

ELECTRICITY ACT, 2023

EXPLANATORY MEMORANDUM

This Act repeals the Electric Power Sector Reform Act, No. 6, 2005 and enact the Electricity Act, 2023 to consolidate the laws relating to the Nigerian electricity supply industry, provide a comprehensive legal and institutional framework for the power sector in Nigeria in the areas of electricity generation, transmission, system operation, distribution, supply, trading, enforcement of consumer rights and obligations, provide for a holistic integrated resource plan and policy that recognises all sources for the generation, transmission and distribution of electricity, including the integration of renewable energy to Nigeria's energy mix, and attract investments.

ELECTRICITY ACT, 2023

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ELECTRICITY ACT, 2023

A Bill

For

An Act to repeal the Electric Power Sector Reform Act, No. 6, 2005 and enact the Electricity Act, 2023 to consolidate the laws relating to the Nigerian electricity supply industry, provide a comprehensive legal and institutional framework for the power sector in Nigeria in the areas of electricity generation, transmission, system operation, distribution, supply, trading, enforcement of consumer rights and obligations, provide for a holistic integrated resource plan and policy that recognises all sources for the generation, transmission and distribution of electricity, including the integration of renewable energy to Nigeria's energy mix and attract investments; and for related matters

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Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria —

PART I — PRELIMINARY PROVISIONS

1. The primary objective of this Act is to provide a comprehensive legal and institutional framework to guide the operation of a privatised, contract and rule-based competitive electricity market in Nigeria and attract through transformative policy and regulatory measures, private sector investments in the entire power value chain of the Nigerian Electricity Supply Industry (in this Act referred to as “the NESI”), and specifically, the Act seeks to achieve the following objectives —
- Objectives of the Act
- (a) provide an ideal legal and institutional framework to leverage on the modest gains of the privatisation phase of electric power sector in Nigeria to accelerate growth in power generation capacity and improve utilisation of generated power through increased investments in new and efficient power generation technology and revamping existing power plants;
 - (b) promote policy and regulatory measures to ensure the expansion of power transmission networks in Nigeria to address any imbalance in the existing transmission infrastructure;
 - (c) stimulate policy and regulatory measures to generally scale up efficient power generation, transmission, and distribution capabilities of the power sector in Nigeria with a view to achieve a national electricity access targets and attaining the highest per capita power consumption in Africa within a reasonable time frame;
 - (d) stipulate consequential, transitional and saving provisions regarding reforms made under the provisions of the Electric Power Sector Reform Act, No. 6, 2005 (in this Act referred to as “the Repealed Act”);

- (e) provide clear guide and legal basis for a phase-wide development of the Nigerian electricity supply industry since the conclusion of the privatisation phase as implemented under the provisions of the Repealed Act;
- (f) promote the development of a competitive electricity market;
- (g) stimulate policy measures that will attract investments across the Nigerian electricity value chain to re-energise economic growth, drive job creation and improve the living conditions of Nigerians;
- (h) provide a clear legal and institutional framework for the formulation and adoption of a National Integrated Electricity Policy and Implementation Plan;
- (i) stimulate policies to address technology limitation and outdated infrastructure that are responsible for value chain losses in the NESI by attracting sustainable investments in new and efficient power generation technology and revamping existing power plants;
- (j) eliminate through policy and regulatory measures, barriers to investments in generation, transmission, distribution, and related sub-sectors in the electricity industry in Nigeria;
- (k) promote policies and regulatory measures to increase geographic coverage in power generation, transmission, distribution and supply of electricity in Nigeria;
- (l) provide a framework to stimulate the development and utilisation of renewable energy sources and create an enabling environment to attract investment in renewable energy sources in order to increase the contribution of renewable energy to the energy mix;
- (m) provide a framework for improvement of access to electricity in rural, unserved, underserved, peri-urban and urban areas through the use of conventional sources and renewable energy off-grid and mini-grid solutions;
- (n) promote indigenous capacity in technology for renewable energy sources through a framework for local content in the Nigerian electricity supply industry;
- (o) promote public education on renewable energy production and consumption to increase the generation and consumption of electricity from renewable sources;

- (p) recognise third-party investments in NESI infrastructure by the private and public sectors;
- (q) provide a clear framework for cross-border electricity trade in the interest of national security and energy self-sufficiency;
- (r) promote frameworks for security of electricity infrastructure, prescribe effective punitive measures against electricity theft and other offences peculiar to the NESI; and
- (s) strengthen the relationship between federal electricity market and state electricity market.

2. (1) Subject to the provisions of section 4 and Paragraphs 13, 14, and 15 of Part II, of the Second Schedule to the Constitution, the provisions of this Act shall apply throughout the Federal Republic of Nigeria and with respect to all aspects and segments of the power sector value chain in Nigeria.

Application and
scope of the Act

Second Schedule

(2) Nothing in this Act shall invalidate —

- (a) any law passed by the House of Assembly of a State with respect to all aspects of generation, transmission, system operation, distribution, supply and retail of electricity within that State;
- (b) any law passed by the House of Assembly of a State regarding the establishment, promotion and management of State electricity power stations;
- (c) any law passed by the House of Assembly of a State to sanction the establishment of a State electricity market, the establishment of a State electricity regulatory authority or any entity by whatever appellation with powers to regulate such markets;
- (d) any collaboration between States and Local Governments and the Federal Government for rural electrification, or between the States and 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
- (e) any law passed by the House of Assembly of a State to sanction the establishment of a State electricity market and State Integrated Electricity Policy and Strategic Implementation Plan.

PART II — NATIONAL INTEGRATED ELECTRICITY POLICY AND STRATEGIC IMPLEMENTATION PLAN

3. (1) The Federal Government through the Ministry responsible for power shall, within one year from the commencement of this Act, initiate the process for the preparation and publication in the Federal Government Gazette, an Integrated National Electricity Policy and Strategic Implementation Plan in consultation with relevant government authorities and other stakeholders to guide the overall development of the electric power sector in Nigeria.
- (2) The National Electricity Policy and Strategic Implementation Plan adopted by the Federal Government under the provisions of subsection (1) shall encompass the following aspects relevant to the development of electric power sector in Nigeria —
- (a) development of electric power sector based on optimal utilisation of resources such as coal, natural gas, nuclear substances and materials as well as renewable energy sources such as, solar, wind, hydro, hydrogen and other renewable sources of energy;
 - (b) captive generation or stand-alone system for generation of electricity for rural areas and non – conventional energy system;
 - (c) rural electrification and for bulk purchase of power and management of local distribution in rural areas;
 - (d) public private partnerships for provision of access to electricity to all areas including villages, hamlets through rural electricity infrastructure and electrification of households;
 - (e) power–source specific policies including waivers and subsidies that will stimulate development of renewable energy;
 - (f) overall development of the electricity value chain in Nigeria with emphasis on alignment of expansion of generation, transmission, distribution and supply infrastructure to ensure reliability of supply and minimise losses; and
 - (g) any other aspect of the power sector that the Federal Government may determine that it requires clear policy direction bearing in mind changes and new global developments in the sector.
- (3) The National Integrated Electricity Policy and Strategic Implementation Plan adopted under subsections (1) and (2), shall be approved by the Federal Executive Council.
4. (1) The National Integrated Electricity Policy and Strategic Implementation Plan approved by the Federal Executive Council (in this Act referred to as “FEC”), under section 3 (3) of this Act, shall be reviewed or revised as required, but not later than every five years.

- (2) The National Integrated Electricity Policy and Strategic Implementation Plan or the revised version referred to under section 3 of this Act and subsection (1) respectively shall be initiated, formulated, deliberated upon, and adopted by the Ministry of Power in accordance with the provisions of this Act and same shall be approved by the FEC before final publication in the Federal Government Gazette for implementation.

5. (1) The Minister shall —

Supervisory powers
of the Minister and
functions of the
Ministry responsible
for Power

- (a) be responsible for the determination, formulation and monitoring of Government policy for the Nigerian electricity supply industry and perform the following functions including other functions assigned to him under this Act and other Acts of the National Assembly;
- (b) issue general policy directions to the Commission on matters concerning electricity, including direction on overall system planning and coordination, which the Commission shall take into consideration in performing its functions under section 34 of this Act, provided that such directions are not in conflict with this Act or the Constitution of the Federal Republic of Nigeria.
- (c) advise the Federal Government on all matters pertaining to the Nigerian electric power sector;
- (d) promote the development of local content in the Nigerian electricity supply industry;
- (e) in consultation with the Ministry responsible for women affairs and other relevant ministries, departments and agencies as the Minister may determine, promote gender mainstreaming in the design and implementation of electricity projects and programmes;
- (f) issue policy directives on cross border electricity trading in conjunction with the Commission and other relevant ministries, departments and agencies to ensure energy security and energy self-sufficiency; and
- (g) do all such other things as are incidental to and necessary for the performance of the functions of the Minister under this Act.

Cap. C23, LFN, 2004

- (2) The Ministry responsible for power shall be responsible for initiating and coordinating broad sectoral policies and implementation frameworks for overall development of the electric power sector in Nigeria and perform the following specific functions —

- (a) carry out public private partnership arrangement under the appropriate statutory framework;

- (b) coordinating activities of power sector including engagement with various States and Local Governments regarding proposed government subsidy and their respective roles in the implementation of extant National Electricity Policy and Strategic Implementation Plan;
- (c) handling policy matters relating to research and development in the power sector including regular detailed research on national load demand with a view to projecting future demands for the country over a given time frame;
- (d) participating in bilateral and multilateral relations affecting the power sector;
- (e) advising the Minister on all matters pertaining to conventional and renewable energy development and utilisation;
- (f) recommending to the Federal Government through the Federal Ministry responsible for such exemption from customs levies and other duties on equipment and machinery necessary for the development, production and utilisation of conventional and renewable energy sources in the NESI as the Ministry may consider appropriate;
- (g) recommending to the Federal Government through the Federal Ministry responsible for finance, such financial incentives necessary for the development, production and utilisation of conventional and renewable energy source;
- (h) in conjunction with relevant ministries, departments and agencies, undertaking feasibility studies and maintain data with a view to availing the same to developers of conventional and renewable energy resources in the NESI;
- (i) undertaking, in conjunction with the Commission, the Energy Commission of Nigeria and other relevant institutions, research, development and dissemination of appropriate conventional and renewable energy technologies;
- (j) promoting, in conjunction with the Ministry responsible for the environment, the use of biomass for electricity generation;
- (k) promoting, in conjunction with the Ministry responsible for physical planning, planning activities relating to energy resource areas such as dams, solar and wind farms, municipal waste dumpsites, agricultural and animal waste, ocean energy, wood plantations for production of bio energy feedstock;
- (l) promoting, in collaboration with other relevant agencies, the development of appropriate local capacity for the manufacture, installation,

maintenance and operation of renewable technologies such as bio digesters, solar systems, turbines and other conventional and renewable energy technologies;

- (m) in collaboration with the Ministries responsible for environment, and water resources to harness opportunities offered under clean development mechanism and other mechanisms including carbon credit trading, renewable energy certificates to promote the development and exploitation of conventional and renewable energy sources;
- (n) generally promoting the utilisation of conventional and renewable energy sources for power generation; and
- (o) facilitating the overall coordination of the activities of the parastatals under its supervision with a view to ensuring the efficacy of extant institutional arrangement in the electric power sector and seamless engagements with the Federal Government implementation organs and the other tiers of government in Nigeria.

- (4) In discharging its functions under this Act or any other instrument, the Ministry shall be under the overall direction of the Minister and shall be guided by the provisions of the Constitution, extant policies and implementation plans as well as the provisions of this Act or any other Act of the National Assembly with direct or indirect bearing on the performance of its functions provided under this Act.

PART III — DEVELOPMENT OF A COMPETITIVE NATIONAL ELECTRICITY MARKET

6. Without prejudice to the transitional and saving provisions contained in sections 230 and 231 of this Act, this Act recognises the legal validity of the evolution and reform of the NESI from its vertically integrated service provision arrangement under the defunct National Electric Power Authority (in this Act referred to as the "Authority") to the privatised phase implemented under the Repealed Act —

Legal validity of pre-privatisation and post-privatization

- (a) physical unbundling of the Authority into 18 companies and transfer of the assets, liabilities and staff of the Authority to the Power Holding Company of Nigeria, the initial holding company (in this Act referred to as the "PHCN");
- (b) licensing of the 18 new successor companies that emerged from the PHCN as distinct generation, transmission and distribution companies as contained in the list set out in Part I of the First Schedule to this Act;
- (c) introduction of the National Integrated Power Projects (NIPP) to address infrastructural deficit and fast-track the development of the NESI and

First Schedule

licensing of Independent Power Producers (IPPs) contained in the list set out respectively in Parts II and III, First Schedule to this Act;

First Schedule

(d) establishment of the Nigerian Electricity Liability Management Company LTD/GTE(NELMCO) to assume responsibility for all the PHCN liabilities and non-core assets of PHCN and successor companies and other such assets or receivables within the NESI leading to privatisation of successor companies and any other extended mandate as may be approved by the National Council on Privatisation regarding the management of tariff deficits accumulated during the post-privatisation stage by successor companies;

(e) incorporation of the National Power Training Institute of Nigeria (NAPTIN) for the primary purpose of manpower training and coordination of manpower training activities in the NESI;

(f) establishment of the Nigerian Electricity Bulk Trading Plc (NBET), a company incorporated under the Companies and Allied Matters Act as a trading licensee holding a bulk purchase and resale license for bulk procurement and bulk sale of electricity and ancillary services; and

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(g) introduction of a rule and contract-based electricity market together with the interim, pre-transitional and transitional rules introduced to regulate the interim, pre-transitional and transitional stages of the market.

7. (1) From the commencement of this Act, the Commission shall, without prejudice to its powers under section 34 of this Act, have the continuing responsibility in the post-privatisation stage of the NESI, to ensure the development of the Nigerian electricity market from its current transitional electricity market stage to the medium term and long-term electricity market stages or such stages of the market in accordance with such terms, preconditions or features as may be prescribed in the market rules or amendment to such rules as may be approved by the Commission.

Competition during
the post-privatisation
stage

(2) For the purpose of subsection (1) and preparatory to the initiation of medium term and long-term electricity market stages as recognised under this Act, the Commission shall —

(a) monitor and ensure that the market operator and market participants in the transitional electricity market perform their respective responsibilities as stipulated under this Act and the market rules, prescribing timelines for completion of such responsibilities and imposing sanctions to ensure strict and timely compliance where necessary;

(b) monitor and ensure that the market participants and the market operator perform their responsibilities as stipulated under this Act in relation to preparation for the initiation of the medium and long-term electricity

markets stages respectively, prescribing timelines for completion of such responsibilities and imposing sanctions to ensure strict and timely compliance where necessary;

(c) prepare and submit annual reports on the market conditions, including advice to the Minister on the end of the transitional electricity market and the establishment and operational dates for the medium and long-term markets respectively taking into consideration the satisfaction of the preconditions and features for operationalising the medium term and long-term market as prescribed in the market rules; and

(d) by its directive and within such period as it may specify, direct NBET Plc, the trading licensee holding the license for the bulk procurement and bulk sale of electricity and ancillary services, to, in accordance with its license, cease to enter into contracts for the purchase and resale of electricity and ancillary services and novate its existing contractual rights and obligations to other licensees.

(3) At any time following the establishment of a substantially privatised market recognised by section 6 of this Act, the Transmission Company of Nigeria Plc may transfer the function of system operation to an ISO on such terms and conditions as the Commission may direct and on such transfer, the ISO shall be subject to the same powers and duties as have been imposed on the transferring successor company under this Act in relation to system operation.

8. (1) The Commission shall present to the President and the National Assembly each report made under section 7 (2) (c) of this Act, and when the Commission, in consultation with the Minister is satisfied that the electricity market in Nigeria has developed to a point where a more competitive stage than the preceding market ought to be established, having regards to the satisfaction of the pre-conditions and such features as may be prescribed under the market rules, the Commission shall issue a declaration that such a market stage be commenced.

Declaration of
competitive
electricity markets

(2) The market stage declared by the Commission under the provisions of subsection (1) shall retain the features and conditions as contained under the market rules and shall remain operational until such a time as the Commission shall determine.

9. (1) The sale and purchase of electricity and ancillary services during the medium-term market stage shall be in accordance with the provisions of the market rules and the grid code.

Sale and purchase of
electricity and
ancillary services

(2) For effective operation of the long-term market established by the Commission under section 8 (2) of this Act, the Commission shall, in accordance with the procedure for amendment of the market rules, approve such amendments to the market rules to prescribe the preconditions for the declaration of the long-term market and the

Commission shall further introduce a retail tariff scheme for retail sale of electricity under long term market as may be appropriate.

10. (1) There shall be market rules and grid code as developed by the system operator and approved by the Commission for the — Market rules and grid code

- (a) operation of the national grid by the system operator; and
- (b) establishment and governance of markets related to electricity and ancillary services.

- (2) In respect of markets for electricity and ancillary services, the market rules may include provisions —

- (a) governing the making and publication of market rules;
- (b) settlement of payments among different participants;
- (c) authorising and governing the making of order by the system operator, including orders —
 - (i) imposing financial penalty on market participants,
 - (ii) authorising a person to participate in the market, or
 - (iii) terminating, suspending or restricting a person's rights to participate in the market; and
- (d) concerning the administration and enforcement of the market rules, including provisions for market rules amendments, dispute resolution, penalties, and market surveillance.

- (3) A market rule may be general or particular in its application.

- (4) Amendments to the market rules shall be developed by the system operator in accordance with the amendment provisions in the market rules:

Provided that all amendments to the rules shall be approved by the Commission before they come into effect, and the system operator shall, in accordance with the market rules, publish any proposed amendment to the market rules at least 22 days before the proposed amendment comes into effect.

- (5) Notwithstanding the provisions subsection (4), and of section 9 (2) of this Act, the Commission shall have the powers to suspend or forebear the application of any provision of the market rules or proposed amendment to the market rules to meet the exigencies of the market or operation of the transmission system for the NESI.

11. (1) From the commencement of this Act, it shall be the responsibility of the Commission to issue directives specifying the class or classes of end-use customers that may constitute eligible customers at every market stage recognised under this Act or the market rules. Commission's directive respecting eligible customers
- (2) For the purpose of subsection (1), the Commission shall monitor the development of the electricity market during transitional, medium and long-term stages of the market indicating in a report such preconditions as the Commission has determined as being ripe for the declaration of eligible Customers including the timing and modalities of eligibility to be followed by the Commission to make its declaration at every market stage.
- (3) In issuing its directive on eligible customers under subsection (1), the Commission shall further specify the conditions that must be observed to ensure fair and effective implementation of the classes of eligible customers listed in the declaration and to ensure that electrical energy to be made available to eligible customers under the Commission's declaration under this section is not being supplied to other end-use customers.
- (4) The Commission shall have the power to review any class or classes of eligible customers already declared by the Minister prior to the commencement of this Act.
12. (1) If the Commission determines that following its directive given under section 11 of this Act will result in decreasing electricity prices to such an extent that a trading licensee or a distribution licensee would have inadequate revenue to enable payment for its committed expenditure or is unable to earn committed rates of return on its assets, despite its efficient management, the Commission may issue further directives on the collection of a competition transition charges from eligible customers, the distribution of the funds collected to the trading licensees or distribution licensees licensed under this Act and the duration of the competition transition charges. Commission's directive respecting competition transition charges
- (2) Without prejudice to the terms of any electricity distribution franchise agreement entered into between a distribution franchisee and distribution licensee under any guidelines or regulations issued by the Commission, the Commission may, where the exit of an eligible customer from a franchised area may negatively affect return on investments made by the franchisee or render such a franchisee incapable of meeting its obligations under the electricity distribution franchise agreement cause payment to be made to the affected franchisees from the competition transition charges collected by the Commission under subsection (1).
13. The Commission shall establish the amount for the competition transition charge and the arrangements for the collection and distribution of the competition transition charge, in accordance with the Commission's directives under section 12 of this Act. Commission's determination respecting competition transition charges

14. In the determination of competition transition charges under section 13 of this Act, the Commission may hold public hearings to obtain the views of interested parties and shall be guided by the provisions of sections 46 and 48 of this Act in respect of the conduct of its public consultations.

Public hearing
respecting
competition transition
charges

PART IV — INCORPORATION AND LICENSING OF ISO

15. (1) The Transmission Company of Nigeria Plc (in this Act referred to as "TCN"), being the successor company issued the license that covers transmission service provider, market and system operation functions under the Repealed Act shall in accordance with the terms of its license and within such stage or period of the market as the Commission may in a written directive specify, take such steps as are necessary under the Companies and Allied Matters Act, to incorporate an entity, the ISO which may be a company limited by shares or have such ownership and governance structure as the Commission may specify and the entity once incorporated under the provisions of this section shall immediately apply to the Commission and be licensed by the Commission as an ISO to perform such market and system operation functions as stipulated under this Act, its license and such terms and conditions as the Commission may direct.

Incorporation and
licensing of the ISO

Act No. 3, 2020

- (2) Upon incorporation and issuance of an ISO license by the Commission under subsection (1) —

- (a) the TCN shall transfer to the ISO, all the assets and liabilities held by the Transmission Company of Nigeria Plc pertaining to its market and system operation functions and the shall be subject to such powers and duties of an ISO under the terms of its license and the provisions of this Act in relation to market and system operation;
- (b) the TCN shall retain its transmission service provider license and shall be responsible for transmission assets and liabilities and perform such functions as are relevant to the development and maintenance of the power transmission infrastructure in accordance with the terms of its license as may be issued by the Commission and the provisions of this Act.
- (c) the Commission shall, through an order put in place a clear plan and timeline for the transition process in subsections (1) and (2) to avoid disruption of industry operations.

16. (1) At the time of incorporation, the subscribers to the incorporation documents of the ISO shall be as may be directed by the Commission in consultation with relevant stakeholders.

Subscribers to the
constitutional
documents of the ISO
and its objects

(2) The Commission shall ensure that the constitutional document of the ISO submitted to the Corporate Affairs Commission for incorporation includes the following objects

- (a) to hold and manage all assets and liabilities pertaining to market and system operation on behalf of market participants and consumer groups or such stakeholders as the Commission may specify;
- (b) to carry out all market and system operation related contractual rights and obligations novated to it by the Transmission Company of Nigeria;
- (c) to negotiate and enter into contract for the procurement of ancillary services with independent power producers, successor generation licensees, and generally perform market and system operations functions as specified under this Act and the terms of its license in the interest of market participants and system users;
- (d) the income and property transferred to it by the TCN or whenever derived shall be applied solely towards the promotion of its objects as set out in its incorporation documents, and no portion of it shall be paid or transferred directly or indirectly by way of dividend, or bonus, by way of profit to the subscribers:

provided that nothing in this section shall prevent the payment in good faith of remuneration to any contractor or staff of the company in return for any services rendered to the Company.

17. The functions of the ISO shall be as provided under section 67 of this Act.

Functions of the ISO

18. In carrying out its objects including the discharge of its functions under its license and the provisions of this Act, the ISO shall have the power to enter into arrangement with any entity or expert to provide the ISO with technical support and expertise in relation to the performance of its functions.

Engagement of technical support

19. (1) The order issued by the Commission under section 15 (2) (c) of this Act shall state the date for the commencement and completion of transfer of relevant employees, assets, liabilities, and novation of market and system operation related contractual rights and obligations of the Transmission Company of Nigeria to the ISO.

Transfer of employees, assets, and liabilities

(2) A transfer order shall be binding on the Transmission Company of Nigeria, the ISO and all other persons.

(3) The provisions of subsection (2) shall apply notwithstanding the provisions of any general or special enactment of the National Assembly or any rule of law that requires notice or registration of transfers.

(4) A transfer order may specify and describe employees, assets, liabilities, rights and obligations to be transferred —

(a) by reference to specific employees, assets, liabilities, rights and obligations;

(b) by reference to any class of employees, assets, liabilities, rights and obligations; or

(c) partly in accordance with the provisions of subsection (4)(a) and partly in accordance with subsection (4)(b).

(5) With effect from the date specified in the relevant transfer order, all bonds, loans, financing agreements, alternative financing agreements, deeds, contracts instruments, documents and such other working arrangements that subsisted prior to the transfer date and relating to the assets to be transferred under the provisions of this section and to which the Transmission Company of Nigeria Plc was party to as the holder of the transmission license that covers transmission service provider, market and system operation functions shall, on and after the effective date, be as fully effective and enforceable against, and in favour of the ISO as if, instead of the Transmission Company of Nigeria Plc, the ISO had been named in it.

(6) A transfer order may —

(a) specify the date that the transfer takes effect and any interest in the property that is being transferred by the order shall vest in the ISO on that date;

(b) provide that the transfer shall be deemed to have taken effect on a date earlier than the date the transfer order is made, but the transfer date shall not be earlier than the dates on which the ISO was incorporated and licensed;

(c) provide that the transfer specified in the order and other transactions associated with the transfers shall be deemed to have occurred in sequence and at times specified in the order;

(d) require the Transmission Company of Nigeria Plc or the ISO to enter to —

(i) enter into any written agreement or execute any instrument specified in the order, and

(ii) register in accordance with the order, any agreement or instrument entered into or executed under subsection (6)(d)(i);

(e) provide that any liability or obligation that is transferred by the order may be enforced against the ISO or relevant successors, and that any right that is transferred by the order may be enforced against the ISO; or

(f) impose conditions on the exercise of powers by the ISO that are related to employees, assets, liabilities, rights or obligations transferred by the transfer order.

(7) A transfer order may contain provisions dealing with other matters not specifically referred to in this Part that the Commission considers necessary or advisable in connection with a transfer.

(8) The subscribers to the incorporation documents of the ISO shall vest in the ISO any further assets as they may deem fit.

20. (1) A statement, in a registered document to which the ISO is a party, that land described in the document was transferred to it from the Transmission Company of Nigeria Plc by or under a transfer order, or any other statement in the document relating to the transfer order, shall be deemed to be conclusive evidence of the facts stated. Conclusive evidence

(2) Nothing in subsection (1) shall create for any person an interest in land that the Transmission Company of Nigeria, Plc did not have and did not transfer except where such interest in land is derived under section 15 (2) (c) of this Act.

21. (1) The ISO shall be entitled to enforce or defend all rights and obligations for or against the Transmission Company of Nigeria Plc in respect of the portion of interests transferred under section 15(2) as if the ISO was the original party to such obligations. Enforcement or continuation of any cause of action or proceedings

(2) Any pending action or proceeding including arbitration in relation to the transferred assets brought by or against the Transmission Company of Nigeria Plc immediately before the initial transfer date may be enforced or continued, as the case may be, on and after that date by or against the ISO in the same way as if this Act has not been enacted.

22. (1) Notwithstanding the provisions of section 21 of this Act — Limitation of action against ISO

(a) no action or other proceedings shall be commenced against the ISO in respect of any employee, asset, liability, right or obligation if, had there been no transfer, the time for commencing the action or other proceedings would have expired; and

(b) the transfer of the employees, assets and liabilities to the ISO by or under the provisions of section 15(2) of this Act shall not be deemed to —

- (i) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;
- (ii) constitute a breach of any Act of the National Assembly, regulation or by-law;
- (iii) constitute an event of default or *force majeure*;
- (iv) give rise to a breach, termination or repudiation or frustration of any license, permit or other right;
- (v) give rise to any right to terminate or repudiate a contract, license, permit or other right; or
- (vi) give rise to any estoppel.

(2) Subsection (1) (b) shall not apply to such contracts as may be prescribed by any regulation made for that purpose.

