

DECLARATION OF ELIGIBLE CUSTOMERS AND ITS IMPACT ON ELECTRICITY DISTRIBUTION COMPANIES AND THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY*

Abstract

The declaration of Eligible Customers on the 15th of May, 2017 by the Minister pursuant to section 27 of the Electricity Power Supply Reform Act has brought about a class of customers who can source power directly from Generation Companies, thereby bypassing Distribution Companies in the power sector. The extent to which the policy directive and regulation on Eligible Customers impacts on Distribution Companies in particular and the Nigerian Electricity Supply Industry (NESI) in general is the focus of this paper. The paper observed that the declaration is coming at a time when the pre-conditions necessary for a fully competitive market are yet to be in place. The paper nevertheless posits that DisCos would be at the receiving end in terms of loss of revenue but some revenue will still be accruable to them through the Distribution Use of System Agreement. The paper concludes that the Eligible Customers Directive which sought to ensure the delivery of power to the large base of industrial and other maximum demand customers, though not without its shortcomings, but a step in the right direction as it would help to stimulate competition in NESI and ensure that electricity is delivered to consumers.

Keywords: Competition, Distribution Companies, Eligible Customer, Privatisation, Competition, Distribution Companies, Generation Companies, Privatisation

1.0 Introduction

The demand for power supply in Nigeria outweighs the supply and several factors are responsible for this problem.¹ These factors include the government's inconsistent power reforms; challenges of energy infrastructure, inadequate and inconsistent power generation, transmission and distribution.² Another significant factor for the low supply of electric power for both domestic and industrial use is that power generation in Nigeria, although low, is still

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² Muhammed Ologundudu, 'The Epileptic Nature of Electricity Supply and its Consequences on Industrial and Economic Performance in Nigeria' (2010) 14(4) GJRE <https://globaljournals.org/GJRE_Volume14/4-The-Epileptic-Nature.pdf>accessed 28 May, 2020.

² Anthony Ohajianya and others, 'Erratic Power Supply in Nigeria: Causes and Solutions' (2014) 3(7) IJESI 51, 51.

underutilised.³ In other words, the distribution companies do not have the capacity to take all the energy generated by the generation companies, thus leading to abandoned and stranded energy which would have been beneficial to consumers.⁴ The complaint about the poor performance of Distribution Companies (Discos) and the allegation that, most of the Distribution Companies have been retaining revenues to the detriment of other players especially the Generation Companies in the electricity value chain necessitated the need to finding a solution provide revenue to Generation Companies to generate energy without financial hindrance.

It is to this effect that the Honourable Minister for Power, Works and Housing in May, 2017 made a policy declaration pursuant to section 27 of the Electric Power Sector Reform Act, 2005 (EPSRA) on the categories of persons who can be regarded as Eligible Customers in the Nigerian Electricity Supply Industry (NESI).⁵ With this Declaration, Generation Companies (Gencos) and Independent Power Producers (IPPs) can by-pass the Bulk Trader (the Nigerian Bulk Electricity Trading Plc (NBET) and sell electricity directly to Eligible Customers.⁶

Before this declaration, customers were only permitted to purchase powers from the licensed distribution companies. Further to the declaration of the Minister, the Nigerian Electricity Regulatory Commission (NERC) issued the Eligible Customer Regulation (ECR) on the 6th of November, 2017 to streamline and provide clarity on the import, application and implementation of the declaration made by the Minister.

ECR sets out the registration regime applicable to Eligible Customers and adopts a phased approach to the introduction of classes of Eligible Customers as an initial step to spawning retail competition and the licensing of traders in the medium-term market, thereby showing a regulatory intent to promote third party access to distribution and transmission networks.⁷ However, it is necessary to state that the conditions necessary for a truly competitive market

³ Babalwa Bungane, 'Epileptic Power Supply Affects Nigeria's Economy, Says NESI' (*ESI Africa Africa's Power Journal*, 12 September, 2017) <<https://www.esi-africa.com/industry-sectors/generation/epileptic-power-supply-affects-nigeria/>> accessed 28 May, 2020.

⁴ Odion Omonfoman, 'Electricity Distribution Companies- The Challenges and Way Forward' (*Premium Times*, 4 January, 2016) <https://opinion.premiumtimesng.com/2016/01/04/electricity-distribution-companies-the-challenges-and-way-forward-by-odion-omonfoman/> accessed 28 May, 2020.

⁵ Emeka Okparaku and Alexis Tsegba, (*Nextier in the News*, 13th June, 2017) <<https://www.nigeriaelectricityhub.com/2017/06/13/eligible-customer-evaluating-the-declaration/>> accessed 08 April, 2020.

⁶ *Ibid.*

⁷ ECR amongst other things sought to greatly improve the level of competition in the supply and distribution of electricity in the NESI by allowing electricity generation companies with uncontracted capacity to meet the demands of certain classes of end users who meet certain regulatory thresholds.

are absent in NESI.⁸ It is to this effect that this paper seeks to examine the regulation on the declaration of Eligible Customer, by NERC and its impact on NESI.

2.0 Meaning of Eligible Customer

The Eligible Customer Declaration (ECD) which was introduced in May 2017 to increase the flow of funds available to the Gencos and in turn increase the supply of electricity in NESI particularly to those customers who meet the eligibility criteria as set out in section 5(1) of ECR was a timely intervention. The eligible customer regime permits certain classes of customers to enter into a power purchase agreement with the Gencos directly.⁹ The Electric Power Sector Reform Act defines an eligible customer as ‘a customer that is eligible, pursuant to a directive or directives issued by the Minister under section 27, to purchase power from a licensee other than a distribution licensee’¹⁰

The categories of customers declared as eligible customer by the Minister and as provided in the Eligible Customer Regulation are:

- a) A customer or group of end-use customers registered with NERC whose consumption is more than 2 MWh/h over the course of one month, that is connected to a metered 11kv or 33 kv delivery point on the distribution network of a distribution licensee under a distribution use of system agreement with such distribution licensee for the connection and for the delivery of electrical energy.¹¹ The customers or end users who fall under this category are those who are located far from the Gencos. They are located in areas where the Discos have provided infrastructure and are totally in charge of distribution and sale of electricity. However, these end users must be

⁸NESI is truly unique. On the face of it, it will appear to be highly competitive with the existence of 6 distribution companies. It is pertinent to state that government own 40% stake in all these distribution companies and in some far-flung states in the country, the government is still responsible for distribution of Power. Furthermore, the entry barrier in this industry is quite humongous. A lot of investors find it extremely difficult to meet the requisite financial thresholds required to break into the NESI. The ever changing laws and government regulation also do not appear to help things.

