

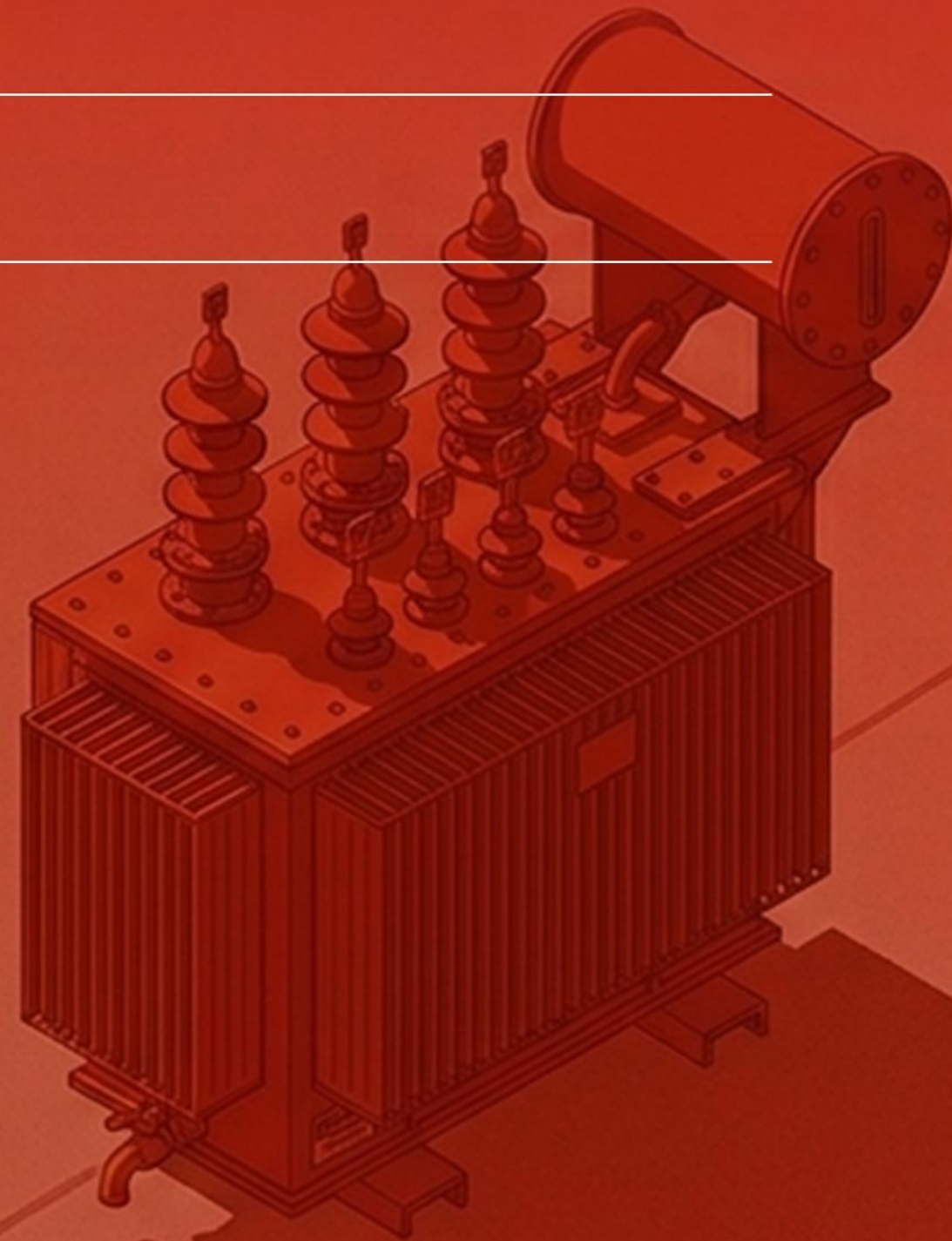
Key Provisions of the Electricity Act 2023 & NERC Regulations



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THE SHIFT FROM ELECTRIC POWER SECTOR REFORM ACT 2005 TO ELECTRICITY ACT 2023

The Nigerian electricity sector has undergone structural and regulatory transformation, evolving from a centrally controlled system under the defunct National Electric Power Authority (NEPA) to a more decentralised framework. This transition began with the repeal of the Electric Power Sector Reform Act, 2005, and has now been replaced by the Electricity Act, 2023 by establishing a more comprehensive legal and regulatory framework for the Nigerian electricity supply industry.

