



**“CHALLENGES OF TRANSPARENCY: RELATIONSHIP BETWEEN REGULATORS AND  
STAKEHOLDERS”**

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**Exposition**

This is a paper on the challenges of transparency in the regulatory sector as it relates to the relationship between regulators and stakeholders. From my practical experiences, it is my position that the level of transparency which is required in the regulatory process needs to exhibit certain features to meet the standard required for a utility command sectoral market confidence. The features required for transparency include clarity of the regulatory roles, responsibility and objectives, predictability of decisions, accountability, stakeholder participation in some aspects of the regulatory process, an open non-strategic access to

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information through documents placed in the public domain. There must be, embedded within the regulatory framework, a mechanism for ensuring transparency. In this paper I examine the practical challenges which confront regulators in Africa’s infrastructure sector and will focus specifically on the energy sector. While many bureaucrats by default deem transparency as counterintuitive, it is an essential requirement in a regulatory agency’s decision making process. It necessitates the formulation and adoption of clear, simple procedural rules for deadlines and decisions, detailed justifications and non-political reviews of decisions, processes that ensure that all concerned parties have an opportunity of expressing themselves in public hearings and avenues for appeal, and even the removal of the regulator in cases of proven gross misconduct.<sup>2</sup>

This paper argues that the ideal situation in terms of good governance, openness and transparency for any regulatory sector is one where communication and good dialogue between the regulators of the infrastructure sector and the investors in that sector ensures that positive relationships are developed. These positive relationships in turn influence attitudes and behaviours within the wider sectoral community which translates into overall efficiency.

### **So who are the stakeholders?**

These are persons that influence or are influenced by the regulatory body’s actions. They can include anything from the end users of electricity, the

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<sup>2</sup> The World Bank Group, Public policy for the private sector. Note No. 114: *Designing Regulatory Institutions for Infrastructure - Lessons from Argentina*(May1997)

government, investors in the electricity and energy sector, governmental donors, financial institutions who provide financial backing to various organisations within the sector and the general public who are affected both directly and indirectly by the actions taken by the regulatory body.

The stakeholders must be privy to the ins and outs of the regulatory body. The regulator on his part therefore needs to ensure that it puts in place various mechanisms that keep stakeholders aware of various issues that affect them and how to address those issues.

The utility regulator such as the Nigerian Electricity Regulatory Commission is mandated with the core tripartite task of;

- Protecting consumers from abuse by firms with substantial market power,
- Supporting investment by protecting investors from arbitrary action by government and,
- Promotion of economic efficiency.

It is therefore pertinent that the regulator adopt certain principles such as transparency being discussed here, in order to ensure that its credibility before the key stakeholders, which is sacrosanct, is enforced.<sup>3</sup>

### **What constitutes transparency within the ambit of the regulatory sector?**

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<sup>3</sup> The World Bank Group, Public Policy for the Private Sector. Note No. 127: *Utility Regulators- The Independence Debate (October 1997)*

Transparency constitutes openness of all facets of regulatory process. It features clarity of regulatory roles, responsibilities and objectives, predictability of decisions, accountability, stakeholder participation and open access to (non-strategic) information through documents placed in the public domain. Such openness increases the legitimacy of regulatory agencies and the public acceptance of decisions. Transparency is key in the African setting today as many African countries seek to establish themselves as attractive setting for investment.

Tied to the issue of transparency of the regulator is the need to ensure that the body is independent of the government given that some governments and especially within the African setting are reluctant to surrender political control over regulatory decisions. Independence enables the regulators perform its critical role of regulatory discretion as it caters to the needs of varying stakeholders. The regulator needs to be placed in a situation where the government of the day makes a credible commitment to the rules that ensure stakeholders the opportunity to earn reasonable returns and level playing field in the running of their businesses. Any weakness in the credibility of the regulator results in a reduction in trust by stakeholders as they will likely view the regulator as not transparent, not independent, and incapable of applying purely economic induced decisions.

### **The importance of stakeholder confidence**

In order to ensure legitimacy of the actions of the regulatory body, an effective channel of communication between the regulator and stakeholders is important. Everyone has a role to play in the sector and awareness by the stakeholders ensures that each group plays its part in an informed manner.

It is important to ensure that the transparency strategy employed by the regulatory agency is tailored to suit the target audience. Communication is only effective if the information is received and understood by those it is intended.

For example, the language used in communicating information to energy consumers should be clear, concise, and non-sensational. Information on contacts and follow-up should be given and clearly defined. For industry stakeholders, transparency entails creation of avenues for pre-publication discussions, dialogue and information sharing prior to the taking of certain actions. And then for the media, transparency requires the regulator to use the media effectively as a tool for dissemination of information. This is essential for any regulatory body that deals with issues that are of social or political interest, especially in a sector as sensitive as the energy sector. Use of media, ensures that the other stakeholders receive information relevant to them in a format that is most accessible to them. An effective communications strategy is one of the fundamental keys to developing any regulatory agency to a level where its stakeholders are assured of its transparency.

