JULY 2024

IMO JOINS ENUGU, ONDO, AND EKITI IN GAINING REGULATORY AUTHORITY UNDER THE ELECTRICITY ACT 2023

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INTRODUCTION

The Electricity Act 2023 is most notable for building on the Constitutional amendment of 2023 which authorised states to create laws on the generation, transmission and distribution of electricity within the boundaries of the state.

Prior to the amendment and the EA, most power sector activities were focused on the national level but with these developments, the Nigerian power sector has effectively become a multi-tier market.

The Act specifically allows states to:

- Pass laws on all aspects of generation, transmission, system operation, distribution, supply and retail of electricity within that State
- Pass laws on the establishment, promotion and management of State electricity power stations
- Pass laws to establish a state electricity market, a state regulatory authority or any entity by whatever appellation with powers to regulate such markets;
- Collaborate with local governments and the federal government for rural electrification, or with local governments and distribution licensees to ensure electricity access to rural, unserved and underserved areas, promote investments in electricity or provision of electricity within states or local government areas; or
- Create a State Integrated Electricity Policy and Strategic Implementation Plan.
- Issue licenses and regulate activities of Independent Electricity Distribution Network (IEDN) and Independent Electricity Transmission Network (IETN) licensees as long as the activities of such licensees do not depend on any part of the national grid.

As such, the Nigerian Electricity Regulatory Commission (NERC) assumes the role of regulating inter-state transactions while the State regulator is responsible for activities that occur entirely within the state.

01 Establishing State Markets under the Electricity Act

When the Act was passed, there was much speculation about how the transfer of regulatory authority would occur with many expressing largely negative views about the feasibility of the entire process. This was fundamentally due to the perception that while the Act could serve as a starting point, it did not effectively provide a pathway for the establishment of a multi-tier market. However, several states have followed the process as outlined in the Act and started the journey to establish state markets.

ESTABLISHING A STATE ELECTRICITY MARKET UNDER THE ELECTRICITY ACT:

Enact Electricity Law	Establish Regulatory Authority	Notify NERC to transfer Regulatory Authority to State	Notify Successor Disco	NERC to Deliver a Draft Order of Transition	Successor Disco to Establish a Subsidiary
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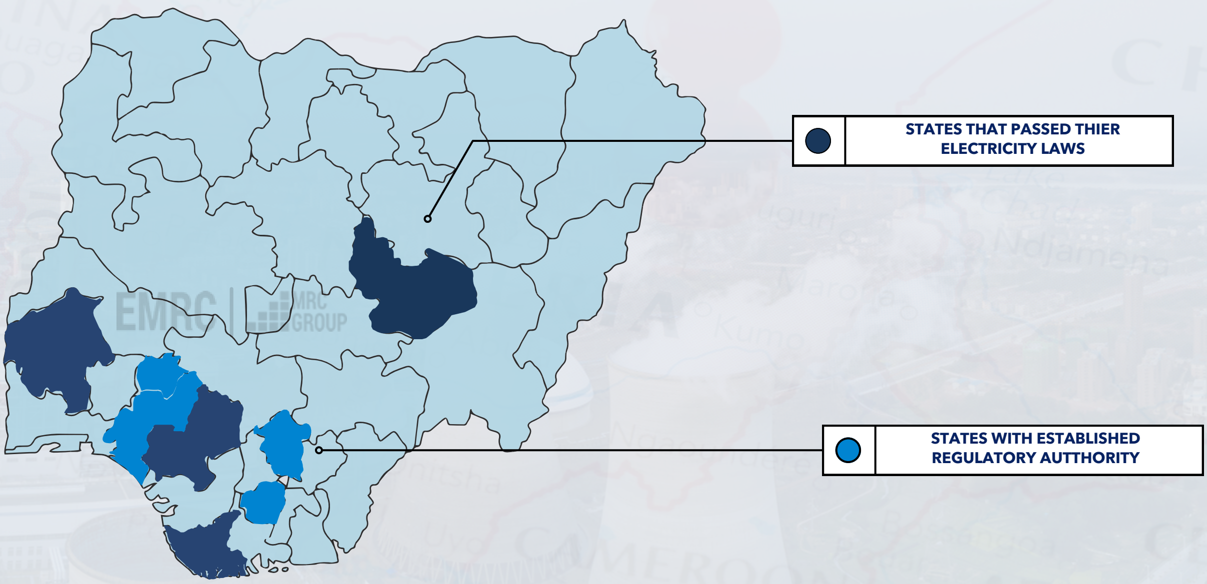
STATE ELECTRICITY MARKET IN NIGERIA AS AT JULY 2024