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| <p>23. The transfer of assets and liabilities under section 15(2) of this Act other than the provision of the forgoing section releases the Transmission Company of Nigeria Plc from any further liability or obligation in respect of the assets and liabilities transferred.</p> | <p>Release from liability or obligation</p> |
| <p>24. Any guarantee or surety which was given or made by the TCN on any other person in respect of any debt or obligation of the TCN and which was effective immediately before the transfer of the principal debt or obligation to the ISO, shall remain fully effective against the guarantor or surety on and after the transfer date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the ISO.</p> | <p>Guarantee or surety</p> |
| <p>25. The TCN shall provide the ISO with all records or copies of records, that are in its custody or control and that relate to an officer, employee, asset, liability, right or obligation that is transferred by or under a transfer order, including personal information.</p> | <p>Provision of records to the ISO</p> |
| <p>26. The Commission may, at any time within one year after making a transfer order, make a further order amending the transfer order in any way that the Commission considers necessary or advisable, including such order or orders as may be necessary to rectify the transfer of any of the employees, assets, liabilities, rights and obligations under a verification or an audit of the employees, assets and liabilities of the ISO as at the date of the relevant transfer order and the section shall apply with necessary modifications to the amendment.</p> | <p>Further order amending a transfer order.</p> |
| <p>27. Prior to the vesting of assets and liabilities of the TCN in the ISO, the Commission shall give the Board of Directors of the TCN directions in writing to ensure the proper transfer</p> | <p>Directions to the TCN on matters related to transition</p> |

of the assets and liabilities of the TCN to the ISO, and the Board of Directors of the TCN shall, without delay, comply with such directions.

28. (1) Any employee of the TCN transferred to the ISO under the provisions of this Act shall be transferred to the service of ISO on terms not less favorable than those enjoyed by him immediately prior to the transfer. Transfer of employees to the ISO
- (2) The service rendered by an employee transferred under the provisions of this Act shall be transferred to the service of the ISO for the purpose of determining employment-related-entitlements as specified by the relevant laws of employment in Nigeria.
- (3) Until such time as conditions of service are drawn up by the ISO —
- (a) the terms and conditions of service applicable to employees of the TCN shall continue to apply to every person transferred to the ISO as if every such person were still in the service of the TCN;
 - (b) an employee transferred by the TCN to the ISO shall be permitted to continue to contribute towards a pension scheme he was contributing to when he was in the employment of the TCN; and
 - (c) the ISO shall continue to contribute towards a pension scheme to which the TCN was contributing in respect of employees in the employ of the TCN prior to the date of transfer.
29. (1) Stamp duty shall not be chargeable under the Stamp Duties Act in respect of any transfer made or transaction entered into under the provisions of this Part on which, except for the exemption granted under this section, stamp duty would have been payable and in particular, and without derogation from this section, no stamp duty shall be chargeable — Exemption from stamp duty or other charges
- Cap. S8, LFN, 2004
- (a) during the incorporation of the ISO, and any successor company created under section 15 (1) of this Act or any subsequent increase to their authorised share capital, prior to the transfer of an interest to one or more private investors;
 - (b) in respect of any security issued in compliance with a transfer order issued under section 15 (2) of this Act;
 - (c) where any convertible securities were issued in compliance with a transfer order issued under section 15 (2), in respect of the exercise of the conversion rights attached to any such security; or
 - (d) in respect of any other transfer of rights and assets under this part.

- (2) Capital gains tax shall not be chargeable under the Capital Gains Tax Act, in respect of any transfer made or transaction entered into under this Part on which, except for the exemption granted under this section, capital gains tax would have been payable.

Cap. C1, LFN, 2004

30. (1) The ISO shall be subject to the National Code of Corporate Governance.

Composition and
appointment of the
Board of the ISO

- (2) The Commission shall cause the incorporation document of the ISO to provide for the composition of the Board as follows —

- (a) a non-executive Chairman;
- (b) the Managing Director of the ISO who shall possess at least 10 years cognate professional or management experience in an electricity generation, transmission, system operation or distribution company;
- (c) four Executive Directors who shall possess at least 10-year cognate professional or management experience in an electricity generation, transmission, system operation or distribution company;
- (d) four Non-Executive Directors who shall possess at least 10 years cognate professional or management experience in an electricity generation, transmission, system operation or distribution company; and
- (e) a representative of the Ministry responsible for power who shall not be below the rank of director.

- (3) The Commission shall have the responsibility to ensure that nominees for appointment to the Board of the ISO under subsection (2) meet the Commission's fit and proper requirements for the composition of such Boards in the NESI and for this purpose ascertain and issue its reservations or otherwise as to the suitability or otherwise of such nominees for appointment.

- (4) Notwithstanding the provisions of the Companies and Allied Matters Act or any other enactment, the power of the shareholders to appoint or remove directors, shall be subject to subsection (5).

Act No.3, 2020

- (5) For the purpose of making appointments to the Board of Directors of the ISO, the subscribers to the constitutional document of the ISO shall constitute an independent committee ("the Board Nomination Committee") of five persons with proven qualifications and tested industry experience one of which shall include a representative of the Ministry responsible for power who shall not be below the rank of director, to identify and recommend highly qualified candidates for such positions in a competitive and transparent manner.

31. The Commission shall cause the incorporation document of the ISO to include the following —

Term of office of
members of the
Board

- (a) an executive member of the Board shall cease to be a director of the ISO if he ceases to be an employee of the company;
- (b) the non-executive members of the Board may serve for an initial term of four years; and
- (c) upon the expiration of the initial term of any of the non-executive members of the Board appointed, such member may be eligible for reappointment for another term of four years and no more.

32. (1) Subject to the provision of the Land Use Act, land vested in the ISO shall not be liable to be acquired compulsorily under any enactment or law, and notwithstanding anything in other enactment or law, no mining operations or any other activities whatsoever shall be carried on, in or under any land vested in the ISO or any land over which the ISO is entitled to rights of way or support for the benefit of lands so vested, except with the prior consent in writing of the Minister.

Protection of land
belonging to the ISO

Cap. L5, LFN, 2004

(2) For the purpose of this section, "land" includes any land under water beyond the territorial waters of Nigeria to which Nigeria is for the time being entitled to any exclusive rights.

PART V — ESTABLISHMENT, FUNCTIONS AND POWERS OF THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

33. (1) There is established the Nigerian Electricity Regulatory Commission (in this Act, referred to as "the Commission"), which shall be a body corporate with perpetual succession which can sue or be sued in its corporate name and subject to this Act, perform all acts that bodies corporate may by law perform.

Establishment of the
Nigerian Electricity
Regulatory
Commission

(2) The headquarters of the Commission shall be at Abuja with such zonal offices and state offices as may be established by the Commission for effective performance of its functions.

(3) The Commission shall be the apex regulator of the NESI and shall be an independent body in the perform of its functions and exercise of its powers under this Act.

34. (1) Subject to the provisions of this Act, the Commission shall perform the following principal functions, that is, to —

Functions and powers
of the Commission

- (a) create, promote, and preserve efficient 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 the 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, security, 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-subsidies within a specified timeframe; and
 - (k) promote gender mainstreaming and local content requirements within the NESI.
- (2) Without prejudice to any other powers assigned to the Commission under this Act, the Commission shall in furtherance of its functions under subsection (1), exercise the following powers ---
- (a) promote competition and private sector participation in the post-privatised power sector, when and where feasible;
 - (b) establish or, as the case may be, approve appropriate operating codes and safety, security, reliability, and quality standards;
 - (c) establish appropriate consumer rights and obligations regarding the provision and use of electricity services;
 - (d) license and regulate persons engaged in the generation, transmission, system operation, distribution, supply and trading of electricity;

- (e) approve amendments to the market rules in accordance with the procedure in the market rules;
- (f) monitor the operation of the electricity markets and sanction licensees in deserving circumstances in accordance with the provisions of this Act and other subsidiary legislation; and
- (g) under the provisions of this Act, intervene in the management and control of the affairs of its licensees and permit holders which it considers has failed, is failing or in crisis, including entering the premises and doing whatever the Commission deems necessary to maintain continuity in the provision of electricity service and ensuring the integrity of the NESI generally;
- (h) seal and enter the premises of persons operating without a license or suspected to have committed an offence under this Act; and
- (i) carryout examination, inquiry and inspect all books, records, accounts and documents required to be kept by a licensee under this Act including inspection at reasonable times, a station or premises used by a licensee.

(3) Without prejudice to its independence in decision making, the Commission shall in the discharge of its functions and powers under this Act, consult, and to the extent the Commission considers appropriate, such persons or groups who may or are likely to be affected by the decisions or orders of the Commission including licensees, consumers, potential investors, and other interested parties.

35. (1) Subject to subsections (2) and (3), the Commission shall consist of seven full time Commissioners appointed by the President subject to confirmation by the Senate. Appointment of Commissioners

(2) In selecting potential nominees, the President shall ensure that individuals are chosen, from the public and private sectors, for their experience or professional qualifications in the following fields or areas of competence —

- (a) law, accountancy, economics, finance, engineering, or administration; and
- (b) generation, transmission, system operation, distribution, supply or marketing of electricity.

(3) The seven Commissioners shall be appointed to reflect one Commissioner from each of the six geo-political zones in Nigeria and a Chairman from any zone.

36. (1) Subject to the provisions of this section, a Commissioner shall hold office for a term of five years provided that to ensure continuity in the Commission, the term of appointment of the first seven Commissioners shall be as follows — Terms of office and conditions of service of Commissioners

(a) the Chairman shall be appointed for five years; and

(b) the Vice Chairman and other Commissioners shall be appointed for four years.

(2) A Commissioner shall not continue in office after the expiry of his term.

(3) Subject to section 37, a Commissioner shall hold office on such terms and conditions as the President may fix in relation to Commissioners generally.

(4) A Commissioner whose term of office has expired is eligible for reappointment for another term and no more.

(5) All appointments or re-appointments of Commissioners shall be made before expiry of their term of office in accordance with section 36 of this Act.

37. (1) A person shall not be appointed as a Commissioner who —

Conditions for
appointment of
Commissioners

(a) is not a Nigerian citizen;

(b) has a financial interest in any business connected, either directly or indirectly, with generation, transmission, system operation, distribution, supply or trading of electricity in Nigeria, or is engaged in any activity (whether for remuneration or otherwise) connected with any such service or system, or is a relative of a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity is in effect passive and will not interfere with the person's impartial discharge of his duties as a Commissioner, or unless the financial interest is terminated prior to the appointment taking effect; or

(c) has, in terms of a law in effect in any country —

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged,

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(d) has, in terms of a law in effect in any country —

(i) been adjudged, by a court of competent jurisdiction, to be of unsound mind, or

(ii) been banned from practicing his profession, or

- (iii) been convicted of an offence and sentenced to a term of imprisonment imposed with or without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who holds the office of Commissioner, and for a period of two years after he ceases to be a Commissioner for any reason whatsoever, shall not acquire, hold or maintain, directly or indirectly, any interest, office, employment or consultancy arrangements, either for remuneration or otherwise, connected with the generation, transmission, system operation, distribution, supply or trading of electricity in Nigeria or any activity connected with any such service or system and if such person acquires any such interest involuntarily or by way of succession or testamentary disposition, he shall divest himself from such interest within a period of three months of such interest being acquired.

38. A Commissioner shall vacate his office and his office shall become vacant —

Vacation of office by
Commissioner

- (a) three months after the date on which he gives notice in writing to the President of his intention to resign;
- (b) on the date he is convicted —
 - (i) in Nigeria, in respect of an offence,
 - (ii) outside Nigeria, in respect of an offence involving financial impropriety or any conduct which, if committed in Nigeria, would constitute an offence; or
- (c) if he becomes disqualified under sections 37 (1) (a), (b), (c) or (d), to hold office as a Commissioner;
- (d) if he is required under section 40 to vacate his office; or
- (e) when he attains the age of 70 years.

39. (1) The President shall require a Commissioner to vacate his office if the Commissioner —

Dismissal and
suspension of
Commissioner

- (a) has, subject to section 37 (2), been found to have conducted himself in a manner that renders him unsuitable as a Commissioner, including a contravention of section 44 or section 58 (2);
- (b) has failed to comply with any term or condition of his office fixed by the President under section 36 (3) of this Act;

(c) is mentally or physically incapable of efficiently carrying out his functions as a Commissioner; or

(d) the Commissioner is convicted of an offence in respect of which a sentence of imprisonment with or without the option of fine whether in Nigeria or abroad.

(2) A Commissioner shall not be removed unless the request is made by the President and supported by a simple majority vote of the Senate.

40. Subject to section 41 (5), on the death of, or vacation of office by a Commissioner, the President shall nominate a candidate to fill that vacancy, and submit such nomination to the Senate within one month for confirmation in accordance with section 35 of this Act. Filling of vacancies in the Commission

41. (1) The President shall designate one of the Commissioners as Chairman who shall be the chief executive and accounting officer of the Commission and another Commissioner as Vice-Chairman. Chairman and Vice Chairman of the Commission

(2) The Vice-Chairman shall retain his position as Vice-Chairman until his term of office as a Commissioner has expired.

(3) The Vice-Chairman shall perform the Chairman's functions whenever the Chairman is absent or for any reason unable to perform them.

(4) The Chairman or Vice-Chairman may at any time resign his office as such by one month's notice in writing to the President.

(5) Whenever the office of Chairman or Vice-Chairman becomes vacant, or on the death of the Chairman or Vice-Chairman, the President shall, within three weeks, select another Commissioner to fill the vacancy under section 40.

42. (1) The Commission shall meet for the conduct of business as often as is necessary or expedient and, subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it deems fit. Meetings and procedure of the Commission

(2) The Chairman or, in his absence, the Vice-Chairman shall preside at all meetings of the Commission.

(3) All decisions of the Commission shall be on the basis of majority of the members present and voting.

(4) The quorum for the meeting of the Commission shall be four and subject to section 45 of this Act, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of a tie in votes, the Chairman shall have a casting vote.

(5) For a meeting of the Commission to review any previous decision or order taken by the Commission, the quorum shall not be less than the Commissioners present when the decision was taken or order was made.

(6) Without derogation from subsection (1), the Commission may conduct its business by means of written resolutions signed by all the Commissioners, provided that, if any Commissioner requires that a matter be placed before all the Commissioners for discussion, this subsection shall not apply to such matter.

43. (1) Commissioners shall be paid from the funds of the Commission —

Remuneration and
expenses of
Commissioners

(a) such remuneration, if any, as the Commission may determine, having regard to the recommendations of the National Salaries, Incomes and Wages Commission; and

(b) such allowances, if any, as the Commission may determine, having regard to the recommendations of the National Salaries, Incomes and Wages Commission, to meet any reasonable expenses incurred by such Commissioners in connection with the business of the Commission.

(2) While making recommendations, the National Salaries, Incomes and Wages Commission shall have due regard to the following principles —

(a) the specialised nature of work to be performed by the Commission;

(b) the need to ensure the financial self-sufficiency of the Commissioners;

(c) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills;

(d) the nature of the expenses incurred by the Commissioners, including national and international travel expenses; and

(e) such other considerations that may be necessary to arrive at a fair and competitive salaries and allowances recommendation for Commissioners.

44. (1) If a Commissioner —

Commissioners to
disclose certain
connections and
interests

(a) acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission,

(b) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in

the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner,

(c) knows or has reason to believe that a relative of the Commissioner —

(i) has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission, or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner; or

(d) for any reason, his private interests conflict with his functions as a Commissioner,

the Commissioner shall immediately disclose the fact to the Commission.

(2) A Commissioner referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, inalienable property or interest referred to in that subsection.

(3) A Commissioner shall, prior to accepting his appointment to the Commission, make a declaration of assets in accordance with paragraph 11 of Part I of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 and shall terminate all other engagements for gain, including appointment to any office in the public service.

Fifth Schedule

(4) A Commissioner who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not more than N1,000,000 or imprisonment for a term not more than six months or both.

45. (1) A decision or act of the Commission or act done under the direction of the Commission shall not be invalid on the ground that —
- No invalidity of decisions and acts of the Commission
- (a) there existed a vacancy or vacancies among the Commissioners; or
 - (b) there existed some defect in the constitution of the Commission at the time the decision was taken or act was done or authorised.
- (2) Where a Commissioner referred to in section 45 of this Act takes part in the consideration of a matter in which his private interests are in conflict with his functions as Commissioner, the other Commissioners may subsequently ratify any decision or action taken in the matter.
46. (1) The Commission shall be entitled to conduct its proceedings, consultations, and hearings at its headquarters or at any other place in Nigeria.
- Proceedings of the Commission
- (2) The Commission shall make regulations for the performance of its functions and for the conduct of its proceedings, consultations and hearings, including procedures for the participation of licensees, consumers, eligible customers and other persons.
47. (1) The Chairman shall ensure that all Commission decisions and orders —
- Decisions and orders of the Commission
- (a) contain the basis for the decision or order;
 - (b) are properly recorded in writing; and
 - (c) are accessible to the public at reasonable times and places.
- (2) The Commission shall issue written reasons in respect of any decisions or orders affecting the existing rights of any person if the affected person requests such written reasons.
- (3) The Commission may issue written reasons in respect of any other decision or order as the Commission deems necessary.
- (4) Every recommendation, declaration, decision or order of the Commission, if purported to be signed by a person describing himself as the Chairman of the Commission, or by a person describing himself as the Vice-Chairman acting in the capacity of the Chairman, shall, unless the contrary is shown, be deemed to be made by the Commission and to have been so signed and may be proved by the production of a copy purporting to have been so signed.

(5) The Commission may make interim orders pending the final disposition of a matter before it.

48. (1) The Commission shall hold a hearing on any matter, which under this Act or any other enactment is required or permitted to conduct or on which it is required or permitted to take any action and the Commission shall hold public hearing on matters, which the Commission may consider to be of significant interest to the general public.

Commission to give notice to interested parties

(2) Where the Commission is required to, or otherwise decides to, hold a hearing, all persons having an interest in such matter shall, as far as reasonably practicable, be notified of the questions at issue and given opportunity for making representations if they so wish.

49. When any matter arises which entails the consideration of any professional or technical question, the Commission may consult such persons as may be qualified to advise on it.

Commission to consult experts on technical questions

50. (1) If a question of law arises from an order or decision of the Commission, the Commission may, on its initiative or at the request of any person directly affected by such order or decision, reserve that question for the determination of the Federal High Court.

Question of law may be referred to the Federal High Court

(2) Where a question has been reserved under subsection (1), the Commission shall state the question in form of a special case and file with the Registrar of the Federal High Court.

51. (1) Subject to this section, any person who is aggrieved by —

Rehearing and appeals

(a) a decision of the Commission not to issue a license,

(b) any term or condition of a license issued to him, or a refusal by the Commission to specify a term or condition of a licence,

(c) a refusal by the Commission to renew a licence,

(d) any amendment of a licence or refusal by the Commission to amend a licence,

(e) the cancellation of a licence,

(f) the grant or refusal by the Commission to grant any approval or authority in terms of this Act,

(g) the outcome of any arbitration or mediation by the Commission of any dispute between licensees,

(h) a decision of the Commission with respect to prices or tariffs, or

(i) any other decision of the Commission,

may apply to the Commission for review of the decision, order or refusal.

(2) The Commission may, reconsider, vary or rescind its decision before issuing a final decision in accordance with such procedures as the Commission may, establish; Provided that such review or reconsideration shall be completed within 30 days of the date it was requested.

(3) Any person dissatisfied with the decision of the Commission under subsection (2) shall, subject to the rules of the Federal High Court, within 30 days from the date the final decision of the Commission was reached, file an appeal to the Federal High Court.

(4) The Federal High Court may affirm, modify or set aside the decision of the Commission reached under subsection (2).

(5) An action shall not be instituted by any person aggrieved by a decision of the Commission without exhausting all internal dispute settlement mechanisms provided under the provisions of this Act.

52. (1) The Commission shall prepare and submit to the Minister, on or before such date as the Minister may specify before the beginning of every financial year, a budget showing the expenditures which the Commission proposes to incur in respect of that financial year in order to carry out the functions of the Commission.

Annual programmes
and budgets of the
Commission

(2) The Commission may, during any financial year, prepare and submit to the Minister a supplementary budget relating to expenditures which were inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget shall be deemed to form part of the annual budget of the Commission for the financial year to which it relates.

(4) The Commission may vary a budget prepared under this section, provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

53. The funds of the Commission shall consist of —

Funds of the
Commission

(a) fees, charges and other income accruing to the Commission from licensees and other things done by it in terms of this Act, excluding any fines or penalties recovered under this Act;

(b) funds allocated to the Commission by the National Assembly, under a request by the Commission for additional funds required to meet its reasonable expenditures; and

(c) such other money as may vest in or accrue to the Commission, whether in the course of its operations or otherwise.

54. (1) The Commission shall —

Surplus funds of the Commission

(a) in respect of each financial year following the audit of its accounts under section 57 of this Act, determine its operating surplus which shall be the remaining sum from the funds received under section 53 of this Act after meeting all budgeted expenditure; and

(b) within 30 days following the audit and determination of its operating surplus, pay such operating surplus directly to the REF established under section 142 of this Act.

(2) The operating surplus of the Commission as determined in accordance with the provisions of this Act shall be remitted to the REF, established as a special Fund for rural electrification, in accordance with under section 80 (1) of the Constitution of the Federal Republic of Nigeria, 1999 and such remittance shall be made notwithstanding the provisions of any Act of the National Assembly on remittances of operating surplus by government ministries, departments and agencies.

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55. The financial year of the Commission shall be the period of twelve months commencing from January 1 and ending on the 31 December in each year.

The financial year of the Commission

56. (1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may require.

Accounts of the Commission

(2) The Commission shall, not later than three months, after the end of the financial year, prepare and submit to the Auditor General for the Federation and National Assembly, a statement of accounts in respect of that financial year.

(3) The Commission shall present quarterly reports on all its activities to the President and National Assembly.

57. (1) The Commission shall appoint an auditor in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the Federation.

Audit of the Commission's Accounts

(2) The accounts kept by the Commission under section 56 (1) of this Act shall be examined by the auditor.

- (3) The auditor shall within six months after the end of each financial year, make a report to the Commission on the statement of accounts prepared under section 56 (2) of this Act, and such report shall state whether or not, in the opinion of the auditor, the statement of accounts gives a true and fair view of the Commission's affairs.
 - (4) The Minister may require the Commission to obtain from its auditor such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider necessary, and the Commission shall forthwith comply with any such requirement.
 - (5) Notwithstanding the provision of subsection (4), the Minister shall authorise the Commission to publish its audited statement of accounts in two national newspapers within one month following the receipt of the auditor's report under subsection (3), and the Commission shall publish the statement of accounts in the manner that has been authorised.
58. (1) The auditor shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any Commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of their audit.
- (2) Any Commissioner or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor under subsection (1), commits an offence and is liable on conviction to a fine not more than N200,000 or imprisonment for a term not more than three months or both.
59. An agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.
60. (1) In addition to any report which the Commission is required by this Act to submit to the Minister, the Commission shall submit to the Minister such other report as the Minister considers advisable.
- (2) The Minister shall publicly release any reports submitted under subsection (1), within two months following the receipt of such a report.
61. (1) The Commission shall employ such persons as it considers expedient for the better performance of the functions of the Commission.
- (2) The terms and conditions of service, including remuneration, allowances and pension benefits, of the staff of the Commission shall be as determined by the Commission.
- (3) Subject to subsection (5), the Commission may assign to its staff such functions of the Commission as the Commission deem fit.

Powers of the
auditors

Execution of
contracts and
instruments by the
Commission

Reports of the
Commission

Staff of the
Commission

- (4) Any assignment of functions under subsection (3) may be made either generally or specifically and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.
- (5) Anything authorised or required by or under this Act to be done by the Commission, other than the making of final orders, may be done by any member of the Commission or staff who has been authorised either generally or specifically by the Commission to do so.
62. Liability shall not attach to the Commission or to any employee of the Commission or to a Commissioner for any loss or damage sustained by any person as a result of the exercise in good faith or performance of any function which, is conferred upon the Commission or the Commissioners.
- Exemption from Liability for the Commission

PART VI — LICENSING

63. (1) Without prejudice to the right of the States of the Federation to make laws and establish markets for the generation, transmission, system operation, distribution and supply of electricity within their respective territories, no person, except in accordance with a license issued under the provisions of this Act or deemed to have been issued as provided under this Act, shall construct, own, operate an undertaking other than an undertaking specified under subsection (2), or in any way engage in the business of —
- Authorised persons to generate and transmit electricity
- (a) electricity generation, excluding captive generation;
 - (b) electricity transmission;
 - (c) electricity distribution;
 - (d) electricity supply;
 - (e) electricity trading; or
 - (f) system operation.
- (2) Notwithstanding the provisions of subsection (1), a person may —
- (a) construct, own or operate an undertaking for generating electricity not exceeding 1 megawatt (MW) in aggregate at a site or an undertaking for distribution for electricity with a capacity not exceeding 100 kilowatts (KW) in aggregate at a site, or such other capacity as the Commission may determine without a license; and

- (b) construct, own, operate an undertaking for generation, transmission, distribution, supply and sale of electricity, including the construction, ownership and operation of mini grid, IEDN/IEDNOs or its IETN/IETNOs within a State under a law enacted by the House of Assembly of a State under section 2(2) of this Act, provided that such a license does not permit the licensee to provide inter-state or transnational distribution of electricity in Nigeria.
- (3) Subject to the provisions of this Act, the Commission shall have the power to inquire into whether a person is engaging or is about to engage in a business for which a license is required under subsection (1).
- (4) The Commission shall have the authority to order any person who contravenes subsection (1) to cease operations, and to make such other orders, including an order to —
 - (a) temporarily confiscate the undertaking of the violator, pending conclusion of trial;
 - (b) direct the disconnection of the facilities of the violator;
 - (c) direct the violator to apply for the relevant license on such terms and conditions as the Commission may specify; or
 - (d) generally, direct the violator to take such steps as may be necessary to prevent the continuation or recurrence of the contravention.
- (5) Without prejudice to subsection (4), any person who contravenes the provision of subsection (1), commits an offence and is liable on conviction to —
 - (a) a fine of at least 10 times the application and license fees for the relevant license contravened;
 - (b) imprisonment for a term not exceeding five years; or
 - (c) both such fine and imprisonment as well as an order for permanent forfeiture of the undertaking to the Commission.
- (6) The Commission shall have the authority to penalise a licensee for violations of its license terms and conditions or to cancel such license in accordance with the provisions of this Act.
- (7) Notwithstanding the provision of subsection (1), it shall be the responsibility of the State Electricity Board or any State authority by whatever appellation, to grant license for mini-grids IEDN/IEDNOs and IETN/IETNOs and provide the framework

for the operation of such licensees, including framework for investment in electricity utilities within the State:

Provided that the Commission shall retain and exercise regulatory powers over mini-grids, IEDN/IEDNOs and IETN/IETNOs in any State of the Federation where such a State –

- (a) has no legal and institutional framework in place for the regulation of mini-grids, IEDNs, IETNs or related electricity services; or
- (b) the operation of such IEDN/IEDNOs, IETN/IETNOs or electricity generation, transmission and distribution undertaking within any State of the Federation relies on any part of the national grid for its operations.

