

# Renewable Energy: Key Highlights of the Electricity Bill

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## A. Introduction

The power generation mix for the Nigerian Electricity Supply Industry (the “NESI”) is dominated by gas with over 70% share of on-grid electricity generation, with hydro supplying the rest<sup>1</sup>. As the technical, operational and commercial regulator of the NESI, the Nigerian Electricity Regulatory Commission (“NERC”) introduced different regulatory measures aimed at improving the Nigerian energy mix through the utilization of renewable energy sources for power generation<sup>2</sup>.

If renewable energy is to make significant in-roads into the power generation mix in Nigeria, particularly in an era where significant steps are required to tackle climate change concerns, changes are required to the Electric Power Sector Reform Act, 2005 (“EPSRA” – the key legislation for the NESI). The proposed Electricity Bill 2021 (the “Electricity Bill”) aims to provide the legal and regulatory

changes required to stimulate the contribution of renewable energy to Nigeria’s energy mix. In this newsletter, we highlight key provisions of the Electricity Bill as it relates to the development and deployment of renewable energy in the NESI.

## B. The Electricity Bill and Renewable Energy: Key Highlights

The Electricity Bill seeks to, inter alia, repeal the EPSRA, consolidate all laws relating to the NESI, introduce regulatory measures to engender the development of the NESI and stimulate the contribution of renewable energy in the energy mix. Unlike the EPSRA, the Electricity Bill contains copious provisions on renewable energy, both in respect of on-grid and off-grid renewables.

1. Nigerian Electricity Regulatory Commission (“NERC”) Quarterly Report – Fourth Quarter 2020. Based on the report, gas accounted for 75.29% of the electricity generated during the fourth quarter of 2020, while hydro accounted for 24.71%.
2. Some of the regulatory measures introduced by NERC include the Regulations on Feed-In Tariff for Renewable Energy Sourced Electricity in Nigeria, 2015; NERC Mini-Grid Regulation, 2016; Regulatory engagements between NERC and the Rural Electrification Agency on off-grid renewables; and NERC Order for the Mandatory Dispatch of Hydropower Plants, 2019. It is worth noting that NERC has also issued licences for (clean) coal power generation as a way of improving the electricity generation mix.



As part of its primary objectives, the Electricity Bill aims to, among others, create an enabling environment to attract investment in renewable energy sources, improve the use of renewable energy off-grid and mini-grid solutions for electrification and promote indigenous capacity in technology for renewable energy sources<sup>3</sup>. To achieve these lofty objectives, certain measures are proposed in the Electricity Bill. Undoubtedly, the implementation of the measures proposed in the Electricity Bill will be a game changer for the renewable energy market in Nigeria. We consider some of these proposed measures below.

- a. Renewable energy as a key part of the National Integrated Electricity Policy and Strategic Implementation Plan: From a planning perspective, the Electricity Bill mandates the development of an Integrated Electricity Policy and Strategic Implementation Plan (the “**Integrated Plan**”) to guide the overall development of the Nigerian power sector. The Integrated Plan is critical to planning as it assesses future electricity needs and puts in place a plan to satisfy those needs. The Integrated Plan will basically act as a roadmap for the development of the Nigerian power sector. The Electricity Bill requires the Integrated Plan to incorporate specific policies including waivers and subsidies that will stimulate the development of renewable energy<sup>4</sup>. To also ensure that relevant policies are introduced to drive the renewable energy sector, the Ministry of Power is given the responsibility of recommending exemptions (such as customs, levies and duties exemptions) and financial incentives necessary for the development, production and utilization of renewable energy.
- b. Express duty on NERC: The Electricity Bill expressly provides that NERC is to “*promote the development and utilization of renewable energy services and increase the contribution of renewable energy to Nigeria’s energy mix*”<sup>5</sup>. As such, the NERC is expressly required to put in place the best possible regulatory measures

aimed at fostering the utilization of renewable energy for power generation in Nigeria<sup>6</sup>. Some of the regulatory measures that NERC is mandated to put in place include simplified licensing for renewable energy service companies, provision of standard power purchase agreements, commercial and technical regulations to ensure connection to the grid and distribution networks, unhindered access to the grid and distribution networks, award of mini-grid concessions to renewable energy companies, issuance of net-metering guidelines and provision of regulation on energy storage.

