

POWER PRODUCTION REGIMES IN NIGERIA

Executive summary

The local regime offers various possibilities to structure power generation. There are more than 130 holders of generation licenses and the introduction of the eligible customers gives other perspectives to increase the Nigerian power generation capabilities in resting on the private sector.

Electric Power Sector Reform Act

In Nigeria, the electricity sector is governed by the Electric Power Sector Reform Act, 2005 (the “*EPSR Act*”) and the various regulations enacted by the Nigerian Electricity Regulatory Commission since its creation by said *ESPR Act*.

Activities of production, transportation and distribution are separated. Where the production and the distribution activities are opened to private investors, the transportation remains under the monopoly of the state of Nigeria through the Transmission Company of Nigeria (“**TCN**”). In addition, the Nigerian federal State incorporated the Nigerian Bulk Electricity Trading Company (“**NBETC**”) acting as the national off-taker for the power plants connected to the grid.

The Nigerian Electricity Regulatory Commission (“**NERC**”) is the controlling authority of the power sector.

In Nigeria, IPP can develop power plants providing that they obtain from the NERC a generation license and conclude a power purchase agreement with NBETC if the plant is connected to the grid, with a distribution company if said plant is connected to a distribution network or with an eligible customer.

IPP can also provide solution for power self-production called captive power generation.

The first step is certainly to find a production site and an off-taker. Then the IPP shall apply for a generation license.

The PPA

As mentioned above, the licensee shall enter into a power purchase agreement with the NBET or other entities specified in the license. NBETC provides a template of such power purchase agreement.

Pursuant to the Regulations for the Procurement of Generation Capacity 2014, the conclusion of PPA with NBETC or Distribution Companies is subject to the following stages:

- The issuance by NBETC in charge of the management of the grid and by the relevant distribution company in charge of the management of its own distribution network of an annual report defining *inter alia* the projected gross MW demand of the system, the available generation capabilities, the anticipated commercial operation date of generation projects under construction and the transmission grid system capabilities and constraints showing that there is a need for additional generation capacity;
- The issuance by said NBETC and distribution company of a bidding process for the selection of the IPP;
- A tender audit conducted by the NERC to ensure that the tender has been fair and transparent.

Since 2017, there is also a possibility for an IPP to enter into a PPA with a customer providing that said customer be qualified as an eligible customer pursuant to Section 27 of the EPSR Act and the Eligible Customer Regulations 2017. The PPA shall be even a document in support of the customer's application to obtain the eligible customer status. The two parties will be entitled to use the grid and/or a distribution network for the delivery of the output under the terms of a "Transmission Use of System Agreement" or a "Distribution Use of System Agreement".

Energy pricing

The NEBC announced having set feed-in tariffs for small size renewable energy projects namely wind farm and biomass plants up to 10 MW capacity, solar plants up to 5 MW capacity and small hydropower plants up to 30 MW.

Except for renewable energy or above these limits, the pricing shall be set through the bidding process conducted by NBETC or the distribution companies as mentioned above.

License regime

Production of electricity over 1 MW rated capacity requires a license¹, granted by the NERC subject to certain conditions as set out in the EPSRA. In this respect, the NERC provides a list of required documents and information for obtaining a license, such as the certificate of incorporation of the project company, construction permit, environmental impact approval certificate, tariff methodology and calculation, technical details experience, power station information, production information, etc².

According to the EPSRA and the Regulation N. NERC-R-0110A, it can take maximum six months as from the acknowledgment of the license application to get the decision of the NERC's approval or refusal³.

Once the obtaining of the generation license, the PPA and the transmission use of system agreement or the distribution use of system agreement will enter into force. The licensee shall then be in a

¹ Section 62 of the EPSR Act.

² Requirements for licences to be granted pursuant to the application for licenses (Generation, Transmission, System Operation, Distribution and Trading) Regulations, 2006.

³ Section 12 of the Regulation N. NERC-R-0110A, 2010.

position to also enter into a connection agreement with TCN as well as a power purchase agreement with the Nigerian Bulk Electricity Trading Plc (NBET) or other entities specified in the license.

Further, it is also possible for a licensee, as the case may be, to make a declaration to the NERC, that a land is required for purposes of electricity generation. Such declaration will then launch a process to get an occupancy over land right⁴.

Once the license delivered, the licensee is not entitled to assign or cede its license or transfer its undertaking by way of sale, mortgage or otherwise, without the prior consent of the NERC, except in specific case provided under the EPSR Act⁵.

The license shall be valid for a period of up to, but not exceeding ten years, provided that the NERC *“may extend the period of a licence taking into account the nature of the undertaking or business, for an additional period not exceeding five years at a time it determines that it is the public interest to do so”*⁶. The granted license may be renewed subject to certain conditions.

⁴ Section 77 of the EPSR Act.

⁵ Section 69 of the EPSR Act.

⁶ Section 71 (10) of the EPSR Act.