⁹NESI is unique. The Nigeria Bulk Electricity Trading Plc (NBET) traditionally precludes end users from purchasing power directly from the Gencos. Traditionally, the Gencos enter a power purchase agreement with NBET who in turn place financial guarantees for bulk electricity purchased from the Gencos. The Transmission Company of Nigeria (TCN) subsequently transmits the power to the Discos. NBET then receives data from TCN for verification of bills to Generators and invoices to Disco. The Disco enters a Vesting Contract with NBET wherein NBET receives financial guarantee for bulk electricity sold to the Discos. The Discos then sell the electricity to billable customers and other end users. However, all these changed with the issuance of the Eligible Customer Declaration and the emergence of ECR. The Declaration and the ECR empowered the Genco to sell power directly to the end users who meet certain criteria.

¹⁰ Electric Power Sector Reform Act, 2005, s.100.

¹¹ Eligible Customer Regulations, 2017 s.5(1).

located close to a 33kv delivery point. The 33kv delivery points are electricity lines which connect load centres like one city to another.

- b) A customer or group of end-use customers registered with the NERC that is connected directly to a metered 132kv or 330kv delivery point on the transmission network under a transmission use of system agreement for the connection and for the delivery of electrical energy.¹² The 132kv or 330kv delivery point is for interstate connection and connects states to the National grid. It step up, maintained and managed by the TCN.
- c) A customer group of end-use customers registered with NERC, whose consumption is more than 2 MWh/h over the course of one month, that is connected directly to a metered 33kv delivery point on the transmission network under a transmission use of system agreement, and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the 33kv delivery point, with the distribution licensee licensed to operate in the location where the customer and the 33kv delivery point are located.¹³ End users who belong in this category are those who are connected to a 33kv line being managed by the TCN pursuant to a transmission use of system agreement, and also agreed with the Disco operating where the end-user is located via a distribution use of systems agreement to construct, install and operate the necessary infrastructure for the end-user to enjoy the benefits of the eligible customer declaration.
- d) A customer or group of end-use customers registered with the Commission whose consumption is more than 2 MWh/h over the course of one month, that is directly connected through a metered delivery point, to the generation facility of a generation licensee it intends to purchase electrical energy from and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the generation facility with the distribution licensee licensed to operate in the location where the generation facility and the customer are located.¹⁴ Customers who fall under this category are those who are situated close to the GenCos and desire to purchase power from them. Aside the Power Purchase Agreement the consumers will need to enter with the said Genco, they will need to

¹²*Ibid*, s. 5(2).

¹³ *Ibid*, s. 5(3).

¹⁴ *Ibid*, s. 5(1).

also enter distribution use of system agreement with the Disco operating in that region so that the Disco will construct the necessary infrastructure.

3.0 Overview of the Eligible Customer Policy and Regulation

The Nigerian Electricity Regulatory Commission NERC, issued the Eligible Customer Regulation ECR on the 1st of November, 2017, pursuant to section 96 of the Electric Power Sector Reform Act, 2005 EPSRA, which was in line with the directive of the Minister under section 27 of EPSRA; with the intent to facilitate competition in the supply of electricity, promote the rapid expansion of generation capacity and open up a window for improvement in the quality of electricity supply in the electricity industry. The Regulation is made up of fourteen (14) chapters. The first chapter introduces the regulation and sets out its objectives and application. Chapter two deals with the criteria which customers must meet in order for them to be captured under the eligible customer regime. Chapter three provides for the requirements that electricity suppliers must meet to supply the eligible customers with power.

In chapter four, the regulation provides for the procedure for the grant of eligible customer status, while chapter five states the rights and obligations of the eligible customers and Generation Companies. Chapter six of the regulation provides for the rights and obligations of service providers while chapter seven deals with switching rules. Chapter eight provides for access to transmission and distribution network, while chapter nine deals with pricing and cost of supply. Chapter ten of the regulation provides for metering, billing and settlement, while chapters eleven, twelve, thirteen and fourteen deal with balancing, phasing and implementation; supplier of last resort and miscellaneous provisions respectively.

Against the background of the chronicled chapters which form the Eligible Customer Regulation, it is pertinent to bring to fore some of its salient provisions. One of such provisions is section 2 of ECR which states that the objectives of ECR are to provide standard rules to facilitate competition in the supply of electricity, promote the rapid expansion of generation capacity and opportunity for improvement in quality of supply; encourage third party access to transmission and distribution infrastructure as a precursor to full retail competition in the Nigerian electricity market; allow licensed generation companies with uncontracted capacity to access unserved and underserved customers thus improving the financial liquidity of the electricity industry and enhancing the stability and operational efficiency of generation companies arising from the flatter load profiles of Eligible Customers and possibly lower technical losses, depending on the required network

interconnection.¹⁵ In terms of application, section 3 provides that ECR shall govern the supply of electric power to Eligible Customers as may be declared by the Minister from time to time in line with section 27 of the Act.¹⁶ The implication of this provision is that only those classified as eligible customers are subject to ECR and its provisions are not applicable to other electricity customers in NESI.

As part of the criteria for customer eligibility, section 6 provides for Site Aggregation requirements to the effects that a group of end users may combine multiple sites and apply for eligibility status from NERC with each application being considered on its own merit. What is required for the consideration of a site aggregation application is that applicants are expected to fulfil the following three requirements, that is (a) each Eligible Customer in the sites to be aggregated is connected to the same Distribution Licensee's network, an IEDN or an off-grid licensee and are connected to the same feeder; (b) the applicant is a single legal entity which may be a Special Purpose Vehicle who shall apply for eligibility status on behalf of the group of end-users and shall execute the transaction documents and (c) that there is a minimum consumption of 500KVA at each site and all located within the same geographical network as may be determined by NERC from time to time.¹⁷ It is important to point out that an end use customer seeking to attain Eligibility Status must procure and install appropriate metering infrastructure at all trading points in compliance with the Metering Code and such meters shall have remote reading capability for the measurement of active power, reactive power, peak demand and profiling of real load.¹⁸

In addition to the metering requirements, an applicant for eligibility status is by virtue of section 8 expected to fulfil the following contractual requirements as a precondition for approval by NERC. That is: (a) Execution of a Power Purchase Agreement (guided by the Commission's standard template) with the prospective Supplier; (b) Execution of Transmission Use of System ("TUoS") agreements with the Supplier and Transmission Service Provider, where applicable; (c) Execution of Distribution Use of System ("DUoS") with the Supplier and Distribution Licensee (where applicable); (d) Execution of market participation agreements with the Market Operator; (e) Execution of a bilateral agreement with the distribution licensee for the construction, installation and operation of a distribution

¹⁵ *Ibid*, s.2.