01 Establishing State Markets under the Electricity Act

To date, the following eight states have passed their Electricity Laws:

STATES THAT HAVE PASSED THEIR ELECTRICITY LAWS:			
ENUGU STATE		**EKITI STATE**	
IMO STATE		**BAYELSA STATE**	
EDO STATE		**OYO STATE**	
ONDO STATE		**PLATEAU STATE**	

On 22 April 2024, Enugu and Ekiti States became the first States to receive regulatory oversight following the release of NERC's Order on The Transfer Of Regulatory Oversight Of The Electricity Market From The Nigerian Electricity Regulatory Commission, signalling a transfer of power from the national to the sub-national regulatory authorities in these states. The following day, Ondo State became the third state to receive a transition order and on 1 July 2024, Imo State became the fourth state to receive a transition order from NERC.

Before the release of the order, there was significant speculation about what the Transition Order would contain, and many states expressed concerns about the possibility of NERC imposing specific directives as they believed this might hinder their independent operations. However, to a large degree, NERC's order is quite concise, compliant with the Act and non-prescriptive.

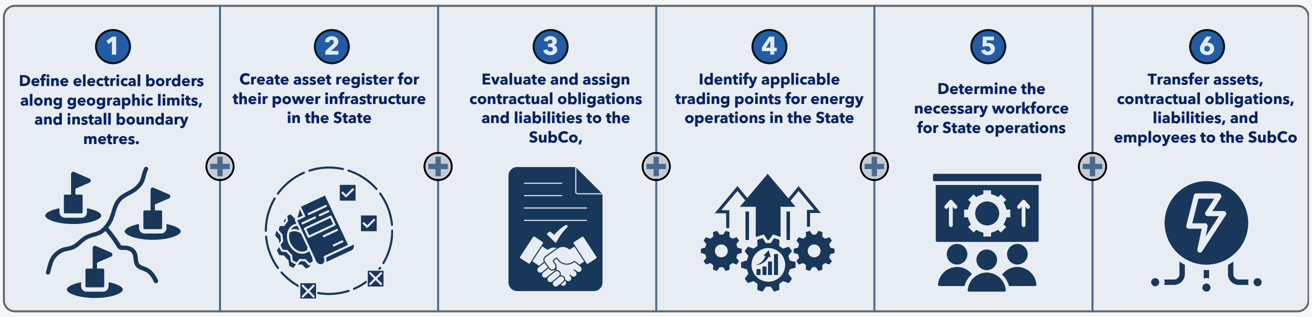
02 The Transition Orders

The orders which came into effect on the 1st of May 2024 referred to the relevant provisions of the Act and the Constitutional Amendment, acknowledging the establishment of a new legal, regulatory and operational landscape.

In line with the provisions of the Act, NERC directed the DisCos operating within the three states to incorporate subsidiaries within 60 days from the day the order comes into force to assume control of distribution and supply activities within the states.

Apart from the transition provisions in the Act, which include the creation of a SubCo by the existing DisCo, the order provided other directives for different relevant entities such as the existing DisCo, the State Government, the potential Sub-Co, NERC and the State Regulator.

Most of the directives were assigned to the existing DisCo which is required to:



1. **Delineate electrical boundaries along geographic boundaries and install boundary meters:** This is essential for carving out the state network as an entity separate from the national grid. It also allows for proper energy accounting.
2. **Create an asset register for their power infrastructure in the State:** This is vital as electrical and land boundaries are not synonymous in many states. Therefore, many DisCos will be required to identify and delineate their assets across state lines.
3. **Evaluate and assign contractual obligations and liabilities to the SubCo and confirm to NERC the contractual details for the supply of energy and capacity that will supply the Sub-Co:** The existing DisCos have contracts that cover operations across their various states. With the implementation of state markets, these contracts must be assigned to individual states.
4. **Identify applicable trading points for energy operations in the State:** As Enugu, Ondo, Ekiti and Imo will become individual markets it will be critical to determine the flow of power into state boundaries as the trading points for an existing DisCo may be within another state's boundary.
5. **Determine the necessary workforce for State operations:** This is critical as DisCo will need to approve a governance structure and identify staff that will be transferred to the SubCo.
6. **Transfer assets, contractual obligations, liabilities, and employees to the SubCo:** As a new entity, the SubCo will have to take control of its share of the existing DisCo's assets, obligations and existing liabilities to ensure business continuity in the new State market.

