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NAVIGATING THE FUTURE OF POWER REGULATION IN LAGOS: A DEEP DIVE INTO THE LAGOS STATE ELECTRICITY LAW, 2024 AND ITS POTENTIAL IMPACT ON THE ELECTRICITY MARKET.

1. Introduction:

Following the enactment of the Electricity Act 2023 (“EA”)¹, which provides a framework for the decentralization of regulation within the power sector², several States, including Enugu, Ekiti, Ondo, Imo, Oyo, Edo, Kogi and more recently, Lagos, have enacted their own electricity laws, established regulatory bodies, and fulfilled the notification requirements under Section 230(2) of the EA, thereby facilitating the transition to State-level regulation.

Lagos State (the “State”), traditionally at the forefront of such initiatives, surprisingly delayed the establishment of its electricity market in accordance with the EA. However, it soon became clear that the State was preparing to introduce a comprehensive law for its electricity market. On December 3, 2024, the Governor of Lagos State (the “Governor”) assented to the Lagos State Electricity Bill,³ which has now become the Lagos State Electricity Law, 2024 (the “Law”).

This briefing note outlines the key provisions of the Law and examines its potential impact on and prospects for the Lagos Electricity Market (“LEM”).

2. Objectives of the Law

The objective of the Law, among others, is to establish a commercially and technically sound Lagos Electricity Market that is well-funded and financially viable; facilitate access to electricity for consumers in the State through the provision of affordable, reliable, and sustainable public

¹ Signed by the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu on 8 June 2023.

² Section 2(2) of the EA.

³ Please see our Briefing note on the Lagos State Electricity Bill 2024 published on 27 September 2024.

<https://ao2law.com/the-lagos-state-electricity-bill-2024-catalysing-the-growth-of-the-electricity-sector-in-nigeria/>

electricity; encourage investment and innovation in the Lagos Electricity Market; create a regulatory framework and licensing regime for regulated activities in the Lagos Electricity Market and the delivery of services to electricity consumers in the State; promote the adoption of diverse, secure, and environmentally sustainable energy sources, energy efficiency, and demand-side management in the State; foster competition in the Lagos Electricity Market while protecting the interests and welfare of electricity consumers; ensure the electrification of unserved and underserved areas of the State; and contribute to the sustainable development of the State.

3. The Lagos State Electricity Regulatory Commission

The Lagos State Electricity Policy 2021 identified the need for an "autonomous credible regulator" to oversee the licensing of market participants and ensure the safety and reliability of electricity within the State. In response, the Law established the Lagos State Electricity Regulatory Commission (the "**Commission**"), a corporate body that is to operate independently in performing its functions, duties, and exercising its powers as outlined under the Law and its regulations. The Commissioner may issue general policy directions to the Commission on matters related to the electricity sector in the State, in accordance with the provisions of the Law. The Commission must consider these directives when carrying out its functions, provided they are not inconsistent with this Law or the Lagos Integrated Electricity Policy and Strategic Implementation Plan (the "**Implementation Plan**").⁴

The functions of the Commission include, but are not limited to: regulating the conduct of activities in the electricity market within the State; regulating, monitoring, and supervising the operation of the LEM; licensing individuals and entities engaged in regulated activities within the LEM; preventing the misuse of market power in the LEM; establishing and enforcing appropriate operating codes, as well as safety, security, reliability, and quality standards for the LEM; collecting, maintaining, and managing electricity data, and providing such data to relevant stakeholders as required; advising the Ministry on matters related to the operation of the Law, including making recommendations for the review of policies, plans, and legislation, as appropriate or upon the Ministry's request; collaborating with relevant ministries, departments, and agencies at both the State and Federal levels to facilitate the establishment, development, and optimal functioning of the LEM; and resolving disputes or complaints, issuing directives, and applying sanctions where necessary.⁵

Furthermore, the Commission shall incentivize the behavior of licensees, electricity consumers, investors, and other market participants in the LEM to ensure the delivery of constant, reliable, and cost-efficient electricity supply to consumers in the State. While the specific incentives to be

⁴ Section 6(1) of the Law. The Implementation Plan is discussed in detail below.

⁵ Section 19 of the Law

implemented by the Commission are yet to be defined, this provision is commendable, as incentives are widely recognized as catalysts for innovation and positive market behavior.