64. (1) A licensee shall comply with the provisions of its license, regulations, codes, orders and other requirements issued by the Commission. General duties of licensee
- (2) Unless stayed by a Court of competent jurisdiction, each licensee shall duly implement or follow, as the case may be, the Commission's orders and written notices, notwithstanding that the licensee has or may intend to take legal action challenging any such order or notice.
65. (1) Subject to such terms and conditions as the Commission may specify in the license, a generation license shall, as the circumstances may require having regard to the grid network capacity, authorise the licensee to construct, own, operate and maintain a generation station for purposes of generation and supply of electricity in accordance with the provisions of this Act. Generation licenses
- (2) Subject to the provisions of this Act, the holder of a generation licensee may sell electricity or ancillary services to any of the classes of persons specified in the license and under this Act.
- (3) Without prejudice to the rights and obligations of successor generation companies which are deemed to be generation licensees under this Act, the Commission shall, for the purpose of subsection (1) have the power to grant multiple generation licenses to independent power producers for generation of electricity from renewable and non-renewable sources subject to such terms and conditions as may be stipulated by the Commission under such licenses.
66. (1) Subject to the provisions of section 15 (1) and (2) of this Act and such terms and conditions as are contained in the license issued to the transmission service provider, such license shall authorise the licensee to --- Transmission licenses
- (a) construct, maintain and operate an efficient, coordinated, economical and integrated smart grid interconnection in Nigeria and other neighboring countries; and

(b) provide non-discriminatory and open access to its transmission system for use by any successor generating company, independent power producer, consumers, licensees or other generators upon payment of appropriate transmission charges.

(2) Without prejudice to the rights and obligations of transmission licensees under subsection (1), the Commission shall have the power to issue independent electricity transmission network license, where —

(a) there is no existing transmission facility and there is need for extension of the transmission network to increase electricity access; or

(b) there are existing transmission facilities that requires reinforcement of transmission network to connect new power generating facilities.

(3) For the purpose of section 63 (2) (b) and (7) of this Act, the franchise area of the independent electricity transmission network license shall be restricted to the greenfield sites within the States covered under the independent electricity transmission network license while the franchise of the transmission service provider shall be over areas that the transmission service provider prescribed under section 15(2) (b) has its transmission facilities.

67. (1) Subject to the provisions of this Act and such terms and conditions as the Commission may specify in the license, a system operation license shall authorise the licensee to carry on system operation, including the following activities as may be specified in the license —

System operation
license

(a) generation scheduling, commitment and dispatch;

(b) transmission scheduling and generation outage co-ordination;

(c) transmission congestion management;

(d) international transmission co-ordination;

(e) procurement and scheduling of ancillary services and system planning for long term capacity;

(f) administration of the wholesale electricity market, including the activity of administration of settlement payments, in accordance with the market rules; and

(g) such other activities as may be required for reliable and efficient system operation.

- (2) All contracts for procuring ancillary services shall be awarded according to an open, transparent and competitive manner, under a procedure established by the Commission, unless the circumstances require otherwise, and the Commission allows or requires an alternative method.

68. (1) Subject to the provisions of this Act and such terms and conditions as are contained in a distribution license issued to successor distribution companies, a distribution license shall authorise the licensee to construct, operate and maintain a distribution system and facilities, including the following activities as may be specified in the license —

Distribution and supply licenses

- (a) the connection of customers for the purpose of receiving a supply of electricity;
- (b) the installation, maintenance and reading of meters, billing and collection;
- (c) expansion of the distribution network in the licensed areas; and
- (d) such other distribution service as may be prescribed for the purposes of this section.

- (2) A distribution licensee may also have the obligation to provide electricity to its customers, under the terms of a distribution license issued by the Commission to the distribution licensee.

- (3) Subject to subsection (6), a distribution licensee may purchase power for resale —

- (a) from a generation licensee;
- (b) another trading licensee; and
- (c) under any rights and obligations novated to it under section 7 (2) of this Act:

Provided all contracts for bulk purchase of electricity by a distribution licensee shall be awarded according to an open, transparent, and competitive manner, under a procedure established by the Commission, unless the circumstances require otherwise, and the Commission allows or requires an alternative method.

- (4) Notwithstanding the provisions of subsection (1), the Commission shall approve a distribution or supply franchising arrangement or any other commercial arrangement between the distribution or supply licensees and third parties within the respective distribution or supply licensees' operations and coverage areas in accordance with approved franchising terms, franchising models, tariffs as may be approved by the Commission:

Provided that the franchisee shall not be deemed to hold a distribution or supply license or sublicense but shall operate under the terms of distribution and supply licensee's license, whichever is applicable, with the distribution and supply licensees being ultimately responsible for quality distribution and supply of electricity in their respective licensed areas of operational coverage.

(5) For the purpose of subsection (4), the Commission may approve a request for electricity distribution franchising at any time during any of the market stages recognised under this Act and the market rules, taking into cognisance the aggregate tenure of licenses held by successor distribution companies, any disaggregation of the distribution licenses into distribution and supply licenses and such distribution franchising framework as may be put in place by the Commission.

(6) Without prejudice to the right and obligations of a successor distribution company, the Commission shall at any stage of the market it considers appropriate, recognise electricity supply as a separate activity from distribution and accordingly issue a directive for the disaggregation of distribution licenses into supply and distribution licensed companies in accordance with the provisions of this Act.

(7) For the purpose of subsection (6), the Commission shall implement a transfer scheme for the disaggregation of successor distribution companies or other distribution licensees into supply and distribution licensees, prescribing in such order, the phases for the transfer of functions, property, interest and liabilities relating to the supply of electricity to intermediary companies to be incorporated by successor companies under the Companies and Allied Matters Act, or any law replacing same to function as a supply license in accordance with the transfer order as may be issued by the Commission under this section.

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(8) On completion of the transfer scheme under subsection (7) —

(a) successor distribution licensees or other distribution licensees as the case may be, shall cease to function as distribution and supply licensees but only as distribution licensees and in accordance with distribution license issued by the Commission under this subsection to cover their unexpired aggregate license tenure of its distribution license or under the terms of a renewed license granted by the Commission; and

(b) the intermediary companies described under subsection (7) shall be issued distinct supply licenses and shall function as supply licensees in accordance with the provisions of this Act and such terms and conditions as may be stipulated by the Commission in its supply license.

(9) The Commission shall grant independent electricity distribution network and independent electricity distribution network operators license to construct, own, operate, maintain or procure the construction and maintenance of independent

electricity distribution network within an area with no existing distribution system or where the existing distribution infrastructure owned by the distribution licensee is unable to meet the demands of such customers giving due regard to the independent electricity distribution network operator framework as may be approved by the Commission for this purpose.

(10) Where the provisions of this section or any other part of this Act authorises a distribution or supply licensee to receive financial contributions from electricity consumers to fund the acquisition, installation and maintenance of electricity distribution transformers or other related equipment, such financial contribution shall be outside the usual obligations of consumers.

(11) Notwithstanding the provisions of subsection (9), any willing and capable electricity consumer may make financial contribution to fund the acquisition, installation and maintenance of electricity distribution transformers or other related equipment for the purpose of ensuring stable electricity supply where —

(a) the electricity, distribution or supply licensee is unable to provide such transformer or equipment within a reasonable time;

(b) there is a prior written request by the electricity consumer to the electricity company specifying —

(i) the name, address, occupation or nature of business of the consumer,

(ii) the amount to be contributed and the capacity of distribution transformer to be procured and installed,

(iii) the location of the distribution transformer to be procured with the funds contributed and the number of customers likely to enjoy improved power supply in the area as a result of the transformer to be procured, and

(iv) the need for a meeting or consultation and agreement regarding the request made under this section.

69. (1) A trading licensee shall be permitted to engage in the purchasing, selling, and trading of electricity and the Commission shall determine the terms and conditions of trading licenses as may be appropriate in the circumstances, and having due regard to the nature of the activities in which the licensee intends to engage.

Trading licenses

(2) For the purpose of giving effect to the provisions of section 7(2)(d) of this Act and ensure smooth transition of the market without interruption, the Commission shall, at the stage of the market it considers appropriate, issue such number of trading licensees as it considers appropriate, authorising such trading licensees to purchase,

sale and trade in electricity and specifying the technical requirements, capital adequacy requirements, credit worthiness and such other terms and condition as may be stipulated in such trading licenses.

(3) Trading licenses issued by the Commission under provisions of subsection (2) shall authorise the trading licensees to —

(a) enter into novation agreements with the trading licensee provided under section 6(f) of this Act for the novation of the contractual rights and obligations for purchase and resale of electricity and ancillary services in accordance with section 7(2) (d) of this Act; and

(b) enter into contract with successor generating companies, independent power producers and other generators for the purchase and resale of electricity and ancillary services.

(4) All contracts for purchases of electrical power and ancillary services by the trading licensees described under section 6 (f) and the holders of trading licenses issued by the Commission under the provisions of subsection (2) shall be awarded according to an open, transparent, and competitive manner, under a procedure established by the Commission, unless the circumstances require otherwise, and the Commission allows or requires an alternative method.

70. (1) A licensee shall not, except as provided under sections 7(2)(d), 15(2)(a), 67(4), (5) and (8) of this Act, assign or cede its license or transfer his undertaking, or any part of it, by way of sale, mortgage, charge, pledge, lease, franchise, exchange or otherwise without the prior consent of the Commission:

Restriction on
licenses

Provided that, where the Commission determine that in any instance the circumstances so require, it may prescribe license terms and conditions providing its specific or general consent for any or all of the foregoing.

(2) A licensee shall not, without the prior written consent of the Commission, acquire by purchase or otherwise, or affiliate or merge his undertaking with that of any other licensee or person that is in the business of electricity generation, transmission, system operation, distribution, supply or trading, other than as provided under section 6 (1) (b), 67, 68 and 78 of this Act.

Provided that the Commission may, in granting its consent, impose conditions such as adherence to codes of conduct approved by the Commission.

71. (1) An application for a licence shall be made to the Commission in the form and manner prescribed and be accompanied by the prescribed fee and such information or documents as may be prescribed or as the Commission may require.

Application and
procedure for licence

- (2) Within 30 days after applying for a license under subsection (1), the applicant shall, at his own expense, cause a notice of the application to be published in a newspaper circulating in the area in which he intends to operate as a licensee, and in a separate, national circulation newspaper in accordance with such directions as may be given by the Commission, stating the period, prescribed by the Commission, within which objections or representation in connection with the application may be made to the Commission, and the Commission shall not issue any licence until all objections or representations received by the Commission have been considered and determined.
- (3) An applicant for a licence who owns, or a licensee who acquires, more than ten percent or such other percentage as the Commission may specify, of the shares in a body corporate, which has applied for or holds another licence issued by the Commission shall disclose such interest to the Commission.
- (4) Subject to subsection (5), if on consideration of an application that satisfies the requirements of subsection (1), the Commission is also satisfied that —
 - (a) the applicant is likely to comply with such provisions of this Act, including all codes of conduct, standards, regulations and license terms and conditions, as apply to the service or system it intends to provide or operate; and
 - (b) the grant of the licence is in the public interest, the Commission shall issue the appropriate licence, as the case may be, to the applicant.
- (5) If on consideration of an application that satisfies the requirements of subsection (1), the Commission is not satisfied as to the additional matters referred to in subsection (4), it shall refuse to issue a licence to the applicant, but before refusing to issue the licence on the ground that it is not satisfied as to the matters referred to in subsection (4), the Commission shall notify the applicant in writing that it proposes to refuse the application and of its reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter.
- (6) The period between the Commission's receipt of an application under subsection (1) and all documents and information submitted in support of it, and the date on which it notifies the applicant of the adequacy of the documents and information, shall not exceed one month.
- (7) The period between the Commission's receipt of an application that satisfies the requirements of subsection (1), and the date on which the Commission notifies the applicant of its decision or proposed decision in accordance with subsection (4) or subsection (5), as the case may be, shall not exceed six months.
- (9) Notwithstanding subsections (1)-(7), the Commission may establish simplified procedures for undertakings and businesses that are limited in size and scope so as to expedite the application and licensing process.

72. (1) A license shall be issued subject to such terms and conditions as may be prescribed, or as the Commission may reasonably determine, including terms and conditions prescribing the use of a tariff methodology approved by the Commission under Part X of this Act. Terms and conditions
of licences
- (2) Subject to subsection (1), a license may contain specific or general conditions which shall apply either to a licensee or class of licensee and may require the licensee to —
- (a) enter into agreements on specified terms with other persons for the provision of or use of electric lines and associated equipment operated by the licensee;
 - (b) purchase power and other resources in an economical and transparent manners; and
 - (c) refer disputes to the Commission for arbitration, mediation, or determination by the Commission and file appeal against the decisions of the Commission; and
 - (d) comply with such renewable purchase obligations or renewable generation obligations as may be prescribed by the Commission under the provisions of this Act to promote generation and consumption of energy from renewable sources.
- (3) In the case of a license issued to an applicant referred to in section 75(3), the license may be issued subject to the condition that the licensee shall divest itself within a specified time of any holding of shares in another licensee or such other conditions, including adherence to codes of conduct, that the Commission determines to be in the public interest.
- (4) In issuing or renewing a distribution license, the Commission may impose a condition requiring the licensee to make such reasonable provision as may be specified by the Commission in the license for the facilitation of rural electrification in the proximity of the service, having due regard to the tariff methodology established by the Commission under Part XI of this Act.
- (5) A license may require the licensee to provide information to the Commission on a periodic basis, in such form and detail as the Commission may determine.
- (6) Unless expressly indicated in the license, the grant of a license shall not hinder or restrict the grant of a license to another person for a like purpose and, in the absence of such an express indication, the licensee, shall not claim any exclusivity:

Provided that the Commission may allow a licensed activity to be exclusive for all or part of the period of the license, for a specific purpose, for a geographical area, or for some combination of the terms.

- (7) A license may contain terms and conditions for the license to cease to have effect or to be modified or amended by the Commission in such circumstances as may be specified in the license or as may be determined by the Commission.
- (8) As a condition of its license, every licensee shall, unless expressly exempted by its license, prepare and submit to the Commission each year such accounting information as the Commission may require.
- (9) The Commission shall include in each license, such details as it may consider necessary, regarding the rights and obligations of the licensee, and procedures to be followed, at the end of its license term.
- (10) The tenure or duration of a license may be open or shall be valid for such duration as stipulated in such license granted by the Commission:

Provided that the Commission shall reserve the discretionary power to cancel, suspend, amend or renew any license taking into account the performance track record of the licensee, the nature of the undertaking, public interest and the provisions of this Act relating to amendment, suspension, cancellation or renewal of licenses.

- (11) Every license shall be deemed to contain a provision that the licensee complies with the market rules to the extent applicable to the licensee.

73. (1) Subject to the provisions of this Act, the holder of a license may apply for a renewal of the license before it expires. Renewal of licenses

- (2) An application for the renewal of a license shall be made to the Commission in the form and manner and within the period prescribed by the Commission, and it shall be accompanied by the prescribed fee, if any.

- (3) The provisions of section 71 of this Act shall apply, *mutatis mutandis*, to the renewal of licenses.

74. (1) Subject to the provisions of this section, the Commission may, at any time, amend a license or any term or condition of a license — Amendment of licenses

(a) if the licensee requests the amendment; or

(b) if the amendment is under a condition of the license imposed under section 72(7) of this Act; or

(c) upon receiving a complaint from any consumer, eligible customer, consumer association, association of eligible customers, or other licensee.

(2) Where a licensee makes an application for the amendment of a license, the licensee shall publish a notice of the proposed amendment to the license in accordance with such directions as may be given by the Commission, stating the period, prescribed by the Commission, within which objections or representations in connection with the amendments may be made to the Commission, and the Commission shall not amend any license until all objections or representations received by the Commission have been considered and determined.

(3) In the case of an application proposing amendments to a license of a licensee who provides services to an area covering a building or place occupied by the Federal Ministry responsible for defense for defense purposes, the Commission shall obtain the consent of the Federal Ministry responsible for defense before making the amendment to the license.

(4) Before making amendments in a license otherwise than on the application of the licensee, the Commission shall direct the applicant to publish the proposed amendments, stating the period within which objections or representations may be made to the Commission, and the Commission shall not amend any such license until all such objections or representations received by the Commission have been considered and determined.

75. (1) The Commission shall, on its own initiative or upon a complaint from any consumer, eligible customers, consumer associations, shareholder in a licensee company or a licensee, inquire into the conduct or functioning of any licensee in carrying out its obligations under its license and the provisions of this Act.

Intervention powers
in failing licensees

(2) Where upon an inquiry made under subsection (1), the Commission determines that the licensee is in grave situation as regards the matters referred to under subsection (3), the Commission shall exercise one or more of the following powers as may be necessary for maintaining continuity in the provision of electricity service —

(a) issue an interim order for the dissolution and removal of the Board of Directors of such a licensee company and appointment of administrators and special directors to manage the affairs of the undertaking until such a period as may be specified in the order notwithstanding anything contained in any written law and the memorandum and articles of association of the licensee company;

(b) issue an order requiring the licensee to take any such action or not take any action, in relation to the undertaking of the licensee, its directors, or officers which the Commission may consider necessary within a specified time notwithstanding anything contained in any written law and the memorandum and articles of association of the licensee company; or

(c) employ any other regulatory intervention tools as the Commission may deem fit in the given circumstance.

(3) The Commission shall invoke its powers to intervene in failing licensees if it determines after an inquiry made under subsection (1) that the licensee —

(a) informs the Commission that it is unable to discharge its obligations under this Act and its license;

(b) is in prolong default in carrying out anything required of it under this Act, regulations or directives of the Commission and its license;

(c) has been plagued by such a protracted management crisis that it has become detrimental to the interest of shareholders, consumers and the overall operations of the undertaking; or

(d) has insufficient assets to cover its liabilities to lenders and it is in eminent risk of receivership from lenders.

(4) If after taking any or all the steps stipulated under subsection (2) or such other measures as in the opinion of the Commission is appropriate in the circumstance, the state of affairs of the licensee does not improve, the Commission shall invoke its powers to revoke the license of the concerned licensee.

76. (1) Without derogation from its powers under section 75, where the Commission is satisfied that a licensee is contravening, has contravened or is likely to contravene any of the conditions of the licence, the Commission may serve upon the licensee an order —

Enforcement of
license

(a) requiring the licensee to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence;

(b) stipulating the period within which any requirement referred to in subsection (1) (a) shall be commenced and completed; and

(c) which shall be published by the Commission in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the licence.

(2) Before serving an order under subsection (1), the Commission shall serve a notice upon the licensee concerned —

- (a) specifying the grounds upon which the order is to be issued and what the Commission considers reasonably necessary for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence;
 - (b) stipulating the maximum period that the Commission considers reasonable for the implementation of any requirement it proposes to order; and
 - (c) allowing the licensee, to make representations to the Commission within such period from the date of service of the notice as it shall specify.
- (3) After considering any representations made under subsection (2)(c), the Commission may serve, or refrain from or defer serving, an order under subsection (1), or serve an order on different terms.
- (4) An order served under subsection (1) may specify a penalty for each day that the licensee subjected to the order is in default of compliance with the order, not to exceed N20,000,000 for each day.
77. (1) Where the Commission revokes a license under section 75 (4) of this Act, the Commission shall make an order regarding the sale of the undertaking of the licensee in accordance with the provisions of this section —
- Sale of undertakings
of licenses
- (a) invite applications for acquiring the undertaking of the licensee whose license has been cancelled and determine which of such applications should be accepted, primarily on the basis of the highest and best price offered for the undertaking;
 - (b) require the licensee to sell his undertaking and the licensee shall sell his undertaking to the person (in this section referred to as "the purchaser") whose application has been accepted by that Commission;
 - (c) all the rights, duties, obligations and liabilities of the licensee, on and from the date of cancellation of license or on and from the date, if earlier, on which the undertaking of the licensee is sold to a purchaser, shall absolutely cease except for any liabilities which have accrued prior to that date;
 - (d) the Commission may make such interim arrangements in regard to the operation of the undertaking as it may consider appropriate including the appointment of an Administrator;
 - (e) the Administrator appointed under paragraph (d) shall exercise such powers and discharge such functions as the Commission may direct.

(2) Where the undertaking of a licensee is sold under subsection (1), the purchaser shall pay to the licensee the purchase price of the undertaking in such a manner as may be agreed upon subject to the approval of the Commission.

(3) Where the Commission issues any order under subsection (1) requiring the licensee to sell the undertaking, it may, by such notice, require the licensee to deliver the undertaking, and the licensee shall deliver on a date specified in the notice, the undertaking to the designated purchaser on payment of the purchase price.

(4) Where the licensee has delivered the undertaking referred to in subsection (3) to the purchaser, but its sale has not been completed by the date fixed in the order issued by the Commission, the Commission may, if it deems fit, permit the intending purchaser to operate and maintain the undertaking system pending the completion of the sale.

78. Where the undertaking is sold under section 77 of this Act then, on completion of the sale or on the date on which the undertaking is delivered to the intending purchaser, as the case may be, whichever is earlier —

Vesting of
undertaking in the
purchaser

(a) the undertaking shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching to the undertaking;

Provided that any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the undertaking; and

(b) the rights, powers, authorities, duties and obligations of the licensee under its license shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee.

79. (1) If the undertaking is not sold in the manner provided under section 77 of this Act, the Commission may, to protect the interest of consumers or in the public interest, issue such directions or formulate such scheme as it may deem necessary for operation of the undertaking.

Provision where no
purchase takes place

(2) The Commission shall give due regard to its relevant regulation on business continuity in issuing —

(a) an order for sale of undertaking under section 75 (6); and

(b) directions or formulating a scheme under subsection (1) which may be necessary for the operation of the undertaking of the licensee where no purchase of the undertaking takes place.

- (3) For the purpose of sections 77, 78, and 79 (1) and (2) of this Act, the Commission shall make such regulations on business and service continuity for the NESI in order to ensure that the interests of licensees and that of customers are protected.

PART VII — GENERATION OF ELECTRICITY

80. (1) Without prejudice to the provisions of section 65 of this Act, the Commission and the ISO shall have a continuing obligation to promote the generation of electricity from renewable energy sources as defined under this Act. Promotion of generation from renewable energy
- (2) In granting generating licenses, the Commission shall promote embedded generation, hybridised generation, co-generation and the generation of electricity from renewable sources such as solar energy, wind, small hydro, biomass and such other renewable sources as defined under this Act or may be developed.
81. (1) The Commission may specify in accordance with section 77(1)(d) of this Act or in extra-ordinary circumstances direct a generating licensee to operate and maintain any generating station in accordance with the terms and conditions as the Commission may direct. Directions to generation companies
- (2) In this section, “extra-ordinary circumstances” means circumstances arising out of threat to security of the State, public order or natural calamity.
- (3) The Commission shall determine the means to offset the adverse impact of directions made to a generating licensee under subsection (1).

PART VIII — ESTABLISHMENT OF THE NATIONAL HYDROELECTRIC POWER PRODUCING AREAS DEVELOPMENT COMMISSION

82. (1) There is established the National Hydroelectric Power Producing Area Development Commission (in this Act referred to as “N-HYPPADEC”), which — Establishment of the National Hydroelectric Power Producing Area Development Commission
- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) sue and be used in its corporate name.
- (2) Any State where hydroelectric power is generated shall be a member State of the N-HYPPADEC.
- (3) The office of the Chairman of the N-HYPPADEC shall rotate among the member States in alphabetical order and subsequently in the order in which new States become members of the hydroelectric power producing areas.

(4) Notwithstanding any provisions contained in any legislation, the composition of members of N-HYPPADEC shall include one person representing each of the remaining geo-political zones.

(5) The N-HYPPADEC shall approve payment of remuneration and other allowances to its staff of the N-HYPPADEC as are payable to persons with the equivalent grade in the Public Service of the Federation and in similar agencies of the Federal Government".

83. The headquarters of the N-HYPPADEC shall be in Minna, Niger State.

Headquarters of the
N-HYPPADEC

84. (1) There is established for the N-HYPPADEC a Governing Council (in this Act referred to as "the Council"), which shall consist of —

Establishment,
membership and
powers of the
Governing Council

(a) a Chairman who shall be appointed on part time basis and shall preside over Council meetings;

(b) one person each who shall be from the affected communities to represent

(i) Benue,

(ii) Gombe

(iii) Kaduna,

(iv) Kebbi,

(v) Kogi,

(vi) Kwara,

(vii) Nasarawa,

(viii) Niger,

(ix) Plateau,

(x) Taraba, and

(xi) any other State affected by the activities of hydro-electric power generated on rivers Benue, Niger or any inland waterway as may be designated by the National Assembly to be an international waterway or inter-state waterway;

(c) two persons to represent other Non-Hydroelectric Power Producing Areas or States;

(d) one person each to represent Federal Ministries responsible for —

(i) power,

(ii) environment,

(iii) water resources, and

(iv) finance; and

(e) the Managing Director of the N-HYPPADEC.

(2) The Chairman and other members of the Council shall be appointed by the President, subject to confirmation by the Senate, except the persons mentioned in subsection (1) (d) whose appointments shall not be subject to confirmation by the Senate.

(3) The office of the Chairman shall rotate among the member States of the N-HYPPADEC in the following alphabetical order —

(a) Benue;

(b) Kebbi;

(c) Kogi;

(d) Niger;

(e) Kwara;

(f) Plateau;

(g) Gombe;

(h) Kaduna;

(i) Nasarawa;

(j) Taraba; and

(k) any other State where hydroelectric power is generated.

85. (1) The N-HYPPADEC shall make its rules as to the summoning of meetings and proceedings at such meetings.

Supplementary provisions relating to the Council

(2) The supplementary provisions as set out in the Fifth Schedule to this Act shall have effect to the proceedings of the Council and other matters contained in it.

Fifth Schedule

86. The Council shall —

Power of the Council

- (a) make internal policy direction and oversee the affairs of the N-HYPPADEC;
- (b) provide internal policy guidelines for carrying out the functions of the N-HYPPADEC;
- (c) enter and inspect premises, project and such place as may be necessary for the purpose of carrying out its function under this Act;
- (d) approve the payment to the staff of the N-HYPPADEC such remunerations and allowances as are payable to persons with equivalent grade in the Public Service of the Federation and in similar agencies of the Federal Government;
- (e) enter into such contract as may be necessary or expedient for the performance of its functions and ensure the efficient performance of the functions of the N-HYPPADEC;
- (f) approve the appointment, promotion and discipline of senior staff of the N-HYPPADEC; and
- (g) do such other things which are necessary and expedient for the efficient performance of the function of the N-HYPPADEC.

87. (1) The Chairman and members of the Council other than *ex-officio* members shall hold office for four years, renewable for another term of four years and no more.

Tenure of office of
members of the
Council

(2) Members of the Council shall be paid such remuneration and allowances as the Federal Government may determine.

88. (1) A person ceases to hold office as a member of the Council if —

Cessation of office

- (a) he becomes bankrupt;
- (b) he is convicted of a felony or an offence involving dishonesty or fraud;
- (c) he becomes of unsound mind or incapable of carrying out his duties;
- (d) he is guilty of a serious misconduct in relation to his duties;
- (e) in the case of a person possessing professional qualification, he is disqualified or suspended, other than his own request, from practicing his profession in any part of the world by an order of a competent authority made in respect of that matter; or

(f) he resigns his appointment by a letter addressed to the President.

(2) A member of the Council may be removed by the President if it is not in the interest of the N-HYPPADEC or of the public that the member should continue in office.

(3) Where a vacancy occurs in the membership of the Council, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, and the successor shall —

(a) represent the same interest; and

(b) be appointed by the President as provided in this Act.