¹⁶ *Ibid*, s.3.

¹⁷ *Ibid*, s. 6.

¹⁸ *Ibid*, s. 7.

system to be used for the supply to the customer, where applicable and (f). Execution of other agreements as may be prescribed by NERC.¹⁹

In the same vein, section 9 provides that an applicant for the eligibility status shall post a Letter of Credit or Bank Guarantee in favour of the Market Operator in accordance with the Market Rules to cover Market administration charges, TUoS charge and other charges as may be approved by NERC.²⁰

In line with the objectives of ECR to set standards, facilitate competition, expand generation and allow licensed generation companies with uncontracted capacity to access unserved and underserved customers, ECR in section 10 provides that a supplier may offer to sell electric power to an Eligible Customer if it holds a Generation Licence²¹ or a Trading Licence²² as criteria to supply power to Eligible Customers.²³

A remarkable feature of ECR is the provision for the rights and obligations of eligible customer and supplier. For instance, section 15(1)(a) provides that an eligible customer shall be granted access to transmission and distribution networks for the purpose of delivery of electricity, pursuant to the execution of the TUoS and/or DUoS agreement as applicable,²⁴ while section 15(1)(b) states that such access rights to transmission and distribution networks and conditions of electric power network usage shall be subject to the general conditions for delivery and supply of electricity, Grid Code, Distribution Code, Metering Code and any other Regulation of NERC.²⁵ On the choice of a supplier, section 15(2)(a) provides that an Eligible Customer may freely choose a supplier and contract the pricing, quantity, and time of supply pursuant to the Grid Code, Market Rules and general conditions for delivery and supply of electricity,²⁶ while section 15(2)(b) provides that an Eligible Customer may contract for electricity supply from more than one supplier, provided that adequate infrastructure is available for the System Operator and Market Operator to reliably account for energy quantities.²⁷ Nevertheless, in accordance with the provision of section 15(2)(c), the contract for access to network connection or any other contract shall not contain any provision to limit

¹⁹ *Ibid*, s. 8.

²⁰ *Ibid*, s.9

²¹ *Ibid*, s. 11

²² *Ibid*, s. 12

²³ *Ibid*, s.10

²⁴ *Ibid*, s.15(1)(a)

²⁵ *Ibid*, s.15(1)(b)

²⁶ *Ibid*, s.15(2)(a)

²⁷ *Ibid*, s.15(2)(b)

the eligible customer's choice of supplier or impose a discriminatory fee, in case of supplier switching.²⁸

Besides the rights of an Eligible Customer, provided for in section 15, ECR also imposes some obligations on the Eligible Customer in section 16. These obligations include (i) Entering into a contract for supply with the holder of a Generation or Trading Licence; (ii) Entering into a contract to access the transmission and distribution network (as may be required) and in compliance with technical codes, general conditions for delivery and supply of electricity and the terms of the Power Purchase Agreement; (iii) Comply with the requirements for off-take on contracted quantities of electricity and peak capacity at each connection point; (iv) Meeting all financial obligations pursuant to the agreements for the supply of electricity in a timely manner;²⁹ and (v) to notify NERC of any change in corporate identity, address and service location.³⁰

Similarly, ECR provided for the rights and obligations of suppliers in sections 17 and 18 respectively. With regards to the rights of suppliers, ECR acknowledges and recognises the rights of suppliers as provided for in PPAs, TUoS, DUoS, Market Participation Agreement and the terms and conditions of the suppliers licence.³¹ Nevertheless, by virtue of section 18(1) the Supplier to an Eligible Customer is obliged to: (a) regularly submit all required data to the transmission or distribution licensees prescribed by the contract provisions on the access to the network (network usage) and contract on supply; (b) notify the Eligible Customer in writing about all types of services which are paid for by the customer as well as other possible conditions at which the supply of electricity is carried out, before engaging in contract for supply.³² Furthermore, section 18(1)(c) provides that an existing supplier whose supply contract is to be terminated shall not set any special additional condition outside the contract including unpaid obligations and shall be guided by the provision of the Market Rules.

Still on rights and obligations, ECR, provides for the rights and obligations of service providers such as the Transmission Service Provider, Market Operator, Distribution Service

²⁸ *Ibid*, s.15(2)(c)

²⁹ The financial obligations are to be met are: (a) as contracted in the Power Purchase Agreement; (b) for use of the transmission network, ancillary services and system operations at the tariff prescribed by NERC; (c) for use of the distribution network at the tariff prescribed by NERC; (d) for the costs and settlement of balances pursuant to the Market Rules; (e) for market administration charges.

³⁰ *Ibid*, n. 11, s. 16.

³¹ *Ibid*, s.17.

³² *Ibid*, s. 18(1) (a) & (b).