- c. Renewable generation obligation: Under the Electricity Bill, electricity generation licensees are obligated to meet renewable generation obligation as may be prescribed by NERC. As such, electricity generating companies will be mandated to either generate power from renewable energy sources, purchase power generated from renewable energy or procure any instrument representing renewable energy generation<sup>7</sup>. Fundamentally, the aim is to create a market for renewable energy and thereby stimulate investments in the sector.
- d. Renewable purchase obligations: The Electricity Bill also mandates the imposition of renewable purchase obligations on distribution or supply licensees<sup>8</sup>. That is, holders of distribution licence or supply licence will be mandated to purchase a minimum quantity of their power requirements from renewable energy sources or purchase instruments representing renewable energy generation. In addition, a bulk customer may be required to purchase a specified percentage of its total electricity needs from renewable energy sources or pay a premium to NERC<sup>9</sup>. The aim of imposing renewable purchase obligations on distribution licensees, supply licensees and bulk customers is to foster the consumption of energy produced from renewable energy sources and thereby stimulate the growth of the renewable energy market in Nigeria.

3. Section 1(i) – (o) of the Electricity Bill.

4. Section 3 of the Electricity Bill.

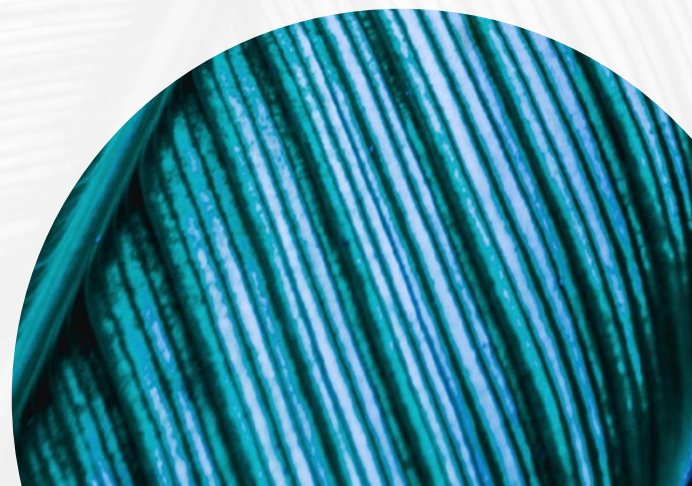
5. Section 35(1)(j) of the Electricity Bill.

6. Part XV of the Electricity Bill.

7. Section 81 of the Electricity Bill.

8. Section 89 of the Electricity Bill.

9. Section 144 of the Electricity Bill.





- e. Connection to and upgrade of transmission and distribution system: The Electricity Bill provides for priority connection to transmission and distribution systems for generators of electricity from renewable energy sources<sup>10</sup>. This priority connection to such systems is however subject to established dispatch procedures. Specifically, an operator of a transmission or distribution system will be required to upgrade its system at reasonable economic expense to feed-in electricity from renewable energy sources where requested by a renewable energy generator interested in feeding electricity into the system. The Electricity Bill provides that the cost of upgrading the system shall be equally shared between the operator of the system and the renewable energy generator, while the renewable energy generator shall solely bear the costs associated with connecting installations to the metering point. The relationship/interaction between an operator of a transmission or distribution system and the renewable energy generator will be governed by a connection agreement between the parties.
- f. Feed-in tariffs: The Electricity Bill mandates NERC to prepare and provide for feed-in tariff rates for electricity generated from renewable energy sources as a way of encouraging investment in renewable energy power generation<sup>11</sup>. The tariff rate will be guaranteed for a period of 10 - 15 years and subsequently be subject to review every 2 years. In determining the tariff, NERC is required to factor the price differential between the purchase price of electricity generated from renewable energy sources and the price of electricity purchased from other sources.
- g. Local content support: The benefits of an effective local content policy cannot be overstated<sup>12</sup>. The Electricity Bill in keeping with the need to ensure indigenous development in all sectors of the Nigerian economy mandates NERC to review the extant National Content Development Regulations for the power sector to address local content requirements for local skills acquisition, local production and assembly of solar

