



DUALE, OVVIA &  
ALEX-ADEDIPE



# **Legal, Policy and Regulatory Considerations for Licensees on Participating in the State Electricity Markets in Nigeria**

## Introduction

Nigeria's new decentralised electricity market regime presents exciting opportunities for licensees in the Nigerian Electricity Supply Industry ("**NESI**"). However, effective utilization of these opportunities requires licensees to plan and carefully consider the legal, policy, and regulatory matters which may positively or negatively impact their participation in the post-decentralisation NESI.

The Electricity Act 2023 ("**EA 2023**") gives considerable autonomy to State Governments with respect to electricity operations in their respective States – particularly as it pertains to regulation and licensing of generation, transmission and distribution of electricity. Notably, licensees may have concerns, including but not limited to the potential treatment of existing licensees, dual regulation from the Nigerian Electricity Regulatory Commission ("**NERC**") and emergent State electricity regulatory commissions ("**State ERCs**"). Accordingly, this article explores key considerations for licensees looking to play in these nascent state markets.

## Legal, Policy and Regulatory Considerations for Licensees

### *Licensing Dynamics in the EA 2023*

The EA 2023 prohibits any person from engaging in any (i) electricity generation, (ii) electricity transmission, (iii) electricity distribution, (iv) electricity supply, (v) electricity trading, or (vi) system operation without an operational licence to conduct such business activities. However, the following activities were specifically exempted from the mandatory requirement for license;

- (i) power systems generating electricity not exceeding 1 megawatt in aggregate, or undertakings that distribute electricity not exceeding 100 kilowatts in aggregate; or
- (ii) businesses that generate, transmit, distribute, supply, trade, operate mini-grids and have been duly licensed under a State electricity law.

The qualification is that the exempted persons and businesses do not (i) distribute or receive electricity out of their resident State, (ii) distribute or receive electricity out of Nigeria, (iii) rely on the national grid system for any part of their operations (each a "**NERC Jurisdiction Trigger Event**", altogether "**NERC Jurisdiction Trigger Events**"). For avoidance of doubt, any part of a licensee's operations that is a NERC Jurisdiction Trigger Event will be regulated by the NERC.

### *Regulations of Licensees/Permit Holders in the NESI*

Whilst the EA 2023 contemplates the issuance of licenses by the States following the setting up of their respective state electricity markets, this will however not invalidate licences already granted by NERC or any further licences granted by them in relation to the national grid. In the table below, we have explored the different licenses in the NESI with a view to explaining their respective modes of operation in the pre-decentralisation and post-decentralisation of NESI.

LICENCES	CATEGORIES	REGULATORY INSTRUMENTS	PRE-DECENTRALISATION	POST-DECENTRALISATION
Generation Licence	<b>Generation Licence – Grid-Connected (On-Grid)</b>  This is the required licence a generation plant that is connected to the national grid system.	<i>Application for License Regulation 2010</i>	NERC issues generation licences for grid-connected generation plants.	Grid-connected Generation Licensees will naturally continue to load their generated electricity onto the national grid and will, therefore, be regulated by the NERC in that regard.
	<b>Generation Licence – Off-Grid</b>  This licence is required for an off-grid generation plant that is not connected to the national grid system.	<i>Application for License Regulation 2010</i>	NERC issues generation licences for off-grid generation of electricity.	State ERCs will regulate off-grid generation licences insofar as NERC Jurisdiction Trigger Events do not occur in the course of such licensee’s electricity operations.
	<b>Generation Licence – Embedded</b>  This licence is for the generation of electricity directly connected to and evacuated through a distribution system connected to a transmission network.	<i>Regulation on Embedded Generation 2012</i>	NERC issues embedded generation licences for electricity generation.	State ERCs will regulate embedded generation. However, NERC will regulate any part of an embedded generator’s operations that is a NERC Jurisdiction Trigger Event.
Transmission Licence	<b>Transmission Service Provider Licence</b>	<i>Application for License Regulation 2010</i>	The transmission service provision licence was issued to and is still held by the	Within the context of the EA 2023, the TCN will retain the transmission service provider license, continue to be