Provider and the System Operator. Regarding the rights and obligations of the Transmission Service Provider, ECR provides that (except as expressly contained in these Regulations) they are as provided in the Technical Codes, Market Rules, Agreements and licence terms and conditions.³³ With respect to the Market Operator, ECR, provides that (except as expressly contained in these Regulations) their rights and obligations are as provided in the Market Rules, Agreements and licence terms and conditions.³⁴ On the rights and obligations of the Distribution Service Provider, ECR provides in section 21 that (except as expressly contained in these Regulations) the rights and obligations of the Distribution Service Provider are as provided in the Technical Codes, Agreements and licence terms and conditions.³⁵ And with regards to the rights of the System Operator, ECR provides that (except as expressly contained in these Regulations) they are as provided in the Market Rules, Technical Codes, Agreements and licence terms and conditions.³⁶

By virtue of the provision of section 23 of ECR, it is mandatory for NERC to approve all PPAs before the commencement of service.³⁷ Consequently, an eligible customer who intends to exit from a distribution licensee's supply is expected to provide a minimum of 3 months' notice to the supplier.³⁸ A waiver may nevertheless be allowed for force majeure events, however, this is subject to verification by NERC.³⁹ Conversely, an eligible customer wishing to reconnect to a distribution licensee's supply network is expected to provide a minimum of 3 months' notice to allow for adequate planning, unless waived by the parties⁴⁰ and by virtue of section 25(2), the applicable tariff for the Eligible Customer on reconnection to the distribution licensee shall be at the prevailing tariff rates for customers in the same tariff class.⁴¹

In the event that an Eligible Customer seeks to switch suppliers, ECR provides for such an Eligible Customer to inform the current supplier in writing of the intention to switch suppliers at an agreed date, subject to the termination clause under the PPA and NERC's approval of the new contract for supply.⁴² Section 26 (1)(a) provides that the procedure for switching

³³ *Ibid*, s. 19.

³⁴ *Ibid*, s. 20.

³⁵ *Ibid*, s. 21.

³⁶ *Ibid*, s. 22.

³⁷ *Ibid*, s. 23.

³⁸ *Ibid*, s. 24.

³⁹ *Ibid*.

⁴⁰ *Ibid*, s. 25 (1).

⁴¹ *Ibid*, s. 25 (2).

⁴² *Ibid*, s. 26(1).

from one supplier to another commences with the execution of a PPA with the new supplier and other industry agreements,⁴³ while section 26 (1)(b) provides that the date of switching of supplier shall be as provided for in the PPA with the new supplier.⁴⁴ By virtue of section 26(1)(c) the new supplier to the Eligible Customer is required to submit an executed PPA to NERC and a notification of the executed PPA to the System Operator, Market Operator, the supplier of last resort and NERC, pursuant to the provisions of the general conditions for delivery and supply of electricity, Technical Codes and Market Rules,⁴⁵ while section 26(1) (d) provides that the Market Operator shall, prior to the effectiveness of the new contract, submit to the previous and new supplier data an accounting balance and metering data of the eligible customer, within three days counting from the date the balance was determined.⁴⁶

Access to transmission and distribution network is critical to the effective implementation of eligible customer regime, to this effect, ECR provides that Eligible Customers or its suppliers are to be granted access to transmission and distribution network so as to ensure the delivery of electricity, pursuant to the contracts executed by the parties.⁴⁷ ECR also states that NERC should promote third party access to the transmission and distribution networks by ensuring: fair access to the distribution and transmission networks subject to the availability of capacity; compliance with the approved DUoS and TUoS tariffs; compliance with Market rules, Technical Standards and Codes; network expansion to meet customer needs; and compliance with quality standards for supply of electricity and maintenance of frequency and regulation of voltage.⁴⁸ Commenting on the issue of open access, Oladejo expressed the view that:

the policy directive merely requires an Eligible Customer to have entered into a bilateral agreement with a system operator for the use of either the transmission or distribution network, it does not make provisions for any specific mechanism that would allow for extensive bilateral trading across the network, such as making provisions that will address a situation where a customer who meets the eligibility criteria in terms of the required quantity of power is unable to have access to transmission or distribution networks. It is therefore imperative that NERC addresses open access issues in the regulatory framework for Eligible Customers in Nigeria.⁴⁹

⁴³*Ibid*, s. 26 (1)(a).

⁴⁴*Ibid*, s. 26 (1)(b).

⁴⁵*Ibid*, s. 26 (1)(c)

⁴⁶*Ibid*, s. 26 (1)(d)

⁴⁷*Ibid*, s. 27 (1)

⁴⁸*Ibid*, s. 27 (1)(c)

⁴⁹ Olaitan Oladejo, "Substituted Service" - The Introduction of The Eligible Customer Regime in the Nigerian Power Sector: Key Issues and Considerations- July 2017. <<http://www.advocaat-law.com/assets/resources/d1c7f55baf6b0cd37de82e6852d3b30a.pdf>> accessed 22 June,

In view of the fact that cost reflective pricing has been a contentious issue in NESI, ECR, made provisions for pricing and cost of supply by stating that the price at which a supplier delivers power to an Eligible Customer may (in addition to capacity and energy charges negotiated in the PPA) include (a) the Transmission Use of System Charges (where applicable); (b) the Distribution Use of System Charges (where applicable); (c) Regulatory fees; (d) Ancillary Service Charges; and (e) Market Administration and System Operation charges as approved by NERC, and in line with the operative Tariff Methodology.⁵⁰ Also realizing the implication of the eligible customer regime on competition especially with the Distribution Companies, ECR provides further that the ⁵¹Minister, upon consultation with the President, may issue a directive for the collection of Competition Transition Charges from Eligible Customers in accordance with section 28 of EPSRA.⁵² On the Competition Transition Charges, Oladejo observed that despite this legal requirement, NERC is yet to provide clear modalities for the assessment of any likely revenue generation shortfall that may be experienced by the Discos by virtue of the declaration of Eligible Customers.

In the same vein, ECR provides that NERC may also determine the rate of contributions to be made by Eligible Customers to the Power Consumer Assistance Fund in accordance with section 84 (1) of EPSRA⁵³ as well as determine the contribution rates to be made by Eligible Customers to the Rural Electrification Fund in accordance with section 89 (a) of EPSRA.⁵⁴

While acknowledging that Energy differences may arise when: (a) An Eligible Customer is unable to take the generated contracted quantities; or (b). A generator is unable to deliver contracted quantities, ECR provided that such differences shall be settled in accordance with the provisions under Power Purchase Agreement and the balancing mechanism developed by the Market Operator pursuant to the provisions in the Market Rules.⁵⁵

It is important to note that since the Eligible Customer Regime is novel in NESI, it adopts a phasing implementation which commences with the introduction of declared classes of

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⁵⁰*Ibid*, n11 s. 28(1).

⁵¹*Olaitan Oladejo Op Cit.*

⁵²*Ibid*, n11 s. 29.

⁵³ *Ibid*, s. 30.

⁵⁴*Ibid*, s. 31.

⁵⁵ *Ibid*, s. 33(1).