89. (1) The N-HYPPADEC shall —

Functions of the N-
HYPPADEC

(a) formulate policies and guidelines for the development of hydroelectric power producing areas without prejudice to the powers of the Minister to issue policy directives and the Nigerian Electricity Regulatory Commission's power to regulate the electricity supply industry under this Act;

(b) conceive, plan and implement, in accordance with set rules, projects and programmes for the development of hydroelectric power producing areas;

(c) carry out a survey of hydroelectric power producing areas in order to ascertain measures which are necessary to promote its physical development;

(d) prepare schemes designed to promote the physical developments of the hydroelectric power producing areas and estimate the cost of implementing such schemes;

(e) implement all measures approved for development of hydroelectric power producing areas by the Federal Government;

(f) identifying factors inhibiting the development of the hydroelectric power producing areas and assist States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the hydroelectric power producing areas;

(g) assess and report on any project being funded or carried out in the hydroelectric power producing areas and ensure that funds released for such project are properly utilised;

(h) tackle ecological problems that arise from overloading of dams in the hydroelectric power producing areas and advise Federal and State Governments on the prevention and control of floods and environmental hazards;

(i) execute such other work and perform such other functions which, in the opinion of the N-HYPPADEC, are required for the development of the hydroelectric power producing areas and their people; and

(h) perform such other functions as the President may direct.

(2) In performing its functions under this section, the N-HYPPADEC shall have regard to the varied and specific contributions of each member State of the N-HYPPADEC.

90. There shall be established in the N-HYPPADEC the following Directorates —

Establishment of
Directorates of the
N-HYPPADEC

(a) Directorate of Finance and Administration;

(b) Directorate of Operations;

(c) Directorate of Engineering and Technical Services;

(d) Directorate of Community and Rural Development;

(e) Directorate of Legal Service; and

(f) Directorate of Planning, Research and Statistics.

91. (1) There shall be for the N-HYPPADEC a Management Committee which shall consist of —

Management
Committee

(a) the Managing Director who shall be the chief executive officer and head of the Management Committee; and

(b) Directors responsible for the Directorates established under section 90 of this Act.

(2) The Management Committee shall be responsible for the general operations and administration of the N-HYPPADEC.

92. (1) There is established for the N-HYPPADEC an Advisory Committee which shall consist of —

Advisory Committee

(a) all Governors of member State of the N-HYPPADEC; and

(b) one person from each of the member States and five other persons from the remaining five geo-political zones of the Federation excluding the North Central Zone.

(2) The Advisory Committee shall appraise and advise the President on the general activities and functions of the N-HYPPADEC at least once every year.

(3) The Advisory Committee shall regulate its own proceedings.

93. (1) There shall be a Managing Director for the N-HYPPADEC who shall —

Appointment of the
Managing Director

(a) be appointed by the President subject to confirmation by the Senate;

(b) be a competent Nigerian; and

(c) hold office on such terms and conditions as may be specified in his letter of employment.

(2) The Managing Director shall —

(a) be an indigene from among the member States of the N-HYPPADEC whose appointment and tenure shall rotate among member States in alphabetical order provided that the Chairman and Managing Director shall not be indigenes of the same State;

(b) be responsible for the general supervision of the employees of the N-HYPPADEC;

(c) be the chief accounting officer of the N-HYPPADEC; and

(d) hold office for a term of four years and renewable for another term of four years and no more.

(3) The Director of the Directorate of Legal Services shall be the Secretary of the N-HYPPADEC and shall, subject to the general direction of the Council, be responsible for —

(a) the administration of the Secretariat of the Council; and

(b) keeping the books and proper records of the proceedings of the Council.

94. (1) Service in the Commission shall be permanent and pensionable for the purpose of the Pension Reform Act and persons employed in the N-HYPPADEC shall be entitled to such pensions, gratuities and other retirement benefits as are prescribed in that Act.

Pension matters

Act No. 4, 2014

(2) Nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity as in respect of that office.

(3) For the purpose of the application or the provision for the Pensions Reform Act, any power exercised by the Minister or other authority of the Government of the Federation other than the power to make regulations is vested in and shall be exercisable by the N-HYPPADEC and not by any other person or authority.

95. (1) The N-HYPPADEC shall establish and maintain a Fund from which shall be defrayed all expenditure incurred by the N-HYPPADEC. Fund of the N-HYPPADEC

(2) There shall be paid and credited to the Fund established under subsection (1) —

(a) 10% of the total revenue generated by any company or authority from the operations of any hydroelectric dams in any member State of the N-HYPPADEC to strengthen its operations and services;

(b) 50% of money due to member States of the N-HYPPADEC from the ecological funds;

(c) without prejudice to any existing right or rights that may be accruing to host communities under this Act or any other enactment, 5% of all revenue accruing from power generated by the various Power Generating Companies in Nigeria (GENCOs) from the member States shall be set aside for the development of the respective host communities;

(d) 5% of all revenue accruing from power generated by the various GENCOs from the member States shall be administered by N-HYPPADEC;

(e) without prejudice to the provisions of subsection (2), the Hydro Electric Power Generating Companies are exempted from the application of this levy;

(f) all money raised for the purpose of the functions of the N-HYPPADEC by way of gifts loans, grants-in-aid, testamentary disposition or otherwise; and

(g) proceeds from all other assets that may accrue to the N-HYPPADEC.

(3) The Federal Government shall contribute to the Fund by way of appropriations, through the National Assembly.

(4) The Fund shall be managed in accordance with the rules made by the Council, and without prejudice to the power to make rules under this subsection, the rules shall in particular contain provisions —

(a) specifying the manner in which the assets of the Fund of the N-HYPPADEC are to be held and regulating the making of payments into and out of the Fund; and

(b) requiring the keeping of proper accounts and records of the purpose of the Funds in such form as may be specified in the rules.

96. The N-HYPPADEC shall apply the proceeds of the Fund established under section 95 of this Act to — Expenditure of the N-HYPPADEC

(a) the cost of administration of the N-HYPPADEC;

(b) the payment of salaries, fees, remuneration, allowances, pensions and gratuities payable under this Act;

(c) the payment for all contracts, including mobilisation, fluctuations, variations, legal fees and cost on contract administration;

(d) the payment for all purchases; and

(e) undertake such other activities as are connected with all or any of the functions of the N-HYPPADEC under this Act.

97. The N-HYPPADEC may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift provided that such condition is in accordance with the laws of Nigeria. Powers to accept gifts

98. The N-HYPPADEC may, with the consent of the President, borrow, on such terms and conditions as the N-HYPPADEC may determine, such sum of money as the N-HYPPADEC may require in the exercise of its functions under this Act. Borrowing powers

99. (1) The Council shall, not later than 31 October in each year, submit to the President an estimate of the expenditure and income of the N-HYPPADEC during the succeeding year. Annual estimates and expenditure

(2) The Council shall cause to be kept proper accounts of the N-HYPPADEC in respect of each year and proper records in relation to the Fund and shall cause the accounts to be audited not later than six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

100. The N-HYPPADEC shall, at the end of every quarter in each year, submit to the President a report on the activities and administration of the N-HYPPADEC. Quarterly report

101. (1) The Council shall prepare and submit to the President, not later than 30 June in each year, a report in such form as the President may direct on the activities of the N- Annual report

HYPPADEC during the immediate preceding year and shall be included in the report, a copy of the audited accounts of the N-HYPPADEC for that year and the auditor's report.

- (2) The President shall, upon receiving of the report referred to in subsection (1), cause a copy of the report and the audited accounts of the N-HYPPADEC and the auditors report to be submitted to each House of the National Assembly.

102. (1) There is established for the N-HYPPADEC a Monitoring Committee which shall consist of such number of persons as the President may deem fit to appoint from the Public or Civil Service of the Federation. Establishment of the Monitoring Committee

- (2) The Monitoring Committee shall —

- (a) monitor the management of the Fund of the N-HYPPADEC and the implementation of the projects of the N-HYPPADEC; and
(b) have access to the books of accounts and other records of the N-HYPPADEC at all times and submit periodical reports to the President.

103. (1) For the purpose of providing offices and premises necessary for the performance of its functions under this Act, the N-HYPPADEC may, subject to the Land Use Act Office premises of the N-HYPPADEC

- (a) purchase or take on lease any interest in land, or other property; and

- (b) construct offices and premises and equip and maintain them.

- (2) The N-HYPPADEC may, subject to the Land Use Act, sell or lease out any office or premises which is no longer required for the performance of its functions under this Act subject to the approval by the President.

104. (1) Subject to the provisions of this Act, the President may give to the N-HYPPADEC directives of a general nature or relating generally to matters or policy with regards to the performance of its functions and the N-HYPPADEC shall comply with the directives. Directives by the President

- (2) The N-HYPPADEC shall, with the approval of the President make regulations generally for the purpose of giving effect to this Act.

105. (1) Subject to the provisions of this Act, the provisions of Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the N-HYPPADEC. Limitation of suits against the N-HYPPADEC

- (2) Notwithstanding anything contained in any other law or enactment, a suit shall not

(a) lie against any member of the Council of the Managing Director for any act done under or in execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in execution of this Act or such law or enactment, duty or authority; and

(b) be instituted in any court unless —

(i) it is commenced within three months next after the act, neglect or default complained of, or

(ii) in the case of a continuation of damage or injury, within six months next after the ceasing of such damage or injury.

(3) A suit shall not be commenced against a member of the Council, the Managing Director, officer or employee of the N-HYPPADEC before the expiration or a period of one month after written notice or intention to commence the suit shall have been served upon the N-HYPPADEC by the intending plaintiff and the relief which he claims.

(4) The notice referred to in subsection (3) shall clearly and explicitly state the —

(a) cause of action;

(b) particulars of the claim;

(c) name and place of abode or the intending plaintiff; and

(d) the relief which he claims

106. A notice, summons or other documents required or authorised to be served upon the N-HYPPADEC under the provisions of this Act or any other law or enactment may be served by delivering it to the Managing Director or by sending it by registered post and addressed to the Managing Director at the principal office of the N-HYPPADEC.

Notice of summons

107. A member of the Council, the Managing Director, any officer or employee of the N-HYPPADEC shall be indemnified out of the assets of the N-HYPPADEC against any proceeding, whether civil or criminal in which judgment is given in his favour or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Council, the Managing Director, officer or employee of the N-HYPPADEC.

Indemnity

PART IX — TRANSMISSION OF ELECTRICITY

108. For the purpose of this Part, the successor transmission licensee or other transmission licensee may structure and demarcate system operation in the country into National Control Centre, Supplementary National Control Centre, and Regional Control Centres with such changes in the location and spread of the transmission infrastructure as may be necessary to facilitate interconnections and coordination of efficient transmission of generated power through the national grid.
- Demarcation of transmission into National Control Centre
109. (1) Investment in the national grid may be made in accordance with such regulations the Commission may issue and shall be undertaken by —
- Private sector investment in transmission network
- (a) the successor transmission licensee with the approval of the Commission for the expansion or integration of technology into existing transmission infrastructure provided under this Act; or
 - (b) a non-licensee in the existing transmission owned, operated and maintained by the successor transmission licensee based on project agreement between such a non – licensee and the licensee,
- (2) Nothing in subsection (1) prohibits the Commission in consultation with the appropriate Authority from approving an application by a non-licensee for —
- (a) a long term concession of old or new transmission lines under any concession or commercial arrangement with the TSP as may deem necessary;
 - (b) any concession or commercial arrangement between concessioners and successor transmission licensee for expansion of the transmission network; and
 - (c) project finance by private investors whereby such investors finance, build, own and maintain parts of the transmission network.
110. In giving effect to the provisions of section 109 of this Act, the Commission shall, without compromising on the economic viability of investments made by licensees and non-licensees in the transmission network, ensure the fair spread of investments.
- Fair spread of private sector investment in transmission network
111. (1) Without prejudice to the provisions of section 66 of this Act, the Commission shall issue directions and exercise such supervision and control as may be necessary to ensure stability and efficient operations of the national grid under the control of a transmission licensee.
- Commission to issue directives to the transmission licensee
- (2) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the national grid in relation to any direction given under subsection (1), it shall be referred to the Federal High Court for settlement:

Provided that pending the decision of the Court, the directions of the Commission shall be complied with by the licensee concerned and such pending decision of the Commission supersede any contrary directive from any other Agency under this Act except as otherwise determined by the Court.

112. From the commencement of this Act, Federal or State Governments may enter into a public-private partnership arrangement with private companies for investment in the transmission network in accordance with section 109 of this Act and with the relevant framework on infrastructure concessions and public-private partnerships.

Public and private partnerships to facilitate transmission of electricity within a State

PART X — DISTRIBUTION AND SUPPLY OF ELECTRICITY

113. (1) Without prejudice to the provisions of section 68 of this Act, the Commission and the ISO shall have the continuing obligation to promote the distribution or supply of electricity from renewable energy sources.

Distribution and Supply Network and Renewable Energy

- (2) The Commission shall carryout a review every two years and assess whether —

- (a) the distribution or supply licensee has tied up adequate sources of power through long term and medium-term power purchase agreements to meet the annual average demand of the area it is required to serve;
- (b) the distribution licensee is maintaining the distribution system in good condition in order to ensure uninterrupted and reliable power supply; and
- (c) the complaints of consumers are promptly addressed and in case of default take appropriate regulatory measure under this Act.

- (3) Where any person, whose premises is situated within the area of supply of a distribution licensee requires supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, enter into a distribution use of system agreement with the distribution licensee to wheel such electricity in accordance with regulations made by the Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.
- (4) Every distribution and supply licensee shall, establish separate forums for redress of grievances of the consumers in accordance with the guidelines as may be specified by the Commission:

Provided that in case of multiple distribution or supply licensee, a joint forum for redress of grievances of consumers may be established separately for distribution licensees and supply licensees.

- (5) Any consumer, who is aggrieved, may make a complaint for the redress of his grievance to the licensee and the licensee shall settle such grievances within a time frame as specified by the Commission.
- (6) Without prejudice to the provisions of subsections (4) and (5), consumers within the same franchise area may not be allowed to switch suppliers except such consumers have letters of non-indebtedness issued to them by previous suppliers.
- (7) Where the licensee fails to settle the grievances of the consumer within such time and in such manner as may be specified under subsection (5), the consumer shall bring his complaint to the attention of the Commission for quick mediation and resolution of the matter.

- 114.** (1) From the commencement of this Act, no licensee shall supply electricity, after the expiry of the date appointed by the Commission, except through installation of a proper meter in accordance with the regulations made in this regard by the Commission. Installation of meters
- (2) Notwithstanding the provisions of subsection (1), the Commission may extend the period given under subsection (1) for metering, where such extension is necessary for a class or classes of persons or for such area as may be specified in the extension notification issued by the Commission in this regard.
- (3) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Commission may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.
- (4) If a person makes default in complying with the provisions contained in this section or the regulations made by the Commission under this section, the Commission may make such order as it deems fit for requiring the default to be made good by the licensee or by any officers of a company or other association or any other person who is responsible for its default.
- (5) For the purpose of ensuring compliance with the provisions of this section, it shall be the responsibility of every electricity consumer to accept the installation of electricity meters duly certified by the NEMSA on their premises.
- (6) Any electricity consumer who fails to comply with the provision of subsection (5), shall be disconnected for the duration that the supplier is denied access to the premises for the purposes of installation of electricity meter.
- 115.** (1) From the commencement of this Act, there is a mandatory obligation on all customers to pay electricity bill and where any person neglects to pay any charge for electricity due from him to a distribution licensee, the licensee may, after Disconnection of supply in default of payment

giving notice in a manner prescribed in any regulations issued by the Commission in that regard, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by the licensee in cutting off and reconnecting the supply, are paid.

- (2) A provision of this Act or anything contained in any other law shall not prohibit the recovery of arrears of charges for electricity supplied.
- (3) The provisions of this section are also applicable to consumers using pre-paid meters where due to defect in the meter it becomes impossible for such pre-paid consumers to input credit on the meter thus compelling the licensee to use the average charge of electricity paid by the consumer during the preceding months under subsection (1).
- (4) Nothing in subsection (2) shall entitle a distribution licensee, distribution franchisee or supply licensee to enforce a former landlord's or previous tenant's outstanding electricity bill against a new landlord or new tenant or new occupant of a property except against the former landlord or previous tenants in accordance with this section.

PART XI—TARIFFS AND SUBSIDIES

116. (1) The following activities in the NESI are subject to tariff regulation —

Activities subject to
tariff regulation

- (a) generation and trading, in respect of which licenses are required under this Act and where the Commission considers regulation of prices necessary to prevent abuses of market power;
 - (b) transmission, distribution, supply and system operation, in respect of which licenses are required under this Act; and
 - (c) electricity distribution franchising or other activity that the Commission may determine as being subject to tariff regulation.
- (2) Prices for the activities referred to in subsection (1) shall be regulated according to one or more methodologies adopted by the Commission for regulating electricity prices and such tariff methodologies shall —
- (a) allow a licensee that operates efficiently to recover the full costs of its business activities, including a reasonable return on the capital invested in the business;

- (b) provide incentives for the continued improvement of the technical and economic efficiency with which the services are provided;
 - (c) provide incentives for the continued improvement of quality of services;
 - (d) give to consumers economically efficient signals regarding the costs that their consumption imposes on the licensee's business;
 - (e) avoid undue discrimination between consumers and consumer categories;
 - (f) phase out or substantially reduce cross subsidies over a time frame specified by the Commission; and
 - (g) promote co-generation, and generation of electricity from renewable sources.
- (3) The Commission shall take into account any subsidy provided by the Power Consumer Assistance Fund under this Act or from any other source, whether direct or by way of favourable financing terms, or in any other manner, in establishing its tariff methodologies.
- (4) Notwithstanding subsection 2 (e), the Commission shall have the authority to —
- (a) approve any willing-buyer, willing-seller ring-fenced arrangement that allows distribution and or supply licensees to enter into bilateral contracts to offer premium service to a class or classes of customer and rely on the provisions of such contracts to offer premium service to a class or classes of customers at different tariff other than the approved tariff methodology; and
 - (b) establish tariff methodologies that reflect the terms and conditions of a contract between licensees or between a licensee and one or more eligible customers.
- (5) Notwithstanding subsection (2) (e), in establishing tariff methodologies, the Commission may differentiate among consumers on the basis of differences in total electricity consumption, the time periods on which electricity is consumed, load factors, power factors, voltage levels, location within the country and other such criteria as may affect the cost of providing a service and may allow a lifeline tariff for some consumers.
- (6) Prior to approving a tariff methodology, the Commission shall give notice in the Federal Government Gazette, and in one or more newspapers with wide circulation, of the proposed establishment of a tariff methodology, indicating the period within which objections or representations in connection with the same may be made to the Commission.

(7) In preparing a tariff methodology, the Commission shall —

- (a) consider any representations made by license applicants, other licensees, consumers, eligible customers, consumer associations, associations of eligible customers and such other persons as it considers necessary or desirable;
- (b) issue a notice to license applicants, other licensees, consumers, eligible customers, consumer associations, associations of eligible customers and such other persons as it considers necessary to submit their inputs and such notice shall be given not later than 30 days or such a timeframe as the Commission may consider to be reasonable to allow all the necessary parties make representations to the proposed tariff methodology; and
- (c) obtain evidence, information, or advice from any person who, in the Commission's opinion, possesses expert knowledge which is relevant in the preparation of the methodology.

(8) The Commission shall fix the date on which the tariff methodology shall come into operation and it shall cause notice to be given in the Federal Government Gazette of that date.

(9) If it appears to the Commission that a tariff methodology should be changed, the Commission shall give notice in the Federal Government Gazette, and in one or more newspapers with wide circulation, of the proposal to change the methodology, indicating the period within which representations in connection with the proposal may be made.

(10) After considering any objections of representations received in response to a notice issued under subsection (9), the Commission may confirm the proposed changes to the tariff methodology and the provisions of subsection (7) shall apply *mutatis mutandis*.

(11) Every person on whom any function has been conferred or imposed in connection with setting tariffs, shall be bound by a tariff methodology that has come into operation under subsection (8) or (10).

(12) Every licensee shall keep at his office a current copy of the tariff methodology applicable to that licensee and shall make a copy available for inspection on request by any person free of any charge during the licensee's normal working hours.

(13) Any fines or penalties levied against a licensee in terms of this Act or any other law or regulation shall not be rechargeable to the licensee's customers.

- (14) Any person or licensee who contravenes or condones the contravention of the provision of subsection (13), commits an offence and is liable to a fine two times the charge to the licensee's customers or imprisonment for a term not more than one year or both.

117. (1) Notwithstanding anything contained in this Act, if the Federal or State Government, as the case may be, desires to grant any subsidy to any consumer or class of consumers in the tariff determined by the Commission under this Act, such subsidy by the Federal or State Government or cross subsidies shall, in order to avoid undue exposure of licensees to speculative revenues, be implemented within the Power Consumer Assistance Fund established under this Act.
- (2) The Commission shall ensure strict implementation of cross-subsidies and facilitate gradual reduction in cross-subsidies with the aim of entirely eliminating cross-subsidies before the declaration of the commencement of a long-term market stage under this Act.
- Provision of electricity subsidy by government

PART XII — ACQUISITION OF LAND AND ACCESS TO LAND

118. (1) Acquisition of land and access rights for electricity projects in Nigeria, including projects related to generation, transmission, distribution and supply of electricity shall be through voluntary and compulsory land acquisition procedures in compliance with the provisions of this Act, the Land Use Act and the Commission's Acquisition of Land and Access Rights for Electricity Projects Regulations or any amendment to it or regulations replacing it.
- (2) A generation licensee, transmission licensee, distribution licensee and any other licensee shall be entitled to access rights over lands, buildings and streets for discharging its obligations under its licence to the extent and in the manner prescribed in the Commission's Acquisition of Land and Access Rights for Electricity Projects Regulation or any amendment to it or regulations replacing it.
- (3) Except where acquired through voluntary acquisition procedure, where a licensee, who has been given a right of occupancy over land in accordance with subsection (1), ceases to require the land for the purposes of the licensed activity, the licensee shall —
- (a) offer the land to the previous holder of the right of occupancy, for repurchase at an amount equivalent to the value of improvement made on the land by the licensee or permit holder; or
- (b) offer the right of occupancy to any other person on such terms and conditions as the Commission may direct where the previous owner declines interest in the land.
- Procedure for acquisition of land and land access rights for electricity projects
- Cap. L5, LFN, 2004

PART XIII — CONSUMER PROTECTION AND LICENSEE PERFORMANCE
STANDARDS

119. (1) The Commission shall develop, in consultation with the licensees, the following — Consumer protection standards
- (a) customer service standards;
 - (b) quality of service and supply standards;
 - (c) customer complaint handling standards and procedures;
 - (d) procedures for dealing with, and assisting where necessary, customers who have difficulty in paying bills;
 - (e) procedures for applying for electricity service;
 - (f) procedures for disconnecting non-paying customers or for those in breach of other terms and conditions of an applicable tariff or contract;
 - (g) the information to be provided to consumers and the manner of its dissemination; and
 - (h) internal procedures for responding to emergency situations.
- (2) Standards and procedures developed by the Commission shall be adhered to by the applicable licensees and all persons to which they apply to and shall be published by the applicable licensees in such manner and by such means as the Commission may direct.
- (3) Without prejudice to the obligations of licensees regarding compliance with service delivery standards under this section, licensees shall publish on a quarterly basis through their official websites or other online mediums, key performance indicators as it affects service delivery including —
- (a) technical data related to load, system and equipment;
 - (b) operational parameters;
 - (c) financial data; and
 - (d) customer service information and other indicators.
120. (1) The Commission shall develop, in consultation with licensees and other interested parties, the following performance standards and codes — Performance standards and codes

- (a) standards of overall performance in connection with the provision of electricity supply services and in connection with the promotion of the efficient use of electricity by consumers;
 - (b) such technical codes and manuals as may be required for the safe, reliable, and efficient operation of the system; and
 - (c) such other standards, codes, manuals as the Commission may require.
- (2) Standards, codes and manuals approved by the Commission under subsection (1) shall be binding on the applicable licensees and shall be published by the applicable licensees in such manner as the Commission may direct.
 - (3) Different standards may be determined for different licensees under this section.
 - (4) The Commission shall carryout annual review of the overall performance of licensees, and in cases of established failure on the part of licensee to meet overall performance standards, the Commission shall determine appropriate reliefs including fines and penalties that the Commission may impose in such circumstances in accordance with the provisions of this subsection and the licensee's performance standards and codes.

PART XIV — COMPETITION AND MARKET POWER

121. (1) The Commission shall have a continuing responsibility to monitor the NESI in regard to its potential for additional competition and to report on this subject, each year to the Minister , and until such a time as the Commission has made a declaration under section 8 (1) of this Act, the content of these reports shall be as prescribed under the market rules, and the content of these reports shall consider whether any of the regulated services in the NESI ought to be exempted from tariff regulation.
- (2) On a finding by the Commission under subsection (1) that it is in the public interest to exempt any of the regulated services from tariffs, the Commission, after consultation with the Minister, shall determine when, and under what conditions, a regulated service may be exempt from tariff regulation, provided that a license from the Commission shall continue to be required in respect of such service so exempted from tariff regulation.
- (3) Subject to section 105 of the Federal Competition and Consumer Protection Act, the Commission shall have the responsibility to consider, in respect of services in competitive markets, the prevention or mitigation of abuses of market power which includes market concentration, in its decisions and orders regarding matters such as licence applications and the grant of licences; licence terms and conditions, the setting of prices and tariffs, and whether or not to approve a merger, acquisition or affiliation.

Competition and
market power

Act No. 1, 2018

(4) In discharging its ongoing responsibility to monitor the electricity businesses and markets to determine whether there is, or may be, an abuse of market power, the Commission shall be entitled to —

(a) require information from licensees;

(b) undertake inquiries; and

(c) establish or contract with an independent entity to provide monitoring services.

(7) In the event that the Commission determines that there is an abuse of market power, it may —

(a) issue cease orders as may be required; and

(b) levy fines to such an amount it may consider appropriate.

PART XV — THE POWER CONSUMER ASSISTANCE FUND

122. (1) There is established the Power Consumer Assistance Fund (in this Act referred to as “PCAF”) to be used for the purposes specified in subsection (4).

Establishment of the
Power Consumer
Assistance Fund

(2) The Commission shall keep and manage the money and assets of the PCAF and shall handle the procedures for disbursement from the PCAF under this Act.

(3) The Power Consumer Assistance Fund shall consist of the following capital and assets —

(a) the contributions delivered under this section; and

(b) any subsidies received from the Federal Government of Nigeria as appropriated by the National Assembly.

(4) The PCAF shall be used to subsidise underprivileged power consumers as specified by the Minister in consultation with the Commission.

123. (1) The Commission shall determine the contribution rates to be sent by designated consumers and class of consumers and eligible customers to the PCAF and the subsidies to be disbursed from the PCAF, in accordance with policy directions issued by the Minister, and subject to subsection (2).

Contribution rates for
the PCAF

(2) The Commission, while determining the contribution rates shall take into consideration the impact of such rates on eligible customers and consumers who

have to assume the burden of such contributions and for this purpose such contributions made by such customers shall be factored into their tariffs.

