The electricity sector in Nigeria has faced persistent challenges in its various subsectors, despite undergoing structural reforms and receiving investments over the years to tackle these recurring issues. Frequent national grid collapses and blackouts have resulted in erratic power supply. Additionally, the sector has grappled with liquidity and profitability challenges, leading to high levels of indebtedness.

Addressing these pressing concerns, on the 8th of June 2023, President Bola Ahmed Tinubu assented to the Electricity bill and accordingly, the Electricity Act, 2023 (“Act”) came into effect. The primary objective of the Act is to consolidate the laws relating to the Nigerian electricity supply industry (“NESI”). The Act covers various critical aspects, such as electricity generation, transmission, system operation, distribution, supply, and trading. The Act is designed to be cost-effective, service reflective, and based on competitive tariffs, contracts, and rules. In doing so, the Act seeks to address the shortcomings of the previous regulatory framework and create a more efficient and competitive electricity market.

The enactment of the Act has led to several earlier Acts being repealed to streamline and consolidate the legal provisions governing the Nigerian electricity sector. These repeals mark a significant step towards establishing a more organized and cohesive legal framework to govern the power industry in the country.

Upon meticulous examination of the objectives of this Act, it becomes evident that it can be aptly described as a comprehensive and all-encompassing legislation. Undoubtedly, the consolidation of all laws pertaining to the Nigerian power sector serves as a fundamental requirement for achieving sustainable development in this domain.

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1 His Excellency, President Bola Ahmed Tinubu, GCFR signed the Electricity Bill 2023 into law as Electricity Act, 2023.
This article aims to explore the crucial provisions of the Electricity Act, 2023, a legislation consisting of 233 Sections and 22 Parts. Part 1 establishes the Act’s Objectives and Application, while Part 2 focuses on the National Integrated Electricity Policy and Strategic Implementation Plan. Part 3 outlines the Development of a Competitive National Electricity Market, and Part 4 addresses the Incorporation and Licensing of the independent system operator (ISO). Part 5 delineates the Establishment, Functions, and Powers of the Nigerian Electricity Regulatory Commission, and Part 6 covers Licensing aspects. Additionally, Part 7 delves into the generation of electricity, and Part 8 establishes the National Hydroelectric Power Producing Areas Development Commission. Part 9 is dedicated to Transmission for Electricity, while Part 10 addresses the Distribution and Supply of Electricity. Part 11 deals with Tariffs and Subsidies, and Part 12 focuses on the Acquisition of Land and Access to Land. Furthermore, Part 13 encompasses Consumer Protection and Licensee Performance Standards, and Part 14 deals with Competition and Market Power. Part 15 introduces the Power Consumer Assistance Fund, and Part 16 pertains to the Rural Electrification Agency. Part 17 is dedicated to Renewable Energy and Energy Efficiency, and Part 18 deals with the Nigerian Electricity Management Services Agency. Additionally, Part 19 establishes the National Power Training Institute of Nigeria, and Part 20 outlines Offences and Penalties. Moreover, the Act includes two additional parts for Miscellaneous and Supplementary provisions, as well as Final provisions. With this comprehensive structure, the Electricity Act, 2023 strives to foster a robust, transparent, and effective electricity supply industry in Nigeria.

**THE KEY PROVISIONS OF THE ACT**

Alignment of the Objectives to Propel Electricity Generation, Supply, and Management across All Levels

The foundational goals of this Act are to establish a comprehensive legal and institutional framework guiding a privatized, contract-based, and rule-driven competitive electricity market in Nigeria. It aims to leverage the successes of the privatization phase of the electric power sector and expedite the growth of power generation capacity. Moreover, the Act endeavours to optimize power utilization, encourage policy and regulatory initiatives for the expansion of power transmission networks across Nigeria.

An additional objective of the Act is to create an environment conducive to attracting investments throughout the Nigerian Electricity value chain, revitalizing economic growth, fostering job creation, and enhancing the living conditions of Nigerian citizens. It strives to eliminate barriers hindering investments in generation, transmission, distribution, and related sub-sectors within the electricity industry, employing effective policy and regulatory measures. Furthermore, the Act recognizes and embraces third-party investments in NESI infrastructure from both private and public sectors.

Ultimately, this Act aims to strengthen the collaboration between federal electricity entities and stakeholders, fostering an environment of collaboration and cooperation to drive sustainable and progressive development within Nigeria’s electricity sector.²

² Section 1(a-s)
A National Integrated Electricity Policy and Strategic Implementation Plan

Sections 3(1) and 4 of the Act outline the provisions for developing and executing an integrated resource plan for the Nigerian Electricity Supply Industry (NESI) via the National Integrated Electricity Policy and Strategic Implementation Plan (NIEPSIP). This plan encompasses specific aspects crucial to the power sector’s advancement, as articulated in the Act, along with any other areas that the Federal Government deems necessary for policy direction.