	A transmission licence permits a transmission service provider to “construct, maintain and operate an efficient, coordinated, economical and integrated smart grid interconnection in Nigeria and other neighboring countries”.		Transmission Company of Nigeria (“TCN”)	responsible for transmission assets and liabilities, and perform other functions relevant to the development and maintenance of the power transmission infrastructure. The NERC will regulate TCN and draw a clear transition plan for the disaggregation of TCN’s system operation functions to avoid disruption of industry operations.
	<p><b>Independent Electricity Transmission Network (“IETN”) Licenses</b></p> <p>IETN licences are issued (i) to extend the transmission network to areas where there are no existing transmission facilities, and (ii) to reinforce existing transmission facilities which requirement reinforcement.</p>	<i>Electricity Act 2023 and relevant State electricity laws</i>		Within the context of the EA 2023, the franchise area of IETN licensees is restricted to greenfield sites within the States covered under their license.
<b>System Operation Licence</b>	A system operation licence permits the licence holder to carry on system operation, which includes, among other things, generation scheduling and commitment dispatch, transmission scheduling and generation outage coordination, transmission congestion management, administering the wholesale electricity market, and	<i>Application for License Regulation 2010</i>	The TCN performs system operation functions pursuant to the system operations licence granted by NERC.	<p>The system operations license is to be disaggregated from TCN and held by Nigeria Independent System Operation Limited, a private company limited by shares.</p> <p>State ERCs have powers to license and regulate system operations within the borders of their States. under section 2(2) of the EA 2023.</p>

	payment settlement in accordance with the market rules.			However, they are unlikely to concern themselves with this, considering that their short-term focus will be developing the off-grid market and relieving the national grid.
<b>Distribution Licence</b>  <i>A distribution permits the licensee to "... construct, operate and maintain a distribution system and facilities..." within a licence area.</i>	<b>Distribution Licence – Grid-Connected (On-Grid)</b>  This licence allows the holder to own a distribution network directly connected to the national grid system	<i>Application for License Regulation 2010</i>	This is regulated by NERC which granted distribution licences to successor distribution companies.	HoldCo distribution licensees will continue to be regulated by NERC. EA 2023 contemplates that NERC will issue a separate licence for supply operations at a point in the market stage, so market operators will not be able to undertake supply operations under the distribution licence unless they obtain a separate supply licence.  Within states, SubCos will be regulated by State ERCs. It remains to be seen whether State ERCs will also split SubCo's distribution licences into distribution and supply licences as contemplated under the EA 2023.
	<b>Distribution Licence – Off-Grid</b>  This licence is obtained for a distribution network not directly connected to a transmission system.	<i>Regulation on Independent Electricity Distribution Network (IEDN) 2012</i>	This is regulated by NERC which grants IEDN licences to market operator.	They will be licenced by State ERCs upon their establishment, provided that none of the NERC Jurisdiction Trigger Events occur in their electricity distribution operations.

<p><b>Mini-Grid Permits/Registration</b></p> <p><i>A mini-grid is an integrated system for local electricity generation, transmission and distribution that can operate in isolation from the national electricity distribution network.</i></p>	<p><b>Interconnected Mini-Grid Licence</b></p> <p>This is the licence for a mini-grid that is connected to the network of a distribution licensee.</p> <p><b>Isolated Mini-Grid Licence</b></p> <p>This is the licence for a mini-grid that is not connected to a distribution licensee's network</p>	<p><i>Mini-Grid Regulations 2023</i></p>	<p>This is regulated by NERC which registers mini-grids under 100 kilowatts and grants permits to mini-grids above 100 kilowatts.</p>	<p>Within the context of the EA 2023, mini-grid operators will be regulated by State ERCs to the extent that a NERC Jurisdiction Trigger Event does not occur in any of their mini-grid operations.</p>
<p><b>Trading Licence</b></p>	<p>A trading licensee may function as an off-taker for power projects, and it plays an important role in ensuring adequate power supply in the NESI, as it ensures continuity of power generation and availability of consumption by matching demand with supply of electricity through purchase and resale agreements.</p>	<p><i>Application for License Regulation 2010</i></p>	<p>This was held by the Nigerian Bulk Electricity Trading Plc (NBET)</p>	<p>Whilst the Nigerian Bulk Electricity Trading Plc ("NBET") faces an uncertain future, the EA 2023 provides that the NERC shall issue trading licences at a market stage that it deems ripe, and such licences will entitle the holders to enter novation agreements with NBET.</p>
<p><b>Captive Generation</b></p>	<p>Captive Generation Permit entitles the holder to generate electricity exceeding 1MW for the purpose of consumption by the generator and not for sale to a third party.</p>	<p><i>Regulation for Captive Power Generation</i></p>	<p>The captive generation permit is granted by NERC.</p>	<p>Within the context of the EA 2023, the captive generation permit will be granted by State ERCs.</p>
<p><b>Eligible Customer</b></p>	<p><b>Eligible Customer Status</b></p>	<p><i>Eligible Customer Regulations</i></p>	<p>NERC grants eligible customer status, and operations related to</p>	<p>State ERCs will regulate Eligible Customers to the extent that they</p>

