THE 2018 METER ASSET PROVIDER REGULATION – PROBLEMS AND PROSPECTS.

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Introduction

With the enactment of the Electric Power Sector Reform Act (EPSRA) in 2005 and the subsequent privatisation of Nigeria's electricity sector in 2013, the provision of meters to electricity customers to ensure efficient billing and collection of electricity tariffs became the statutory responsibility of the electricity distribution companies (DisCos).

However, the DisCos have been unable to finance the acquisition and installation of meters, which in turn has allowed high commercial and collection losses to continue to plague Nigeria's electricity sector. Furthermore, the DisCos have perpetuated the practice of billing electricity customers on an estimated basis and not on the basis of actual electricity consumed.

Previous initiatives such as the Credited Advance Payment for Metering Implementation (CAPMI) Scheme have not yielded the desired result in closing the metering gap. The CAPMI Scheme permitted electricity consumers to acquire and install metres through self-finance. However, even though customers made payments for the provision of meters, DisCos were still unable to provide the meters.

In a bid to eliminate the estimated billing practices in the Nigerian Electricity Supply Industry (NESI), attract private investment into the metering services industry, close the metering gap through accelerated meter roll out and enhance revenue assurance for the NESI, the Nigeria Electricity Regulatory Commission

(NERC) has issued the **2018 Meter Asset Provider Regulations** (the Regulations). The Regulations were made under Section 96 of the EPSRA.

Objective

The objective of the Regulations is to provide standard rules to encourage the development of independent and competitive metering services in the NESI. Under the Regulations, the NERC shall licence pre-qualified Meter Asset Providers (MAP) who will finance, install, maintain and where necessary, replace end-user electricity meters.

Licensing of MAP

As a first step in the licencing process, NERC shall prequalify applicants by conducting due diligence on the applicants and issuing a 'No-Objection' to enable them to participate in the procurement process. NERC shall also appoint a Tender Auditor who shall audit the bid process conducted by the DisCos. The DisCos will lead the procurement process for the MAP and will request prospective MAPs to submit their bids. Upon final evaluation of the submissions, the DisCos will name the successful bidder and will offer to enter into a Meter Service Agreement (MSA) with the successful bidder for the provision of metering services.

The successful bidder shall then apply to NERC for the grant of a MAP permit, and NERC shall issue the permit if it is satisfied that the applicant has met the requisite statutory, technical, technological and local content requirements as provided in the Regulations. These include the details of the experience and expertise of the MAP's directors, management and technical staff, its business plan, and any relevant experience in asset finance, metering and other related business.

A successful application is also dependent on the applicant MAP demonstrating that not less than 30% of its contracted metering targets is sourced from local meter manufacturing or assembling companies.

Contractual Framework

The Regulations require the MAP to enter into Meter Service Agreements (MSA) and Service Level Agreements (SLA) with the respective DisCos. The MSA is to provide for the means of payment for the meters, and the number of meters that the MAP will deploy under the agreement. The SLA, on the other hand, allows the DisCos and the MAP to expressly state the services to be rendered and the degree of performance expected from the MAP.

The DisCos and MAP are required to comply with the provisions of the Metering Code, the Guidelines for Certification of Metering Service Provider and other relevant Regulations.

The procedure may be summarised as follows:

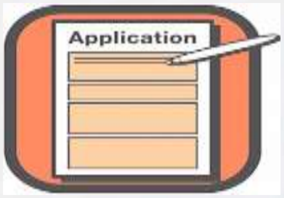
Step 1

Prequalification by NERC through a due diligence exercise and issuance of a 'No-Objection'.

Step 2

The procurement process is undertaken by the DisCos and an offer letter given to the successful bidder.

Step 3



The successful bidder makes a formal application to NERC for the grant of a permit.

Step 4

Evaluation of the application by NERC to ensure it meets the statutory, technical, technology and local content requirements of the regulation.

Step 5

Grant of Meter Asset Provider licence by NERC.

Step 6

Execution of MSA, Service Level Agreements and any other related agreements between the DisCos and the MAP.

Operational Requirements

The MAP licence for meter financing, procurement and other related matters is valid for 15 years from the date NERC issues the permit. It is expected that the MAP can recover the cost of the asset and an acceptable return on investment over a period of 10 years.

