ELIGIBLE CUSTOMERS; THE DAWN OF COMPETITION IN ELECTRICITY SUPPLY IN NIGERIA

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Eligible customers ("ECs") are electricity consumers who are qualified to purchase power directly from a licensee other than a Distribution Company ("DisCo"). Section 27 of the Electricity Power Sector Reform Act 2005 ("EPSRA") gives the Minister of Power ("Minister") the right to issue a directive specifying the class or classes of end-use consumers who shall constitute eligible customers.

Pursuant to this, the Minister on 25 May 2017 issued a policy directive declaring four categories of eligible customers in the Nigerian Electricity Supply Industry. Following the Minister's directive, the Nigerian Electricity Regulatory Commission ("NERC") approved the Eligible Customers Regulations (ECR) on 1 November 2017 as a guideline for the implementation of the Minister's directive.

The categories of eligible customers are:

(1) Customers Eligible to Purchase Bulk Power through a Distribution Network

The customers under this category may include clusters of residential end-users, office buildings, universities and small-scale industries. This class of customers are required to take delivery of their bulk power through a metered 11kV or 33kV delivery point on the distribution network. Thus, it is necessary for them to sign a Distribution Use of System ("DUoS") Agreement with a DisCo for the delivery of electrical energy from the power supplier.

Customers that would qualify under this category will have to consume at least 2 Megawatts per hour (MWhr/h) on a monthly basis. We note that there is a conflict between the Minister's directive and the ECR on the minimum consumption of an eligible customer under this category. While the limit specified in the Minister's directive is *not less than* 2MWhr/h on a monthly basis, the ECR specifies *more than* 2MWhr/h on a monthly basis. Considering that under Section 27 of EPSRA, it is the Minister that has the power to specify the class of customers that will qualify for eligibility status, it follows that the categorisation made in the Minister's directive supersedes that of the ECR.

An embedded generating plant may be a preferred source of supply to customers buying bulk power through a distribution network. This way, the parties can avoid certain complexities that may arise by connecting through the grid. However, such embedded generating plant must have a nameplate capacity of less than 20MW.

(2) Customers Eligible to Purchase Bulk

Power through the Transmission Network

ECs in this class will include large-scale industries with heavy energy consumption. Customers in this class are required to connect directly to a metered 132kV or 330kV delivery point on the transmission network. They will have to sign a number of grid connection agreements including the Transmission Use of System (TUoS) Agreement with the Transmission Company of Nigeria ("TCN"). And, because they are connected to the transmission network, the customers will also have to sign a Market Participation Agreement with the Market Operator ("MO") (an operational department of the TCN) and comply with the provisions of the Electricity Market Rules.

The customers under this category would not be required to sign any agreement with a distribution licensee because they will not use distribution systems or a distribution network.

(3) Customers Eligible to Purchase Bulk Power from the Grid through a Distribution System

Customers under this category are expected to purchase their bulk power supply from the grid. These customers' consumption must be more than 2 MWhr/h on a monthly basis. They are to connect to the grid through a metered 33kV delivery point. Thus, customers under this category are required to sign an agreement with the DisCo licensed to operate in the location of the 33kV delivery point, for the construction, installation and operation of the distribution system through which the customers would connect to the grid. They will also have to sign the various grid connection agreements with the TCN and MO and be subject to the Electricity Market Rules, as market participants.

(4) Customers Eligible to Purchase Bulk Power directly from a Power Plant

These customers must consume more than 2 MWhr/h on a monthly basis. As they are required to connect to the plant via a 33kV distribution system, the customers will have to sign an agreement with the DisCo licensed to operate in the location of the 33kV delivery point for the construction, installation and operation of the distribution system through which they would connect to the power plant.

Procedure for Applying for Eligibility Status

The procedure is as follows:

Step 1

Execution of PPA between EC & Supplier

Step 2

Execution of TUoS/DUoS (as applicable)

Step 3

Application to NERC for eligibility status

Step 4

NERC evaluation of application

Step 5

NERC issuance of final decision (Within 30 working days)

Business Opportunities Following the EC Regulations

The ECR presents several opportunities for different players in the electricity chain. We will attempt to outline a few of these opportunities below:

Distribution Companies (DisCos)

The general perception in the market is that the DisCos will incur significant customer losses upon the implementation of the eligible customer programme. While this may be true to a degree, the eligible customer programme does present the DisCos with a number of opportunities. For instance, the class of customers who will purchase bulk power through the distribution network will require the DisCos to provide power delivery services through 11/33 kV delivery points. This will particularly be the case where end-users apply for eligibility status as a cluster and incorporate a Special Purpose Vehicle (SPV) to execute the required documentation to obtain eligibility status. Since such SPVs would not be distribution licensees, they will require the services of a DisCo to meter and distribute power to each user in the cluster.

Also, embedded generators who have entered into contracts for the supply of power to ECs will have to pay connection charges to the DisCos. Where ECs purchase bulk power directly from the grid or from Independent Power Plants (IPPs), they are required to enter into bilateral agreements with DisCos for the installation, operation and maintenance of a distribution system.

Part of the Minister's directive requires generation licensees, who sell bulk power to ECs, to make available and sell to the DisCos (at a regulated price), extra generation capacity equal to 20% of their bulk sale. The price at which such power can be sold to the DisCos is not to exceed

the average wholesale price charged by the Nigerian Bulk Electricity Trading PLC (NBET). This provision would ensure that the DisCos would have extra power, procured at a relatively low price, to supply to their customers.