The Commission is also empowered to hear and determine matters relating to the issuance of licenses, refusal to issue licenses, and the revocation of licenses, among other things. Upon conclusion of a hearing, any aggrieved party may appeal the Commission's decision to the Commission itself. An appeal against the decision of the Commission may be made to the High Court.⁶ One might question why an appeal against the Commission's decision at the first instance should be made to the same Commission that issued the original decision. While some may view this as an opportunity for the Commission to reconsider its decision, we believe this constitutes a waste of time, and that appeals should be directed to the High Court.

The Law encourages the Commission to engage with market stakeholders prior to issuing any regulations, rules, or guidelines. This creates an avenue for stakeholders to have their opinions and concerns duly considered. This is commendable, as market participants, including electricity consumers, increasingly seek to stay informed about the activities of the electricity market.

4. The Lagos Integrated Electricity Policy and Strategy Implementation Plan

The Law empowers the State, through the Ministry, in consultation with the Commission and relevant stakeholders, to develop and publish the first edition of the Implementation Plan, which will guide the overall development of the LEM within six (6) months of the Law's commencement. The Implementation Plan is to address matters including, but not limited to, the structure of the LEM; the development of the LEM based on the optimal utilization of power generation resources such as fossil fuels, nuclear materials, and renewable energy sources; the decarbonization of the Lagos State Market and the promotion of renewable and sustainable sources for electricity generation; and the deployment of innovative and emerging technologies.

5. Licensing Requirements under the Law

With the introduction of the EA, relevant participants in the Nigerian Electricity Supply Industry are constantly on the lookout to leverage respective State electricity laws that create a more conducive environment for doing business in Nigeria.⁷

⁶ While the Law defines Court to mean Magistrate Court or High Court of Lagos State, the law does not specifically define what High Court means. We however presume it to be the High Court of Lagos State.

⁷ Some Independent Power Producers (IPPs) have been patiently waiting for the Law in order to avoid conflicts with certain Distribution Companies (DisCos) regarding franchise areas. We note that it has been challenging for some IPPs to successfully collaborate with existing DisCos in supplying power within the State. With the introduction of the Law, such potential friction is expected to be reduced.

Activities subject to licensing include generation, transmission, distribution, trading, supply and system operation. Notably, from the commencement of the Law, entities carrying out any electricity-related undertaking in the State are granted a three-month transitional period to regularise their activities under the new regime. It is important to note that both the State and federal governments, prior to the passage of the Law, introduced several initiatives to address power solutions in the State. Recently, the Ministry published an invitation for expressions of interest to select preferred bidders for the establishment of gas-fired independent power plants for the clean Lagos electricity market. With the introduction of the Law, there is some uncertainty about the role of the Commission in this bid. However, the Law allows any person unsure whether their undertaking or activity requires a license under this Law to seek clarification and clearance from the Commission.⁸

Similar to the EA⁹, the Law exempts a licensee from obtaining a license if its activities are conducted using mechanisms with a production or carrying capacity not exceeding an aggregate of 1 MW. Unlike the EA, which requires a license for an electricity distributor with a capacity exceeding 100 kW, the Law does not make a distinction for generating and distributing electricity. Essentially, a licensee wishing to generate or distribute electricity with a capacity of less than 1 MW will not need to obtain a license. It is suggested that the term "licensee" may be used incorrectly, as it assumes that anyone engaged in the generation, transmission, distribution, trading, or supply of electricity must be a licensed entity. Despite this, the Law's departure from the EA regarding electricity distributors is commendable, as it has the potential to attract more investors into the distribution value chain.¹⁰

6. Application Process

When applying for licenses, the Commission is required to respond within three (3) months, demonstrating a commitment to efficiency and certainty. This represents a significant improvement over the six-month timeline outlined in the NERC License Regulation 2010, which has frequently been delayed due to bureaucratic obstacles. If the State adheres to this prescribed timeline, it could set a new benchmark for regulatory efficiency within the electricity market.¹¹ However, it is important to note that the Law does not include provisions for deemed approval, as seen in the Petroleum Industry Act, 2021 ("PIA")¹², and the Business Facilitation (Miscellaneous Provisions) Act 2023 ("BFA")¹³. As a result, if the Commission fails to approve or reject an

⁸ Section 49(3) of the Law.

⁹ Section 63(2) of the EA.

¹⁰ Essentially, distribution companies with distribution capacities of up to 999KW can carry out their activities without a distribution license from the Commission.

¹¹ Section 51(3) of the Law.