According to the Act, the Federal Government, through the Federal Ministry of Power, is mandated to prepare and publish the NIEPSIP in the Federal Gazette within one year of the Act’s commencement. This plan will serve as a comprehensive guide for the overall development of Nigeria’s electric power sector. Additionally, the Act specifies that the NIEPSIP be reviewed or revised at least every five years or within a reasonable timeframe determined by the Minister of Power. This regular review ensures that the plan remains current and responsive to the evolving needs and dynamics of the power sector in the country.

Fostering a Competitive National Electricity Market

The Act is designed to pave the way for the establishment of a competitive national electricity market, acknowledging the significance of evolving and reforming the Nigerian Electricity Supply Industry (NESI). This transformation aims to facilitate the transition of the current transitional electricity market stage to short-term and long-term electricity market stages, as prescribed by the market rules.

Sections 8 to 14 of the Act outline essential provisions concerning the declaration of a competitive market, the sales and purchase of electricity and ancillary services. The commission, responsible for overseeing the market, will provide market rules and grid codes developed by the system operator. These rules may have general or specific applications, ensuring the smooth functioning and fairness of the electricity market.

Previously under the control of the Federal government, the NESI is now set to undergo a significant shift with the enactment of this Act. States will gain authority to regulate the generation, transmission, and distribution of electricity within their respective states. The liberalization of the electricity market is expected to attract private and independent investors, fostering robust and enhanced participation in the power sector.

Moreover, section 112 of the Act enables both Federal and State Governments to engage in public-private partnership arrangements with private companies for investments in the transmission network. These partnerships will operate under the provisions of the Act and relevant frameworks concerning infrastructure concessions and public-private partnerships. This initiative is aimed at attracting much-needed investments to bolster the transmission network’s efficiency and reliability. The Act, however, sets limitations on interstate and transnational electricity distribution. Private investors have the opportunity to obtain various licenses under the Act, including generation licenses, transmission licenses, system operations licenses, trading licenses, and distribution and supply licenses. These licenses empower private entities to participate in distinct segments of the electricity value chain, fostering healthy competition and stimulating innovative solutions to meet Nigeria’s escalating energy demands. Importantly, it is worth noting that any individual can construct, own, or operate an undertaking for generating electricity, not exceeding one megawatt in aggregate at a site, or undertake electricity distribution with a capacity of up to 100 kilowatts in aggregate at a site, without the obligation of acquiring a license.
Empowering Regulatory Bodies: Strengthening Oversight of the Power Sector

The Act introduces significant enhancements to the powers and autonomy of regulatory bodies tasked with overseeing the power sector. It not only bolsters the Commission’s authority to enforce compliance, regulate tariffs, and resolve disputes effectively within the sector but also allows for the delegation of regulatory functions to state regulators once they are established. Presently, Lagos, Edo, and Kaduna States have taken the initiative to establish their power market regulations, and it is anticipated that they will commence regulating their respective markets. However, in states where such regulations are yet to be formed, the Commission will continue to fulfil its regulatory responsibilities.

To uphold transparency and accountability, the Act lays down clear guidelines for the licensing, monitoring, and supervision of market participants. These guidelines establish a framework that curtails anti-competitive practices and ensures a level playing field for all industry players. Beyond empowering the Commission, the Act establishes distinct bodies with specific mandates. These bodies include the National Hydroelectric Power Producing Area Development Commission, the Rural Electrification Agency, the Nigerian Electricity Management Services Agency, and the National Power Training Institute of Nigeria. Each of these entities will play essential roles in the effective and coordinated development of Nigeria’s power sector, contributing to its growth and sustainability.

Establishing the Nigerian Electricity Regulatory Commission (NERC)

The Act duly maintains the existence of the Nigerian Electricity Regulatory Commission (NERC) and outlines the provisions pertaining to its functions. As per the Act, NERC is vested with the authority to license and regulate entities involved in the Nigerian Electricity Supply Industry (NESI). The Act specifies that NERC shall function as a body corporate with perpetual succession, enjoying the ability to sue or be sued in its corporate name and undertake all acts that other bodies corporate may perform.

Sections 34-62 of the Act delineate the functions and powers of the Commission, including the appointment of a Commissioner who will serve as its head. The Act further addresses the terms of office, conditions of service, vacation of office, and remuneration for Commissioners, among other matters related to their roles. Overall, the Commission holds the position of the apex regulatory authority in the NESI and operates independently as a distinct body.