Embedded Generators

Until now, the challenge with embedded generation is that there has been very little non-DisCo activity in the embedded generation market. The Declaration of Eligible Customers has opened up opportunities for small generation companies to supply power to customers within a distribution network. Thus, small IPPs, by virtue of this declaration are no longer restricted to signing PPAs with customers who are able to host generating plants within their premises. We expect that the declaration of ECs would spur increased activity in embedded generation.

Transmission Company of Nigeria

The introduction of the ECR is likely to lead to a surge in market participation which means, that a lot of power could potentially be injected into the grid. This would lead to greater stability and increased revenue. Particularly, classes of ECs who connect to the transmission network would be required to pay transmission charges.

Consumers

Implementation of the ECR will encourage competition in the electricity market as ECs would have the freedom to make more efficient choices with respect to power supply. Heavy industries would no longer need to build their own power generation plants but can focus their resources on their core activities. End users such as commercial buildings and office complexes can now form clusters and apply for eligibility status under the site aggregation provisions of the ECR.

Contractual Requirements

Different classes of ECs are required to sign a number of contracts. The table below shows the contractual requirements for each class.

EC category	PPA with IPP	Market Participation Agreement with MO	DUoS with DisCo	TUoS with TCN	Construction/O&M with DisCo
Customers Eligible to Buy Bulk Power through a Distribution Network	YES	NO	YES	NO	NO
Customers Eligible to Purchase Bulk Power through the Transmission Network	YES	YES	NO	YES	NO
Customers Eligible to Purchase Bulk Power from The Grid through a	YES	YES	NO	YES	YES

Distribution System					
Customers Eligible to Purchase Bulk Power directly from a Power Plant	YES	NO	NO	NO	YES

Pricing

Pricing of electricity between the ECs and power suppliers is not regulated but is to be determined on a bilateral basis. However, the price at which electricity is supplied may include certain charges depending on the point of connection as indicated below:

Charges/EC Category	Transmission Use of System Charge	Distribution Use of System Charge	Regulatory Fees	Ancillary Charge	Market Administration and System Operation Charge	Competition Transmission Charge	Power Consumer Assistance Fund Charge	Rural Electrification Fund Charge
Customers Eligible to Purchase Bulk Power through a Distribution Network	NO	YES	YES	NO	NO	YES	YES	YES
Customers Eligible to Purchase Bulk Power through the Transmission Network	YES	NO	YES	YES	YES	YES	YES	YES
Customers Eligible to Purchase Bulk Power from The Grid through a Distribution System	YES	NO	YES	YES	YES	YES	YES	YES
Customers Eligible to Purchase Bulk Power directly from a Power Plant	NO	NO	YES	NO	NO	YES	YES	YES

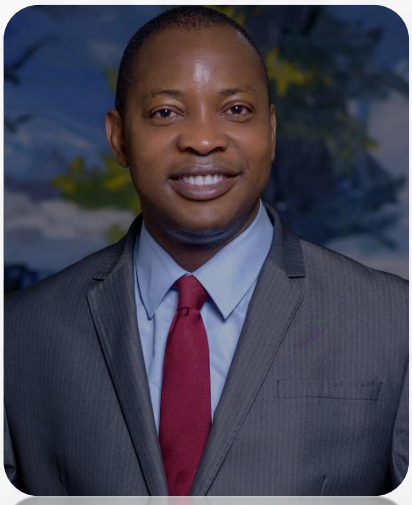
CONCLUSION

The ECR offers several opportunities to players in the electricity market and, seemingly opens the door for competition where the Discos had hitherto enjoyed a monopoly.

It however provides for a two-phased approach to the implementation of the ECs programme. In the first phase of implementation, the second to fourth categories of ECs as listed above can immediately apply for eligibility status. Within the first category of ECs listed above, only customers connected to a metered 33kV delivery point are qualified to apply for eligibility status in the first phase of implementation. ECs connected to a metered 11kV delivery point may only apply in the second phase of implementation. This second phase will only be implemented following an order by NERC, upon the fulfilment of the conditions listed in the Second Schedule to the ECR.

It is important to note that end users connected to 11kV delivery points consist mainly of residential and commercial customers who constitute a large percentage of the Discos' current customer base. The phased implementation of this programme would allay the fear of revenue losses for the Discos because for the time being, their largest customer base would be left untouched.

In conclusion, the ECR provides a structured framework for the implementation of the Minister's directive. It also provides a platform for increased competition in the electricity market by expressly permitting ECs to freely switch suppliers without penalty while also guaranteeing fair access to the distribution and transmission networks as may be required by ECs and their supplier.



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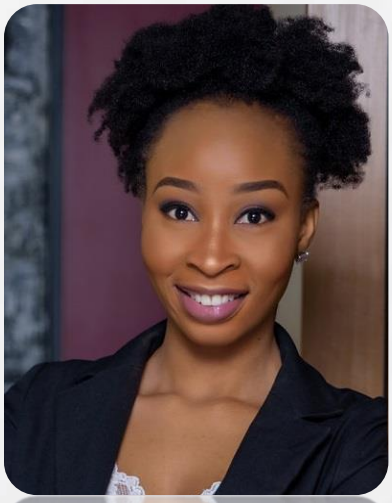

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