¹² Section 226(4) of the PIA

¹³ Section 4(1) of the BFA

application within the prescribed timeline, the course of action available to the applicant remains unclear.

7. Restrictions on Transfer

The Law prohibits licensees from acquiring or merging with another licensee's utility, or transferring, assigning, or disposing of their utility or any part thereof, without prior approval from the Commission. This includes transactions such as sales, leases, takeovers, or exchanges.¹⁴ The Law further provides that a licensee cannot transfer, assign, or dispose of its licence or any part of its operations without prior written approval from the Commission. Any unauthorised transfer or assignment is void. However, the Commission may approve commercial arrangements like franchising between licensees and third parties to improve operational efficiency, provided they align with the Implementation Plan or other relevant government policies.¹⁵ The added regulatory step may lead to delays in transactions, higher administrative costs, and uncertainty regarding the likelihood of approval. To address these concerns and maintain investor confidence, it is crucial to establish clear, efficient, and time-bound approval processes. This need for timely approvals is particularly important in light of past delays in the energy sector, where ministerial or regulatory consent has frequently been prolonged before receiving approval.¹⁶

8. Failing Licensees

Just like the EA¹⁷, the Law empowers the Commission to intervene in failing licensees.¹⁸ These include situations where the licensee is unable to meet its obligations, in prolonged default, suffering from a management crisis detrimental to stakeholders, or facing financial distress with insufficient assets to cover liabilities. Undoubtedly, this intervention will guarantee sustainability in the LEM.

9. Licensing and Tariff Methodology

The Law provides that activities licensed by the Commission must follow one or more approved tariff methodologies, which are subject to periodic reviews to reflect market changes. This ensures that tariffs remain aligned with evolving market conditions and regulatory needs. The Commission is empowered to approve negotiated transactions between licensees and specific consumer classes, ensuring that these agreements align with the overall tariff methodology. This flexibility supports tailored solutions while maintaining regulatory oversight.

¹⁴ Section 53 of the Law

¹⁵ Section 62 of the Law

¹⁶ An example of this is Seplat Energy Plc's acquisition of Mobil Producing Nigeria Unlimited, which took more than two years to obtain ministerial approval

¹⁷ Section 75 of the EA

¹⁸ Section 68 of the Law



10. The Lagos Independent System Operator

Mirroring the national power sector's unbundling¹⁹, the Law establishes an Independent System Operator (the “**Lagos ISO**”) to enhance grid reliability and market efficiency.²⁰ The Lagos ISO, to be operational within eighteen (18) months of the Law’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 from 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.

11. Emission Control Renewable Energy, Energy Efficiency and Demand-Side Management (DSM) Strategy and Action Plan:

In line with Nigeria’s 2060 Net Zero target²¹, the State is leading the transition to clean and sustainable energy sources through the Law, which aims to accelerate this shift by promoting

¹⁹ 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/>

²⁰ Section 96 of the Law

²¹ 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

renewable energy, energy efficiency, and demand-side management (“DSM”). The Law fosters private sector participation by creating a favorable investment climate and streamlining administrative processes. It also ensures grid access for renewable energy and introduces incentives to enhance energy efficiency. To establish a clean energy market, the Law sets emissions standards, imposes levies on polluting power plants, and implements a robust monitoring system. Revenue from these levies will fund electrification projects. Within eighteen (18) months of the Law’s commencement, the Ministry, in consultation with relevant stakeholders, will develop a Renewable Energy, Energy Efficiency, and DSM Strategy and Action Plan for the State, providing a roadmap for cleaner energy use. The Commission will also implement a mechanism for issuing Guarantees of Origin, similar to renewable energy certificates. By enacting the Law, the State has positioned itself as a leader in sustainable energy, significantly contributing to Nigeria's overall energy transition and improving the lives of its citizens.

12. Off-Grid Electrification Strategy and Action Plan:

Through the Law, the State aims to provide electricity to all residents via the Off-Grid Electrification Strategy and Action Plan (“Off-Grid Action Plan”).²² This Off-Grid Action Plan focuses on identifying unserved and underserved areas, developing strategies to promote off-grid solutions, and creating an enabling environment for private sector investment. The State government will also offer incentives, education, and capacity-building programs to support the growth of the off-grid sector. A comprehensive Off-Grid Action Plan will be developed, setting short-, medium-, and long-term targets for off-grid solutions. The plan will be reviewed every three (3) years to ensure its effectiveness. Additionally, the State will establish regulations for off-grid solutions and e-waste management, as well as implement strategies to promote gender and social inclusion in the electrification process. The Off-Grid Action Plan will include a robust monitoring and evaluation framework to track progress, assess the impact of its implementation, and conduct annual reviews, audits, and reporting on the measures introduced by the State.