It is essential to highlight that the regulatory authority established by this section of the Act operates autonomously from the powers vested in states to enact laws and create electricity markets within their respective territories. This ensures that the overall regulatory framework remains consistent and coherent throughout the nation while providing a conducive environment for the effective functioning and development of the Nigerian power sector.
Sections 108 to 112 of the Act address the crucial aspect of electricity transmission in Nigeria. The Act introduces a delineation of the transmission system operation, dividing it into the national control centre, supplementary national control centre, and regional control centres. This strategic demarcation facilitates the efficient interconnection and coordination necessary for the smooth transmission of generated power through the national grid.

As a significant improvement, this provision enables states to establish their own legal and institutional frameworks to regulate electricity transmission activities within their respective jurisdictions. It also fosters an environment that attracts investments in the transmission sector. Moreover, the Act works towards the de-monopolization of Nigeria’s electricity generation, transmission, and distribution at the national level. It empowers states, companies, and individuals to actively participate in generating, transmitting, and distributing electricity.

These efforts represent commendable strides towards promoting increased private sector participation, attracting new investors, and driving innovation in the power sector. By diversifying and decentralizing the electricity transmission landscape, the Act opens doors to greater efficiency, sustainability, and development in Nigeria’s electricity infrastructure.

Establishing the National Hydroelectric Power Producing Areas Development Commission (N-HYPPADEC)

Section 82 of the Act establishes the National Hydroelectric Power Producing Areas Development Commission (N-HYPPADEC), tasked with formulating policies and guidelines for the development of hydroelectric power-producing areas. It is essential to note that this responsibility is independent of the powers of the Minister to issue policy directives and NERC’s authority to regulate the Nigerian Electricity Supply Industry (NESI). Section 89 of the Act further outlines additional functions assigned to N-HYPPADEC. The members’ state of the commission are Benue, Kebbi, Kogi, Niger, Kwara, Plateau, Gombe, Kaduna, Nassarawa, Taraba and any other state where hydro-electric power is generated and the headquarter shall be in Minna, Niger State.

To ensure efficient governance, the N-HYPPADEC will have a Governing Council overseeing its administration, a Management Committee responsible for general operations and administration, and an Advisory Committee tasked with appraising and advising the President on N-HYPPADEC’s activities at least once a year. Section 86–107 provides for power and tenure of office of member of the council, cessation of office, function of the commission, pension matters, funds of the commission, borrowing power, power to accept gifts, annual report, establishment of monitoring committee amongst others.

Section 95 of the Act establishes the N-HYPPADEC Fund, which will be financed from various sources outlined in the section. This fund is designated to support the commission’s endeavours in the development of hydroelectric power-producing areas.

The creation of the N-HYPPADEC, along with its governance structure and dedicated fund, signifies a significant step towards harnessing the potential of hydroelectric power resources in Nigeria. This specialized commission is expected to play a pivotal role in driving sustainable development and advancement in hydroelectric power-producing areas within the country.
Promotion of Renewable Energy in the Act

The Act places a strong emphasis on the development and utilization of renewable energy resources, a key objective of the Nigerian Electricity Regulatory Commission (NERC). Accordingly, the Act encourages various forms of renewable energy generation, including embedded generation, hybridized generation, co-generation, and electricity generation from sources such as solar energy, wind, small hydro, biomass, and other defined renewable sources.

Section 165 of the Act identifies the commercial activities encompassed in the renewable energy industry, encompassing generation, distribution, sales, and installation activities. However, the Commission retains the authority to modify the scope of activities through appropriate regulatory instruments.

Section 164 of the Act mandates NERC to implement multiple measures to increase the contribution of renewable energy to Nigeria’s energy mix. Some of these measures include streamlining licensing and fee regimes for renewable energy service companies, establishing regulations defining the roles of various stakeholders in integrating renewable energy into the national grid and distribution network, providing mini-grid regulations for renewable energy, reviewing National Content Development Regulations to promote local skills acquisition and production of renewable energy components, ensuring favorable pricing mechanisms, introducing feed-in tariffs for various renewable energy sources, and issuing guidelines for net-metering rooftop solar PV systems and small wind power installations.

To incentivize the adoption of renewable energy, Section 166 of the Act directs the Federal Ministry of Finance to introduce tax incentives in line with existing fiscal policies that promote renewable energy projects in Nigeria.

In line with the Act’s focus on renewable energy, the Act also prohibits transmission and distribution systems (TDS) operators from unreasonably rejecting connection requests from renewable energy generators within their coverage areas.

Overall, the Act demonstrates a commitment to fostering the growth of renewable energy in Nigeria’s energy landscape, encouraging sustainable practices and advancing the nation’s efforts toward cleaner and more efficient energy utilization.