It is worthy of note that a permit issued to a MAP is only valid for a specific procurement process by a DisCo. The implication of this is that a MAP that intends to provide its services to other DisCos shall be required to acquire several permits after successful participation in procurement processes.

Financial Provisions

The MSA between the DisCo and the MAPs shall provide for payment security to be given to the MAPs. The Regulations provide that the MAPs shall be paid a Metering Service Charge. This Charge will be paid by end-use consumers to DisCos as part of the tariff for electricity consumption.

The DisCo shall then remit this Charge to the MAP to offset the capital cost of the meter as well as ongoing operational and maintenance costs. To ensure timely disbursements, the Metering Service Charge shall be ring-fenced to an account dedicated to the payments of the charge to the MAPs. Electricity customers may also elect to finance their meter asset by making an up-front payment for the meter. These customers would not be required to pay a Metering Service Charge.

Intermediate Provisions

Meters deployed under this MAP framework will not form part of the DisCos' Regulatory Asset Base; only meters installed by the DisCos as at 31 December 2018, will form part of the Regulatory Asset Base. All meters deployed post-December 2018 shall be structured under the MAP framework.

The implication of this is that consumers who obtained their meters directly from the DisCos before 31 December 2018 will not be required t0 pay any Metering Service Charge, as their electricity tariffs have been calculated using the building block approach which provides a return on capital expenditure.

Our Thoughts

The introduction of the Regulations is an excellent step towards closing the metering gap, which itself is necessary for the efficient collection of electricity payments and reducing the illiquidity in the sector. The Regulations appear to provide sufficient contractual freedom to the MAPS and the DisCos. This is evidenced by the fact that both parties are also free to agree on a payment structure and security that will be acceptable to the MAP under the MSA. Furthermore, the provisions of the Regulations will prevail against all other Regulations/Codes, including the Metering Code which ordinarily regulates the provision of metering services.

This contractual freedom could guarantee more investor confidence than a regime where the respective obligations, liabilities and rights will be determined and curtailed by regulation.

Also, the Regulations provide for specific timelines for the DisCos to undertake the procurement and engagement of the MAPs. The DisCos are required to conclude the procurement process and engagement of MAPs within an approximate period of 4 months commencing on 3 April 2018.

Coupled with these provisions is the right of NERC to audit the procurement process undertaken by the DisCos, and the prohibition placed on DisCos, their core investors, subsidiaries, affiliates, directors and their relatives from setting up, owning shares or holding directorships and senior management positions in a MAP. The above provisions are geared towards ensuring that the procurement process of the MAPs are transparent and the contractual relationships entered into shall be at arm's length.

Finally, the Regulations give justification to NERC to take necessary action to drastically reduce the DisCos' ability to bill electricity customers on an estimated basis. It provides that within 120 days from the commencement of the Regulations, NERC shall issue an Order that will cap the bills of unmetered Customers.

Nonetheless, the provisions of the Regulations raise a key concern: it restricts a MAP to a specific DisCo and requires the MAP to acquire several permits if it wants to provide metering services to other DisCos. This may be too cumbersome for a prospective MAP. In our view, it is sufficient to require the MAPs to merely obtain a 'No Objection' from NERC before participating in other procurement processes, without requesting that they obtain a permit for each distribution network to which they intend to render services.

Given the fact that this framework seeks to encourage private investment in electricity metering and to ensure a swift meter roll-out, it will be more expedient to reduce the regulatory processes required to achieve these objectives.

Conclusion

The MAP framework appears to be a viable means for the eradication of estimated billing and ensuring a more efficient way of reducing commercial and collection losses in the NESI. However, this can only be achieved if there is an adherence to and enforcement of due process in the procurement process, and proper implementation of the metering service charge in a transparent manner. It is expected that success of the Meter Assets Providers regime will relieve the Discos of the burden of providing metering services and enable them to give more focus on their core responsibility of power distribution.

Also, Nigerian-owned meter manufacturing companies and meter assembling plants can expect to a have greater participation in the metering industry as MAPs are required to obtain at least 30% of their meters from local sources. This may, in turn, lead to additional foreign direct investment into the country, while also ensuring transfer of technology to Nigeria.

If you would like to get more information on this, you may contact the Energy Practice Group of the firm through its email address: energy@aelex.com.

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