It is important to create and maintain transparency by the regulatory body due to the key function of the regulator as protector of whatever infrastructure sector it is regulating, in this case, electricity. Stakeholders need to view the regulator as the legitimate, ultimate and authoritative source of qualitative information. For

instance, investors in the sector need to view the regulator as a body that is able to ensure market transparency, professional ethics and overall good governance in its performance of its role as the protector.

As the regulatory body that is responsible for licensing and standards monitoring in the power sector, the body needs to be actively involved in the dissemination of information regarding the sector as this goes a long way to developing and maintaining trust in the regulator as a source of updated and quality information.

Regulations aimed at improved transparency between the regulator and industry stakeholders serve as key step in the process of gaining the confidence of stakeholders. Such regulations should aim to embrace all types of stakeholders and address their legitimate and reasonable interests accordingly.

Whether the information being shared is pertinent to the stakeholder’s immediate environment and therefore requires a response from them or it is merely for information purposes, transparency demands that both kinds be shared.

### **Effect of transparency towards stakeholders**

The reverse also makes transparency key tool. The stakeholders would reach a point where they trust in the legitimacy of the regulator to the extent that they are also providing the regulator with information that enables it perform its functions effectively and also respond to trends in use and changes to the ways stakeholders make use of services being provided. Receipt of quality information from stakeholders therefore becomes an important benefit of good transparency.

The regulator’s role therefore becomes established as a source of qualitative information and protector of stakeholder interests.

Transparency by the regulatory agency should not react to whatever information being disseminated through different mediums but should be proactive in its process of ensuring transparency. This can be through developing and maintaining a communications strategy that is implemented effectively over time, reviewed and revised to ensure that the goals which are set are achieved.

Improved stakeholder consultation ensures that the regulatory agency is aware of and meeting the needs of stakeholders are anticipated and dealt with effectively.

Offering the stakeholders an opportunity to become aware of the regulator’s policies and providing an avenue for asking questions and making enquiries.

Mediums that enable effectiveness in transparency measures can include press releases, media briefings, press conferences and interviews; newsletters, annual reports, letters and emails to stakeholders, interactive web based information, meetings and shared information within the organization.

Communication methods should be strategically linked to the target audience and it is therefore essential to ensure that the method chosen recognizes the differences between stakeholders and the way in which they receive or access information. The mode selected should facilitate two-way communication.

Transparency also dictates that whatever information is being communicated to the stakeholders is done in a timely manner and is not reacting to complaints from stakeholders or publications by press who may be seeking to sensationalize or manipulate the true nature of certain facts or events. Messages need to be

consistent for all stakeholders regardless of the method in which it is communicated or the language that is employed.

### **Challenges confronting the African sector infrastructure regulators**

Challenges to effective communication can include failure to disseminate information in a timely manner; receipt of mixed messages by stakeholders which is also associated with information being provided in reaction to messages that may have been shared by other inaccurate sources.

Anything that prohibits the dissemination of information in a consistent, understandable and timely manner amounts to a challenge to transparency between the regulator and stakeholders.

Intensive efforts should be made to avoid certain pitfalls that hinder transparency including poor or inappropriate language for the target audience, lack of a planned timeline, legal issues or obstacles, confidentiality agreements, reluctance to share information, inability to obtain the necessary information, poor or incomplete data and a lack of empathy or understanding of the stakeholder’s perspective.

Communication should be clear, concise and according to a clearly defined action plan, allowing for constructive feedback and an open channel of communication between the regulator and stakeholders.



In making decisions that affect stakeholders, the wider environment must also be considered and factored into that process<sup>4</sup>. It is important to note that the regulated sector is not necessarily the key stakeholder who should be the main focus of any strategies to ensure transparency.

The regulator needs to establish its role and communicate that role to the stakeholders and those that are being regulated in order to ensure that a relationship where trust and communication flows freely is established. Being open and transparent enables the regulated sector and other stakeholders develop processes within themselves that enhance their interaction with the compliance agency.

Certain factors that will enhance transparency of the regulator can include timeliness of communication, technical competence, courtesy and respect towards stakeholders.

Transparency also demands that the processes, procedures and methods employed by the regulatory be made known to the stakeholders in as much as it is possible to do so without compromising the functions of the regulator or its internal processes. Those internal processes in turn should also be made known to the employees of the regulator who are also stakeholders in the quest for efficient and effective performance of duties. A balance must also be struck between the need to comply with set out procedures and processes within the

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<sup>4</sup> *Managing relationships with stakeholders and the regulated sector- chapter 11; Administering regulation: Best practice guide*, Australian National Audit Office, 2007

regulator, for example as it concerns granting of licences, and the need for the regulator to carry out its functions in a timely manner.

In order to ensure that the regulator is also carrying out its mandated duties effectively and efficiently, there is need to ensure that the stakeholders know what to expect from the regulator in different situations. By explaining to the regulated sector and other stakeholders how the regulator is likely to respond in different categories of cases and the factors it will likely take into account in deciding on a response, a regulator can build a more open and communicative relationship with the sector. The stakeholders develop a relationship with the stakeholder where they feel that they are able to interact more freely and effectively with the regulator if they are aware that the regulator’s resources will frequently be focused on facilitating compliance with its rules, regulations and procedures to ensure that they are meeting their mandate effectively.

