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# THE PROCESS OF REFORMS IN THE NIGERIAN ELECTRIC POWER SECTOR THAT CULMINATED IN THE ENACTMENT OF THE ELECTRIC POWER SECTOR REFORM ACT, 2005 AND THE ELECTRICITY ACT 2023

-Shimasaan Gbanger\*

-Terlumun Godfrey Ieave\*\*

## ABSTRACT

For many years, the electric power sector remained stagnant under the National Electric Power Authority. The monopoly and other inefficiencies under this regime led to frequent disruptions in electricity supply, consumer rights violations without remedies, among other issues. This research employed the doctrinal research methodology in discussing the process of reforming the sector and dealing with these issues. It was found that due to the issues highlighted, the government found it necessary to reform the sector. It was similarly found that such reform was made possible by the enactment of the Electric Power Sector Reform Act 2005. Again, it was found that even with the enactment of the Electric Power Sector Reform Act 2005 and the subsequent enactment of the Electricity Act 2023, the issue of privatisation has not been completely resolved. Thus, it was recommended among other things that government must take steps to resolve this issue to enable a more robust privatisation and competition regime.

## INTRODUCTION

Before the enactment of the Electric Power Sector Reform Act (EPSR Act), 2005, the electric power sector was a complete monopoly under the control of the National Electric Power Authority (NEPA) empowered by the NEPA Act 1990.<sup>1</sup> The public monopoly not only confer enormous power on NEPA but also insulated it from any liability for negligence or other conduct.<sup>2</sup> The case of *Amadi v Essien*<sup>3</sup> wherein the Court of Appeal held that though obnoxious and

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\*Shimasaan Gbanger, LL. B, BL, (LL.M Candidate, Nasarawa State University, Keffi)

\*\*Terlumun Godfrey Ieave, LL. B, BL, (LL.M Candidate, Nasarawa State University, Keffi)

<sup>1</sup> WA Isola, 'An Overview of Electricity Sector Reforms in Nigeria' [2016] 1(1) *Journal of Economic Policy and Analysis* 30; MY Zakari, *Background to Nigerian Electric Power Sector Reforms* (A Lecture Note prepared for Post Graduate Students of Nasarawa State University Keffi 2024) 1.

<sup>2</sup> Ibid.

<sup>3</sup> (1994) 7 NWLR (pt 354) 94 CA; (1993) LPELR-14644 CA.

oppressive, the provisions of section 12 (2) of the National Electric Power Authority Act (NEPA Act) exonerated NEPA from any liability to electricity consumers arising from any loss, damage or inconvenience reiterated this point. Thus, NEPA hampered both privatisation and consumer protection and its regime saw to continuous setbacks in the electric power sector in Nigeria even with enormous resources invested in the sector. In this research, the process of reform is considered in details.

## **THE PROCESS OF REFORMS LEADING TO THE ENACTMENT OF THE EPSR ACT 2005**

A brief background to the inefficiency of NEPA in the electric power sector is stated above. It was in view of the background above that in 1999, the government saw it fit to begin the process of reform of the sector beginning with the setting up of the Electric Power sector Reform Implementation Committee. This Committee produced the policy document for the government – the National Electric Power Policy (NEPP),<sup>4</sup> which culminated in the EPSR Act 2005. The reform became necessary for many reasons. First, the monopoly under NEPA had not achieved any tangible positive results in the sector. Second, Privatisation which promotes competition and consumer protection were virtually non-existent since NEPA was a monopoly and at the same time insulated from liability for damage caused. By the NEPP, the reforms were aimed at achieving at least six objectives.<sup>5</sup> The first objective was to ensure that private investments from both foreign and local investors was attracted to the electric power sector in Nigeria. The reform also sought to create an independent regulator – now the Nigerian Electricity Regulatory Commission, to oversee the sector in Niger. The promotion of transparency, competition and efficiency as well as the development of local capacity in technology were also a key objective of the reforms. Similarly, the reforms were aimed at divesting government interests in the electricity sector to proper performance just as they aimed at promoting continuous review of laws in the sector.