In relation to the Off-Grid Action Plan, the Law replaces the Lagos State Electricity Board (“Board”), established under the Lagos State Electricity Power Sector Law 2018, with the Lagos State Electrification Agency (the “Agency”).²³ The Agency will assume similar functions, including managing electrical installations, promoting the electrification of unserved and underserved areas, and taking responsibility for the execution of the Off-Grid Action Plan.²⁴

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.

²² Section 120 of the Law

²³ Section 121 of the Law

²⁴ Section 122 of the Law



The Law also mandates that the Agency establish and maintain a fund (the "**Electrification Fund**")²⁵ to cover all expenditures incurred by the Agency. The Electrification Fund will be managed by the Agency and will consist of funds from the State's annual budget allocation; fines and penalties imposed and collected by the Commission; donations, gifts, loans, grants, aids, and other assets; earnings, interest, and other income generated from investments of the Fund; as well as any special intervention fund provided by the State. If properly managed, the Electrification Fund will play a crucial role in improving access to electricity across the State.

13. Power Enforcement Unit

Due to the rising cases of electricity theft, unauthorized electricity supply, theft of electricity cables, illegal use of electricity, and damage to electricity infrastructure, the Law establishes a Power Enforcement Unit ("**PUC**") within the Ministry. The PUC is tasked with addressing electricity theft, handling whistleblower reports, and collaborating with the Ministry of Justice to prosecute offenses under the Law.²⁶ The PUC is empowered to make arrest while carrying out its functions.²⁷

The Law stipulates varying penalties for different electrical offenses. For instance, any person found guilty of electricity theft is liable, upon conviction, to: (i) a fine of at least five (5) times the value of the electricity used, misused, or stolen, or a custodial or non-custodial sentence for a maximum term of three (3) years, or both the fine and custodial or non-custodial sentence; (ii) in the case of a continuing offense, a daily fine of no less than twenty thousand Naira

²⁵ Section 148 of the Law

²⁶ Section 160 of the Law

²⁷ Section 160(2) of the Law

(N20,000.00); and (iii) for a body corporate, a fine of at least seven (7) times the value of the electricity used, misused, or stolen, and a daily fine of no less than fifty thousand Naira (N50,000.00) for a continuing offense.²⁸ This penal provision is commendable as it holds the potential to deter others from engaging in electricity theft.

14. Host Communities Development Trust Fund

A significant provision of the Law is the establishment of the Host Community Trust Fund (the "Trust Fund"), designed to support the development of host communities of the Power Generating Companies ("GENCOs"). The Law mandates that two percent (2%) of the annual operating expenditure for the preceding financial year be set aside by GENCOs licensed by the Commission for the development of the host communities where they operate. Host communities are defined as those situated or adjoining the area of operation of GENCOs, which arguably exempts transmission and distribution companies from this obligation.

Importantly, the Law's provision regarding the financial contribution to the Trust Fund differs from the Electricity Act (Amendment) 2024 (the "Amendment Act").²⁹ The Amendment Act stipulates that GENCOs must set aside five percent (5%) of their annual operating expenditure for the preceding financial year for the development of their host communities. Therefore, with the additional two percent (2%) required under the Law, GENCOs operating in Lagos State, while also operating in other States, could face a cumulative host community trust fund obligation of up to seven percent (7%) of their annual operating expenditure.

Another point of uncertainty in the Law concerns the definition of GENCOs. The Law does not provide a clear definition of GENCOs, making it unclear which entities qualify to contribute to the Trust Fund. This raises questions about whether GENCOs include entities that generate less than 1MW for their own consumption or those holding captive permits. The lack of clarity on this matter complicates the implementation of the provision.

15. Transitional Provisions

As with most statutes, transitional provisions are included to maintain the status quo for pre-existing licensees, preventing disruption in the sector. The Law ensures that pre-existing licensees

²⁸ Section 163 of the Law. Other offences such as damage to electricity infrastructure, on conviction, attracts a minimum fine of five (5) times the value of replacement of such infrastructure, material, installation, equipment or electricity transmission or distribution line including the cost of replacement or repair or to a maximum custodial sentence of three (3) years or six (6) months non-custodial sentence or to both fine and custodial or non-custodial sentence.