124. (1) All consumers and eligible customers including such class of customers under section 123 (2) of this Act shall make contributions to the PCAF at the rates and for the duration specified by the Commission under section 123 (1). Contribution payments for the PCAF
- (2) In making contributions to the PCAF under subsection (1), eligible customers shall pay their contributions directly to the PCAF set up by the Commission under this Part and other consumer or class of customers liable to make contributions under this Act shall pay their contributions to their distribution licensee and the distribution licensees shall compile such contributions and send them to the PCAF, and all collections and payments shall be made in accordance with the guidelines as may be established by the Commission.
125. Where the Minister has determined that subsidy payments from the PCAF should be disbursed to distribution companies for electricity supplied to designated consumers, or classes of consumers, the Commission shall disburse the subsidy to such distribution companies at the rates and for the durations specified by the Commission. Payments from the PCAF
126. Any person who fails to pay to the Commission or a distribution licensee, within the prescribed time, any amount owed under this Part, commits an offence and is liable to a fine not exceeding three times the amount owed. Fine for non-payment of money owed

PART XVI — RURAL ELECTRIFICATION AGENCY

127. (1) There is established the Rural Electrification Agency (in this Act, referred to as "the Agency") which shall be charged with the functions provided under this Act. Establishment of the Rural Electrification Agency
- (2) The Agency shall be a body corporate —
- (a) with perpetual succession and a common seal;
 - (b) which may sue or be sued in its corporate name; and
 - (c) which may acquire, hold, purchase, mortgage and deal with property, movable or immovable, real or personal.
128. The objectives of the Agency are to — Objectives of the Agency
- (a) create an enabling channel for entry into markets for rural, unserved and underserved electrification services, and to coordinate corporate bodies wishing to supply such services and facilities;
 - (b) ensure that rural, unserved and underserved electrification services are provided efficiently, economically and at such performance standards

which reasonably meet social, industrial and agricultural needs of rural communities;

- (c) promote the development and ensure the implementation of Government's policies on rural electrification and execution of all such other functions and responsibilities as are given to the Agency under this Act or are incidental or related to it;
- (d) promote electricity access for rural, unserved and underserved populace to have unfettered access to electricity facilities;
- (e) promote the development of off-grid electrification to rural, unserved and underserved areas;
- (f) provide the framework to support —
 - (i) the development and utilisation of renewable energy sources and an enabling environment to attract investment in rural,
 - (ii) the promotion for the productive use of renewable energy,
 - (iii) diversification of supplies to safeguard energy sources,
 - (iv) improved access to electricity through the use of various rural electrification and renewable energy technology sources,
 - (v) public education for rural electrification and renewable energy production and consumption, and
 - (vi) the deployment of bio-energy technology for rural electrification; and
- (g) promote, develop and implement any special electrification intervention programmes and projects, in both rural and peri-urban communities, as may be approved by the Federal Ministry responsible for power in furtherance of government objectives or initiatives by the Federal Government of Nigeria.

129. (1) For the furtherance of its objectives under section 128 of this Act, the functions of the Agency are to — Functions and powers of the Agency

- (a) promote universal access to affordable and sustainable electricity thereby improving the quality of life and economic opportunities for rural, unserved and underserved communities;

- (b) provide access to reliable electric power supply for rural, unserved and underserved dwellers in a way that would allow for reasonable return on investment through appropriate tariffs that are economically responsive and supportive of the average rural customer;
 - (c) oversee, manage and execute the funding of the Rural Electrification Fund in accordance with the operational guidelines approved by the Board;
 - (d) the Agency shall promote the exploitation, utilisation and development of renewable energy sources in accordance with the regulations or other subsidiary legislation issued by the Commission and collaborate with relevant Federal ministries, departments and agencies and State Boards for Rural Electrification responsible for the development, promotion, management, and utilisation of renewable energy sources;
 - (e) provide learning opportunities to educate interested communities, students and individuals on the opportunities for rural, unserved, and underserved electrification business ventures;
 - (f) promote the use of low-cost options in rural, unserved and underserved electrification projects that apply for subsidy grants towards start-up cost;
 - (g) advocate and facilitate for tax incentives, investment capital allowance and low interest loans for local producers of renewable energy products for electrification;
 - (h) encourage the economic growth of rural, unserved and underserved communities through rural electrification projects; and
 - (i) perform such other ancillary functions which are necessary and incidental to its objectives and functions under this Act or any other Act of the National Assembly.
- (2) In the performance of its functions, the Agency shall consult such persons or groups of persons who may or are likely to be affected by its projects or programmes, including investors or renewable energy companies, renewable energy user cooperatives, State Rural Electrification Boards, interested parties and other stakeholders.
- (3) For the achievement of its objectives and functions under subsection (1) and (2), the Agency is vested with powers to —
- (a) insure its property against any loss or all forms of risks;
 - (b) acquire, purchase, hold, construct or maintain any property whatsoever whether movable or immovable required for or in connection with the

performance of its functions and to sell, dispose of or otherwise deal with such property or any part of it;

(c) establish zonal offices and maintain liaison and state offices for the performance of such functions as the Agency may determine;

(d) foster gender mainstreaming in rural electrification activities;

(e) in accordance with the provisions of this Act, receive, manage and disburse funds accruing to the REF established under section 142 of this Act for the carrying out of approved projects;

(f) collect, collate, process and disseminate rural electrification data and information; and

(g) perform any other thing necessary and instrumental to the performance of its functions under this Act.

130. (1) There is established for the Agency a Governing Board (in this Act referred to as "the Board") which shall be constituted and exercise the powers and perform the functions stipulated under section 134 of this Act.

Establishment and composition of the Governing Board of the Agency

(2) The Board shall consist of seven members as follows —

(a) six members appointed to represent the six geopolitical zones of Nigeria out of which one shall be designated as a part-time Chairman, two others designated as Non-Executive Directors while the other three shall serve as Executive Directors; and

(b) the Managing Director and chief executive officer of the Agency.

(3) The Managing Director and the Executive Directors of the Agency appointed under the provisions of this Act shall possess the qualifications, experience and competence stipulated under section 136 and 141 of this Act while the part-time Chairman of the Board and the Non-Executive Directors of the Board shall be highly respected persons with relevant experience and distinguished career in public service and private sector.

(4) All members of the Board shall be appointed by the President on the recommendation of the Minister.

131. (1) The Chairman and other members of the Board —

Tenure of members of the Board

(a) shall hold office for a term of five years on such terms and conditions as may be specified in their letters of appointment; and

(b) may be re-appointed for another term of five years and no more.

132. (1) Notwithstanding the provisions of this a person shall cease to hold office as a member of the Board if he — Cessation of membership of the Board

(a) becomes bankrupt, suspends payment or compounds with his creditors;

(b) is convicted of a felony or any offence involving dishonesty or fraud;

(c) become of unsound mind, or incapable of carrying out his duties;

(d) is guilty of a serious misconduct in relation to his duties;

(e) in the case of a person possessed of professional qualifications, is disqualified or suspended from practicing his profession in any part of the world by an order of a competent authority made in respect of that member; or

(f) resigns his appointment by a letter addressed to the President.

(2) If a member of the Board ceases to hold office for any reason whatsoever before the expiration of the term for which he is appointed, another person representing the geopolitical zone and possessing the requisite qualification shall be appointed in his stead as a member of the Board to serve the unexpired term of the person whose membership of the Board has ceased.

133. The Chairman and non-executive members of the Board shall be paid such emoluments, allowances and benefits as the Federal Government may direct through the National Salaries and Wages Commission. Allowances of the Chairman and Non-Executive members of the Board

134. (1) The Board shall — Powers of the Board

(a) formulate guidelines relating to the discharge of the functions and realisation of the objectives of the Agency under this Act;

(b) generally, supervise the management of the affairs of the Agency;

(c) supervise and ensure accountability of the REF established under this Act by defining appropriate procedures for management of the REF by the Agency;

(d) approve the criteria for disbursement of money approved for the Fund;

(e) approve disbursement of money from the REF to pay for the Agency's programmes and projects;

- (f) receive and examine reports from designated persons or institutions in respect of financial assistance in relation to the realisation of the objectives of the Agency;
- (g) decide on policies and procedures for the allocation and use of funds from the REF established under this Act for rural electrification subsidies;
- (h) approve the establishment or reorganisation of such units, departments or divisions of the Agency where it considers expedient and necessary for the smooth operations of the Agency; and
- (i) generally, exercise control and supervise the internal policies, finances and property of the Agency.

(2) The Board shall, in the performance of its functions under subsection (1), sit on part-time basis and no part-time member of the Board is permitted to interfere with the day to day running of the Agency.

(3) The Board shall, in the exercising its powers under this Act, submit annual report and audited accounts of the Agency to the Minister.

135. The Board shall adopt its rules and regulations to guide the summoning and conduct of proceedings at its meetings.

Meeting and
proceedings of the
Board

136. (1) The Board shall, on the recommendation of the Managing Director and chief executive officer of the Agency, appoint a staff from the Management Cadre of the Agency as the Secretary to the Board and once appointed shall attend Board meetings and perform the functions assigned to him under this Act or such other functions as may be assigned to him by the Board but shall not be reckoned as Board member.

Secretary of the
Board

(2) The Secretary shall be responsible for —

- (a) convening, on the authority of the Chairman, meetings of the Board;
- (b) recording the minutes of all meetings of the Board and such other meetings as the Board may direct;
- (c) acting as Secretary to any committee as may be appointed by the Board except technical committee;
- (d) maintaining and keeping minute books and a register of the members of the Board;
- (e) keeping in safe custody all title documents relating to the Agency's properties;

- (f) keeping in safe custody all agreements entered into by the Agency with any third party;
- (g) arranging, through the Managing Director, payment of fees and allowances of meetings and all other matters affecting members of the Board;
- (h) communicating the decisions of the Board to the Board members; and
- (i) carrying out such other duties and responsibilities as may be assigned to him by the Managing Director and chief executive officer of the Agency.

137. (1) There shall be for the Agency a Managing Director who shall be appointed by the President on the recommendation of the Minister and on such terms and conditions as may be specified in his letter of appointment. Managing Director and chief executive officer of the Agency

(2) The Managing Director shall be —

- (a) the chief executive and accounting officer of the Agency;
- (b) responsible to the Board for the administration of the Agency;
- (c) appointed for a term of five years in the first instance and may, subject to satisfactory performance, be reappointed for one further term of five years and no more; and
- (d) be a person who possesses adequate professional qualifications and experience in the fields of power, engineering, law, public administration, or other relevant discipline and must have prior senior management experience in the power sector either in public service or private sector for a cumulative period of at least 10 years.

138. (1) The Agency shall have powers to employ such persons as it may deem necessary for the discharge of the duties and powers of Agency under this Act or any regulations made under it; Other staff of the Agency

- (2) The Agency shall have the powers to determine the job description, title, terms, qualifications and salaries of any such person and all such persons shall be subject to the provisions for discipline of staff under this Act.
- (3) The employment of the Agency's staff, including its secretary shall be subject to such terms and conditions as may be stipulated by the Agency's Board and contained in the respective staff's employment contract.

139. (1) Service in the employment of the Agency shall be deemed approved service under the Pensions Reform Act, and accordingly, employees of the Agency shall, in respect of their services shall be entitled to pensions, gratuities, and other retirement benefits as are prescribed under it.

Pension and gratuity

Act No. 4, 2014

(2) Notwithstanding the provisions of subsection (1), nothing in this Act shall prevent the appointment of a person to any office on terms, which preclude the grant of a pension and gratuity in respect of that office.

140. (1) The Agency shall have its headquarters located in the Federal Capital Territory and may set up zonal operational offices in the six geopolitical zones or State offices as the Board may approve.

Structure of the
Agency

(2) There shall be at the headquarters of the Agency, three divisions to be headed by three Executive Directors under the direct supervision of the Managing Director as follows —

(a) Rural Electrification Fund Division, headed by an Executive Director, with the Fund Management Directorate under his direct supervision;

(b) Engineering and Technical Services Division, headed by an Executive Director, with a Projects Support Directorates under his direct supervision; and

(c) Corporate Services Division, headed by an Executive Director with two Directorates under his direct supervision namely —

(i) Planning Research and Promotion Directorate; and

(ii) Finance and Administration Directorate.

141. (1) The Executive Directors of the Agency appointed under this Act shall possess academic and professional qualifications in the fields of power, engineering, law, accounting, corporate communication, project management, public administration in addition to cognate experience and competence relevant to the respective divisions they head as prescribed under section 140 of this Act and shall be appointed on such terms and conditions as may be specified in their appointment letters.

Functions of
Executive Directors
and Directorates of
the Agency

(2) The Executive Director, Rural Electrification and Renewable Energy Fund Division shall perform the following functions in relation to his division and the directorate under his supervision —

(a) oversee the Rural Electrification Fund Management Directorate;

(b) retained head the Rural Electrification Fund Division;

- (c) implement the policies of the Agency as they apply to the Rural Electrification Fund;
 - (d) supervise the work of the Rural Electrification Directorate under him and render reports to the Managing Director or the Board;
 - (e) coordinate draft expenditure estimates and development plans of the Directorate to ensure compliance with the objective of the Agency; and
 - (f) perform such other functions as may be assigned by the managing Director of the Agency or the Board towards the realisation of the objectives of the Agency.
- (3) The Executive Director, Engineering and Technical Services Division shall perform the following services in relation to his division and the directorate under his supervision —
- (a) head the Engineering and Technical Services Division;
 - (b) oversee the Projects Support Directorate;
 - (c) implement the policies of the Agencies as it relates to rural electrification, renewable energy and energy efficiency;
 - (d) supervise the work of the Project Support Directorate under him and render reports to the managing Director or the Board;
 - (e) ensure that the expenditure estimates of the Project Support Directorate is in accordance with the objectives of the Agency under this Act; and
 - (f) perform such other functions as may be assigned to him by the Managing Director of the Agency or the Board towards the realisation of the objectives of the Agency.
- (4) The Executive Director, Corporate Services Division shall perform the following functions in relation to his Division and the directorates under his direct supervision —
- (a) head the Corporate Services Division;
 - (b) oversee the Planning, Research and Promotion Directorate to promote rural electrification and create awareness more generally; and
 - (c) oversee the Finance and Administration Directorate to manage the Agency's internal finance and administration.

(5) The REF Management Directorate shall be responsible for —

- (a) establishing and administering the REF to provide capital subsidies to qualified rural electrification schemes developed by public or private sector entities;
- (b) complying with the policy guidelines and procedures for administering the REF giving regard to the criteria for subsidy award, transparency, and accountability;
- (c) coordination of rural electrification projects at local, zonal and federal levels; and
- (d) performing any other function that may be approved by the Board as being relevant to the realisation any of the objectives of the Agency.

(6) The Engineering and Technical Services Directorate shall be responsible for —

- (a) providing technical support services for the Agency's projects including planning, survey and analysis, technical design, evaluations, verifications, production of bill of engineering measurement and evaluation, monitoring and supervision, liaising with other agencies and compliance with standards and specifications in accordance with global best practices;
- (b) facilitating technical support from public and private sector partnership aimed at promoting rural electrification projects; and
- (c) performing any other function that may be approved by the Board as being relevant to the realisation any of the objectives of the Agency.

(7) The Projects Support Directorate shall be responsible for —

- (a) providing technical support to rural electrification schemes in accordance with policy guidelines designed to protect consumers and service providers on the basis of bilateral agreements signed between the Agency and project developers;
- (b) monitoring project development and supervise project implementation to ensure compliance with standards and specifications used for projects supported by the REF; and
- (c) diligent supervision and monitoring, ensure that projects supported by the REF meets minimum safety standards, quality of materials requirements, appropriate design and proper use of the network equipment, reasonable cost effectiveness and other requirements.

(8) The Planning, Research and Promotion Directorate —

- (a) shall be responsible for promoting rural electrification through Nigeria;
- (b) shall serve as an information clearing house and promote public awareness; and
- (c) shall work with the Ministry responsible for power to collect information on rural electrification, including existing projects, planned projects, renewable energy sources, rural load, equipment and material suppliers, and technological innovations for cost-effective power supply.

(9) Finance and Administration Directorate shall be responsible for —

- (a) internal financial and administrative management of the Agency; and
- (b) liaising with zonal offices Directorate in deciding zonal office staff matters.

142. There is established the Rural Electrification Fund (in this Act referred to as "the REF") into which money from the following sources shall be paid and credited with —

Establishment of the
Rural Electrification
Fund

- (a) any operating surplus of the Commission determined after annual audited account of the Commission and paid directly into the REF within 30 days following the audit of the Commission's account in accordance with section 56 of this Act;
- (b) any fines and penalties imposed and collected by the Commission in the enforcement of the provisions of this Act or regulations made by the Commission which shall be paid directly to the REF within 30 days of collection;
- (c) any donations, grants, gifts, assistance or loans made by local or international, bilateral or multilateral agencies or non-governmental organisations, the private sector, Federal or State Governments, local communities, businesses, or any other entity;
- (d) any special intervention fund as may be provided by the Federal, State or Local Government of the Federation;
- (e) endowments, bequests, gifts, whether of money, movable or immovable property from private foundations, trusts or other sources not contrary to the objectives of the Agency and national security;

(f) funds appropriated by the National Assembly for the realisation of the objectives of the Agency and performance of its functions under this Act; and

(g) 2% of funds accruable to the Commission from the tariff structure as operational cost.

143. The purpose of the REF established under section 142 of this Act shall be to promote, support and provide sustainable and renewable rural electrification programmes and projects for underserved and unserved communities through public and private sector participation in order to — Purpose of the REF

- (a) achieve more equitable regional access to electricity;
- (b) maximise the economic, social and environmental benefits of rural electrification subsidies;
- (c) promote expansion of the grid and development of off grid electrification; stimulate innovative approaches to rural electrification; provided that no part of the REF shall be used as subsidies for consumption;
- (d) stimulate innovative approaches to rural electrification; provided that no part of the REF shall be used as subsidies for consumption;
- (e) promote the research and development of new technological advancement in the Nigerian renewable energy space; research into the establishment of technical and utilisation standards of renewable energy for electrification;
- (f) research into the establishment of technical and utilisation standards of renewable energy for electrification;
- (g) implement programmes to adopt international best practices with respect to renewable energy utilisation;
- (h) promote the implementation of mini-grid and off-grid renewable energy power systems for remote areas, unserved, underserved communities, and islands;
- (i) promote the execution of renewable energy projects for non-electricity purposes; and

- (j) develop infrastructure for renewable energy for electrification, renewable energy projects and capacity building for the energy sector.

- 144.** The REF shall be managed by the Fund Management Directorate of the Agency under the direct supervision of the Executive Director, Fund Division in accordance with the provisions of this Act. Management of the REF
- 145.** (1) The Commission shall determine the rate of any contribution payable by eligible customers and licensees into the REF. Contribution rates for the REF
- (2) The Commission, while determining the contribution rates, shall take into consideration the impact of such rates on eligible customers and licensees who have to assume the burden of such contributions.
- 146.** (1) All licensees and eligible customers liable to make contributions under section 123 of this Act shall make contributions to the REF at the rates and for the duration specified by the Commission in accordance with section 122 (3) of this Act. Contribution payment for REF
- (2) In making contributions to the REF, licensees and eligible customers shall pay contributions to the Agency through the Commission.
- (3) All collections and payments shall be made in accordance with procedures established by the Agency.
- 147.** (1) The Agency shall, in consultation with the Minister — Criteria for allocation of the REF
- (a) establish objective and transparent criteria for the geographical allocation of resources from the REF and such criteria shall be determined taking into account —
- (i) the need for financial support from the REF,
 - (ii) progress in increasing rural electrification achieved through previous disbursements from the REF, and
 - (iii) the existence of local matching funding; and
- (b) develop an open, competitive and transparent procedure for making disbursements from the REF to individual projects, including the establishment of eligibility and selection criteria.
- (2) The eligibility criteria for the purposes of subsection (1) (b) shall be determined considering —

(a) the extent to which the proposed activity can demonstrate technical, economic and financial viability for a sustained period;

(b) the extent to which the proposed activity demonstrates support for rural development taking into account the priorities of the local communities; and

(c) the level of community and investor commitment to the proposed activity.

(3) The selection criteria for the purposes of subsection (1) (b), and the quantum of disbursement, shall be determined taking into account —

(a) the resources available from the REF;

(b) the cost of each new connection created under the project; and

(c) other objective criteria that the Agency may determine, such as tariff levels and quality of service.

148. Any person who fails to pay to the REF within the prescribed time, any amount owed, shall be liable to a fine not exceeding three times the amount owed. Fine for non-payment of amount owed

149. The Agency shall, as may be approved by the Board, apply money from the REF created under section 142 of this Act or any other fund at its disposal to pay for — Expenditure of the Agency

(a) such projects, programmes or activities as are connected to the objectives, functions and purposes of the Agency;

(b) the cost of administration and maintenance of the Agency;

(c) publicity and advocacy activities of the Agency;

(d) allowances, expenses and other benefits of members of the Board, committees or consultants appointed for the Agency;

(e) overhead allowances, benefits of employees of the Agency;

(f) salaries, allowance and benefits of employees of the Agency; and

(g) such other activities as may be approved by the Board.

150. All sources of money paid into the REF as specified in section 146 (1) of this Act shall be exempt from income tax. Exemption from income tax

151. (1) The Minister shall have the supervisory powers and perform the functions as assigned to him under this section and any other part of this Act as follows — Supervisory powers of the Minister

- (a) the Minister has the responsibility for the formulation, amendment and implementation of National Rural Electrification Policy and shall give directives of general or specific character to the Agency in the performance of its functions or implementation of any policy measure.
- (b) the Minister may make recommendations to the Agency relating to the performance by the Agency of any or all of its functions under this Act; and
- (c) the Minister shall on a proposal made by the Agency, undertake a review of the Rural Electrification Strategy and Implementation Plan approved by the President:

Provided that under the provisions of the Repealed Act, at least every two years from the commencement of this Act and the Rural Electrification Strategy and Implementation Plan when reviewed shall come into effect only after the approval of the President.

- (2) The supervisory powers of the Minister under this section shall relate to general or specific policy matters but shall not be exercised by the Minister in such a manner as to undermine the provisions of this Act.

- 152.** (1) For the purpose of effective execution, coordination and monitoring of rural electrification projects nationwide and the functions of the Agency, the Agency shall collaborate with State Rural Electrification Boards or related state agency by whatever appellation and the Agency shall encourage such State to establish Local Government Rural Electrification Implementation Committees or such other similar institutions to carry out any component of the Rural Electrification Strategy and Implementation Plans in their respective States.

States Rural
Electrification Boards
and Local
Government Rural
Electrification
Committees

- (2) State Houses of Assembly shall by law make provision for the structure, operation and functions of the State Electricity Board and Local Government Rural Electrification Committees in their respective States.

- 153.** (1) The Agency shall maintain effective liaison with State Rural Electricity Boards and Local Governments Rural Electrification Implementation Committees where established and shall leverage on such relationship to —

Relationship between
the Agency and State
Rural Electrification
Boards

- (a) ascertain the status of the rural electrification access in the States and Local Government Areas concerned;
- (b) review, in conjunction with the States or Local Governments, matters connected with or expected to affect the progress of rural electrification projects in States or Local Government areas;

- (c) leverage on such relationship to implement awareness programs on opportunities that are available to States and Local Governments through the use of renewable energy technologies;
 - (d) build strong alliances with States and local governments that can be used to resolve disputes arising from acquisition of land and access to land for rural electrification projects; and
 - (e) consider and advise the states and local government areas on the adoption of the best strategies for the realisation of objectives of the Rural Electrification Strategy and Implementation Plans.
- (2) The Agency, as considered appropriate, may assist a State Electricity Board or a Local Government Implementation Committee in the formulation and preparation of strategic plans for the implementation of rural electrification projects in a State or its Local Government or in their local communities.
 - (3) The Agency may provide information and render advice to States Rural Electrification Boards, Local Government Rural Electrification Committees or to any person or body, where it considers that, to do so will assist in achieving the efficient implementation of rural electrification nationwide.
 - (4) The Agency shall arrange such technical assistance as may be practicable and also encourage State Governments to provide technical and financial assistance, including training, human capacity development, transfer of any required technology to the local communities in their domains for the attainment of the national targets on rural electrification.

154. For the purpose of monitoring progress in the implementation of the Rural Electrification Strategy and Implementation Plans as may be adopted or reviewed the Minister in consultation with the Agency shall, on a quarterly basis, submit to the President, progress report indicating activities and milestones achieved in the implementation of the Rural Electrification Strategy and Implementation Plans and such a report shall highlight information relating to —

Progress reports

- (a) the expansion of the national grid to rural areas;
- (b) the development of off-grid power sources;
- (c) renewable energy power generation;
- (d) the impact of ongoing rural electrification projects on economic inequalities in the rural and peri urban areas;
- (e) impact of rural electrification on general rural economy and addressing gender inequalities in the rural areas in particular; and

(f) the extent to which the projects set out in the strategic plan are being achieved.

155. (1) The Agency shall provide an appropriate machinery for the monitoring of rural electrification implementation projects nationwide. Monitoring of rural electrification projects
- (2) The mechanism for rural electrification monitoring shall include the use of geographic information system and geo mapping technologies to monitor projects effectively, generate and analyse projects data without physical visits to projects locations.
156. (1) The Agency may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift. Power to accept gifts
- (2) The Agency shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Agency under this Act.
157. The Agency may, with the approval of the Board, borrow such sums of money as may be required to execute or complete any special project of the Agency. Power to borrow
158. The Agency shall, not later than 30 September in each financial year, submit to the National Assembly through the Minister, an estimate of income and expenditure of the Agency during the next succeeding year. Estimates of the Agency
159. (1) The Agency shall keep proper and regular accounts and other records of money received and paid by the Agency and of the several purposes for which the money have been received or paid, and of its assets, credits and liabilities. Accounts and audits
- (2) The Agency shall do all things necessary to ensure that all payments out of the REF and bank accounts are correctly made and properly authorised and that adequate control is maintained over the assets in its custody and over the expenditures incurred by the Agency.
- (3) The Board shall cause the accounts of the Agency to be audited quarterly and shall be externally audited once every year.
- (4) The Auditor-General for the Federation shall —
- (a) inspect and audit the accounts and records of financial transaction of the Agency;
- (b) inspect records relating to assets of the Agency; and

(c) draw the attention of the Minister to any irregularity disclosed by the inspection and audit.

(5) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any account or record referred to him under this section.

(6) The Auditor-General or an officer authorised by him is entitled at all reasonable time to a full and free access to all accounts, records, documents and papers of the Agency relating directly or indirectly to the receipt or payment of money by the Agency or to the acquisition, receipt, custody or disposal of assets by the Agency.

(7) The Board shall forward a copy of the audited financial statements of the Agency, upon preparation to the Minister for onward transmission to the National Assembly, together with any report or observation made by the auditors and the Auditor-General on the statement of accounts.

(8) The audited accounts of the Agency and the Auditor-General's report on those accounts shall form part of the Auditor-General's overall annual report to the National Assembly.

160. The Agency shall submit to the Minister, not later than 30 June of each financial year, a report of its activities during the preceding financial year, and it shall include a copy of the audited accounts of the Agency for that year and a copy of auditor's report on it. Annual report

161. (1) The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Agency. Limitation of suits against the Agency

(2) No suit shall be commenced against the Agency, a member of the Board, officer or employee of the Agency before the expiration of a period of 30 days after a written notice of intention to institute a suit has been served on the Agency by an aggrieved party or his counsel. Cap. P41, LFN, 2004

(3) The notice referred to in subsection (2) shall state the —

(a) cause of action;

(b) particulars of the claims;

(c) particulars of the aggrieved party; and

(d) relief which he claims.