NERC on its part will prepare a register of licensees, permit holders, and certificate holders in the State and inform them of the transfer. This register is to be delineated by authorized activities and use of the national grid. Regulatory oversight for intrastate activities will transfer to the State Regulatory Commission while NERC will approve generation and transmission services where the State relies on the national grid.

The State Government on its part will assume responsibility for the provision of tariff policy support such as subsidies in the State while the State Regulator will be authorised to grant licences for intrastate activities and determine the end-user tariff methodology and tariff.
Once created, the SubCo must apply for a supply and distribution license from the State Regulator and obtain approval from NERC where it aims to procure energy from the national grid or any other source outside the State where it operates.

NERC has mandated that Enugu, Ondo, and Ekiti states complete the required regulatory process by October 22, 2024, while Imo State must do so by December 31, 2024. This directive aligns with the Electricity Act's provisions, which stipulate that the transfer process must be concluded within six months. s.

While the transition process has been made clearer, some grey areas remain.

Regulatory Charges: NERC currently collects 1.5% of revenue from the three sectors of the value chain. While each State will determine what levies the regulator may charge, it is uncertain if NERC will continue to collect this charge or a lesser charge from the SubCos who may continue to rely on the national grid for energy supply in the short to medium term.

Regional Markets: The Act does not envisage the establishment of regional markets. Nonetheless, it does not specifically bar States from establishing them. As such, where States create laws which allow the establishment of regional markets, it is unclear if NERC be entitled to regulate. The Act firmly places interstate activities within NERC's regulatory purview; therefore, it is likely. However, the Act also allows States to establish their markets in whatever form they deem suitable. At this point, it may be unclear whether regional markets can thrive under the new legal landscape and what sort of regulatory oversight NERC may have in such circumstances.

Treatment of Statutory Liabilities: At the national level, there is currently an escrow arrangement which ensures that DisCos meet their statutory obligations. While these liabilities will be transferred, it is unclear how they will be recovered in the new sub-national markets.

Balancing Existing Interests: SubCos will inherit existing liabilities that are tied to their franchise areas. This means that where new distribution licenses are granted within those areas, this may hamper their ability to meet their repayment obligations. Therefore, some mechanisms should be put in place to ensure that new distribution licensees do not hinder cost recovery for the SubCo.

Technical Standards and Codes: To ensure a bidirectional flow of power between markets, it may be necessary to develop some minimum technical standards for State markets for optimal energy trading. This will also ensure that generation in one state can be augmented with energy from another where there is a grid collapse or mismatch in supply and demand, further enhancing the reliability of supply.

NBET's Exit from the Market: NBET's license is set to expire in November 2024. However, there is uncertainty about the feasibility of that process with many stakeholders asserting that NBET's role is still necessary considering the poor liquidity performance of DisCos. Nevertheless, NBET is a player in the national market and it is important to consider what payment guarantees State markets will put in place to ensure business continuity especially as these contracts will still be subject to some oversight from NERC which regulates all activities on the national grid.

04 Conclusion

Nigeria stands on the brink of a transformative venture that will not only reshape its power sector but also redefine the economic landscape. This ambitious transition to a multi-tier electricity market has the potential to accelerate electrification, fostering economic growth and development. However, unforeseen factors may arise, potentially causing delays.

The success of this initiative hinges on establishing a clear collaborative framework and adopting an agile approach to swiftly address challenges and rectify errors as they emerge. This transition requires meticulous planning, strong leadership, and a commitment to flexibility. The goal is not just to transfer regulatory authority but to ensure that each state can efficiently manage its energy resources, tailoring solutions to local needs and driving innovation in the sector.

Moreover, fostering partnerships between state governments, private investors, and wider sector stakeholders will be essential in leveraging expertise and resources. This collective effort can create a resilient energy infrastructure that supports Nigeria's broader economic ambitions, paving the way for sustainable development and improved quality of life for all citizens.

As Nigeria embarks on this journey, the lessons learned and the strategies developed can serve as a model for other nations facing similar challenges, highlighting the potential of decentralized power systems to transform economies and empower communities.

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ENUGU, EKITI AND ONDO BECOME THE FIRST STATES TO GAIN REGULATORY AUTHORITY UNDER THE ELECTRICITY ACT 2023

EMRCINSIGHTS

Energy Market and Rates Consultants Limited. Suite 217-219, Plot 1099
Adamawa Plaza Central Business District Abuja, FCT.
E: info@energymrc.ng W: www.energymrc.ng

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