Based on the above, the government began its reforms of the electricity sector in Nigeria by establishing the Power Holding Company of Nigeria (PHCN) as an initial holding company.<sup>6</sup> The PHCN took over all the assets and liabilities which were before then those of NEPA. The PHCN saw to the unbundling of the power sector into eighteen successor companies comprising six

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<sup>4</sup> Bolanle Onagoruwa, 'Nigerian Power Sector Reforms and Privatisation' (Bureau of Public Enterprises 14 June 2011) <<https://sec.gov.ng/files/Bolanle%20Onagoruwa%20Presentation%20to%20DG%20SEC.pdf>> accessed 20 May 2025.

<sup>5</sup> Yemi Oke, *Nigerian Electricity Law and Regulation* (Lawlords Publications 2013) 1.

<sup>6</sup> Zakari (n 1).

generation companies, eleven distribution companies and one distribution company.<sup>7</sup> The unbundling of the electric power sector in Nigeria as well as the privatisation of same was necessary to ensure sustainable electricity supply in Nigeria which was before now impossible due to NEPA's monopoly and the inefficiency that came with that monopoly.<sup>8</sup> It must be noted however that the privatisation of the sector is limited to the generation and distribution subsectors while the transmission subsector is still in the control of the federal government. The privatisation of the sector and the necessity of same is explained in the following words;

The unbundling and privatization were necessitated by the failure of the sector, under the erstwhile traditional model of government control and monopoly, to attain a level of efficiency required to meet its primary goal of providing sustainable electricity needs of the country. The situation had made it imperative to privatize the sector in the hope that a privatized sector will be able to meet the electricity needs of the country. Considering the humongous nature of the company that managed the sector on behalf of the government, a number of very deliberate measures had to be taken and implemented in order to ready the behemoth that NEPA was for privatization.<sup>9</sup>

## **INEFFICIENCIES OF NEPA AND THE NEED FOR REFORMS**

From the above and as may be seen later in this work, at least four reasons made NEPA inefficient and necessitated the reforms in the electric power sector. The first was the monopoly which meant that Nigerians received electricity only from NEPA and no other company. The second was lack of consumer protection which meant that even in the event of negligence of NEPA or its agents, no remedy was available to the injured electricity consumer. The third was the complete control of NEPA by the government meaning that there was no independent institution capable of dealing with the intricacies of electricity supply viz-a-viz consumer protection. The fourth was the continuous decline in electricity supply under the NEPA regime. These are briefly discussed below;

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<sup>7</sup> Ibid.

<sup>8</sup> MY Zakari and Habiba Musa and SCC Okoronkwo, 'An Assessment of Market Competition in the Nigerian Electricity Supply Industry as Provided under the Electric Power Sector Reform Act, 2005' (2016) *Nigerian Current Law Review* 91.

<sup>9</sup> Zakari (n 1) 2.

## MONOPOLY

Consumer choice was absent under the regime of NEPA. Thus, even as there were constant power cuts and other issues, the electricity consumer in Nigeria could have only NEPA or nothing. Competition was virtually non-existent as NEPA was in charge of generation, transmission, distribution and supply of electricity throughout Nigeria.<sup>10</sup> In an ever-changing world and the importance of consumer choice, it was important to bring forth reforms to change this narrative. This therefore necessitated the reforms subsequently adopted as described above.

## ABSENCE OF CONSUMER PROTECTION MEASURES

It is stated earlier that the public monopoly not only confer enormous power on NEPA but also insulated it from any liability for negligence or other conduct.<sup>11</sup> Section 12 (2) of the NEPA Act exonerated NEPA from any liability to electricity consumers arising from any loss, damage or inconvenience. The Court of Appeal interpreted this provision in *Amadi v Essien*.<sup>12</sup> The Court held that while NEPA had clearly committed wrongful acts against the respondent, NEPA was not liable in view of the provisions of section 12 of the NEPA Act. The Court of Appeal further emphasised that though obnoxious and oppressive, the provisions of the NEPA Act were clear on the insulation of NEPA from such liability. It was therefore for the National Assembly to provide an enactment to deal with the oppressive provisions of the NEPA Act otherwise the Court would have no basis to assign liability.