162. An execution or attachment of process shall not be issued against the Agency in any action or suit without the consent of the Attorney-General of the Federation. Restriction on execution of suits against the property of the Agency

163. A member of the Board, officers of the Agency shall be indemnified against any proceeding, whether civil or criminal, in which judgment is given in his favor, or in which he is acquitted, if any such proceeding is brought against him in his capacity as member of the Board, officer, or employee of the Agency. Indemnity

PART XVII — RENEWABLE ENERGY AND ENERGY EFFICIENCY

164. The Commission shall support the development and utilisation of renewable energy and for this purpose, take the measures stipulated under this section to increase the contribution of renewable energy to Nigeria's energy mix — Communication to promote the development and utilisation of renewable energy
- (a) stipulate in its licensing and fees schedule, simplified licensing and fees regime for issuance of licenses to renewable energy service companies for the provision of electricity to consumers and from renewable energy sources specified under this Act;
 - (b) issue commercial and technical regulations for connectivity to the grid and distribution network for sale of electricity generated from renewable energy sources to distribution and trading licensees, eligible customers and other consumers;
 - (c) issue technical standards and certification procedures for technical personnel participating in renewable energy projects taking into cognisance the need to promote local skills and local requirements for renewable energy projects;
 - (d) provision of standards for power purchase agreements with specific requirements and terms for marketing and trading renewable electricity;
 - (e) provide regulations specifying the role of generation licensees, transmission service provider, ISO distribution licensees in the integration of renewable energy generated capacity into the national grid and distribution network;
 - (f) monitor and enforce compliance with renewable purchase obligations and generation purchase obligations as may be prescribed by the Commission;
 - (g) provision of embedded renewable electricity generation regulations including review of extant standards for solar PV, wind turbines and regulation for biomass electricity;
 - (h) provision of mini-grid regulations on renewable energy to cater for installation, metering, billing and other requirements, for renewable energy mini-grid systems;

- (i) review 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 the Commission for local contents requirements;
- (j) ensure stable and long -term favorable pricing mechanism for renewable energy and facilitate unhindered access to the national grid and distribution network through the prescribed measures;
- (k) stipulation of duty on the Commission and system operator to promote generation and consumption of electricity from renewable energy sources;
- (l) introduction of feed -in tariffs for all small hydro schemes, all biomas co-generation power plants, solar and wind-based plants irrespective of their sizes within the terms of the tariffs to be up to 20 years to guarantee buyers under standard power purchase agreements and provide return on investments;
- (m) award of license of mini-grid concessions to renewable energy companies to exclusively serve a specific geographical location indicating aggregate electricity to be generated and distributed from a site with obligation to serve customers to request service;
- (n) provide standards and sitting guidelines for solar homes systems, stand -alone solar PV, micro hydro and wind power;
- (o) ensure clarity in the market rules and offer incentives and support to independent power producers for investments in generation of electricity from Renewable sources specified under this Act;
- (p) provide support to the Agency established under this Act towards efficient implementation of rural electrification using renewable energy sources specified under this Act;
- (q) develop light-handed measures for awarding renewable electricity concessions for generation, distribution of electricity within 10MWs generating electricity exceeding 1MW and distributing electricity above 100KW in aggregate at the site;
- (r) provide technical specifications and codes for stand -alone solar PV, micro-hydro and wind power;

(s) issuance of renewable energy standards on installation, decommissioning and disposal of renewable energy accessories and monitor compliance in conjunction with other relevant MDAs with mandates on product safety and standards;

(t) issue guidelines on net-metering for roof-top solar PV systems, small wind power in accordance with the provisions of this Act regarding the procedure for adoption of guidelines or other regulatory documents by the Commission; and

(u) in consultation with the relevant MDAs provide regulation on energy storage to promote energy efficiency.

(2) The Commission shall for the purpose of the implementation of this Act, approve —

(a) rates chargeable for the purchase of electricity from renewable energy sources by public utilities;

(b) charges for mini-grid and grid connection; and

(c) rates chargeable for wheeling of electricity from renewable energy sources.

165. (1) For the purpose of this Part, commercial activities in the renewable energy industry include —

Commercial activities for renewable energy

(a) generation;

(b) distribution;

(c) sales; and

(d) installation.

(2) The Commission may by regulatory instrument limit or expand the scope of activities under subsection (1).

166. (1) From the commencement of this Act, the Federal Ministry responsible for Finance shall introduce such tax incentives as are necessary to promote and facilitate the generation and consumption of energy from renewable energy sources and in accordance with the provisions of the Industrial Development (Income Tax Relief) Act or such other fiscal policy framework foster such tax reliefs that would incentivise implementation of renewable energy projects in Nigeria.

Renewable energy incentives and standards

Cap. 17, LFN, 2004

167. (1) Where the Commission provides for a renewable purchase obligation, it shall take into consideration the following —

Considerations for
renewable purchase
obligation

- (a) technology being used to generate electricity from renewable energy sources;
- (b) assurance of the financial integrity of public utilities; and
- (c) net effect of the cost of renewable energy on the end user tariff, in specifying the percentage level of electricity.

(2) A bulk customer permitted by the Commission, shall —

- (a) purchase a specified percentage of its total purchase of electricity from renewable energy sources; or
- (b) pay to the Commission a premium as determined by the Commission.

(3) The premium payable shall constitute a source of revenue for the Commission under this Act.

(4) For the purposes of this section —

“premium” means the amount payable by the bulk customer instead of the purchase of electricity required under subsection (2) (a); and

“bulk customer” means a customer that purchases or receives electricity from renewable energy sources in the amount or level specified by the Commission.

168. (1) An electricity distribution utility shall not buy or negotiate a power purchase agreement with a generator of electricity from renewable energy sources unless it is in accordance with guidelines provided by the Commission.

Feed-in tariffs rates

(2) The Commission shall prepare and provide public utilities with guidelines on the level of rates that may be charged by the public utility for electricity generated from renewable energy sources.

(3) The Commission shall take into account the —

- (a) technology being used in the renewable energy industry;
- (b) location of the generation facility;
- (c) operating norms for the specific technology under consideration;

(d) costs associated with construction, commissioning, operation and maintenance of the plant;

(e) the reasonable rate of return; and

(f) the balance between the interest of the consumer and the investor, in preparing the guidelines.

(4) The feed-in-tariff rate fixed for electricity from renewable energy sources shall be guaranteed for such a period as may be stipulated by the Commission.

(5) The Commission shall, in determining the mechanism for the regulated electricity market, factor into the tariff, the price differential between the purchase price of electricity generated from renewable energy sources and the price of electricity purchased from other sources.

169. (1) A public utility shall not demand a feed-in-tariff rate for electricity generated from renewable energy sources unless the feed-in-tariff rate chargeable has been approved by the Commission.

Approval of feed-in tariffs rates

(2) A public utility shall not directly or indirectly demand or receive a feed-in-tariff rate higher than the feed-in-tariff rate approved by the Commission in relation to electricity generated from renewable energy sources.

(3) Notwithstanding the provisions of section 168 (2), a distribution licensee may demand and receive from a consumer a higher feed-in-tariff rate agreed to by both the distribution licensee and the consumer with the written permission of the Commission.

(4) The power to approve a rate under this section shall not apply to the export of electricity generated from renewable energy sources.

170. Feed-in-tariff rates approved by the Commission for electricity generated from renewable energy sources shall be published by the Nigerian Electricity Regulatory Commission in the Federal Government Gazette and the mass media.

Publication of feed-in tariff rates

171. (1) An operator of a transmission or distribution system shall connect a generator of electricity from a renewable energy source within the coverage area of the transmission or distribution system where a generator of electricity from renewable energy sources so requests, such request not to be unreasonably withheld and an operator of a transmission or distribution system shall —

Connection to transmission and distribution systems

(a) upgrade the transmission or distribution system at reasonable economic expense to feed-in the electricity from the generator of electricity from renewable energy sources; and

- (b) upgrade the transmission and distribution system as soon as practicable if so, requested by a generator interested in feeding in electricity.
- (2) The cost of upgrading the transmission or distribution system shall be valued, agreed upon and shared equally between the operator of the transmission or distribution system and the generator of electricity from renewable energy sources.
- (3) The costs associated with connecting installations to the metering point shall be borne by the generator of electricity from renewable energy sources.
- (4) For the purposes of subsection (1), the operator of a transmission or distribution system shall enter into a connection agreement with a generator of electricity from renewable energy sources within the coverage area of the transmission or distribution system.
- (5) A licensee, contractor or its sub-contractor, or any other entity carrying out operations in the renewable energy subsector shall ensure that the local content is a component of their operational renewable energy activities.

PART XVIII — NIGERIAN ELECTRICITY MANAGEMENT SERVICES AGENCY

- 172.** (1) There is established the Nigerian Electricity Management Services Agency, (in this Act referred to as "NEMSA"). Establishment of
Nigerian Electricity
Management Services
Agency
- (2) The NEMSA —
- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued in its corporate name; and
 - (c) may, subject to this Act, perform all acts that bodies corporate may, by law, perform.
- (3) The headquarters of the NEMSA shall be in Abuja.
- (4) The Electricity Management Services Plc. incorporated in 2007 shall be taken over by the NEMSA for the purposes of this Act.
- (5) The personnel shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed in Electricity Management Services Plc and the Nigerian Electricity Management Services Agency Act. Act No. 6 2015
- 173.** (1) There is established for the NEMSA a Governing Board (in this Act referred to as "the Governing Board"). Establishment and
membership of the
Governing Board

(2) The Governing Board shall consist of —

(a) a Chairman who shall —

(i) be appointed by the President on the recommendation of the Minister, and

(ii) be a highly respected person of impeccable character and have a minimum of 10 years experience in the NESI;

(b) one person from each of the six geopolitical zones of the Country appointed by the President on the recommendation of the Minister;

(c) the Managing Director and chief executive officer of the NEMSA;

(d) the representative of Federal Ministry responsible for power; and

(e) the representative of Federal Ministry responsible for finance.

(3) The General Manager, Legal of the NEMSA shall be the Secretary of the Governing Board.

(4) In choosing the appointed six members of the Governing Board under subsection (2) (b), the Minister shall consider each proposed member's character, competence, professional and practical experience in the NESI.

(5) A member of the Governing Board shall not have any share or interest, whether in his own name or otherwise, in any company or other body corporate or an association of persons (whether incorporated or not), or a firm engaged in the business of generation, transmission and distribution and trading of electricity or fuel for the generation, or in the manufacture of electrical equipment.

174. (1) A member of the Governing Board appointed otherwise than by virtue of his office shall hold such office for a term of three years and may be eligible for re-appointment for only one further term of three years, which shall be on a part time basis. Tenure of office

(2) The office of a member of the Governing Board shall become vacant if —

(a) he resigns as a member of the Governing Board by notice in writing under his hand addressed to the Minister; or

(b) the Minister is satisfied that it is not in the interest of the Governing Board for the member to continue in office and, upon the approval of the President, notifies the member in writing to that effect.

- (3) The supplementary provisions as set out in the Fourth Schedule to this Act shall have effect to the proceedings of the Governing Board and other matters contained in it.

Fourth Schedule

175. The Governing Board has the power to —

Powers of the
Governing Board

- (a) oversee the affairs of the NEMSA;
- (b) provide guidelines for the NEMSA in the performance of its functions in accordance with the policy thrust of government;
- (c) approve the payment to the staff of the NEMSA such remuneration and allowances as are approved by the National Salaries, Incomes and Wages Commission;
- (d) approve the appointment, promotion and discipline of management staff from the rank of assistant general manager and above other than the management team of the NEMSA; and
- (e) do such other things as are necessary and expedient for the efficient performance of the functions of the NEMSA.

176. Subject to this Act, the NEMSA shall —

Objectives and
functions of the
NEMSA

- (a) carry out electrical inspectorate services for the NESI,
- (b) enforce all statutory technical electrical standards and regulations as published by the Commission and all other relevant statutory bodies;
- (c) collaborate with Standards Organisation of Nigeria and other relevant government agencies to ensure that all major electrical materials and equipment used in Nigeria are of the right quality and standards;
- (d) ensure that the power systems and networks put in place have been properly executed before use, to ensure that such systems are capable of delivering safe, reliable and sustainable electricity supply to consumers nationwide;
- (e) enforce compliance with technical standards and specifications for all electrical installations, electrical plants, including power plants and auxiliary systems, electric networks and connectivity to the grid;
- (f) enforce compliance with safety requirements for construction, operation and maintenance of electrical power plants, transmission system, distribution networks and electric installations;

- (g) enforce the conditions for installation of meters for transmission systems, distribution networks and supply of electricity;
- (h) carry out the duties of inspecting engineers for inspection, testing and certification of all categories of electrical installation in the NESI;
- (i) provide comprehensive technical support services that will guarantee the efficient production and delivery of safe and reliable power supply and enhance efficient service delivery industry-wide;
- (j) provide sustained technical inspection, testing and certification of all electrical materials, (including transformer oil and chemicals) or equipment, power systems, networks (generation, transmission and distribution), or electrical installations to be used in the power sector, to ensure a stable system to deliver safe, reliable, regular power supply, guarantee safety of lives and property, and avert loss of lives and property in the NESI;
- (k) test, calibrate and certify every brand of electricity meters and instruments whether locally manufactured or imported before use in the NESI, and to periodically carry out sample test of such meters and instruments deployed in the NESI;
- (l) test and certify electrical installations in hazardous locations such as in filling stations, prospecting oil companies, off and onshore flow stations or wells, floating production storage and offloading vessels;
- (m) process and issue competency certificates to qualified electrical personnel working in the NESI;
- (n) regularly carry out periodic inspection, monitoring and assessment of existing power plants or stations, installations, Extra High Voltage (EHV) and High Voltage (HV) transmission lines and associated transmitting or switching stations and distribution networks to ensure that they are in regular fitness to generate, transmit, distribute and deliver reliable and safe power supply to the electricity consumers nationwide;
- (o) regularly monitor the compliance level of the technical regulations, standards and specifications used in the NESI;
- (p) carry out or cause to be carried out investigation of electrical accidents and electrocutions (outright deaths) in connection with generation, transmission, distribution, supply or use of electricity with a view to finding out the causes, and enforce remedial measures and proffer or suggest ways of preventing future occurrence;

- (q) promote research on matters affecting the generation, transmission, distribution and utilisation of electricity;
- (r) publish information beneficial to the growth of the electricity industry including reports and investigations;
- (s) advise the Minister and other relevant agencies on all technical matters relating to generation, transmission and distribution of electricity;
- (t) take over the functions of statutory electrical inspection, testing and certification of all electrical installation hitherto carried out by the Director of Electrical Inspectorate Services and the Electrical Inspectorate Services Division of the Federal Ministry responsible for Power;
- (u) provide non-core and ancillary services for commercial opportunities and drive in the NESI, including research and development, electricity information management systems, renewable energy services, specialised medical and health care services, project management and consultancy, electricity workshop service, project unit service for specialised projects in the Nigerian electricity supply industry logistics, warehousing and printing technology;
- (v) partner and to be a joint and major player with other related services in the NESI, for technical and commercial services and to perform and provide all other related services in the NESI, as may be approved by the Minister;
- (w) collaborate with other stakeholders in the electricity power sector on standards and specifications of all major electrical equipment and materials manufactured or imported for use in Nigeria, to ensure uniformity and ensure that all electrical equipment and materials comply with approved standards; and
- (x) perform such other functions as may be provided under this Act or conferred by the Minister's directives.

177. (1) There is appointed for the NEMSA by the President on the recommendation of the Minister, a Managing Director and chief executive officer.

Appointment of the
Managing Director
and chief executive
officer and other staff
of the NEMSA

(2) The chief executive officer shall be an electrical engineer, registered with Council for the Regulation of Engineering in Nigeria (COREN) and have not less than 20 years professional and practical experience in the core operational areas of the NEMSA or the NESI.

(3) The chief executive officer shall hold office for a term of four years, and may be eligible for re-appointment for only one further term of four years.

- (4) The chief executive officer shall be the head of the management and chief accounting officer of the NEMSA.
 - (5) The chief executive officer shall be the Chief Electrical Inspector of the Federation with powers to carry out the functions of enforcement of technical standards and regulations, through technical inspection, testing and certification of all categories of electrical equipment, materials and installations, electricity meters, instruments and other related matters in the NESI.
 - (6) The chief executive officer shall be responsible for the administration of the NEMSA, keep the books and records of the NEMSA and be subject to the supervision and control of the Governing Board.
 - (7) The Minister shall also appoint three Executive Directors who shall hold the office for a term of four years and may be eligible for re-appointment for only one further term of four Years.
 - (8) The Executive Directors shall administer under the direction of the Managing Director the following Directorates —
 - (a) Technical Services;
 - (b) Commercial Services; and
 - (c) Corporate Services.
 - (9) The NEMSA may appoint such other officers and employees as it considers necessary for the performance of its functions under this Act and on such terms as to salary remuneration, fee, allowance, pension, leave and gratuity as the NEMSA may determine in consultation with the National Salaries, Incomes and Wages Commission.
 - (10) The staff of the NEMSA shall be public officers as defined in the Constitution of the Federal Republic of Nigeria 1999.
- Cap. C23, LFN, 2004
178. (1) Service in the NEMSA shall be approved service for the purpose of the Pensions Reform Act, officers and other persons employed in the NEMSA shall be entitled to pensions, gratuities and other benefits as are prescribed under it.
- Service to be subject to the Pension Reform Act
- (2) Notwithstanding subsection (1), the NEMSA may appoint a person to any office on terms, which preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.
- Act No. 4, 2014
- (3) For the purpose of the application of the provisions of the Pensions Reform Act, any power exercisable by a Minister or other agency of the Government of the

Federation, other than the power to make regulations under section 13 is vested in and shall be exercisable by the agency and not by any other person or agency.

179. (1) The NEMSA shall establish and maintain a Fund from which shall be defrayed all expenditure incurred by the NEMSA and into which shall be paid and credited — Funds of the NEMSA

- (a) fees, charges, and any other income accruing to the NEMSA from certifications and other things done by it under this Act, excluding fines or penalties recovered under this Act;
- (b) grants of money or other property, upon such terms and conditions as may be specified by the person or organisation making the grants, provided that such terms and conditions are consistent with the objectives and functions of the NEMSA under this Act;
- (c) funds allocated to the NEMSA by the National Assembly, under a request by the NEMSA for additional funds required to meet its reasonable expenditures; and
- (d) such other money as may vest in or accrue to the NEMSA, whether in the course of its operations or otherwise.

(2) There shall be paid into the Fund established under subsection (1) such payments as may be made to the NEMSA by the Federal Government for the running expenses of the NEMSA and all other assets accruing to the NEMSA.

(3) The NEMSA may apply the proceeds of the Fund established under this section to —

- (a) the cost of administration of the NEMSA;
- (b) reimburse members of the Governing Board or of any committee set up by the Governing Board for such expenses as may be expressly authorised by the Governing Board in accordance with the rates as provided by extant rules and regulations;
- (c) the payment of salaries, fees or other remuneration, allowances, pensions and gratuities payable;
- (d) the maintenance of any property vested in the NEMSA;
- (e) any other expenditure in connection with the functions of the NEMSA; and
- (f) remuneration and allowances of the Governing Board members in accordance with existing Government regulations.

(4) The chief executive officer shall perform all duties as may be stipulated by Government Financial Regulations.

(5) The NEMSA shall prepare and submit through its Governing Board to the Minister on or before 31 October of each year a budget showing the expenditures which the NEMSA proposes to incur in respect of the next financial year in order to carry out the functions of the NEMSA.

180. The chief executive officer shall prepare and submit to the Governing Board for onward transmission to the President through the Minister, not later than 30 June of each year, a report on the activities of the NEMSA during the immediately preceding year, and shall include in the report a copy of the audited accounts of the NEMSA for that year and the auditor's report on it. Annual report

181. (1) For the purpose of performing the functions of the Agency, the chief executive officer or any other performing officer of the NEMSA, authorised in that behalf shall — Access to premises and other enforcement powers

(a) have a right of access to all premises and the technical records of any institution or establishment engaged in electricity material supply and installation; and

(b) by notice in writing served on a person in charge of any institution or authority mentioned in subsection (1) (a), require that person or establishment to furnish information on such matters as may be specified by the notice.

(2) A person or establishment required to furnish information under subsection (1) shall comply with the notice within the period of time specified in the notice.

(3) The NEMSA may obtain a court warrant to enter and search any property in the exercise of its functions.

(4) Where it appears to the NEMSA that a breach of electrical technical standard, regulation or of any interest the NEMSA is mandated to protect is taking place, the NEMSA may publish a notice in such manner as it considers appropriate to draw attention of other person affected or likely to be affected by the contravention or threatened contravention —

(a) specifying the actual or potential contravention;

(b) directing the person or establishment concerned to do or not to do such things as they may be specified;

(c) specifying the remedy and the timescale for compliance; and

- (d) notifying the person or establishment concerned of its intention to issue an enforcement order.
 - (5) A person or establishment affected by the notice specified in subsection (4) is entitled to make representations against or in support of the enforcement notice by a date specified in the notice.
 - (6) A person or establishment concerned fails to comply with a notice served under subsection (4), the NEMSA may issue an enforcement order.
 - (7) A person who fails to comply with an enforcement order, commits an offence and is liable on conviction to a fine of ₦1,000,000 or imprisonment for a term of three months or both.
 - (8) The NEMSA shall not issue an enforcement order if —
 - (a) a person or establishment concerned is able to demonstrate to the satisfaction of the NEMSA that it is not in breach of any standard, or regulation; and
 - (b) the breach was not intentional, and it has been remedied.
 - (9) Where a person or establishment concerned fails to comply with an enforcement order, the NEMSA may institute legal proceedings against them in any court to compel compliance.
- 182.** The Minister may give directives of a general or special character to the NEMSA relating to the performance by the NEMSA of any or all of its functions under this Act, and the NEMSA shall comply and give effect to the directives. Supervisory powers of the Minister
- 183.** The NEMSA shall submit its input to the Commission in the making of further technical regulations for the purpose of carrying out its functions under this Act. Regulations
- 184.** (1) The NEMSA's certification of any electrical equipment, material or installation used in the NESI shall not be sufficient defence for negligence or damage suffered from the effect or application of the certified electrical equipment, material, or installation or power plant networks by the manufacturer, installer or user. General provisions
- (2) When an electrical material or installation is found defective after it has been brought into use, the licensee shall be required to rectify all anomalies that may be observed by an inspecting engineer.
 - (3) In addition to inspecting engineers who are permanent staff of the NEMSA, the NEMSA may appoint, on a temporary basis, special inspecting engineers for specified assignments or tasks.

- (4) An inspecting engineer in the service of the NEMSA or the NEMSA is not liable for acts carried out in the service of the NEMSA.
- (5) In resolving disputes, including intra-organisation conflict and external conflicts involving any person or establishment, the NEMSA shall, as first line of action, apply amicable settlement processes such as negotiation, mediation and conciliation before resorting to the court.
- (6) No court action shall be instituted against the NEMSA without a prior notice of 30 days in writing before such action is initiated.
- (7) The provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the NEMSA. Cap. P41, LFN, 2004
- (8) No new or upgraded electrical installation of any type shall be connected to an existing electricity power system or networks and energised either for temporary or permanent use until such electrical installation has been duly inspected, tested and certified fit for use by NEMSA.
- (9) Utilities companies or owners and users of electrical installation or power system and networks, shall notify the NEMSA in writing within 48 hours of the occurrence of any electrical accident, electrocution and or electrical fire for investigation.
- (10) Utilities companies, electrical installation and networks owners shall rectify or make good and safe any defects or anomalies recommended by NEMSA, arising from investigation of electrical accidents and electrocution incidences or technical evaluation and monitoring of electrical installations and networks within four weeks on receipt of report or as may be specified by NEMSA and any person who violates this provision commits an offence and is liable on conviction to fine ranging from ₦1,000,000 to ₦5,000,000 or imprisonment for a term of three years or both.

PART XIX — NATIONAL POWER TRAINING INSTITUTE OF NIGERIA

- 185.** (1) There is established the National Power Training Institute of Nigeria (in this Act referred to as "the Institute"). Establishment of the
National Power
Training Institute of
Nigeria
- (2) The Institute shall be a body corporate —
- (a) with perpetual succession and a common seal;
 - (b) which may sue or be sued in its corporate name; and
 - (c) which may acquire, hold, purchase, mortgage and deal with property, movable or immovable, real or personal.

186. (1) The Institute shall perform the following functions —

Functions and powers
of the Institute

- (a) serve as a focal point for human resources development and workforce capacity building as well as research centre for matters relating to electric power in Nigeria and possibly Africa in general;
- (b) offer engineering, technical and other training or certificate programmes in collaboration with both foreign and local institutes for professionals and practitioners in the power sector and serve as a pupillage centre and finishing school for graduates of engineering;
- (c) provide capacity in formulating and implementing pilot projects in relevant fields and ensure maintenance, effective monitoring of technical standards and compliance in the industry and dissemination of new ideas and technologies to the power industry;
- (d) provide customer-focused learning and development solutions as well as assist in identifying employees' competency gaps and training needs;
- (e) build and maintain a framework of key skills, knowledge and behaviour for high performing industries and provide manpower development advice to industry participants;
- (f) design and install effective maintenance training programmes for engineers, technicians, artisans and craftsmen to ensure that a highly maintained culture is utilised throughout the industry to enhance efficiency;
- (g) design and develop professional certificate programmes, management, leadership, regulatory and ICT skills that will ensure proficiency and global recognition;
- (h) organise, support, encourage and maintain training facilities in all managerial, financial and technical fields as well as liaise and organise both local and foreign training, tours and seminars in collaboration with local and foreign institutions in respect of the electricity industry;
- (i) undertake project consultancies in relation to generation, transmission and distribution companies or related matters;
- (j) borrow or raise money for the purpose of the company on such terms and on such security as may be thought fit; and
- (k) do all such other things as may be considered to be incidental or conducive to the attainment of the above objects or any of them.

(2) For the performance of its functions under subsection (1), the Institute shall be vested with the powers to —

- (a) enter into such contracts as may be necessary or expedient for carrying into effect the provisions of this Act;
- (b) insure its property against any loss or all forms of risks;
- (c) establish training centers in such locations as may be approved by the Council;
- (d) establish gender unit to track and collate gender mainstreaming indicators in the implementation of its training programs taking into consideration the overall gender mainstreaming framework in the NESI;
- (e) receive and manage the Power Training Fund and other funds accruing to the Institute under the provisions of this Act;
- (f) collate and maintain a database on existing manpower and skill –gap in the NESI based on its trainings and research;
- (g) advise the Federal Government and other relevant stakeholders on matters relating to manpower training in the NESI; and
- (h) exercise such other powers as are incidental and ancillary to the performance of its functions under this Act.

187. (1) There is established the Governing Council of the National Power Training Institute of Nigeria (in this Act referred to as “the Council of the Institute”)

Establishment and membership of the Governing Council

(2) The Council of the Institute shall consist of —

- (a) a Chairman who shall preside at Council of the Institute meetings and the following members all of whom shall be appointed by the President on the nomination of the Minister;
- (b) the Director General of the Institute;
- (c) a representative of the Federal Ministry responsible for power;
- (d) a representative of the Federal Ministry responsible for finance;
- (e) a representative of the Federal Ministry responsible for education on technical education;

(f) a representative each nominated by the Minister responsible for power to represent the interest of licensees, permit holders and other stakeholders in the NESI; and

(g) a representative each of the NERC, National Board for Technical Education (NBTE), NEMSA, Council for the Regulation of Engineers in Nigeria (COREN) and the Nigerian Society of Engineers (NSE) recommended by the respective organisations.