PV components, deep cycle batteries, electro-mechanical components of SHP technology, wind power, boilers and turbines for cogeneration of less than 30MW or other components as may be specified by NERC for local contents requirements. In addition, all entities (including licensees, contractors and subcontractors) carrying out operations in the renewable energy space are mandated to ensure that local content is a component of their operational renewable energy activities.

- h. Market for trading of renewable energy certificates: The Electricity Bill defines “renewable energy certificates” as “a tradable environmental commodity that represents proof that electricity was generated from an acceptable source and can be sold, traded or bartered by the owner of the certificate claiming to have purchased such renewable energy”. By allowing the satisfaction of renewable generation obligations and renewable purchase obligations through the purchase of renewable energy instruments (such as renewable energy certificates), the Electricity Bill seeks to create a compliance market as a way of stimulating the Nigerian renewable energy market and encouraging investments in renewable energy projects.
- i. Creation of the Rural Electrification and Renewable Energy Agency to replace the Rural Electrification Agency: The existing EPSRA established the Rural Electrification Agency (“**REA**”) as the implementing agency responsible for the electrification of rural and unserved areas<sup>13</sup>. However, the Electricity Bill expands the scope of the REA to drive renewable energy projects in Nigeria. To buttress the REA’s expanded scope, the Electricity Bill proposed the creation of the Rural Electrification and Renewable Energy Agency (“**REREA**”) as a replacement agency. As part of its functions, the REREA is required to advocate for tax incentives, investment capital allowance and low interest loans for local producers of renewable energy products; and for carbon tax to disincentivize the sale of fossil fuels, encourage reliance on renewable energy and trigger gradual transition to clean energy.

10. Section 148 of the Electricity Bill.

11. Sections 145 - 147 of the Electricity Bill.

12. See our publication on local content in the oil and gas industry: <https://www.dentonsacaslaw.com/en/insights/articles/2022/april/20/implementation-of-the-nigerian-oil-and-gas-industry-content-development-act-2010>.

13. Part IX of the EPSRA.



In advocating for carbon tax, the expectation is that the REREA (if established) will liaise with the National Council on Climate Change (the “**Council**”) given that the recently enacted Climate Change Act, 2021 provides that the Council shall collaborate with the Federal Inland Revenue Service (the Federal tax authority) to develop a mechanism for carbon tax in Nigeria and confers on the Council the power to make regulations to supervise market-based mechanisms and instruments relating to climate change.

- j. Creation of the Rural Electrification and Renewable Energy Fund: Similar to the proposed expansion of the scope of the REA with the planned creation of the REREA, the Electricity Bill also seeks to expand the scope of the Rural Electrification Fund (“**REF**”) created under the EPSRA with the creation of the Rural Electrification and Renewable Energy Fund (“**REREF**”). The expanded scope of the REREF will cover funding for, among others, research and development of new technological advancement in the Nigerian renewable energy space, execution of renewable energy projects for non-electricity purposes, development of infrastructure for renewable energy, production-based subsidies for renewable generation and equity participation in renewable energy projects.

## C. Conclusion

Harnessing the renewable energy sources available in Nigeria is not only important to improve security of supply in the NESI and access to electricity for Nigerians but is also paramount given the significant steps required to tackle climate change and the growing importance of environmental, social and governance (“**ESG**”) related issues for investors. Undoubtedly, renewable energy is an important element of ESG and in the fight to reduce emissions of greenhouse gases. As such, providing a clear legal and regulatory framework will certainly go a long way in stimulating investments in the Nigerian renewable energy sector. While the clarity proposed by the Electricity Bill is certainly vital, NERC, relying on the existing EPSRA, can and is empowered to introduce additional regulatory measures aimed at expanding the utilization of renewable energy in Nigeria.



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