	<p>This status is given to customers who are eligible to purchase power from a licensee other than a distribution licensee.</p>		<p>it are regulated by NERC to the extent of other commercial terms that are left to parties to decide by contract, e.g., a power purchase agreement between a generation company and the eligible customer, a distribution use of system (DUoS) agreement between a distribution company and an eligible customer, etc.</p>	<p>do not, for the purpose of taking benefit of their eligible customer status, rely on any factor which will cause any NERC Jurisdiction Trigger Event.</p>
--	---	--	--	--

### ***Renewable Portfolio Standards (RPS)***

In our [Energy Sector Review 2023 and Outlook 2024](#), we predicted a further penetration of renewable energy into the NESI. This prediction has been validated by the NERC's operationalisation of section 164(e) EA 2023 which pertains to renewables purchase obligations through April 2024 MYTO Supplementary Order for respective distribution companies. The Supplementary Order directs distribution companies to, from April 2025, ensure that 10% of their energy off-take is from embedded generation and 50% of the said 10% must be from renewable sources. Existing and intending licensees should consider the renewable energy purchase requirements and the potential for participating in the renewable energy market.

### ***Growth of the Off-grid Market***

As States take over regulatory oversight of electricity operations within their territorial jurisdiction, the State ERCs will likely focus on harnessing and utilising local energy potential in the short to medium term. This will, in turn, drive the growth of mini-grid and off-grid projects within the States. It is envisioned that States will, in the long term, establish state grids or collaborate with other States to establish regional grids in order to reduce pressure and overreliance on the national grid. Accordingly, licensees must prepare to participate in the off-grid space at the inception stage of a state electricity market.

### ***Dual Tariff Regime***

In the event State ERCs decide to issue tariff orders just like the NERC, some operators may likely be confronted with a dual tariff regime where any of their business operations is caught by a NERC Jurisdiction Trigger Event.

### ***Unlikelihood of a System Operations Licence***

In every electricity market, an entity is needed to ensure reliable and secure electricity transmission and real-time coordination of electricity operations in the wholesale electricity market. The system operation licensee performs this duty. The TCN currently holds the system operation licence, but this will soon change as the NERC has issued an interim order unbundling the TCN with the effect that the system operation functions of the TCN will, effectively as from August 2024, now be performed by the Nigerian Independent System Operations Limited. Considering that States and State ERCs will be more focused on decentralised generation in the short to medium term, state grids are not likely to be on their minds and, as such, there is unlikely to be state system operators even though the state electricity laws may provide for issuance of same.

### ***Electricity trading and the future of NBET***

The trading licence is required for entities that engages in the purchase, sale and trading of electricity. The NERC shall, when it considers it appropriate, issue such number of licences it considers appropriate. The EA 2023 provides that these new licensees will be entitled to enter into novation agreements with NBET, successor generation companies, independent power purchasers and other generators for purchase and resale of electricity and ancillary services.



The State ERCs may, to the extent provided in the state electricity laws, also licence and regulate electricity traders in so far as such traders are not already validly licenced by the NERC and/or do not concern themselves with any NERC Jurisdiction Trigger Events.

While NBET faces an uncertain future, it is hoped that it will be restructured into a power exchange where electricity generators, traders, and large consumers can buy and sell electricity in various portions and timeframes (i.e., spot/real-time, day-ahead, and futures markets). This will still align with NBET's founding objectives, except that, instead of injecting liquidity, NBET, will now as an electricity trading platform, serve as an avenue for people to sell their electricity portfolio in different portions and different timelines. This is quite possible with willing participants and robust clearing and settlement mechanisms as indicated by the Lagos Commodities and Futures Exchange proposed launch of crude trading on its exchange platform.

### **Conclusion**

Nigeria's state electricity markets hold immense potential for improved service delivery and increased investment in the power sector. By proactively addressing legal, policy, and regulatory considerations, licensees can seize the opportunities presented by this evolving landscape and contribute to a more efficient and reliable electricity market for Nigerians.

This article is for general information purposes only and does not constitute legal advice. For further questions, assistance or clarifications, you may contact us at [info@doa-law.com](mailto:info@doa-law.com) or contact any of the contributors herein listed. To request reproduction permission for any of our publications, please use our contact form which can be found on our website at [www.doa-law.com](http://www.doa-law.com).

**LAGOS**

Plot 1B, Block 129  
Jide Sawyerr Drive  
Lekki Phase I  
Lagos State, Nigeria

**ABUJA**

4th Floor, Abia House  
Plot 979, 1st Avenue  
Off Ahmadu Bello Way  
Central Business District  
Abuja FCT, Nigeria

Tel.: 0700 DOALAW (0700 362529)  
Email: [info@doa-law.com](mailto:info@doa-law.com)  
[www.doa-law.com](http://www.doa-law.com)