(3) The supplementary provisions set out in the Fifth Schedule to this Act shall have effect with respect to the proceedings of the Council of the Institute and other matters in it.

Fifth Schedule

188. Subject of the provisions of this Act, the Council of the Institute shall be responsible for the general management of the affairs of the Institute and in particular, the control of the property and finances of the Institute.

Functions of the Council of the Institute

189. The Chairman and other members of the Council of the Institute shall each hold office for a term of four years and may be eligible for re-appointment for another term of four years and no more.

Tenure of members of the Council of the Institute

190. (1) Notwithstanding the provisions of section 189 of this Act, a member of the Council of the Institute may cease to hold membership of the Council of the Institute if he –

Cessation of membership of the Council of the Institute

(a) has conducted himself in a manner that renders him unsuitable as a member of the Council of the Institute;

(b) failed to comply with any term or condition of his office fixed by the President in his appointment letter;

(c) is mentally and physically incapable of carrying out his functions as a member and has been so certified mentally and physically incapable by a medical report issued by a government hospital;

(d) is convicted of an offence by a court of competent jurisdiction in Nigeria or abroad;

(f) is disqualified from practicing as a member of a professional group by an order of competent professional body to which he is a member; and

(h) he resigns his appointment by a letter addressed to the President.

(2) A member of the Council of the Institute shall not be removed unless the request is made by the Council of the Institute to the President and supported by a simple majority of the Council of the Institute in a letter specifying that the member should

be removed or cease to be a member on any of the grounds specified under subsection (1).

- 191.** The Chairman and members of the Council of the Institute shall be paid such allowances and benefits as may be approved by the National Salaries and Wages Commission.
- Allowances of the Chairman and members of the Council of the Institute
- 192.** The President shall appoint a candidate to fill a vacancy in the membership of the Council of the Institute where such vacancy arises as a result of death of a member or any of the grounds specified under section 190 (1) of this Act, and the person so appointed shall represent the same as his predecessor and hold office for the remainder of the term of office of his predecessor.
- Filling of vacancies in the Council of the Institute
- 193.** (1) There shall be appointed by the President, a Director-General who shall be the administrative head of the Institute and chief accounting officer of the Institute responsible —
- The Director — General and other staff of the Institute
- (a) for the administration of the Institute; and
- (b) amongst other administrative oversight duties, ensure discipline amongst the staff of the Institute
- (2) The Director-General shall possess not less than 15 years professional experience in the fields of engineering, law, public administration, accounting, economics and practical experience in public or private sector of the NESI or other related industry experience in Nigeria or any other country in the world.
- (3) The Institute shall, with the approval of the Council of the Institute establish such departments, directorates and units as may be required for ease of administration.
- (4) The Institute may appoint such persons as members of staff of the Institute as it may consider necessary and may approve through the Council of the Institute such conditions of service including pension in accordance with the Pension Reform Act.
- Act No. 4, 2014
- 194.** The Legal Adviser of the Institute shall be the Secretary to the Council of the Institute and shall —
- The Secretary of the Council
- (a) attend and take minutes of Council meetings and meetings of Committees set up by the Council;
- (b) under the authority of the Chairman, conduct correspondences, keep its records, seal of the Institute; and
- (c) perform such other functions as may be assigned to him by the Council.

195. (1) There shall be for the purpose of administering the functions of the Institute relating to training and certification in accordance with the provisions of this Act, the Academic Board (in this Act referred to as the "the Academic Board")

Academic Board of the Institute

196. The Academic Board shall have the power to —

Functions and powers of the Academic Board

- (a) manage the activities of the academic office;
- (b) coordinate the development, review and upgrading of the Institute's training curricula to meet local and international standards;
- (c) consider and make final recommendation on submissions made on faculty requirements;
- (d) manage examination processes and issue results and certificates;
- (e) coordinate admission processes;
- (f) review actions on all research, monitoring and evaluation reports relating to academic matters;
- (g) generate quality report to the Institute's management on all activities of the Academic Board; and
- (h) undertake any other duties assigned to it by the Council through the management of the Institute.

197. (1) The Academic Board shall consist of —

Composition of the Academic Board

- (a) the Director –General of the Institute who shall be Chairman of the Academic Board;
 - (b) all Heads of Directorates;
 - (c) the Legal Adviser of the Institute
 - (d) Head of ICT of the Institute; and
 - (e) other officers appointed by the Director General one of whom shall be the Secretary of the Academic Board.
- (2) Notwithstanding the provisions of subsection (1), the Academic Board may co-opt any person to attend its meeting but the person so co-opted shall not have a vote or be counted towards quorum at meetings of the Academic Board.

(3) For the purpose of discipline of students of the Institute, the Academic Board shall have the powers to recommend to the Director-General of the Institute, the suspension or expulsion of a student on such terms as may be recommended by the Academic Board.

(4) Any recommendation for suspension or expulsion of a student of the Institute under subsection (3) shall be effective only after the approval of the Director-General and ratification by the Council:

Provided that the affected student shall be accorded the opportunity to defend himself before the Academic Board and the Council respectively against the allegation warranting his expulsion or suspension, whichever is the case.

198. (1) The Institute shall, not later than the 31 January of the succeeding year, cause to be prepared a statement of its income and expenditure during the preceding financial year together with a statement of the assets and liabilities of the Institute as at the last day of that preceding financial year.

Financial statement,
annual budget and
estimates

(2) The statement referred to in subsection (1) shall be audited by an independent firm of auditors appointed by the Council and shall be published within nine months in the Federal Government Gazette, a national newspaper and also submitted to the National Assembly and the Minister.

(3) The Institute shall cause to be prepared not later than 1 September in any year or such a time as may be directed by the Minister, estimates of revenue and expenditure for the ensuing financial year and when prepared they shall be submitted to the Council for approval and onward transmission to the Minister.

199. The Institute shall prepare and submit to the Minister, not later than 30 June of each financial year, a report in such a form as the Minister may direct, on the activities of the Institute during the immediately preceding financial year and shall include in the report a copy of the audited accounts of the Institute as prepared under section 199 of this Act.

Annual report of the
Institute

200. (1) The Fund of the Institute includes —

Fund of the Institute

(a) fees charged by and payable to the Institute in respect of its training activities;

(b) any other fund, amount, charges or dues recoverable by the Institute;

(c) revenue, accruing to the Institute by the way of budgetary appropriation by the National Assembly, fees earned from consultancy services, subvention, grant-in-aid, endowment or otherwise; and

(d) donations and legacies accruing to the Institute from any source for the general or special purpose for the Institute.

(2) Subject to extant framework on revenue of government agencies, the sums of money received on account of the Institute shall be paid into such bank as may be approved by the Council of the Institute for the credit of the Institutes general, current or deposit bank accounts.

(3) Donations of money to be applied for any particular purpose may be expended by the Institute in fulfilment of such purposes only:

Provided that the Institute shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attaching to such donation.

201. The Institute may apply the proceeds of the funds received under section 200 of this Act to — Expenditure of the Institute

(a) defray the cost of administration of the Institute;

(b) reimbursing members of the Council or of any Committee set up by the Council for such expenses as may be expressly authorised by the Council in accordance with the rates approved by the National Salaries and Wages Commission;

(c) the payment of salaries, fees, facilitation or consultancy fees or other remuneration, allowances payable in the course of performance of the Institute's activities;

(d) acquisition or maintenance of any property of the Institute; and

(e) any other expenditure in connection with the functions of the Institute.

202. There is established a Fund to be known as the Power Training Fund (in this Act referred to as the "Power Fund") into which shall be paid — Establishment of the Power Training Fund

(a) 40% of money accruing into the Power Fund;

(b) loans, grants or voluntary contributions from licensees, local and international development partners; and

(c) any other money that may come to the Institute apart from what is provided under this section.

203. The Power Fund shall be utilised to promote and encourage the acquisition of skills and human capacity development in the NESI with a view to generating a pool of Utilisation of the Power Training Fund

indigenously trained manpower sufficient to meet the needs of the power sector and the economy in general.

204. All the Fund established under sections 200 and 202 of this Act shall be exempted from income tax. Exemption of Funds from income tax
205. The Minister shall exercise supervisory powers over the Institute and perform such functions as are assigned to him under this section. Supervisory powers of the Minister
206. The provisions of the Public Officers Protection Act shall apply in respect of all suits against the Institute. Limitation of suits against the Institute
- Cap. P41, LFN, 2004
207. (1) The Council of the Institute may, within the scope of its authority under this Act, make regulations relating to any internal and domestic matters prescribed by this Act under its control and superintendence other than matters for which provision is to be made under the Fifth Schedule to this Act. Power to make regulations
Fifth Schedule
- (2) Regulations made shall be in writing and shall come into effect when sealed with the seal of the Institute, unless another date for commencement is prescribed in it.
- (3) Nothing in subsection (2) shall make it obligatory for the Council to publish the said Regulations in the Federal Government Gazette:

Provided that such Regulations not gazetted bear the official seal of the Institute.

PART XX — OFFENCES AND PENALTIES

208. (1) A person who — Theft of electricity
- (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee, franchisee or permit holder or supplier as the case may be,
- (b) tampers or bypasses a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted,
- (c) damages or destroys an electricity meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, uses electricity unauthorised or through a tampered meter, or

- (d) uses electricity for the purpose other than for which the usage of electricity was authorised so as to consume or use electricity,

commits an offence and is liable on conviction a fine as provided under this section or be imprisonment for a term of at least three years or both:

Provided that in a case where the load consumed or used or attempted consumption or use —

- (i) does not exceed 10 kilowatts, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity; or
- (ii) exceeds 10 kilowatts, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the penalty shall be for a fine of at least six times the financial gain on account of such theft of electricity or imprisonment for a term of at least six months and a maximum up to of three years.

209. (1) A person who —

Theft of electric lines
and materials

- (a) cuts, removes takes away transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or its owner, as the case may be, whether or not the act is done for profit or gain,
- (b) stores, possesses or otherwise keeps in his, hers or its premises, custody or control, any electric line, material or meter without the consent of the licensee or its owner, whether or not the act is committed for profit or gain, or
- (c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of the licensee or its owner, whether or not the act is done for profit or gain,

commits an offence of stealing of electric lines and materials and is liable on conviction to a fine of at least N500,000 or imprisonment for a term of at least three years and a maximum of up to five years or both.

- (2) Where a person or corporate body previously convicted of an offence under subsection (1), commits an offence under that subsection, the person or corporate

body is, on conviction liable for the second or subsequent offence to a fine of at least ₦1,000,000 of imprisonment for a term of five years.

210. Any person who receives any stolen electric line or material knowing or having reasons to believe it to be stolen property, commits an offence and is liable on conviction to a fine not more than three times the value of the stolen property received or imprisonment for a term of 14 years or both. Offence of receiving stolen electricity
211. Any person who — Interference with meters or works of licensees
- (a) without authorisation connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee, franchisee or permit holder or disconnects the same from any such electric line,
 - (b) without authorisation reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee, franchisee, or permit holder when the said electric line or other works has or have been cut or disconnected,
 - (c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, franchisee, or permit holder, or
 - (d) maliciously injures any meter, indicator, or apparatus belonging to a licensee, franchisee or permit holder or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering,
- commits an offence and is liable on conviction to a fine not more than ₦500,000 or imprisonment for a term not more than three years or both, and a fine of ₦10,000 for every day the offence continues.
212. A person who, negligently breaks, injures, throws down or damage any material connected with the supply of electricity, commits an offence and is liable on conviction to a fine of ₦300,000 in addition to the restoration of the damaged material or line. Negligently breaking or damaging electricity materials
213. A person who, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, commits an offence and is liable on conviction to a fine of at least ₦300,000. Intentionally disrupting power supply
214. A person who, maliciously extinguishes any public streetlights commits an offence and is liable on conviction to a fine up to ₦200,000. Offence relating to damage to public streetlights
215. A person who — Contravention of regulations or orders
- (a) fails to comply with any order, rules, decisions, licence, permits, codes, standards, direction or any other subsidiary legislation issued under this

Act, within such time as may be specified in the said subsidiary legislation; or

- (b) contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder,

commits an offence and is liable a fine of ₦500,000, or imprisonment for a term not more than three months or with both, and in the case of a continuing offence, an additional fine not more than ₦100,000 shall be paid for every day the offence continues.

- 216.** A person who, in any declaration required to be made under this Act, makes any statement which he knows to be false or does not have reasonable grounds to believe to be true, commits an offence and is liable on conviction to a fine not more than ₦100,000 or to imprisonment for a term not more than six months or both.

False declaration

- 217.** (1) Where an offence under this Act has been committed by a company, every principal officer who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, and the company itself are deemed to have committed the offence and liable to be proceeded against and punished accordingly:

Offences by companies

Provided that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, secretary or other principal officer of the company, such director, secretary or other officer shall also be deemed to have committed the offence and are liable to be proceeded against and punished accordingly.

- (3) For the purposes of this section —

- (a) "company" means a company registered under the provisions of the Companies and Allied Matters Act;
- (b) "director", in relation to a company has the same meaning as a Director under the Companies and Allied Matters Act; and
- (c) "secretary" means a company secretary to a company and has the same meaning as a company secretary under the Companies and Allied Matters Act.

Act No. 3, 2020

- 218.** (1) A person who aides, counsels or abets an offence punishable under this Act, commits an offence and is liable on conviction to the fine or imprisonment prescribed for the offence.

Abetment

- (2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other Act for the time being in effect, if any staff of the Commission, NEMSA or a licensee enters into or acquiesces in any agreement whether oral or written, abstains from doing, permits, conceals or connives to do any act or thing whereby any theft of electricity is committed, he commits an offence and is liable on conviction to a fine of ₦500,000 or imprisonment for a term of at least three years or both.

219. (1) If an electrical inspector, a police officer, an employee of NEMSA acquires, in the course of his duties, information relating to the financial affairs of any person, or to any commercial secret, or if any other person indirectly acquires such information from an electrical inspector, a police officer, or an employee of NEMSA, he shall not for personal gain make use of such information, nor disclose it to any other person except —
- Unlawful use of
information by
inspector
- (a) mandatory disclosure required for performance of his position;
- (b) for the purpose of legal proceedings under this Act or any other law; and
- (c) to the extent that it may be necessary to do so for the purpose of this Act or any other law.
- (2) A person who uses information obtained in the circumstances described under subsection (1) and uses such information for his personal gain and contrary to the provisions of subsection (1) (a)-(c), commits an offence and is liable on conviction to the forfeiture of any proceeds accruing to him on account of the contravention of this section and a fine not more than ₦500,000 or imprisonment for a term not more than two years or both.
220. (1) A person who willfully and intentionally obstructs, retracts, prevents, harasses or injures any person lawfully carrying on duties on half of a licensee, franchisee or permit holder, commits an offence and is liable on conviction to a fine of at least ₦2000,000 or imprisonment for a term not more than six years or both.
- Obstruction,
impersonation
- (2) A person who impersonates or falsely presents or parade as an employee of a licensee, franchisee or permit holder under this Act, commits an offence and is liable on conviction to a fine of ₦300,000 or imprisonment for a term of at least seven years or both.
221. The Attorney-General of the Federation and Attorneys-General of respective States of the Federation shall have the powers to prosecute offences under this Act, while relevant authorities, including security agencies may prosecute only after the prior consent of the respective Attorneys-General thereof.
- Power to prosecute
222. (1) Notwithstanding provisions of any legislation, the court may, in the case of a first-time offender, direct any person who has committed an offence of theft of
- Power to compound
offences

electricity or any other offence to pay a sum of money to the affected licensee, franchisee or permit holder, company or individual.

- (2) On payment of the sum of money in accordance with subsection (1), a person in custody in connection with that offence shall be set free and no proceedings shall be instituted or continued against such person or company in court.

223. (1) The Federal High Court and the State High Courts shall both have concurrent jurisdiction to try offences under this Act.

Jurisdiction to try offences

- (2) The court shall ensure that all matters brought before it under the provisions of this Act against any person, body or authority shall be conducted with dispatch and given accelerated hearing.

PART XXI — MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

224. Where any electric lines or electrical plant, belonging to a licensee are placed in or on any premises or land not being in the possession of the licensee, such electric lines or electrical plant shall not be liable to be taken in execution under any process of any civil court or in any proceedings in insolvency against the person in whose possession the thing may be.

Exemption of electric lines or electric plants from attachment in certain cases

225. (1) A licensee, franchisee or permit holder or any person duly authorised to act on his behalf in a license may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or on which the electric supply-lines or other works have been lawfully placed by him for the purpose of —

Power of the licensee to enter premises and to remove fittings or other apparatuses of the licensee

- (a) inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee franchisee or permit holder;

- (b) ascertaining the amount of electricity supplied or the electrical quantity contained in the supply; or

- (c) removing where a supply of electricity is no longer required, or where the licensee franchisee or permit holder, is authorised to take away and cut off such supply, any electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

(2) A licensee franchisee or permit holder or any person authorised may also, under a special order in this behalf made by the Tribunal and after giving at least 24 hours' notice in writing to the occupier —

- (a) enter any premises or land referred to in subsection (1) for any of the purposes mentioned in it; or

- (b) enter any premises to which electricity is to be supplied by him, for the purpose of examining and testing the electric wires fittings, works and apparatus for the use of electricity belonging to the consumer.

- (3) Where a consumer refuses to allow a licensee, franchisee or permit holder or any person authorised to enter his premises or land under the provisions of subsections (1) and (2), or when such licensee, franchisee or permit holder or person has so entered, refuses to allow him to perform any act which he is authorised by those subsections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of 24 hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.
- (4) Anyone who physically attacks a staff of a licensee or permit holder in the course of discharging his lawful duties under the provisions of this Act, commits an offence and is liable on conviction to a fine which may extend up to ₦1,000,000 or imprisonment for a term which may extend up to six months or both.
- (5) Where the physical attack in subsection (4) results in permanent disability or death of the victim, the offender shall be accordingly prosecuted under the Penal Code or the Criminal Code, as the case may be.

226. (1) The Commission may, make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Commission, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Power of the
Commission to make
regulations

- (2) Subject to subsection (1), regulations made may provide for any or all of the following —
 - (a) the administration of the affairs of the Commission, including, the holding of meetings mediation proceedings, the conduct of inquiries and investigations, becoming a party, the handling of information, the rules by which evidence shall be taken, and generally the conduct of its business;
 - (b) the duties, powers, rights, and obligations of a licensee;
 - (c) the procedure for applying for licenses, requirements for information and documentation to be submitted by applicants;
 - (d) the procedure for amending or cancelling licenses;
 - (e) the determination of the standards of performance that will be required from licensees;
 - (f) the information that will be required from licensees and the manner and form by which it shall be provided;
 - (g) the method and manner by which the tariffs that may be charged by licensees for their services will be determined;

- (h) fees, levies, and other charges that may be payable by licensees, eligible customers or consumers;
- (i) the regulation of licensee investments, assets and properties, and the interest in such assets and properties, in connection with the electricity industry;
- (j) customer-related matters, such as complaint handling procedures, practices concerning customers with difficulties paying bills, connection and disconnection procedures;
- (k) the resource procurement policies of, and the associated contracting by, the licensees, including, as may be applicable, its review and approval;
- (l) the regulatory treatment of rural electric schemes and investments;
- (m) procedures for addressing licensee mergers, acquisitions, affiliate relationships and transactions;
- (n) procedures for market power monitoring, mitigation and enforcement;
- (o) the terms and conditions for the provision of system access by transmission and distribution licensees to other entities;
- (p) fines and penalties that may be payable by licensees or consumers for violations of those things for which they may be levied under this Act; and
- (q) such other regulations as may be required.

(3) Regulations made under this section shall be published in the Federal Government Gazette by the Commission.

227. (1) The Commission shall monitor and ensure compliance with local content requirements as provided under the Commission's Regulations on National Content Development for the Power Sector, 2014 or any other amendment thereto with such modification or amendment as to bring it into conformity with the provisions of this Act.

Local content in the power sector

(2) The Commission shall consult with any principal local content regulatory and enforcement body as may be established by an Act of the National Assembly, in coordinating and monitoring compliance with local content requirements for the power sector.

228. Without prejudice to provisions of the Nigerian Investment Promotion Act and the terms and conditions of licenses or contracts entered into by investors in the Nigerian power sector, this Act guarantees asset protection, right to sale or transfer licensee

Protection of investments in the power sector

undertaking in the event of revocation of licenses or compensation in the event of any forceful takeover in the interest of national security. Cap. N117, LFN, 2004

229. The specific functions of the Power Council shall be to —

Functions of the Council

- (a) ensure policy harmony in the NESI by considering, adopting, and reviewing the National Integrated Electricity Policy and Strategic Implementation Plan for the approval of the National Economic Council in accordance with the provisions of this Act;
- (b) deliberate on challenges experienced by stakeholders within the NESI and agree on acceptable solutions to the challenges;
- (c) eliminate any information gap encountered by any agency or other stakeholder performing certain functions that are critical to effective functioning of the Nigerian electricity supply industry;
- (d) articulate the strategies for seamless compliance with policy directives within the Nigerian power sector with clarity in terms of the lead ministry, agency or other relevant entity that will spearhead, coordinate and track compliance with such policy measure;
- (e) serve as forum for collaboration between Agencies of the Federal and State Governments in the formulation or review of the National Integrated Electricity Policy and Strategic Implementation Plan adopted under sections 3 and 4 of this Act;
- (f) articulate uniform and targeted incentives (whether fiscal or otherwise), with an identifiable lead ministry or agency to spearhead such incentives to boost investments in the Nigerian electricity market including investments in the import or local manufacture and assembly of renewable energy and energy efficiency components; and
- (g) publish annual performance evaluation reports for the NESI indicating amongst other things key policy targets, achieved targets, challenges experienced by market operators, participants and other stakeholders and measures to address identified challenges.

PART XXIII — FINAL PROVISIONS

230. (1) Notwithstanding anything to the contrary contained in this Act —

Consequential and transitional provisions

- (a) the Commission, the Agency, NEMSA and other Agencies established under this Act including any other entity established and constituted under the Repealed Act or under the Acts repealed and enacted under this Act, before the commencement of this Act, shall be deemed established and constituted under the relevant provisions of this Act and the Commission, the Agency, NEMSA and other Agencies established under this Act shall

continue to operate and perform their respective functions as if the Repealed Act or the Acts repealed and enacted were in effect and the provisions of this Act shall apply accordingly with respect to their functions, legal personality and all their activities;

- (b) any license, licensee, certificate, authority, permit, tariff, market rules, regulations, orders, directives, codes and standards or other subsidiary legislation whatsoever which was issued or recognised by the Commission under the Repealed Act and other Acts repealed and enacted under this Act and which had effect immediately before the commencement of this Act, shall continue to have effect to the extent that they have not been amended by this Act or where necessary an amendment is carried out to bring them into conformity with the provisions of this Act;
- (c) any tariff, price, levy or surcharge which was in effect and chargeable within any area in respect of the provision of electricity to consumers or to any particular consumer or undertaker (if any), before the commencement of this Act shall continue to be in effect and chargeable in respect of provision of electricity to those or similar consumers by a licensee who provides electricity within the area concerned until alternative provision is made in respect of such tariff, price, surcharge, under the provisions of this Act;
- (d) subject to the provisions of this Act, any permission granted, direction given or anything whatsoever made, done or commenced which, before the commencement of this Act had or was capable of acquiring effect and effect under the Repealed Act and other Acts repealed and enacted under this Act, shall, on and after the commencement of this Act, continue to have, or as the case may be, to be capable of acquiring effect and effect as it had been granted, given, made, done, or commenced as the case may be, under the equivalent provisions of this Act; and
- (e) any cause of action or proceeding which existed or was pending or enforced by or against a licensee, permit holder, the Commission, the Agency, Ministry, NEMSA, or other Agencies under the provisions of the Repealed Act before the commencement of this Act, shall be enforced or continued, as the case may be, on or after the commencement of this Act by or against the licensee, permit holder, the Commission, the Agency, Ministry, NEMSA, or other Agencies same way that it might have been enforced or continued against the licensee, permit holder, the Commission, the Agency, Ministry, NEMSA, or other Agencies under the Repealed Act or other Acts repealed and enacted under this Act.

(2) A State of the Federation may at any time ---

- (a) enact a law by whatever appellation to provide for the establishment of a State electricity market;
 - (b) establish a State electricity regulatory authority for the State ("the State regulator") and appoint a governing body and staff for the said entity;
 - (c) deliver a formal notification of the events in paragraphs (a) and (b) above and request the Commission to transfer regulatory authority over electricity operations in the State to the State regulator; and
 - (d) deliver a formal notification of the events in paragraphs (a) and (b) to the relevant successor electricity distribution licensee ("the successor company"), with a copy to the National Council on Privatisation ("NCP") through the Bureau of Public Enterprises, requesting them both to ensure that the successor company takes the steps set out in subsection (3).
- (3) Within 45 days of receiving formal notification of the enactment of the law under subsection (1), the Commission shall draw up and deliver to the State regulator a draft order setting out a plan and timeline for the transition of regulatory responsibilities from the Commission to the State regulator, which transition shall be completed not later than six months from the date on which the formal notification in subsection (1) was delivered to the Commission.
- (4) Where a State takes the steps provided in subsection (2), the successor company responsible for electricity distribution in that State shall upon receiving formal notification from the Commission —
- (a) within two months of receiving the said notification, incorporate an subsidiary electricity distribution company under the Companies and Allied Matters Act ("the additional successor company"); and
 - (b) transfer the assets, liabilities, employees and the relevant contractual rights and obligations of the successor company in that State ("the transfer").

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- (5) The transfer shall —
- (a) not constitute a fraud on the creditors of the successor company; and
 - (b) be undertaken by agreement, as to the treatment of relevant liabilities, between the creditors, the successor company, the additional company and, where necessary, the Commission, the State electricity regulatory authority and any other relevant third party; and
 - (c) shall not impose a condition on the Government of a State to take on any of the liabilities of the successor company or guarantee their repayment.

- (5) The provisions of subsection (2) shall be implemented notwithstanding the provisions of any general or specific enactment of the National Assembly or any applicable law, rule or contract that requires notice, consent, approval or registration of such transfer and no stamp duty and capital gains tax shall be chargeable or levied by the relevant tax authorities in respect of the transfer.
 - (6) On the completion of the transfers under subsections (2) and (3), whichever occurs later in time, the Commission shall have no further regulatory responsibility whatsoever for electricity market activities carried on entirely within the State to which regulatory responsibility has been transferred and for which the additional successor company has been incorporated and conferred with assets, liabilities, employees, rights and obligations.
 - (7) An additional successor company incorporated and licensed by a State regulator as provided shall, on the completion of the transfers under subsection (2) and (3), and the issuance of a license, be under the regulatory oversight of the State regulator and shall have no further obligation to pay any form of license fees to the Commission.
 - (8) Notwithstanding the provisions of section 63 (1) and subsection (5), the generation, transmission, system operation and distribution of electricity in a State that has not exercised its option under subsection (2) shall continue to be regulated by the Commission in accordance with the provisions of this Act until such time as that State exercises the option.
 - (9) The Commission and all State electricity regulatory authorities shall have a continuing obligation to foster and maintain a beneficial inter-institutional relationship amongst themselves and accordingly they shall establish an inter-governmental body to promote harmonious relationships with each other individually and as a group and for coordinating the development of principles, standards and rules for the reduction of regulatory risk in the Federal and State electricity markets in the country.
231. (1) Except as otherwise provided in this Act, the Electric Power Sector Reform Act, No. 6, 2005 is repealed. Repeal and savings provisions
- (2) The enactments set out in the Third Schedule to this Act are repealed. Third Schedule
- (3) Notwithstanding the provisions of subsection (1), anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

“Act” means the Electricity Act;

“affiliates” in relation to a licensee means any holding company or subsidiary of the licensee or any subsidiary of a holding company of a licensee, and unless the Commission decides to the contrary, subsidiary status shall be presumed to arise from the ownership of or the power to vote, directly or indirectly ten percent or more of the voting securities of such entity and holding status shall be determined accordingly;

“Agency” means Rural Electrification Agency established under Part XV of this Act;

“ancillary services” means those functions necessary for reliable operation of a power system, which may include, but are not limited to, services that would provide or permit the following —

- (a) facilities scheduling, control and dispatch;
- (b) reactive power and voltage control;
- (c) frequency regulation;
- (d) operating reserves; and
- (e) black start;

“animal waste” means manure or any other material like bedding, milk house waste, soil, hair, feather or debris normally included in animal waste handling operations;

“Auditor-General” means the Auditor-General for the Federation.