²⁹ 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.

retain the right to operate under any license, permit, approval, consent, or certificate issued prior to its commencement. These pre-existing approvals will be deemed valid by the Commission and will remain in effect for their specified duration, subject to any necessary modifications deemed appropriate by the Commission.³⁰

Additionally, the Commissioner and the Commission are required to collaborate with the Nigerian Electricity Regulatory Commission, the Nigerian Electricity Management Safety Agency, other relevant federal entities, and pre-existing licensees to ensure a smooth transition.

The Law further states that the transitional period for the transmission of the LEM to more competitive trading arrangements shall occur within three (3) months from the commencement of the Law.³¹ This provision effectively sets a clear and efficient timeline for transitioning to more competitive trading arrangements, promoting swift and organized change.

16. The NERC Order

As required under the EA, when a State enacts its own electricity law, NERC is expected to, within 45 days of receiving formal notification of the enactment of the law, draw and deliver to the Commission a draft order (“**NERC’s Order**”) setting out a plan and timeline for the transition of regulatory responsibilities from the NERC to the Commission. This transition must be completed no later than 6 months after NERC receives the formal notification of the enactment of the State law.³²

In response to this provision, the NERC’s Order has been issued to the Commission. The NERC’s Order seeks to commence the process of the transfer of regulatory oversight for the intrastate electricity market in the State from NERC to the Commission, provide a transition plan for the transfer and to address any transitional matters arising from the transfer.³³

Under the NERC’s Order, the Distribution Companies (“**DisCos**”) operating within the State³⁴ have been directed by NERC to incorporate a subsidiary under the Companies and Allied Matters Act 2020 to assume responsibility for the intrastate supply and distribution of electricity in the State from the DisCos. The DisCos are further ordered to complete the incorporation of the respective subsidiaries within 60 days from the effective date of the NERC’s Order, and such subsidiary shall apply to the Commission for a license to supply and distribute electricity within the State.

³⁰ Section 178 (1) of the Law

³¹ Section 178 (7) of the Law.

³² Section 230 of the EA

³³ Following the formal notification of the Law, NERC issued two orders to the DisCos dated 5th December 2024 but published on NERC’s website on 19th December 2024.

³⁴ Eko Electricity Distribution Plc and Ikeja Electric Plc.

NERC's Order marks a significant step in the implementation of the provisions outlined in the EA regarding the transfer of regulatory responsibilities for the intrastate electricity market. By setting out a clear plan and timeline for this transition, NERC has taken proactive measures to ensure the smooth handover of oversight to the Commission. Furthermore, the directive for DisCos to incorporate subsidiaries to manage the intrastate supply and distribution of electricity emphasizes the importance of structuring the electricity market in alignment with the new regulatory framework. With a 60-day deadline for incorporation and a subsequent application for licensing, the process aims to foster greater efficiency and clarity in the management of electricity supply within the State.

17. Conclusion

In conclusion, the Law marks a significant step towards the modernization and decentralization of electricity regulation in the State. With its comprehensive framework, the Law lays the groundwork for the establishment of a competitive and sustainable electricity market, focusing on increasing access to reliable, affordable, and clean energy. The inclusion of various incentives, a clear regulatory structure, and provisions for the promotion of renewable energy and energy efficiency reflects the State's commitment to achieving long-term energy sustainability. These efforts are expected to attract investment, foster innovation, and create a more stable power sector within the State.

However, the Law's potential for success hinges on effective implementation and clarity in some key areas, particularly regarding the transitional provisions, the role of the Commission in regulating new ventures, and the enforcement of compliance. For instance, the ambiguity surrounding the three-month transitional period for pre-existing licensees under Section 178(7) raises important questions about the timelines for transitioning into the new regulatory framework. A clear directive from the Commission will be crucial to avoid disruptions and ensure a smooth transition for all stakeholders involved. Moreover, efficient mechanisms for licensing, tariff regulation, and enforcement will be essential to maintaining market stability and boosting investor confidence.

Ultimately, the Law, is a promising step forward in the transformation of the State's electricity sector. By focusing on innovation, competition, and sustainability, the Law provides a roadmap to achieving the ambitious goal of 24-hour electrification for all Lagosians. As the State continues to refine its regulatory framework and implement its strategies, the development of the Lagos Electricity Market will likely serve as a model for other regions in Nigeria seeking to enhance their power sector and contribute to the nation's broader energy transition goals.

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