution companies from such obligations. Importantly, the provision of the Bill as it relates to the percentage of financial contribution to be made by GENCOs operating in Lagos State into the Trust Fund is distinct from that provided in the Electricity Act

(Amendment) 2024 (the “Amendment Act”)¹⁶. The Amendment Act provides that GENCOs are to set aside five percent (5%) of their annual operating expenditure for the preceding financial for the development of their host communities. It is necessary to point out that with the proposition of an additional two percent (2%) under the Bill, GENCOs seeking to operate within Lagos State while also operating in other States of the Federation may then be subjected to a cumulative host community trust fund obligation of about seven percent (7%) of their annual operating expenditure.

Conclusion

This Bill sets the stage for Lagos State to transform its power sector significantly. By introducing an independent electricity market, Lagos State aims to boost its economic potential, enhance power reliability, and attract substantial investments. The Bill's emphasis on renewable energy, energy efficiency, and off-grid solutions aligns with global sustainability objectives, showing a dedication to a cleaner energy future. The establishment of the Agency and the Electrification Fund demonstrates a proactive stance in addressing the challenges faced by underserved communities, potentially narrowing the electricity gap and improving residents' quality of life in these areas. The creation of a specialized Power Enforcement Unit is a vital measure in combating electricity theft, a persistent issue hindering the industry's growth. Overall, the Bill provides a promising framework for developing a resilient, efficient, and sustainable power sector. Its successful execution could serve as a blueprint for other Nigerian States and contribute to the country's broader energy transition.

For further information on the foregoing or related matters, please generally contact us at info@ao2law.com, or specifically contact the key contacts.

¹⁶ The Electricity Act (Amendment) 2024 was enacted on 9th February 2024 to address developmental issues raised by various host communities. Essentially, it imposes corporate social responsibilities on power generating companies.