## GOVERNMENT CONTROL OF NEPA

The key issue with government control of any sector is corruption and inefficiency.<sup>13</sup> Ethical codes are not complied with and the manner of behaviour is grossly inconsistent with best practices.<sup>14</sup> The situation under NEPA was no different. With the government control of NEPA, Nigeria witnessed serious inefficiencies, corruption and mismanagement.<sup>15</sup> It is these issues which degenerated into other problems such as decline in the supply of electricity on many fronts. It was therefore necessary to reform the sector to minimize government control and promote efficiency.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> (1994) 7 NWLR (pt 354) 94 CA; (1993) LPELR-14644 CA.

<sup>13</sup> KC Ani Casimir and EM Izueke and IF Nzekwe, 'Public Sector and Corruption in Nigeria: An Ethical and Institutional Framework of Analysis' [2014] 4(3) *Open Journal of Philosophy* 216.

<sup>14</sup> Ibid.

<sup>15</sup> Alfred M Tija, 'Preriscoping Competition in the Nigerian Electricity Supply Industry' [2023] 13(1) *University of Ibadan Law Journal* 139, 146.

## CONTINUOUS DECLINE IN SUPPLY

It is stated that less than two years into taking over the electricity sector in Nigeria, two out of the four existing power stations broke down and could not be made functional.<sup>16</sup> This meant that during this period, Nigeria could not enjoy any electricity from these power stations – the effect being that electricity supply significantly reduced. Also, under the regime of NEPA in 2001, only nineteen out of the seventy-nine generating units installed were operational.<sup>17</sup> This was approximately a quarter of the electricity potential of the country. The situation again clearly indicates serious decline in the electricity sector and consequently the supply of electricity to consumers. To make matters worse, NEPA saw to the decline of installed capacity from approximately 6000MW to about 1,750 MW, a decline by more than sixty percent.<sup>18</sup> All these led to frequent power cuts and other inefficiencies in the supply of electricity in Nigeria.

## CHALLENGES OF THE REFORMS

Even with the unbundling and privatisation exercise however, it is noted that the problems of the sector are far from extinguished as the power sector is still experiencing several challenges. Firstly, it is stated that the fact that privatisation and competition is incomplete as the existing monopoly existent under NEPA has essentially been converted to private monopoly where the 18 companies continue to operate in the private sector without the addition of any other company.<sup>19</sup> For instance the regime has not been able to create competition in the distribution sub-sector and electricity consumers have no choice outside the existing electricity distribution companies.

Similarly, Nigeria is has still not migrated to the post privatisation era since no competitive market has been declared following the unbundling as was required by the Electric Power Sector Reform Act 2005 (EPSR At) and now the Electricity Act 2023.<sup>20</sup> These issues need to be addressed if a proper reform as envisaged by the Electricity Act is to be achieved.

## CONCLUSION AND RECOMMENDATIONS

This work examines the process leading to reforms in the electric power sector in Nigeria. It is seen that the inefficiencies of NEPA in several areas necessitated the reforms. These reforms were aimed at promoting privatization and competition, ensuring consumer protection, among other

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<sup>16</sup> VK Abanihi and SO Ikheloa and F Okodede, 'Overview of the Nigerian Power Sector' [2018] 7(5) *American Journal of Engineering Research* 253.

<sup>17</sup> Tijah (n 15) 147.

<sup>18</sup> AS Sambo, 'Matching Electricity Supply with Demand in Nigeria' (2008) *International Association for Energy Economics* 32.

<sup>19</sup> Tija (n 15).

<sup>20</sup> Tijah (n 15) 150.

things. It is seen also that the reforms have not been completely given the force they need as the electricity sector in Nigeria is still in the pre-privatisation era. It is therefore recommended among other things that;

1. The environment for the post privatisation era should be enabled by the relevant bodies to deal with the current private monopoly in place.
2. The legal framework should be amended to enable the introduction of new distribution companies and other competitors.