

Amadi: Pushback by Consumers Will Create a Fair Tariff Regime

Chairman of the Nigerian Electricity Regulatory Commission, Dr. Sam Amadi told Chineme Okafor that the constant pushback on retail electricity tariffs by consumers will create a fair and reasonable tariff regime in the market. He also spoke on other contemporary issues in the power sector. Excerpts:

Could you explain the recent joint electricity tariff review options the Commission is taking up with distribution companies?

You know that a credible tariff structure is the most important component of the regulatory framework of an electricity market. A credible tariff is important to consumers because they want to have assurance that they are paying affordable tariff that are just and reasonable.

For investors, a credible tariff structure gives assurance that the electricity market is stable and able to guarantee cost recovery over a long period of time. For us at NERC, the process through which the tariff is set mostly determines its credibility. NERC has built a regulatory framework since 2008 that has been acknowledged by all knowledgeable stakeholders as one of the most transparent and credible frameworks.

Since 2010 we have improved this model by enhancing our ability to discover the real costs of generating, transmitting and distributing electricity. Our methodology provides protection against exploitation by operators and enhances incentives for more efficiency. Now, what we have added by late 2014 is the requirement of customer consultation. This has further reduced the tendency for operators to seek and get windfall profit.

Because of mandated consultation consumers are challenging the proposal for tariff increase by Discos. This push back is necessary to create a fair and reasonable tariff. This push back ensures that no operator comes to NERC with an incredible tariff. So, we are fulfilling the requirement of law that says that we should hold a fair balance between operators and consumers. So, last week, Discos submitted tariff proposals. We have developed work-plan that requires that before NERC reviews and approves any tariff we must have credible report that the operator has conducted a credible customer consultation.

Furthermore, NERC will present customers another opportunity to contest the tariff proposal from any Discos. This will be the most open and transparent tariff process anywhere in the world. That is the legacy I am leaving behind and it is institutionalised in regulations and guidelines so that tomorrow when my colleagues and I are no longer there, NERC will still remain in the sunlight that we have put it.

So, this defines the tariff review collaboration?

Well, if you call the tariff process a collaboration between NERC and Discos it means that we have given them the discretion to present their costs to customers before coming to the regulator for approval and the regulator will ask difficult questions before approving any tariff.

There is no guarantee here except the guarantee of an open and transparent process that is evidence based. The tariff regime in the Nigerian electricity market is very credible. The rules are clear. The only disagreement we do have is disagreement as to what the operator has proved to be a prudent and efficient cost we should pass to consumers. There is no doubt as to the process and the fundamental benchmarks of the tariff regime.

Power generation seems to have grown from what it was in the last couple of months, there are however various attributable factors to this development; increase in gas supply, more water in the dams and perhaps, upgrade of the transmission system, what regulatory explanation is tenable here?

Yes, power has improved significantly. This is something we should be happy about. But we should not be satisfied and complacent. At NERC, we are not complacent at all. We are operating with guided optimism. Gas supply has improved. So, we now have more gas going to the power plants.

The ‘body language’ of the new administration is therefore working. Let me say something about body language as a student of management and leadership. Change in body language is important in the science of transformation. Leadership is about setting direction, aligning the team and creating a sense of urgency. So, a leader’s primary job is to instigate a new behavior. Leaders do so mostly through communication, including trading in symbolism. So, Mr. President’s intolerance for corruption and laxity, that is, his body language, works well with NERC.

For the past five years, even as the power sector has not worked well, NERC has continued to deliver on its mandate. If others fail to deliver on policy or gas supply, we have by and large delivered on regulatory commitment. So, this new music is good to our ears and is bringing the best in us. So, there is no debate that the president has set, through body language, a new paradigm that has influenced behavior in the electricity market.

We should not begrudge President Buhari’s credit for playing a leadership role that has induced urgency. We now need structural stimulus to sustain this new discipline. I guess that is what the new Minister of Power whenever he is appointed will work together with us to provide.

Happily, NERC has gone further than anyone else in this learning curve. Immediately after the end of the tenure of the last administration I reviewed our performance and wondered why we did not attain daily supply of 6,000MW. I came to the conclusion that the reason is poor project management. We did not finish the NIPP project because of poor project management. Corruption in procurement of contractors is one serious component of poor project management. I took another look at the regulatory framework in NERC and realised that compared with other regulators our output was world class.

How come your ‘world class’ regulatory output has remained quite impalpable?

Of course there are areas we need to do more. We still need to build capacity in doing some high-end work. But many world-class experts have consistently rated NERC as the best in Africa. So, why don't we have 6000MW? I reviewed our regulatory activities and noticed that we have done well in traditional regulation overlooking the fact that Nigeria's case requires more than traditional regulation.

We can't just make regulations and assume that the system will work. We don't need to just provide leadership. We also need to manage the routine, the mundane and ensure that things get done.

I decided that I will become more of a manager and less of a leader. A leader sets out a vision of change and communicates that vision to the community. In our own case it means we set out the nature of the new electricity market and define expected behavior that will lead to a competitive and efficient market. This is leadership. But it is not sufficient. Now we focus on management. We ask why things are not working according to regulation. Instead of providing for load allocation in the MYTO we ask why discos are rejecting loads. So, we hunker down and roll our sleeves and diagnose the problem.