Any uncertainty or murkiness as to stakeholder understanding of the regulator’s business hinders progress, investment, compliance with procedures, rules and regulations. In essence, a lack of transparency hinders any chance of effectiveness by the regulator.

### **Towards good transparency and openness**

In establishing procedure which enhances transparency by the regulator, it is essential to keep in mind that the regulated sector/stakeholders are not often a homogeneous group. Therefore a one size fits all strategy will not suffice. The regulator needs to ensure that it has an in depth knowledge of their different

attributes such as their cultural diversity and tailor their messages and communication accordingly<sup>5</sup>.

A transparent relationship with the regulated sector will enable the regulator to more effectively influence the attitudes and behaviour of those that are being regulated. The regulator moves beyond mere surface compliance and simply doing the necessary minimum to a place of recognition of established expertise and trust in its capabilities and good governance.

Where the stakeholders feel they have a voice and can input in the risk management of the regulated sector, the regulator moves on to quicker and more cost effective compliance.

By defining the roles, obligations and commitments of the regulator clearly and in a manner that is understandable to stakeholders, the regulator defines the terms and conditions of the relationship. The regulator then also becomes more transparent and provides a forum for the stakeholders to be accountable as well as hold the regulator responsible<sup>6</sup>.

For example the Department of Inland Revenue in New Zealand published a statement of its obligations to taxpayers in that country. The charter covered details of the department’s aim in terms of serving tax payers, provision of reliable advice and information, confidentiality, consistency and equity in service

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<sup>5</sup> *Managing relationships with stakeholders and the regulated sector- chapter 11; Administering regulation: Best practice guide*, Australian National Audit Office, 2007

<sup>6</sup> *Managing relationships with stakeholders and the regulated sector- chapter 11; Administering regulation: Best practice guide*, Australian National Audit Office, 2007

and the rights of stakeholders to make enquiries<sup>7</sup>. It also stated that the stakeholders equally have an obligation to provide relevant information when dealing with the Department to ensure that quality service is provided.

Mechanisms that are appropriate for ensuring transparency and communication to and with stakeholders should include both traditional and non-traditional methods of communication such as seminars, presentations, town hall meetings, clinics, workshops and outreach events. Care should be taken to ensure that those that do not have the access or ability to receive information through traditional methods still gain the information that is being communicated. Use of email and internet should be embraced in this new age of technological advancement. The regulator should maintain a website that is updated frequently with all the information that has been referred to above and provide a well-monitored ‘contact us’ feature with appropriate addresses and phone numbers.

Consistent consultation with stakeholders also creates a forum for those stakeholders to openly exchange information and opinion which is relevant to the regulator and it also acts as another avenue for creating transparency by the regulator.

There should also be transparency for stakeholders in the complaints handling process. Such a credible and transparent process should include certain features such as access by stakeholders to the details of the complaints handling mechanism, confidentiality of the complaints and supporting evidence, timeliness and commitment to set timelines that should have been set for the process of

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<sup>7</sup> *Managing relationships with stakeholders and the regulated sector- chapter 1.31; Administering regulation: Best practice guide*, Australian National Audit Office, 2007

addressing complaints, prioritization of complaints as they are received, notification of the stakeholders of the findings of the regulator following the complaints and the actions that the regulator intends to take, and finally the regulator should aim at incorporating any lessons learned from the complaint’s process into its processes and practices<sup>8</sup>.

Transparency of the regulator also demands that it equips itself with the financial, human and infrastructural capacity to ensure that it is able to meet the demands that will be placed on it by stakeholders. This ensures that the regulator is able to maintain an arm’s length relationship with regulated firms, consumers, other private interests and most importantly political authorities. Such independence elevates the level of trust that is placed in the regulator by key stakeholders.<sup>9</sup>

## **Conclusion**

The biggest challenge facing any utility regulator is that of establishing its legitimacy and trustworthiness before its stakeholders. This requires robust procedural mechanisms which ensure that processes are put in place for accountability purposes. Maintaining transparency towards stakeholders must be part of the daily routine of the regulator. To this end, it is imperative that the regulator keeps itself knowledgeable about the opinions, expectations and opinions of the stakeholder.

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<sup>8</sup> *Managing relationships with stakeholders and the regulated sector- chapter 11; Administering regulation: Best practice guide*, Australian National Audit Office, 2007

<sup>9</sup> The World Bank Group, Public policy for the private sector. Note No. 127: *Utility Regulators- The Independence debate* (October 1997)

Utility regulators must become competent in the process of developing strategies that support effective communication with internal and external stakeholders in its utility sector. The benefits to all within the regulated sector cannot be overstated. Whilst recognizing the challenges that are faced by any regulator particularly in the infancy stage of the organization, there must be a commitment to the development of such strategy for the benefit of all.

Thank you.

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