Unlike its predecessor, the Electricity Act, 2023 adopts a more progressive approach. For instance, the Act does not only consolidate the existing laws governing electricity generation, transmission, distribution, and supply, but it also introduces robust provisions on consumer protection, enforcement mechanisms and market regulation under the oversight of the Nigerian Electricity Regulatory Commission (NERC). Notably, the Act decentralises electricity regulation by empowering State governments to generate, transmit and distribute electricity within their respective jurisdictions, by this, energy access and power efficiency are promoted.

STATE POWER IS REAL

The Electricity Act 2023 affirms the constitutional authority of States within the Federation to enact laws regulating their electricity sectors. Pursuant to section 2(2)(a)–(e) of the Act, States are empowered to regulate electricity generation, transmission, distribution, and the development of intra-state electricity markets within their respective jurisdictions. In reality, several States in Nigeria, are at varying stages of electricity sector reforms including; legislative enactments, institutional development and market design. Notably, over fourteen States have secured the transfer of regulatory oversight from the Nigerian Electricity Regulatory Commission (NERC) including Lagos,

More so, another innovative shift in the 2023 Act is its deliberate alignment with global objectives, particularly Sustainable Development Goal 7 (SDG 7) on access to affordable and clean energy. This is evidenced in the inclusion of a chapter to renewable energy (sections 164–171 of the Electricity Act 2023), a provision that was largely absent under the repealed Act. Interestingly, the Act significantly expands the scope of offences and enforcement provisions (sections 208–220 of the Electricity Act 2023). This undoubtedly emphasises a stronger commitment to accountability within the power sector in Nigeria because the repealed Act only provided for offences in its sections 93 and 94 with lesser penalties.

Pursuant to section 226 of the Electricity Act 2023, the Commission has authority to make regulations. One of the regulations so made, is the Customer Protection Regulations 2023 which addresses the rights of customers, the obligations and liabilities of a distribution company, procedures for connection and disconnection of electricity services, meter reading, et cetera.

Enugu, Ondo, Oyo, Imo, Ekiti, Bayelsa, Nasarawa, and Akwa Ibom, which have all demonstrated strong commitment to developing functional subnational electricity markets. Some of the extant State laws include but not limited to: Lagos State Electricity Law 2024, Ogun State Power Sector Law, 2024, Delta State Electricity Power Sector Law 2024, Jigawa State Rural Electricity Board Law, Bayelsa State Electricity Law 2023, Niger State Power Sector Law 2024, Anambra State Electricity Law 2025, inter alia. While several other States are at advanced stages of legislative and regulatory transition as they are gradually moving from federal oversight to independent regulatory frameworks.

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THE AIMS OF THE ELECTRICITY ACT 2023

The aims of the Electricity Act 2023 are spelt out in the preamble including the creation and promotion of competitive and private sector participation in the post-privatised power sector and electricity market. Although from the tenor of the Act, electricity is treated as a service, and not as a fundamental right. However, in certain exceptional circumstances, liability may arise against a distribution company that willfully disconnects electricity supply in a manner that endangers a human life.

For instance, the disconnection of power in premises where a patient is dependent on life-support systems, even in cases of payment default, may give rise to a cause of action against the distribution company. Such a conduct may be construed as a violation of the fundamental right to life and the right to dignity of human person as enshrined in the Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended, given the foreseeable and fatal consequences of such disconnection.

PRINCIPAL FUNCTIONS OF NERC

The Nigerian Electricity Regulatory Commission (NERC) is established under the Electricity Act of 2023 and it is conferred with certain statutory functions and responsibilities which are; (a) create, promote and preserve electricity industry and market structures and to ensure the optimal utilisation of resources for the provision of electricity services (b) maximise access to electricity services, by promoting and facilitating consumer connections to distribution systems in both rural and urban areas (c) ensure adequate supply of electricity to consumers (d) ensure that prices charged by licensees are fair to consumers and are sufficient to allow the licensees to finance their activities and to allow for reasonable profit for efficient operation (e) Ensure the safety and reliability and quality of service in the production and delivery of electricity to consumers (f) ensure that regulation is fair and balanced for licensees, consumers, investors and other stakeholders (g) present quarterly reports to the President and National Assembly on its activities (h) issue directives and carryout such measures to ensure the gradual development and smooth operation of the various stages of the market (i) Promote the development and utilisation of renewable energy services and increase the contribution of renewable energy to Nigeria's energy mix (j) promote cost reflective and service reflective tariffs and ensure gradual elimination of cross-subsides within a specified time-frame and