We get everybody in the room and ask plenty useful questions. The answers are always in good questions. We now put these answers in new regulations and guidelines. This is the managerial craft. It is about problem solving. It is what the doyen of the management craft, Peter Drucker, called 'executive presence'. This is why we started the CEO meetings that afford us monthly opportunity to sit together and review what is not working and find solutions.

Now I have set up a task force on stranded power. The team is closely monitoring the network with a sole purpose of ensuring that we don't have stranded power. They bring up issues that need to be addressed to guarantee increase in power supply. With refocusing on problem solving instead of just doing standard regulation as in the textbook we could be solving some of these problems that made it difficult to attain 6000MW. So, President Buhari's leadership is aligning with NERC effective management to produce good results.

Indeed, you recently talked about shifting your regulatory focus to enforcement and penalties of wrong actions in the market, one is tempted to think that nothing has changed especially with the Senate's intrusion in the sector vis-à-vis fixed charge payments, poor metering and tariff increments, have you any words on this?

Let me first clear the issue of the Senate intervention. You know the National Assembly has legislative oversight responsibility over all executive agencies that are created by law. This power means they can ask an agency to brief it on various policies that impact on the livelihood of the people.

Of course, the National Assembly is not an executive agency so it cannot take over regulatory responsibility but it can always oversee what we are doing. What we did is to proactively respond to the Senate to state that most of what it wants to be done are either done or about to be done. We recognise that there is significant public concern about fixed charge and we tried

to explain it from both legal and business points of view. In short, we said that the fixed charge is legal. It is a legitimate form of charge in utility for recovery of cost.

The only problem is that some consumers who pay fixed charge may not have electricity supply for a long period of time because of the incessant service failure. This is why we are demanding that the distribution companies restructure the fixed charge such that it does not punish non-consumption. But we cannot just remove it without providing for how to secure the revenue requirement of the distribution companies.

I think people need to understand about electricity market. You have a contract with the Discos to guarantee them a revenue requirement to execute their business plan. This commitment is then predicated on certain quality of service delivery. You must provide the revenue requirement if you want them to deliver on the service commitment. Therefore, removing fixed charge or changing its nature would require a process that allows the Discos frame a new system of recovering those costs without the fixed charge. So, it cannot be a matter of administrative faith.

The second aspect of the question is about enforcement. Now this is how the market works. If we guarantee you a revenue requirement we are obligated to exact appropriate service standard. In the past we have argued about cost reflective tariff, about the required technical standards, about the load allocation. We are now able to provide most of these things.

The operators have no excuse not to perform their side of the regulatory bargain. A regulator is not a bull in a china shop. He does not go about with horsewhip looking for whom to trash. He is a market maker and an enabler of better service. The Nigerian electricity market is predicated on incentive regulation that commits us to use incentives to improve performance. So, people who believe that until we break the china we are not doing the work are wrong. The objective is to improve performance. If china has to break to improve performance so be it. But don't go about breaking china.

Now, we have started increasing enforcement action in the market because that is what the times now require. We have established a task team on enforcement to bring coordination to enforcement. The result is obvious. We are controlling estimated billing. Abuja Disco was recently sanctioned after a transparent enforcement process. It has refunded about 32,000 customers the tune of about N50 million. We have issued similar queries to other distribution companies. We are evaluating their responses. The important thing is that every sanction must follow through a transparent process and be effective in addressing the service failure. Our enforcement action should not compound the crisis of the sector or increase regulatory risks.

The Senate has also accused the Commission of failing to remit financial receipts into government coffers, is the Senate justified on such claim?

That is based on a misunderstanding of the actual situation, which we have cleared and the both Chairman and members of the Senate Ad Hoc Committee now knows we are not in any way in default. The point is simple. NERC is not a revenue generating agency of the federal government. No constitutional provisions or law designates NERC as a revenue generating

agency. We don't collect taxes, royalties or forfeitures on behalf of the federal government. We are a regulator of a market who provides services on behalf of customers.

We are paid from tariff just like the Transmission Commission of Nigeria (TCN), the Nigerian Electric Bulk Trading Company (NBET).

All over the world it is the same story. A regulator depends on tariff. A regulatory agency does not make profit. It receives regulatory fees from operators in order to regulate the market. The Electric Power Sector Reform Act, 2005 understands this fact very well and provides that NERC prepares the cost of regulating the sector and recovers it from the market. Where the market cannot provide for capital projects, the commission can request budgetary support of the government. At the end of the year, if we have any surplus it goes to the Rural Electrification Agency (REA).

This is because REA is an agency that is focused on improving electricity access. It ultimately serves the interest of the customers who finance NERC. So, there is not room for misunderstanding NERC as a revenue generating agency. If you look at an electricity bill there is a component for the regulatory work called a regulatory fee. There is a component for government called VAT which is remitted to FIRS, a revenue generating agency. NERC does not collect VAT or tax from consumers of electricity or operators.

Has the Commission got any response to its recent letter to the Chief Judge of the Federal High Courts, pleading for judicial deference for electricity related court cases?

