

# **NEMSA ACT, REGULATORY CERTAINTY AND PRESIDENT BUHARI**

**By Faloseyi Michael**

Arguably the discussion on electricity supply generates so much passion among Nigerians more than any other socio-economic issue in Nigeria today. Nigerians are enthusiastic about doing everything, anything to get us out of the woods. It is in this context that whatever recommendation or suggestion any one has as the solution to the problem will at all times appeal to us.

Challenges posed by the acute shortage of electricity supply, viewed from whatever perspective has assumed the dimensions of a dinosaur or the proverbial elephant whose death invites different types of knives. It is a multi-dimensional challenge. There is enough to contend with from whatever perspective it is dissected from. From the supply end, we have an acute shortage of generation capacity required for our teeming population and economic projections. Besides this, the limited installed capacity cannot be delivered owing to bottlenecks in the gas supply to the thermal power plants due to perennial pipeline vandalism. At the mid stream or transmission level, there is paucity of funds to expand the network on a consistent basis, vandalism of equipment as well as weak integrity of the existing transmission lines. At the downstream or the distribution network, the scenario is no different, if not much more complicated, with inadequate supply, weak distribution network, wide metering gap which has occasioned pervasive over billings, poor customer care culture among staff of electricity distribution companies. This was the scenario prior to conclusion of the sector privatisation in 2013. This unfortunate picture was further compounded with corruption at every stage of the value chain and the Federal Government's inability to fund further expansion projects in the power sector.

Privatisation was, therefore, adopted by the Federal Government in 2005 as the way out of the quagmire with the enactment of the Electric Power Sector Reform (EPSR) Act in March of that year. Successive administrations have since then demonstrated different levels of commitment in the policy implementation from conception to eventual transfer of ownership on November 1, 2013 by immediate past administration. The enabling law- EPSR Act 2005 established the Nigerian Electricity Regulatory Commission (NERC) as an independent umpire of this process. Section 32 of the Act assigned the Commission responsibilities over key aspects of technical and economic regulation. This entails tariff regulation, approval of capacity expansion and business plans, oversight among others. In essence, the Commission was established as a value chain regulator of the electricity industry.

Unfortunately, the Act which established the Commission is yet to be reviewed yet these responsibilities are being assigned another agency of the Federal Government by the name Nigeria Electricity Management Services Authority (NEMSA). The organisation

existed as a limited liability company of the government. It charges the industry operators for services rendered which include meter and equipment testing. Nigeria Electricity Management Services Limited in its pre-designed format can adequately carry out its responsibilities for the sector as a licensed limited liability company. The questions being raised by the unfortunate and ill-thought NEMSA Act that was passed 'Nicodemusly', on the eve of President Goodluck Jonathan's departure, is how many more limited liability companies within the sector will mutate into statutory bodies with their own Act?

Needless to say that Nigerians are yet to see the much needed gain of this reform in terms of uninterrupted power supply. One undeniable fact, however, is that the privatisation of the electricity sector in Nigeria has been executed in a manner that draws applause from other countries of the world. South Africa recently said it was adopting the Nigerian model to privatise its electricity sector. With this effort, investors' confidences have been created in the system, especially by the transparent and quality leadership being provided by the sector regulator. New business horizons are beginning to open up, while expansion of capacities at every stage of the value chain of electricity production is also going on. What is required at this stage is the discipline to stay on course. This, however, may not likely be with the ominous development.

While we are yet to recover from the euphoria of being able to pull through the privatisation of the power sector with the transfer of ownership in 2013, we seem to have taken an action that is inimical to a process that was worldly acclaimed as successful. Ironically, the process that could be held out as a testimonial for former President Goodluck Jonathan was reverted just at the twilight of the same administration. A portentous implication of the NEMSA Act is that it is a reversal of whatever commendation that administration received over his handling of the privatisation of the power sector.

NEMSA Act, for whatever it stands for, is a duplication of the role for which NERC was created to perform. Implementation of the Act will create uncertainty in the emerging electricity market. Investors who are gradually warming up to enter our market will no longer see reasons to invest their money here. Whatever gains we have made or hoping to make will be either stagnated or reversed.

For those who may not know, the role assigned NEMSA in the new Act entails enforcement of technical standards and regulations, technical inspections, testing and certification of all categories of electrical installations, electrical meters and instruments etc, to ensure the efficient production and delivery of safe, reliable and sustainable electricity power supply.

Interestingly, promoters of the NEMSA Act are some of the best hands the President Jonathan could parade as reliable advisers and bureaucrats. They worked hands in glove with politicians in the National Assembly, who hardly do anything but for the personal

benefit of it. The ultimate aim of the Act is to create two regulatory agencies for the power sector. They argue that NEMSA should handle technical regulation, while NERC handles economic regulation.

Truth be told, there are few examples of countries with two regulators in a sector and there is nothing sacrosanct about what we have in place now that it cannot be changed or improved upon. However, having two regulators for the power sector cannot be an improvement on what we have presently. Besides, the enabling act for the sector reform was enacted in 2005. But for all practical purposes, the law has only been put to test for barely one and half years ago with the transfer of ownership of the utilities to new owners in November 2013. Why, therefore, are we in a haste to make changes? Existence of two regulatory agencies besides creating confusion in the system, especially when EPSR Act 2005 that created NERC has not been reviewed is at a cost on the consumers of electricity. Ghana as an example of countries with two regulators has no good story to tell on the ground tuff protection and fight for space. I don't think that is what Nigerians are asking for. Nigerians want electricity like yesterday, not creation of agencies that end up fighting for space while the job is left undone. This much was made known at the public hearing at the National Assembly by the Bureau of Public Enterprise (BPE), Nigeria Infrastructure Advisory Facility (NIAF) and some other knowledgeable individuals and organisation except the promoters of this bill.

Passage of NEMSA Act by former President Jonathan at the dawn of his administration has two major casualties, the first being the system that would be thrown into confusion or reverse gear. The other casualty was Jonathan's testimonial of advancing the privatisation of the power sector. However, President Muhammadu Buhari has a task to either allow this revolving chair of regulatory uncertainty or not. The challenge is before him. This attempt at proliferation of agencies, for that is what it is, is coming at a time our economy is running on half tank!

**Faloseyi, Michael is Head, Media Unit, NERC**