(k) promote gender mainstreaming and local content requirements within the NESI. Sections 33(1) and 34(1) of Electricity Act 2023. The foregoing functions of the Nigerian Electricity Regulatory Commission (NERC) under the Electricity Act, 2023 are not entirely new as similar powers were previously conferred under section 31 of the repealed Electric Power Sector Reform Act 2005. A comparative reading of both statutes reveals that the principal objects set out in paragraphs (a)–(d) of the repealed Act are substantially retained in the 2023 Act, with only minor drafting variations that do not materially alter their substance. However, a notable departure arises in respect of paragraph (e) of the repealed Act, which has been modified in the current legislation. Likewise, the Electricity Act 2023 expands the scope of principal objects of NERC by increasing them from paragraphs (a)–(g) under the repealed Act to paragraphs (a)–(k), thereby reflecting a broader regulatory mandate. This expansion includes a more deliberate emphasis on the promotion and utilisation of renewable energy. Notwithstanding this apparent progression, it may be argued that the 2023 Act adopts a more structural, though arguably restrictive, as it omits the omnibus provision previously contained in paragraph (g) of the repealed Act, which afforded the Commission a wider discretionary authority.

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ELECTRICITY ACCESS REALITY

Access to electricity is generally a prerequisite for economic development and growth of a nation. This is because the availability of reliable and affordable electricity is important for powering industries and facilitating economic growth. For instance, electricity plays roles in sectors such as; manufacturing, agriculture, healthcare, education and communication. From powering machinery and equipment to facilitating communication in Nigeria among Nigerians, it follows that without easy access to electricity, the industries would be incapacitated and lives may be lost. However, in Nigeria today, millions of persons and places still do not have reliable electricity access. Although, the obligation of NERC in this regard is to 'maximise' and not necessarily to 'provide' access to electricity since the statutory provision is understandably a compromise of two competing standards viz; increasing access to electricity and creating competitive electricity market.

This implies that NERC plays the role of a regulator to provide the enabling environment for the private sector and investors that will subsequently deliver access to electricity. For this reason, to the extent that the NERC Regulation or any other subsidiary legislation enacted by NERC, delivers access to electricity, the assessment will be that NERC has discharged one its principal functions under section 34(1) of the Act.

Statistically, the percentage of the population in Nigeria with access to electricity between 2010 and 2020 is between 48% and 55.4%. In terms of numbers, credible data has been quoted to show that 92 million people out of over 200 million of the population in Nigeria, do not have access to electricity, as at 2022. The sources indicate that the country has the worst electricity access rate globally by showing that a year before the enactment of Electricity Act, 46% of Nigerian population are deprived of access to electricity.

LICENSING & PERMITS

The 2023 Act makes clear provisions for licensing and permits under sections 63–79 of the Electricity Act 2023 to regulate activities across the electricity value chain including; generation, transmission, distribution, trading, system operation, and electricity supply. These provisions make it mandatory for any person or any corporate entity intending to undertake such activities under the Act to obtain a licence from the Nigerian Electricity Regulatory Commission (NERC), unless expressly excluded. The Act also recognises certain exceptions, particularly for small-scale or captive generation, where a permit rather than a full licence may suffice. In exercising its licensing powers, NERC is required to consider factors such as; technical and financial capacity, safety standards and public interest. These provisions are intended to ensure that only competent and compliant operators

participate in the electricity market thereby promoting reliability and consumer protection. The Act equally sets out the procedures for the grant, modification, transfer, renewal, suspension, and revocation of licences thereby providing regulatory certainty and accountability. Licences are typically issued subject to fulfilments of certain conditions precedent including performance obligations and compliance with applicable regulations and standards. The Commission is statutorily empowered to impose penalties or revoke licences in cases of breach of the Act. Notably, the Act introduces flexibility by accommodating permits and exemptions for specific categories of electricity activities, which supports innovation and encourages investment, particularly in renewable and decentralised energy systems.

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CONCLUSION

The Electricity Act, 2023 with the extant subsidiary legislation by Electricity Regulatory Commission (NERC), remarkably demonstrates a decisive shift in Nigeria’s electricity sector towards a decentralised and market-driven approach. By promoting renewable energy such as solar mini-grids, rural electrification initiatives, and increased private sector participation, the Act lays an innovative foundation for a sustainable and inclusive clean energy transition.

However, the realisation of these objectives remains contingent on addressing different challenges including; bureaucratic bottlenecks, implementation of policies and regulations, epileptic collapse of national grid, electricity theft, skill gaps, financing constraints as well as legal conflicts between the Act and States enactments. Effective resolution of these issues will guarantee the full potential of the reforms in the new Act.

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