The Chief Judge acknowledged receipt and promised to look into the matter. But this is a nuisance. One of the lawyers who took NERC to court has somersaulted and filed a contempt proceedings against me. Of course, it is laughable and mischievous to accuse a public officer of contempt of court for expressing legal scholarship on a matter of topical legal interest. My letter to the Chief Judge never abused judges.

It simply asked the Chief Judge to devise an administration intervention that could support the power sector reform by discouraging judicial interventions on the behalf of complainants that are ill-advised. Even if my opinions are wrong, expressing a wrong opinion about the law is not a contempt of law except in the minds of some mischievous busybodies.

The great Lord Denning made it clear that a fair comment on the opinion or decision of a judge can never be contemptuous. In my own case I did not mention any judge or case in bad light. I only argued for judicial deference to fair and legal regulatory decision as it is done all over the world. Perhaps, my traducers prefer ignorance to knowledge.

Obviously, key managers in the sector have been meeting with Vice President Yemi Osibanjo, what has the new government said to the regulator in its meetings with it?

These meetings were not meetings for giving instructions but solving real problems. I think Mr. Vice President has been phenomenal in handling these meetings. He is patient and intelligent to listen carefully and pick out the main arguments. And he always cut through the chase and gets to the real issues. He has a true professorial and lawyerly disposition and that helps a lot with policy work. After these meetings we have renewed urgency and commitment to work hard and there is great follow up. These meetings are clearly better than we had in the past. There seems to be no preconceived ideas so it helps creative thinking and problem solving. I am impressed.

A recent electrocution of an undergraduate student at the University of Lagos evokes the constant allusion that rates of electricity-related accidents are still high in the NESI, is the regulator losing hold of this, what balancing act has the regulator done with the technical enforcer, NEMSA, considering that your initial enlistment of private technical enforcers seems in limbo?

The electrocution of the UNILAG undergraduate is a clear reminder of the very bad network management in the electricity market. Accidents are a product of poor working environment, culture and equipment. I must confess that I am not happy with the state of safety in this market and we are working hard to improve things.

First, we have established a health and safety code and manual to build capacity in the industry. The code and manual articulated all the standard safeguards and operational procedures. But this is not enough. We need new culture and working ethics. Culture is the most difficult thing to change. So, we have quarterly training and performance management meetings to evaluate the prevailing. But above when incidents occurs like the present case we conduct regular inspections and if there is negligence or failure in duty of care we will proceed to sanction the operator. This is standard approach.

How feasible is the Commission's 6000MW end of year electricity generation projection, you had already set up a taskforce to ensure this, why this extraordinary measure?

It is feasible depending on how quickly we can turn around the network of the distribution and transmission company. I am worried about getting this milestone because of the preliminary report I have got from the committee. The deterioration of the Discos network is worse than we think. There is still massive load rejection even as we have solved the imbalance energy problem. So, it means that there is something else. That something else is getting our attention.

So, maybe we get to succeed in this target. Don't forget that this is my own ambitious target not a target set in MYTO for the market. Why I am setting this target? I will like us to crown the tenure on a high. We all like to succeed. It is miserable that we have for 16 years set a target of 6,000MW and never got it. I will be sad if we miss it. I will be very happy to have the Commission finish its first tenure on 6,000MW. It is like breaking the jinx so that we can aim at 10,000 and 20,000MW. If we don't get to 6,000MW under Buhari's new paradigm of discipline and anticorruption then how can we be sure of getting 10,000MW soon? We have to work hard.

It appears no one seems to be talking about the possible impacts of Nigeria's financial challenges on the power market, are there no near or remote impacts on the market from the present economic challenges of the country, how buoyed is the market against such possible developments?

The power and financial market are joined at the hip. Without a sound financial sector we will surely struggle. And if the power sector collapse, it will impact adversely on the financial sector. You can see that lately we have worked very closely with the Central Bank. It is part of such understanding. We are working on a business continuity regulation to protect the financial and other markets in the event of an unlikely event of a failure of the electricity

market or if one of the utilities fails.

What is happening with the transmission network, what is the government's plan for that which has been described as the weakest link in the value chain?

The transmission network is very weak. That is not a secret. Everyone knows that. The new administration knows about this even before it took over. The previous administration knows about this hence it asked a private firm to manage the transmission under a management contract. But the verdict is even the management contractor did not do so much good. We can't tell whether it is because they lack the capacity or because the previous administration did not give them an enabling environment for effective management of the transmission grid. What is the plan of the future? We are waiting for the new government. I am sure soon we will hear. But NERC has commenced the process for the creation of the Independent System Operator (ISO) as required by the law. This will continue until Mr. President through his authorised functionary gives us a counter instruction.

Could you give an insight into how the sector has fared with the CBN intervention fund, is the sector up to date with its obligations to gas suppliers?

The CBN facility has just been disbursed less than 50 per cent so we cannot evaluate its impact. But I think it has addressed some of the concerns with gas debt and money owed some generators. This has helped cash flow crisis. But we will wait for few weeks when hopefully we disburse about 70-80 per cent to better access its impact.