Eligible Customers as a precursor to the eventual introduction of retail competition and the licensing of traders in the Medium-Term Market of NESI.⁵⁶

In order not to leave an Eligible Customer stranded in the event of a failure by the contracted supplier, ECR provided for a supplier of last resort who shall act as the contingent supplier to an Eligible Customer.⁵⁷ Presumably, for the ease of connectivity, ECR provides that Distribution Companies operating within the network coverage of the Eligible Customer will act as suppliers of last resort under a provisional arrangement and price to be mutually agreed by the contracting parties.⁵⁸ ECR in its miscellaneous provisions, states that NERC will maintain a list of eligible customers and their licensed suppliers on their website⁵⁹ and all disputes between parties in connection with it shall be resolved in accordance with the dispute resolution clauses of the respective agreements governing their relationship and the dispute resolution mechanism in the Market Rules (where applicable).⁶⁰

4.0 Implementation and Operationalization of the Eligible Customer Regime in Nigeria

For a designated eligible customer to come into effect, ECR requires a Power Purchase Agreement (PPA) be executed with the prospective Genco, and execute a Transmission Use of System agreement (Tuos) be executed with the Supplier and Transmission Service Provider.⁶¹ ECR also provides that where applicable, an Execution of Distribution Use of System (Duos) agreement be executed with the Supplier and Distribution Licensee.⁶² It provides also that where it is also applicable, a market participation agreement with the Market operator should be executed.⁶³ Similarly, ECR also provides that a bilateral agreement with the distribution licensee for the construction, installation and operation of a distribution system to be used for the supply to eligible customer and the execution of any other

⁵⁶ *Ibid*, s. 34.

⁵⁷ *Ibid*, s. 37.

⁵⁸ *Ibid*, s. 38.

⁵⁹ *Ibid*, s. 39.

⁶⁰ *Ibid*, s. 40.

⁶¹ John Chibueze and Eniola Sadare, 'Electricity Regulation in Nigeria: An Overview' (*Thomas Reuters Practical law*, 1 April, 2019).

<[https://content.next.westlaw.com/Document/I1325158da63211e498db8b09b4f043e0/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true&bhcp=1](https://content.next.westlaw.com/Document/I1325158da63211e498db8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1)> accessed 30 May, 2020.

⁶² ECR, s.14(1)(b).

⁶³ *Ibid*, s.17.

agreements which may be prescribed by NERC be executed as may be necessary.⁶⁴ The various agreements are considered below.

4.1 Power Purchase Agreement

A power purchase agreement is a long-term electricity supply agreement between the consumer and the supplier who will provide energy to the consumer under a set of terms including a fixed price.⁶⁵ The bilateral nature of this agreement ensures that it can be tailored to meet specific needs and reach specific milestones. This agreement typically makes provisions for the minimum energy provided, pricing, length of guaranteed price.⁶⁶ The agreement also contains terms which will dictate how the risk of price fluctuation will be minimized.⁶⁷ Power Purchase Agreements enables consumers to hedge on energy prices and formulate a budget where utilities are accurately set forth.⁶⁸

The type of Power Purchase Agreement to be executed by the Genco and the eligible customer is dependent on the means through which the eligible customer would receive the power; that is, whether the power being purchased would be delivered through distribution networks and transmission or if the eligible customer will receive it directly from the Genco.⁶⁹ The importance of the Power Purchase Agreement cannot be over emphasised. In situations where the eligible customer purchases the power directly from the Genco, then it will just be between the Genco and the eligible customer. This happens when the eligible

⁶⁴ Ibid, s. 8. In addition to the documents listed above, applications for registration of Eligible Customers must be accompanied with: (a) corporate and financial documents of the Applicant; (b) copies of documents showing the Applicant and Supplier have satisfied technical and safety requirements; (c) a letter of introduction from the Applicant's bankers and other financial support documents; (d) copies of the Applicant's utility bills; (e) a statement from the System Operator or relevant Disco indicating the structures to which the Applicant is connected and that the Applicant meets the conditions prescribed in the relevant technical codes and conditions for supply of electricity; and (f) a Letter of Clearance from the relevant Disco that the Applicant is not indebted to it. The Applicant is also required to provide a Letter of Credit or Bank Guarantee in favour of the Market Operator in accordance with the Market Rules to cover Market administration charges, Tuos and Duos Charges, and where it is proposed that electricity will be supplied to the Applicant, after registration, by a Genco, evidence of excess capacity above the quantities the Genco has contracted with NBET, will also be required. Applications will be verified and evaluated by the Commission, and a decision issued no later than thirty (30) working days after the date of filing by the Applicant.

⁶⁵ Sotereas Pantazes 'Commercial Energy Consumption and the Evolution of the Solar Power Purchase Agreement' (*John Hopkins University*, 1 May, 2008) <https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/35882/Pantazes_Commercial%20Builsing%20Energy%20Consumption_2008_Sislen.pdf> 12 accessed 13th April, 2020.

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ *Ibid*

⁶⁹ Erin Decker, 'The Evolving Structure of Power Purchase Agreements (PPAs)' (*Schneider Electric*) <<https://perspectives.se.com/new-blog-stream/the-evolving-structure-of-power-purchase-agreements-ppas>> accessed 30 May, 2020

customer is in close proximity to the Genco. The Power Purchase Agreement entered by the Genco and the eligible customer is bilateral. In situations where the eligible customer is situated in a place where there is distribution network; the Power Purchase Agreement entered here would be tripartite as it needs to encompass the Genco, the Disco and the eligible customer.

It is important to note that while ECR allows the eligible customers to contract directly with the Gencos, a possible issue that may arise is the ability of the eligible customers to commit to long-term PPAs with the requisite payment security which is often required by Suppliers.⁷⁰

4.2 Transmission Use of System Agreement

The Transmission Use of System Agreement is an agreement between a company which provides transmission infrastructure and network and a generating company for the latter to use the transmission infrastructure and network to supply electricity to end users.⁷¹ This agreement traditionally provides for how the tariffs are structured, the mode of service delivery and dispute resolution mechanism which will be employed by parties if such arise.⁷² This agreement is traditionally entered into by the Discos and Transmission Company of Nigeria (TCN).⁷³ It is important to point out here that NERC establishes the Transmission Use of System Charge.⁷⁴ This charge is to be paid to TCN as the managers of the national grid through which the Discos transport the electricity from the Gencos to the end users.⁷⁵ This charge is levied on the Discos and charged per unit of energy delivered to them.⁷⁶ It is determined through the use of building blocks methodology and by bringing together existing and forecast capital costs, efficient operating cost and allowances for return on capital and depreciation.⁷⁷

4.3 Distribution Use of System Agreement

⁷⁰ Olayemi Anyanechi, 'Nigeria: Developing A Liquidity Solution For the Nigerian Power Sector (Part 1)' (*Mondayq*; 17 August, 2016) <<https://www.mondayq.com/Nigeria/Energy-and-Natural-Resources/519808/Developing-A-Liquidity-Solution-For-The-Nigerian-Power-Sector-Part-1>> accessed 30 May, 2020.