“Authority” means the National Electric Power Authority unbundled into successor companies as recognised under section 6 of this Act;

“bio-degradable” means material that has the —

- (a) ability to break down safely and relatively quickly by biological means, into the raw materials of nature; or
- (b) proven capability to decompose into non-toxic soil, water, carbon dioxide or methane;

“biogas” means gas that comprises primarily of methane and carbon dioxide produced by the biological breakdown of organic matter in the absence of oxygen

and produced by anaerobic digestion or fermentation of biodegradable materials like biomass manure sewage, municipal waste, green waste and energy crops;

"biogas digester" means an equipment that has the capacity to degrade organic matter to produce biogas;

"biomass" means organic matter like agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial waste;

"captive generation" means generation of electricity for the purpose of consumption by the generator and which is consumed by the generator itself and not sold to a third party;

"Code of Conduct" means any rules established by the Commission governing behavior, relationships, and practices between licensees and their affiliates;

"cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);

"Commission" means the Nigerian Electricity Regulatory Commission established under Part V of this Act;

"Companies and Allied Matters Act" means the Companies and Allied Matters Act, No. 3, 2020;

"competition transition charge" means any charge prescribed under section 13 of this Act;

"Constitution" means Constitution of the Federal Republic of Nigeria 1999, Cap. C23, Laws of the Federation of Nigeria, 2004;

"consumer" means any end-user of electricity who is a customer of a distribution licensee, franchisee, mini- grid operator or other permit holders that is not an eligible customer and, for purposes of filing a complaint with the Commission and for any other reason that the Commission may determine, a person who is temporarily disconnected or otherwise without service, provided that a person who has applied for, but has yet to receive, service shall also be deemed to be a consumer;

"control area" means a transmission system or interconnected transmission systems, and interconnected generating units, bounded by metering and telemetry equipment that permits a system operator to apply a generation control scheme in order to —

- (a) match the electrical output of the generating stations within the control area and energy purchased from entities outside the control area, less energy sold to entities outside the control area, with the load within the control area;
- (b) maintain scheduled interchange with other control areas, within the limits of good utility practice;
- (c) maintain the frequency of the control area's electric power systems within reasonable limits in accordance with good utility practice;
- (d) maintain power flows on transmission facilities within appropriate limits to preserve reliability; and
- (e) provide sufficient generating capacity to maintain operating reserves in accordance with good utility practice;

"cross subsidies" means the subsidisation of the tariffs by one class or group of consumers by another class or group of consumers;

"Council means the Governing Council established under section 84 (1) of this Act;

"Director-General" means the Director -General referred to under section 193 (1) of this Act;

"distribution" means the delivery of electricity over a distribution system;

"distribution license" means a license granted under section 63;

"distribution licensee" means a licensee authorised under this Act to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply of operation;

"distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;

"distribution system" means the system of facilities, as defined by the Commission, consisting wholly or mainly of low voltage (less than 132kV) electric lines used for the distribution of electricity from grid supply points to the point of delivery to consumers or eligible customers, and includes any electrical plant and meters operated in connection with the distribution of electricity, but shall not include any part of a transmission system;

"electric line" means any line which is used for carrying electricity for any purpose and includes —

- (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and
- (b) any apparatus connected to any such line for the purpose of carrying electricity;

"electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include —

- (a) an electric line; or
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
- (c) an electrical equipment, apparatus or appliance under the control of a consumer;

"electricity" means electrical energy —

- (a) generated, transmitted, distributed and supplied or traded for any purpose; or
- (b) used for any purpose except the transmission of a message;

"electricity supply code" means the electricity supply code under the provisions of this Act;

"electricity system" means a system under the control of a generating company or licensee, as the case may be, having one or more —

- (a) generating stations,
- (b) transmission lines, or
- (c) electric lines and sub-stations,

and when used in the context of a State the entire electricity system within the territories;

"electricity trader" means a person who has been granted a license to undertake trading in electricity under section 69 of this Act;

"eligible customer" means and include a customer that is eligible, under the directives issued by the Minister under the Repealed Act and under the declaration

made by the Commission under the provisions of section 12 of this Act, to purchase power from a licensee other than a distribution licensee;

"energy crop" includes a plant —

- (a) that can be directly exploited for its energy content,
- (b) that is grown for the sole purpose of energy production but not for food production, or
- (c) that is grown specifically for its fuel value;

"energy security" means the availability, adequacy, reliability and environmental sustainability of energy supply;

"energy sources" includes coal, wind, oil, gas or wood consumed in the generation of power;

"FEC" means the Federal Executive Council referred to under sections 3 (3) and 4 of this Act;

"feedstock" means a material that can be used to produce bio-fuel;

"franchisee" means a persons authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;

"functions" includes duties, roles, responsibilities and powers;

"generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site, a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

"generation" means the production at a generating station of electric power and other generation products such as reactive power;

"generation license" means a license issued under section 65 of this Act;

"generating station" means a station for generating electricity, including buildings, plant and machinery and all accessories used for that purpose and the site to be used for the station or accessories;

"generator of electricity" means the person that generates electricity from renewable energy sources and supplies it to the general public;

"geothermal energy" means energy extracted from heat stored in the earth;

"grid connection" means the linkage between a renewable energy system and the utility grid;

"grid interactive renewable electricity" means a system which has the capacity to feed electricity from renewable energy source into the utility grid;

"grid" means the high voltage backbone system of inter-connected transmission lines, sub-stations and generating plants;

"grid code" means instructions, rules, procedures, guidelines for the operation and planning of an interconnected power system and accounting requirements relating to it;

"grid standards" means the grid standards issued by the Commission under the provisions of this Act;

"hydro" means a project that has a generating capacity not exceeding 100 megawatts;

"independent power producer" means an entity that is granted a generation license by the Commission or State Electricity Boards under the reform of the Nigerian Electric Power Sector under Repealed Act and include those licensed under this Act;

"IEDNs and IEDNOs" means independent electricity distribution network and independent electricity distribution network operators respectively, recognised under section 63(2)(b) and (7) of this Act;

"IETN and IETNOs" means independent electricity transmission network and independent electricity transmission network operators respectively, recognised under section 63(2)(b) and (7) of this Act;

"inspecting engineer" means a qualified person holding office under NEMSA as specified under Part XVII of this Act, including his deputy and his assistants.

"inspectorate service" means technical services provided by NEMSA in the electricity supply industry to ensure safety of use and reliability of supply and ensuring compliance with technical standards and regulations and includes inspectorate services carried out by the Commission;

"Institute" means the National Power Training Institute of Nigeria established under section 185 (1) of this Act;

"ISO" Independent system operator means a system operator that is licensed by the Commission under Part IV of this Act;

"interim market" means the stage of the Nigerian electricity market between the completion of privatisation and start of pre-transitional and transitional electricity market stages as regulated under the interim market rules and the Grid Code;

"land" means land, tenements, hereditaments and appurtenances, or any estate or interest in it;

"Land Use Act" means the Land Use Act, Cap. L5, LFN 2004;

"landfill gas" means the gas produced in landfills due to the anaerobic digestion by microbes on any organic matter which can be collected and flared off or used to generate electricity in a thermal power plant;

"license" means a license issued by the Commission or State Electricity Board in accordance with the provisions of this Act;

"licensed facility" means a part of or the whole portion of a building, structure, equipment or plant that is licensed for the purpose of activities in the renewable energy industry;

"licensee" includes any person who holds a license or is deemed to hold a license issued under Part VI of this Act or under any other relevant provision of this Act;

"lifeline tariff" means a tariff set by the Commission with prices that incorporate cross subsidies by other customers and which may be enjoyed by such group of consumers as the Commission may designate under this Act;

"local authority" means a local government, municipal council, town council, rural district council or local board;

"line" means any wire, cable, tube, pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

"Managing Director" in relation to NEMSA means the Managing Director of NEMSA under Part XVI of this Act;

"Managing Director" in relation to the Agency means the Managing Director of the Rural Electrification Agency established under Part XVI of this Act;

"medium term market" refers to the market stage between the end of the Transitional electricity market and before declaration long term electricity market by the Commission under section 8 of this Act.

"market power" means the ability of a seller or group of sellers to maintain prices above competitive levels, or maintain stable prices while reducing the quality of product and services provided, for a significant period of time;

"market rules" means rules issued by the Commission under the provisions of this Act;

"mini grid renewable power system" means a network of electricity supply from renewable energy technologies which is not connected to the grid;

"Minister" means the Minister responsible for power and include any other Minister to whom the President may assign administrative functions in respect of this Act;

"national grid" means any electrical power system that transcends the boundaries of one or more states in Nigeria or that is connected to a country outside Nigeria for the purpose of electricity generation, transmission, system operation, distribution, supply and trading;

"NBET Plc" means the Nigerian Electricity Bulk Trading Company Plc to which sections 6 (f) and 7 (2) (d) of this Act applies;

"NEMSA" means the Nigerian Electricity Management Services Agency established under part XVIII of this Act;

"N-HYPPADEC" means the National Hydroelectric Power Producing Areas Development Commission established under section 82 of this Act;

"non-depleting resources" means resources that replenish themselves or reproduce easily;

"ocean energy" means energy created by the power of ocean currents, waves and tides with the use of technology;

"off grid renewable power system" means electricity supply from renewable energy technologies which is not connected to the grid;

"open access" means the non-discriminatory provision for use of transmission lines or distribution system or associated facilities with such lines or system by any

licensee or consumer or a person engaged in generation in accordance with the regulations specified the Commission or in a license;

"other agencies" means NEMSA, N-HYPPADEC and NAPTIN established under this Act;

"overhead lines" means electric line which is placed above the ground and in the open air but does not include live rails of a traction system;

"person" includes an individual, company, partnership or any other association of individuals, whether incorporated or not;

"Power Consumer Assistance Fund" means the Power Fund established under section 97 of this Act;

"power purchase agreement" means an agreement that sets out the rights and liabilities between the generator of electricity and the distribution utility;

"power station" means an assembly of plant or equipment for the creation or generation of electricity of electrical energy.

"power system" means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following —

- (a) generating stations;
- (b) transmission or main transmission lines;
- (c) sub-stations;
- (d) tie -lines;
- (e) load dispatch activities;
- (f) main or distribution mains;
- (g) electric supply lines;
- (h) overhead lines;
- (i) service lines; and
- (j) works.

"pre-transitional market" refers to the stage of the Nigerian electricity market between the end of the interim market and before the declaration of a transitional

electricity market by the Minister as regulated under the pre-transitional market rules and the grid code;

"production-based subsidy" means financial assistance given for the generation of electricity;

"public utility" means an institution which provides a basic service to the public, including water, electricity, transportation, or telecommunications;

"REF" means the Rural Electrification Fund established under section 142 of this Act;

"regulations" means regulations made by the Commission under the provisions of this Act;

"relative" means spouse, child, parent, brother, sister, uncle, aunt, in-laws, cousins, and, where applicable, their spouses;

"relevant government authorities and other stakeholders" means those government authorities and stakeholders referred to under section 3 (1) of this Act

"renewable energy certificates" means a tradable environmental commodity that represents proof that electricity was generated from an acceptable source and which can be sold, traded or bartered by the owner of the certificate claiming to have purchased renewable energy;

"renewable energy companies" means a company licensed by the Commission to generate electricity from renewable energy sources and include a company issued a permit for mini-grid or to deal in renewable energy products and services by whatever description;

"renewable energy product" means goods and service produced from renewable energy;

"renewable energy resources" means natural resources such as sunlight, wind, rain, tides and geothermal heat, which are renewable and naturally replenished;

"renewable energy sources" means renewable non-fossil energy sources like wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas;

"renewable energy system" means equipment that transforms renewable energy sources into electrical or heat energy;

"REREF" means the Rural Electrification and Renewable Energy Fund established under section 142 of this Act;

"RESIP" means the Rural Electrification Strategy and Implementation Plan to be prepared under section 151 of this Act;

"Repealed Act" means the Electric Power Sector Reform Act, No. 6, 2005 and includes Acts repealed under section 232 of this Act;

"rules" means market rules approved by the Commission and include other rules made under the provisions of this Act;

"sewage gas" means biogas produced by the digestion and incineration of sewage sludge which can be used to generate energy;

"solid waste" includes waste that arises from domestic activity and is predominantly household and commercial waste collected by a municipality within a given area in a solid or semi-solid form but excludes industrial hazardous waste and toxic waste;

"Schedules" means the Schedules to this Act;

"TCN" means the Transmission Company of Nigeria Plc, the transmission licensee to which Part IV of this Act applies;

"security" means shares, debentures, bonds and other securities of a company recognised under the Companies and Allied Matters Act, Act, No. 3, 2020;

"service-line" means any electric supply-line through which electricity is, or is intended to be, supplied —

(a) to a single consumer either from a distributing main or immediately from the distribution licensee's premises; or

(b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

"six geo-political zones" for the time being means —

(a) North Central (consisting of Benue State, Nassarawa State, Niger State, Kogi State, Plateau State, Kwara State, Federal Capital Territory);

(b) North East (consisting of Bauchi State, Borno State, Gombe State, Yobe State, Adamawa State and Taraba State);

(c) North West (consisting of Kano state, Kaduna State, Katsina State, Jigawa State, Kebbi State, Sokoto State, Zamfara State);

(d) South-South (consisting of Delta State, Edo State, Rivers State, Akwa-Ibom State, Cross River State, Bayelsa State);

(e) South East (consisting of Anambra State, Abia State, Enugu State, Ebonyi State, Imo State); and

(f) South West (consisting of Lagos State, Oyo State, Ogun State, Osun State, Ondo State, Ekiti State);

"Stamp Duties Act" means the Stamp Duties Act, Cap. S8, Laws of the Federation of Nigeria 2004;

"State Electricity Board" means any body enacted by a Law of the House of Assembly of a State to be responsible for electricity matters within that State.

"street" means any street, highway, or road, or any part of a street, highway or road, and includes —

(a) any bridge, ferry or pontoon over which such street, highway or road passes;

(b) any drift in the line of such street, highway or road;

(c) any approach, culvert, cutting, dam, ditch, drain, embankment, fence, grid, guard, kerb, parapet, subway or other work or thing belonging to or connected with or forming part of such street, highway or road; and

(d) any sanitary lane or private street;

"sub-station" means a station for transforming or converting electricity for the transmission or distribution and includes transformers converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site;

"successor companies" means the 18 companies listed in Part I of the First Schedule to this Act which were created following the restructuring of the Authority under the Repealed Act;

"supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

"supply license" means license granted under section 69 of this Act;

"system operation" means the operation of one or more transmission systems and "system operator" shall be construed accordingly;

"system operation license" means a license granted under section 67 of this Act;

"tariff" means a tariff approved by the Commission under the provisions of this Act that specifies the prices, terms and conditions under which electricity service is to be provided;

"technical support services in relation to NEMSA established under Part XIX of this Act" means specialised technical services provided in the NESI by the NEMSA;

"technical support service" means specialised technical services provided in the Nigerian electricity supply industry by the Agency specified in Part XVI of this Act.

"trading" means any form of marketing, brokering or intermediation in the sale of electricity, whether or not it entails the purchase of electricity for resale, or whether or not title is taken to the electricity sold;

"trading license" means a license issued under section 69 of this Act;

"transmission" means the conveyance of electric power and energy over a transmission system;

"transmission licensee" means a person licensed to transmit electricity under the provisions of this Act;

"transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

"transmission system" means a system, as defined by the Commission, consisting wholly or mainly of high voltage (greater than or equal to 132kV) electric lines for the conveyance of electricity within an undertaking or from one undertaking to another, including any transmission lines, transformers, switchgear and other works necessary for and used in connection with such electrical equipment, and the buildings as may be required to accommodate the transformers, switchgear and other works;

"transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part of it as may be required to accommodate such transformers, switch-gear and other works;

"transitional electricity market" means to the stage of the Nigerian electricity market commenced between the end of the pre-transitional electricity and before the declaration of the medium term electricity market, and for the purpose of this Act;

"TSP" means transmission service provider recognised under section 15 (2) (b) of this Act.

"undertaking" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached to it belonging to any person acting as a generating company or licensee under the provisions of this Act;

"wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under the provisions of this Act; and

"works" includes electric line, and any building, plant, machinery, apparatus, and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a license or sanction granted under this Act or any other law for the time being in effect.

233. This Act may be cited as the Electricity Act, 2023.

Citation

SCHEDULES

First Schedule

Sections 6(b), (c) and 232

PART I

SUCCESSOR COMPANIES

A. Transmission

1. Transmission Company of Nigeria

B. Generation

2. Egbin Power Plc
3. Afam Power Plc
4. Kainji Hydro Electric Plc
5. Shiroro Hydro Electric Plc
6. Ughelli Power Plc
7. Sapele Power Plc

C. Distribution

8. Kano Electricity Distribution Company
9. Yola Electricity Distribution Company
10. Enugu Electricity Distribution Company Plc
11. Abuja Electricity Distribution Company Plc
12. Ibadan Electricity Distribution Company Plc
13. Jos Electricity Distribution Company Plc
14. Eko Electricity Distribution Company Plc
15. Ikeja Electricity Distribution Company Plc
16. Port Harcourt Electricity Distribution Company Plc
17. Benin Electricity Distribution Company Plc
18. Kaduna Electricity Distribution Company Plc

PART II

NIPP POWER GENERATING PLANTS

1. Calabar Power Station, Cross River State
2. Ihovbor Power Station, Edo State
3. Egbema Power Station, Imo State
4. Eyaen Power Station, Edo State
5. Gbarain Power Station, Bayelsa State
6. Ikot - Abasi Power Station, Akwa -Ibom State
7. Sapele Power Station, Delta State
8. Omoku Power Station, Rivers State
9. Ibom Power Station, Akwa-Ibom State

10. Papalanto Power Station, Ogun State
11. Omotosho Power Station, Ondo State
12. Geregu Power Station, Kogi State
13. Alaoji Power Station, Abia State

PART III

LICENSED INDEPENDENT POWER PRODUCERS

1. Farm Electric Supply Ltd
2. Ethiopie Energy Ltd
3. ICS Power Ltd
4. Supertek Nigeria Ltd
5. Mabon Ltd
6. Geometric Power Ltd
7. Westcom Technologies & Energy Services Ltd
8. Anita Energy Ltd
9. Bresson Nigeria Ltd
10. First Independent Power Co. Ltd, Magboro, Ogun State.
11. First Independent Power Co. Ltd, Omoku, Rivers State
12. First Independent Power Co. Ltd, Trans-Amadi, Rivers State.
13. Ibafo Power Station Ltd
14. Hudson Power Station Ltd
15. Shell & Petroleum Devt. Ltd
16. Agbara Shoreline Power Ltd
17. Index Thermal
18. Nigerian Agip Oil Co. Ltd
19. Nigerian Electricity Supply Corporation (Nig.) Ltd
20. AES Nigeria Barge Limited
21. Energy Company of Nigeria (NEGRIS)
22. Minaj Holdings Ltd
23. Ibom Power Ltd
24. Notore Services Ltd
25. Ewekoro Power Ltd off – grid
26. Ikorodu Industrial Power Ltd off – grid
27. Westcom Technologies & Energy Services Ltd off – grid
28. CET Power Projects Ltd, Tinapa, Cross River State off – grid
29. CET Power Projects Ltd, Iganmu, Lagos State, off – grid
30. Tower Power Utility Ltd, off – grid
31. Ikorodu Industrial Power Ltd, Distribution
32. Aba Power Ltd – Distribution.

Second Schedule

Section 2(1)

ACTS REPEALED

1. Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act, No.7, 2010.
2. Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act, 2010.
3. Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act, 2010.
4. The Nigerian Electricity Management Services Agency (Establishment, Etc.) Act, No. 6, 2015.
5. Electric Power Sector Reform Act, No. 6, 2005.

SUPPLEMENTARY PROVISIONS RELATING TO THE NIGERIAN ELECTRICITY
MANAGEMENT SERVICES AGENCY BOARD UNDER PART XVII

Procedure of the Board

1. Subject to the Act and Section 27 of the Interpretation Act, Cap. 123, Laws of the Federation of Nigeria, 2004, the Board may make standing orders regulating its proceedings or those of any of its committees and every meeting shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting the members present at the meeting shall elect one of the members to preside at the meeting.
2. The quorum of the Board shall be the Chairman or the person presiding at the meeting and six other members of the Board.
3. On any special occasion, the Board may co-opt any person to be a member for as many meetings as may be necessary, and that person so co-opted shall have all the rights and privileges of a member, except that he shall not be entitled vote or count towards a quorum.
4. Subject to its standing orders, the Board may appoint such number of standing and ad-hoc committee, as it deems fit, to consider and report on any matter with which the Agency is not concerned.
5. Every Committee appointed under the provisions of subparagraph (4) shall be presided over by a member of the Board and shall be made up of such number of persons, not necessarily members of the Board, as the Board may determine in each case.
6. The decision of the committee shall be of no effect until it is confirmed by the Board.

SUPPLEMENTARY PROVISIONS RELATING TO THE COUNCIL

1. (1) The Council may appoint one or more committees to which it may delegate any of its functions.
- (2) No decision of a Council shall have effect unless confirmed by the Council.

Meetings of Council

2. (1) The Council shall meet for the conduct of business at such times and places as the Chairman may appoint but shall not meet less than twice in a year.
- (2) The Chairman may at any time, and shall at the request in writing of not less than seven members of the Council, summon a meeting.
- (3) Particulars of the business to be transacted at any meeting shall be circulated by the Secretary to the Council to members with the notice of meeting.

Power to co-opt members

3. (1) Where the Council desires to obtain the advice of any person on a particular matter it may co-opt such person as a member for a meeting whether or not expressly convened for the purpose of considering the particular matter.
- (2) Such member shall not be entitled to vote nor shall he count towards quorum.

Questions how decided

4. (1) Every question put before the Council at a meeting shall be decided by the majority of the votes of the members present and voting.
- (2) Seven members shall form a quorum at any meeting of the Council.
- (3) The Chairman shall, at any meeting have a vote and, in the case of any equality of votes, may exercise a casting vote.

Standing orders

5. Subjects to paragraph 4, the Council shall make standing orders with respect to the holding of meetings, the nature of notices to be given, the proceedings there at, the keeping of minutes of such proceedings and the custody and production for inspection of such minutes.

Absence of the Chairman

6. If the Chairman is absent from a meeting of the Council, the members present shall elect one of their members to act as Chairman for the purpose of the meeting and the decision reached by two-third of member's present shall be binding.

Contracts and instruments

7. (1) A contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may in like manner be entered into or be executed on behalf of the Council by any person generally or specifically authorised by it for that purpose.
- (2) Any member of the Council or of a committee thereof, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Council or a committee thereof, shall forthwith disclose his interest to the Council and shall not vote on any question relating to such contract or arrangement.

Seal of the Institute

8. (1) The common seal of the Institute shall not be used or affixed to any document except under a resolution duly passed at a properly constituted meeting of the Council and recorded in the minutes of such meeting.
- (2) The affixing of the seal of the Institute shall be authenticated by the signature of the Director General or some other persons authorised generally or specifically by the Director General to act for that purpose.
- (3) Any document purporting to be a document duly executed under the seal of the Institute, shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

SUPPLEMENTARY PROVISIONS RELATING TO THE COUNCIL

Proceedings of the Council

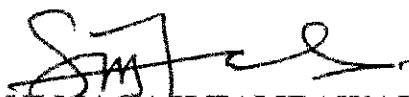
1. (1) Subject to this Act and Section 27 of the Interpretation Act, Cap. I23, Laws of the Federation of Nigeria, 2004, the Council may make standing orders regulating its proceedings or those of any of its committees.
- (2) The quorum of the Council shall be the Chairman or the person presiding at the meeting and four other members of the Council, and the quorum of any committee or the Commissions shall be as determined by the Council.
- (3) The Council shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so by notice given to him by less than four other members, he shall summon a meeting of the Council to be held within 14 days from the date on which the notice is given.
- (4) At any meeting of the Council, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at the meeting.
- (5) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him or such period as it deems fit but a person who is in attendance by virtue of this subparagraph shall not be entitled to vote at the meeting or the Council and shall not count towards a quorum.
- (6) The validity or any proceeding of the Council or of a committee shall not be adversely affected by —
 - (a) a vacancy in the membership of the Council or committee;
 - (b) a defect in the appointment of a member of the Council or committee; or
 - (c) reason that a person not entitled to do so took part in the proceedings of the Council or committee.

Committees

- (7) The Council may appoint one or more committees to carry out, on behalf of the Council, such functions as the Council may determine.

- (8) A committee appointed under this paragraph shall consist of the number of persons as may be determined by the Council and a person shall hold office on the committee in accordance with terms of his appointment.
- (9) A decision of a committee of the Council shall be of no effect until it is confirmed by the Council.

I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA, 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.



SANJ MAGAJI TAMBAWAL, fcna
CLERK TO THE NATIONAL ASSEMBLY

 DAY OF June, 2023

SCHEDULE TO THE ELECTRICITY BILL, 2023

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Electricity Bill, 2023	An Act to repeal the Electric Power Sector Reform Act, No. 6, 2005 and enact the Electricity Act, 2023 to consolidate the laws relating to the Nigerian electricity supply industry, provide a comprehensive legal and institutional framework for the power sector in Nigeria in the areas of electricity generation, transmission, system operation, distribution, supply, trading, enforcement of consumer rights and obligations, provide for a holistic integrated resource plan and policy that recognises all sources for the generation, transmission and distribution of electricity, including the integration of renewable energy to Nigeria's energy mix and attract investments; and for related matters.	This Bill repeal the Electric Power Sector Reform Act, No. 6, 2005 and enact the Electricity Act, 2023 to consolidate the laws relating to the Nigerian electricity supply industry, provide a comprehensive legal and institutional framework for the power sector in Nigeria in the areas of electricity generation, transmission, system operation, distribution, supply, trading, enforcement of consumer rights and obligations, provide for a holistic integrated resource plan and policy that recognises all sources for the generation, transmission and distribution of electricity, including the integration of renewable energy to Nigeria's energy mix and attract investments	10th May, 2023	23rd May, 2023

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.


SANI MAGAJI TAMBAWAL, fca
 Clerk to the National Assembly

Stc
 ... Day of *June*, 20*23*



BOLA AHMED TINUBU, GCFR
 President of the Federal Republic of Nigeria

Stc
 ... Day of *June*, 20*23*

I ASSENT.