Tariff Regulations and Transparency

The Act introduces a transparent tariff-setting process to ensure that electricity tariffs are reasonable, cost-reflective, and based on efficient cost structures. It mandates the publication of tariff methodologies, allowing consumers and stakeholders to understand the rationale behind tariff calculations. These tariff regulations aim to strike a balance between the financial viability of power providers and the affordability of electricity for consumers.

Section 116 of the Act governs the tariff regulation of various activities within the Nigerian Electricity Supply Industry (NESI), such as generation, trading, transmission, distribution, supply, system operation, and electricity distribution franchising. The applicable prices for these activities are regulated through tariff methodologies adopted by the NERC. These methodologies are designed to promote economic efficiency, incentivize improvements in service quality, and encourage co-generation and the use of renewable energy sources. They also aim to provide customers with transparent information about the actual cost of their electricity consumption.
The Act allows for the differentiation of consumers based on factors such as total electricity consumption, timing, load factors, power factors, voltage levels, and location within the country, among others, which may affect the cost of service provision. However, the tariff methodologies are designed to prevent undue discrimination between consumers and consumer categories. The proposed tariff methodologies are made public through publication in newspapers and the official gazette, enabling stakeholders to raise objections or provide feedback to the Commission.

The Act also permits the subsidization of tariffs by the Federal and State Governments and allows for cross-subsidization among different consumer groups. Such subsidies and cross-subsidies are to be managed within the Power Consumer Assistance Fund (PCAF), established in accordance with Section 122 of the Act. The PCAF serves to subsidize power supplied to underprivileged consumers, as identified by the Minister in consultation with the Commission.

Establishment of other dynamic agencies

The Act establishes the Rural Electrification Agency (REA) as a dynamic body corporate, endowed with perpetual succession and the capacity to sue and be sued in its corporate name. Sections 128 to 141 provide a comprehensive outline of the REA’s objectives, functions, and powers, along with the establishment and composition of its board members, including their tenure, cessation, and allowances. Additionally, the Act introduces the Rural Electrification Fund (REF) to support the agency’s initiatives. The primary objective of the REA is to facilitate the electrification of rural, unserved, and under-served markets in a cost-effective manner that enables reasonable returns on investment through appropriate tariffs, catering to the social, industrial, and agricultural needs of rural communities. The Agency is also committed to promoting renewable energy sources and providing public education on rural electrification and renewable energy production and consumption.

Part XVIII of the Act establishes the Nigerian Electricity Management Services Agency (NEMSA) as a body corporate with perpetual succession and a common seal. Sections 173 to 184 elaborate on the establishment and membership of NEMSA’s governing board, specifying their tenure of office, powers, objectives, and the provision of a dedicated fund. NEMSA shall retain its organizational structure as outlined in the NEMSA Act, 2015. The agency’s functions include enforcing all statutory technical electrical standards and regulations published by the Commission, issuing competency certificates to qualified electrical personnel working in the Nigerian Electricity Supply Industry (NESI), and conducting periodic inspections, monitoring, and assessments of power plants, installations, transmission lines, and distribution networks to ensure their fitness for purpose.

Part XIX centers on the establishment of the National Power Training Institute of Nigeria (NPTIN) as a body corporate with perpetual succession and the capacity to sue and be sued. Sections 186 to 207 comprehensively address the functions and powers of the institute, the establishment and membership of its governing council, allowances, the creation of an academic board, and the establishment of the power training fund, among other vital aspects. NPTIN’s primary role is to serve as a focal point for human resources development and workforce capacity building, along with functioning as a research center for matters relating to electric power in Nigeria and Africa. The institute will collaborate with local and foreign institutions to organize training and professional certificate programs to ensure proficiency and global recognition of professionals in the power sector. Furthermore, Section 186(2) empowers the Institute to utilize its database on manpower development to provide advice to the Federal Government and other relevant stakeholders on matters concerning manpower training in the NESI.
The Act represents a significant and positive step forward, especially in terms of unifying the laws and regulations within the Nigerian electricity sector. It introduces several innovative commissions aimed at promoting efficient and effective electricity generation from diverse sources, creating investment opportunities, and driving overall economic development, among other benefits.

Overall, the successful implementation of the Act will lead to the establishment of a privatized, contract-based, and rule-driven competitive electricity market in Nigeria. This move will break the monopoly and encourage private sector investment across the entire power supply industry, empowering states to independently generate and transmit electricity.

With this Act in place, the Nigerian electricity sector is poised for transformative growth and progress. It opens avenues for increased participation from various stakeholders, paves the way for modern and sustainable power generation practices, and creates an environment conducive to economic expansion. Embracing the Act’s provisions and effectively administering them will undoubtedly unlock new possibilities and propel Nigeria’s energy landscape towards a brighter and more prosperous future.