⁷¹ The Grey Matter, 'The Nigerian Electricity Supply Industry- Recent Development and Prospects' (*Banwo & Ighodalo* 25 February, 2018) <<https://www.banwo-ighodalo.com/grey-matter/the-nigerian-electricity-supply-industry-recent-developments-and-prospects>> accessed 30 May, 2020.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Sharudden Mahmoud and Aisha Mahmud, "Transmission Tariff" (NERC) <<https://nerc.gov.ng/index.php/home/myto/407-transmission-tariff>> accessed 17 April, 2020.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

Distribution Use of System Agreement is an industry framework which makes provisions for connection to and use of electricity distribution networks.⁷⁸ Traditionally, the distribution use of system agreement is centralised document which also provides for charging regimes for the use of and connection of electricity distribution networks.⁷⁹ It could be either bilateral or multiparty.⁸⁰ It is bilateral when the contract is entered into by either the Genco or the end user and the distribution company for connection and use of the distribution network; and multilateral when it is entered into by the Genco, the end user and the distribution company.⁸¹

4.4 *Execution of Market Participation Agreement*

The importance of the execution of a Market Participation Agreement in NESI cannot be over emphasised. It is one of the documents which must be submitted to NERC before the eligibility status of an applicant is granted.⁸² The market participation agreement is entered into by the market operator- a business unit under the Transmission Company of Nigeria and the applicant (participant) seeking to become an eligible customer.⁸³ The market operator is mandated to administer, implement and operate the Nigerian Electricity Market in a manner that guarantees efficiency, transparency and non-discriminatory market administration services to all participants.⁸⁴

The main aim of the market participation agreement is to ensure that participants in NESI comply with the extant rules to enable the market operator administer NESI appropriately. This agreement also sets forth the rights and obligations of the participants with respect to the market operator and vice versa.⁸⁵ In this agreement, the participants generally undertake to comply with the market rules, grid code, metering code, the operating procedure and the market procedure at all times.⁸⁶ Amongst other things, it is agreed that the participant will

⁷⁸ Julien Barba, 'Nigeria: Eligibility Customers Regime: The Implementation of an 'Open Access' Electricity Market in Nigeria' (*Mondayq*, 04 January, 2018) <<https://www.mondaq.com/Nigeria/Energy-and-Natural-Resources/660496/Eligibility-Customers-Regime-The-Implementation-Of-An-Open-Access-Electricity-Market-In-Nigeria>>accessed 08 June, 2020.

⁷⁹ Erin Decker (n. 57).

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² ECR, Schedule 1 (A)

⁸³ ONEM Administrator, 'Market Participation Agreement' (*Operator of the Nigerian Electricity Market*, 13 February, 2017) <http://www.onemnigeria.org/index.php?option=com_content&view=article&id=100:market-participation-agreement&catid=1:latest-news&Itemid=50> accessed 30th May, 2020.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

construct, maintain and operate any equipment, system or facility connected to the transmission systems in compliance with the grid code.⁸⁷

4.5 Site Aggregation in Eligibility Application

There is no doubt that electric power is important to the smooth running of business establishments. A critical look at the provisions of section 5 of ECR which provides for categories of eligible customers shows that the electric power consumption rate of an establishment must be humongous to enable them fall into any of the various categories of eligibility. This provision in a manner attenuates the necessity for site aggregation. Similarly, section 6 of ECR- provides that a group of end users may combine multiple sites and apply for eligibility status from the Commission. In the course of site aggregation, each applicant must fulfil the following three (3) site aggregation requirements:

- a) Each customer in the sites to be aggregated is connected to the same Distribution Licensee's network, an IEDN or an off-grid licensee and are connected to the same feeder.⁸⁸
- b) The applicant is a single legal entity which may be a Special Purpose Vehicle who shall apply for the eligibility status on behalf of the group end-users and shall execute all truncation documents.⁸⁹
- c) There must be a minimum consumption of 500KVA at each site, all located within the same geographical network as may be determined by NERC from time to time.⁹⁰

To govern the nature of third-party access to transmission and distribution networks, NERC in line with the provision of ECR, is expected to release a set of compliance rules.⁹¹ These rules are intended to insure fair and non-discriminatory third party access to the transmission and distribution network.⁹² It remains to be seen how this will fare with the Discos especially with respect to the determination of fees payable for access. It is worthy of note that delays in the release of the rules may affect the implementation of the eligible customer regime, as open access to networks will be crucial to efficient supply of electrical power to the eligible customers. The Mini-Grid Regulations released earlier this year provides for template

⁸⁷ *Ibid.*

⁸⁸ *Ibid*, s 6(1) (a)

⁸⁹ *Ibid*, s 6(1) (b)

⁹⁰ *Ibid*, s 6(1) (c)

⁹¹ *Ibid*, s. 27(1)(b)

⁹² *Ibid.*

contracts and a simplified application procedure.⁹³ It is important for NERC to continue this trend by providing standard documentation to ease the process and ensure the 30-day timeline for NERC's approval as provided in ECR is achieved.⁹⁴

It is important to note that while provisions were made for eligible customer, ECR, took into account the possibility of the potential for loss of revenue for the Discos and therefore made provision for the power consumed by underprivileged power consumers to be subsidized by the eligible customer.⁹⁵ The funds for the subsidisation of the power consumed by the underprivileged shall upon contribution be paid into the Power Consumer Assistance Fund. It is important to state that although this fund has been created by the NERC, the NERC is yet to formulate a framework for the utilization of the funds.⁹⁶

5.0 Market Impacts of the Eligible Customer Declaration

Section 2(1)(a) of the ECR provides for standard rules in order to facilitate competition in the supply of electricity, promote the rapid expansion of generation capacity and also invariably improve the quality of electric supply in NESI. ECR seeks to encourage third party access to transmission and distribution infrastructure as a precursor to ensure full retail competition in NESI.⁹⁷ It will allow Gencos to access unserved and underserved customers thereby greatly improving their financial liquidity in the electricity industry.⁹⁸ The proper implementation of ECR will enhance the stability and operational efficiency of Gencos, thereby increasing electricity supply in NESI and in turn increasing the revenues available to Gencos.⁹⁹

With the emergence of the Eligible Customer Regulation (ECR), varying degrees of impact is expected on different players in the electricity value chain. There are implications for the various licensees in the sector and for other consumers of electricity who may not themselves qualify as eligible customers.

⁹³The NERC Regulation for Mini Grid, 2016 sought to regulate the generation and distribution of electricity within the 1 megawatt and 100 kilowatts respectively.

⁹⁴ NERC Regulation for Mini-Grid, 2016 contains contract templates which are to serve as guides to parties as they negotiate or enter any agreement in this regard.

⁹⁵ Electric Power Sector Reform Act, 2005, s. 84.

⁹⁶ Ewah Eleri, Okechukwu Ugwu and Precious Onuvae, 'Expanding access to Pro-Poor Energy Services in Nigeria' (ICEED, October 2012) <<https://iceednigeria.org/backup/workspace/uploads/final-pro-poor-energy-access-paper-26-nov.pdf>>accessed May 30, 2020.

⁹⁷*Ibid*, s. 2(1) (b).

⁹⁸*Ibid*, s. 2(1) (c).

⁹⁹*Ibid*, s. 2(1) (d).

The eligible customer regulation could immediately be perceived as another potential erosion of their customer base of the distribution companies and by extension their revenues. This concern stems from the fact that the classes of persons who qualify as eligible customers as declared by the Minister appear to be extensive, and also consist of “maximum demand” customers. The said classes comprise mostly of industrial electricity consumers and large residential estates with usually high electricity demand, and constituting a substantial part of revenue sources of the Distribution Companies. In the event that these customers opt for the direct supply of power from the Generation Companies, this could whittle away a significant chunk of the revenues of the Distribution Companies, thereby leaving the Distribution Companies with a customer base primarily comprised of the lower demand customers and further aggravating the low collection levels experienced by the Distribution Companies.¹⁰⁰ The presupposed dwindling economic fortunes caused the Discos to issue a notice of force majeure to the Bureau of Public Enterprise (BPE), contending that the impact of the Regulation has resulted in a change of law which has prevented them from fulfilling their obligations under the Performance Agreement. This notice was rejected by the BPE.¹⁰¹ On the other hand, the Eligible Customer Regulation was greatly lauded by the generating companies given its expected positive impact on their business. The acclaimed low-level collection of electricity bills by the distribution companies and the corresponding low remittances by the distribution companies have greatly exacerbated the liquidity challenges in NESI.¹⁰² This does not augur well for the generation companies, their gas suppliers and other sector players who rely almost entirely on collections and remittances by the distribution companies.¹⁰³ It is expected that ECD will increase the revenue of the generation companies as it opens up another stream of income arising from their direct sale of electricity to the eligible customers, separate from revenues expected under their long term off_take contracts¹⁰⁴ with the Nigerian Bulk Electricity Trading Plc “NBET”, or revenues that may be derived from the sale of electricity to distribution companies under different arrangements.¹⁰⁵

¹⁰⁰*Ibid*

¹⁰¹ Ayodele Oni and Francis Williams, 'The Eligible Customer Regime - Can the Electricity Distribution Companies in Nigeria Validly Declare Force Majeure' (*Bloomfield Law Practice*, 2nd July, 2018) <<https://www.bloomfield-law.com/our-works/the-eligible-can-the-electricity-distribution-companies-in-nigeria-validly-declare-force-majeure/>> accessed 25 March 2020.

¹⁰² Harrison Edeh, 'Discos say N8.7bn required to meet NERC's remittance order' (*Business Day*, 23rd October, 2019) <<https://businessday.ng/energy/power/article/discos-say-n8-7bn-required-to-meet-nercs-remittance-order/>> accessed 30th May, 2020.

¹⁰³*Ibid*.

¹⁰⁴An agreement between a producer and a buyer to purchase or sell portion of the producer's energy produced

¹⁰⁵ Desmond Ogba, 'Towards A Competitive Electricity Market: The Berthing of Eligible Customers' (*Templars*, 25 May, 2017) <http://www.templar-law.com/towards-competitive-electricity-market/> accessed 25 March 2020.

The pricing regime for the eligible customers is benchmarked against the prices charged by NBET for electricity supplied to the Distribution Companies. Based on the EC Directive, the eligible customers are to be supplied power by the Generation Companies at a price not exceeding the average wholesale price that the Distribution Companies are charged by NBET. In effect, the bilateral contracts between the Generation Companies and the eligible customers will be subject to a price cap based on the wholesale electricity tariff approved by NERC for NBET and the Distribution Companies. This price regulation for bilateral contracts could disincentivise the Generation Companies from actively procuring additional capacity for sale to eligible customers.¹⁰⁶

Nevertheless, the implementation of ECD could result in more financing opportunities for the generation companies. Although NBET currently provides buyer credit support to the generation companies in the form of letters of credit, the generation companies have not, for various reasons (including pending litigation), been able to cash-in on the credit support provided by NBET. This, coupled with the overall liquidity challenges in the sector, has limited the ability of the Generation Companies to raise additional financing for their operations. It is expected that with the EC Directive, the Generation Companies may be able to sell their output to creditworthy eligible customers, and they can manage their payment and collection risks by obtaining adequate, easily assignable, enforceable and ultimately bankable credit support from such customers to backstop payment obligations.¹⁰⁷ This will no doubt support their financing drive even if for a small percentage of their operations.

Apart from increased revenue and better assurance of payment, the Generation Companies will also be able to ramp up generation capacity as well as mop up their stranded capacity to trade with available eligible customers.¹⁰⁸ This could also help address the reported practice of Distribution Companies rejecting load allocation by the system operator.¹⁰⁹

Notwithstanding the foregoing, it is not likely that the Distribution Companies will lose out completely under the new regime. In some instances, the eligible customers (in particular those that are connected to a metered 11kV or 33kV delivery point on the distribution network) will be required to enter a distribution use of system agreement under which the

¹⁰⁶*Op Cit*, Desmond Ogba.

¹⁰⁷*Ibid*.

¹⁰⁸ Chineme Okafor, 'Gencos Accuse Discos of Inhibiting Higher Power Generation, Supply' (*Thisday*, 10 January, 2019) <<https://www.thisdaylive.com/index.php/2019/01/10/gencos-accuse-discos-of-inhibiting-higher-power-generation-supply/>> accessed 30 May, 2020.

¹⁰⁹*Ibid*.

Distribution Companies may still benefit from the tariffs; and the eligible customers that are directly connected to the metering facility of a Generation Company may enter into a bilateral agreement with a Distribution Company to construct and operate distribution facilities. It is believed that these options could substantially cushion the revenue loss for the Distribution Companies.¹¹⁰

The emergence of this new regime may lead to the increase in electricity tariffs. Hitherto, the revenue generated from the high paying customers enable the Discos to subsidise the bills sent out to the low paying customers.¹¹¹ It is submitted that the Discos will most likely increase their tariffs when they lose their high paying customers. The loss suffered by the players in the Nigerian electricity value chain may lead to the implementation of the Competition Transition Charge (CTC). This charge is determined by the Minister in consultation with the President. CTC is required where the impact of the eligible customers regime greatly precludes the Discos from satisfying its committed expenditure or earn permitted rates return.¹¹² CTC is meant to mitigate any hardship the eligible customer regime may cause on the Discos and other players in the electricity value chain. Against the background that neither EPSRA nor the licences issued by NERC to the Distribution Companies authorised them to operate exclusively or as monopolies in their distribution zones even though as a matter of practice, they tend to generally operate as such,¹¹³ with the licensing of independent electricity distribution networks¹¹⁴ and the recent increase in the number of off-grid generators,¹¹⁵ captive generators¹¹⁶ and mini-grid projects¹¹⁷ who sell their excess power directly to third parties consumers, usually large retail malls, residential neighbourhoods, industrial clusters and other big businesses; proper implementation of the ECR may potentially put these business model at risk. This is because their target consumers are those who may qualify as eligible customers and may opt for the latter if they are assured

¹¹⁰*Ibid.*

¹¹¹ Okechukwu Nnodim, 'New Power Policy Will Raise Tariff by 14%- Discos' (*The Punch*, 7 August, 2018) <<https://punchng.com/new-power-policy-raise-tariff-by-14-discos/>> accessed 30 May, 2020.

¹¹² ESPRA, section 28.

¹¹³ The Discos tend to monopolize distribution in the areas they operate. A typical example is the AEDC. It monopolises the distribution of electricity in the Federal Capital territory, Kogi State, Niger State, and Nasarawa State.

¹¹⁴ John Chibueze and Eniola Sadare (n. 49).

¹¹⁵ Jean Marie Takouleu, 'Nigeria: Daystar Obtains \$4 million from Sunfunder for Off-Grid Supply to Businesses' (Afrik21, 12 February, 2020) <<https://www.afrik21.africa/en/nigeria-daystar-obtains-4-million-from-sunfunder-for-off-grid-supply-to-businesses/>> accessed on 30 May, 2020.

¹¹⁶ Habeeb Salawu, 'Captive Renewable Energy: An Opportunity for Nigerian Businesses' (Sustyvibe, 2016) <<https://sustyvibes.com/6545-2/>> accessed May 30, 2020.

¹¹⁷ Ilias Tsgas, 'Nigeria to Install New PV Mini Grids As Domestic Off-Grid Sector Surges' (Pv Magazine, 27 December, 2019) <<https://www.pv-magazine.com/2019/12/27/nigeria-to-install-new-pv-mini-grids-as-domestic-off-grid-sector-surges/>> accessed 30 May, 2020.

of efficient service levels, especially since the regulated price of power offered to eligible customers by the Generation Companies could be cheaper than the price offered by such off-grid generators. It is therefore expected that improved service efficiency, competitive pricing and long-term power supply contracts should be key considerations for off-grid generators, lest they risk losing their “eligible customers” to the Generation Companies.

6.0 Conclusion

Although, the eligible customers’ declaration is intended to expand and deepen competition in NESI, a number of issues such as the determination of eligibility status, potential decline in the revenue of the distribution companies, challenges with the implementation of the Competition Transition Charges; and the creditworthiness of the eligible customers to the bankability of the associated power purchase agreements are envisaged. For instance, it would appear that EPSRA which gives the Minister absolute discretion to determine the classes of eligible customers without requirement for consultation with the public or sector stakeholders prior to issuing such directive or any change thereof creates some elements of uncertainty as to which consumers will be “eligible” and for how long.

Despite the provision in ECR on the classes of customer who qualify for eligible customer status, there is no clear pathway to the attainment of the said status. The absence of ECR to capture and provide the means through which NERC would exercise its discretion in granting the status has created an administrative dilemma capable of being abused to the detriment of applicants. Given the significant potential effect of the ECR on the revenues of distribution licensees, especially in view of the possibility of site aggregation by end-user customers intending to apply for registration as eligible customers, it would have been more meaningful for the issuance of the eligible customer regulations to have been preceded by a specific directive from the Minister authorizing the collection of Competition Transition Charges from eligible customers, as a buffer for the distribution companies before the parameters of the eligible customers registration process are delineated.

The declaration is, therefore, not without its shortcomings, but it is submitted that its pronouncement and the passage of the ensuing ECR is a step in the right direction as its main purpose is to improve competition in NESI and ensure that electricity is delivered to consumers rather than being abandoned or stranded.

7.0 Recommendations

In order for the Eligible Customers Regime not to be another white elephant policy, the generation company must expand the generation capacity so as not to be seen concentrating supply to the Eligible Customers and abandoning the DisCos.

Nigeria is endowed with large oil, gas, hydro and solar resources, and it has the potential to generate 12,000 MW of electric power from existing plants. On most days, however, it is only able to dispatch around 4,000 MW, which is insufficient for a country of over about 200 Million people. The Generation Companies must show enough reasons that stranded energy are not due to obsolete facilities of the DisCos that deny them the capacity to take more energy, in the event that the Distribution companies are able to scale up their facilities, more demand will be made, putting pressure on the Generation Companies and frustrating the Eligible Customers Objectives.