



DUALE, OVIA &
ALEX-ADEDIPE



Nigeria Energy Sector Review 2023/2024 Outlook

GLOSSARY

AFREXIM	African Export-Import Bank
BPD	Barrels Per Day
DAM	Day-Ahead Market
DCSO	Domestic Crude Oil Supply Obligation
DisCos	Electricity Distribution Companies
ECOWAS	Economic Community of West Africa States
EA	Electricity Act 2023
EMS	Environmental Management System
EMR	Environmental Management Reviews
EPSRA	Electric Power Sector Reform Act 2005
ERERA	Electricity Regulatory Authority
ETP	Energy Transition Plan
EV	Electric Vehicle
FEF	Frontier Exploration Fund
FGN	Federal Government of Nigeria
GHGs	Green House Gases
GenCos	Electricity Generation Companies
ICC	Information and Coordination Centre
IFC	International Finance Corporation
IOW	Integrity Operating Window
KW	Kilowatts
LASG	Lagos State Government
LNG	Liquefied Natural Gas
MAN	Manufacturers' Association of Nigeria
MGR	Mini-Grid Regulations
MMcfd	Million Cubic Feet Per Day
MW	Megawatts
NACCIMA	Nigerian Association of Chambers of Commerce, Industry, Mining, and Agriculture
NASENI	National Agency for Science and Engineering Infrastructure
NBET	Nigerian Bulk Electricity Trading Plc
NERC	Nigerian Electricity Regulatory Commission
NESI	Nigerian Electricity Supply Industry
NEI	Nigerian Energy Industry
NGN	Nigerian Naira
NNPC	Nigerian National Petroleum Company Limited
NMDPRA	Nigerian Midstream and Downstream Petroleum Regulatory Authority
NUPRC	Nigerian Upstream Petroleum Regulatory Commission
NSIA	Nigerian Sovereign Investment Authority
OG	Oil and Gas
PIA	Petroleum Industry Act
PMS	Premium Motor Spirit
PPA	Power Purchase Agreement
PV	Photovoltaic
PUA	Pre-unitization Agreement
Q2	Second Quarter
REA	Rural Electrification Agency

ROQ	Request for Quotation
RIPLE	Renewables Investment Platform for Limitless Energy
SEMs	State Electricity Markets
SOQ	Statement of Qualification
TAR	Technical Allowable Rate
TCN	Transmission Company of Nigeria
TGS	TGS-PetroData Offshore Services Limited
USD	United States Dollars
VAT	Value Added Tax
WAPP	West Africa Power Pool

INTRODUCTION

As 2023 beckoned, the focus of a large majority of Nigerians was on the upcoming 2023 major elections to the extent that the elections will effectively mark the end of the previous government administration at the state and federal level and officially usher in a new administration. Following the conclusion of the 2023 major elections, President Bola Ahmed Tinubu emerged as the president-elect and was officially inaugurated as the president of the Federal Republic of Nigeria. The emergence of the new administration has significantly impacted the Nigerian Energy Industry (the “NEI” or “Industry”)¹ given the introduction of a wide range of market, legal and regulatory changes prior to and post the change of administration. More significantly, a large number of Nigerians eagerly anticipated the position to be taken by the new administration more particularly on the removal of subsidy on the sale of premium motor spirit in Nigeria. This is in addition to a number of critical events including but not limited to operationalisation of the Dangote oil refinery, the revitalisation of the moribund refineries, the enactment of a new electricity legislation, the decentralisation of the electricity markets, expected operationalisation of state electricity markets, implementation of the Nigerian Energy Transition Plan (ETP) and other important developments in the Industry.

The year 2023 was indeed defining for the Industry as the Industry experienced several market-defining transactions and events as well as legal and regulatory developments. This report only analyses (i) the important market developments and industry trends as well as the legal and regulatory updates in the oil and gas sector, power sector and the renewables sector (ii) the Nigerian ETP, emphasizing how the plan will be financed and ultimately fit into the broader global energy transition, climate change mitigation and decarbonisation objectives; and (iii) incorporates our outlook and expectations in the Industry for the year 2024. For convenience, the report is divided into three sections – (1) Oil and Gas Sector, covering both the upstream, midstream and downstream sector (2) Power Sector and (3) Renewables Industry. Each section discusses industry developments as well as legal and regulatory updates.

SECTION 1 - OIL AND GAS SECTOR

In 2023, the Oil and Gas (“OG”) sector in Nigeria experienced a number of commercial, legal and regulatory developments. From the attempted deregulation of the downstream sector, official commissioning of a fully-owned private oil refinery in Lagos to the full operationalisation of certain licenses in the OG sector, these recent developments are undoubtedly market-defining and will potentially define the outlook of the OG sector going forward. We expect that the recent wave of market-defining policy and commercial reforms, more particularly in the downstream sector, would herald the emergence of a fully liberalised and privatised subsector - largely determined by the sharp interplay of the forces of demand and supply.

In this section, we have outlined the relevant industry news, market trends and legal/regulatory developments in the upstream and downstream sub-sector, highlighting how these have impacted the OG sector in 2023 and will potentially define the OG sector in 2024;

¹ Please note the Nigerian Energy Industry covers i) the oil and gas sector, ii) power sector and iii) the renewables sector.

A) Industry Trends/Updates

i. Official Removal of Subsidy on the Sale of Premium Motor Spirit.

Following the swearing-in of President Bola Ahmed Tinubu, the Federal Government of Nigeria (“**FGN**”) officially removed the subsidy on the sale and distribution of Premium Motor Spirit (“**PMS**”) in the downstream segment of the OG Sector on May 28, 2023. It is imperative to note that the PMS, also known as petrol or gasoline, constitutes the most accessible consumption fuel in Nigeria.

Whilst the announcement came as a shock to a number of affected citizens, the move has been long awaited by key stakeholders in the OG Sector who had historically clamoured for the removal of subsidy payments. Notably, the whopping sums of money earmarked yearly for the payment of subsidy have only benefitted a select few in the Nigerian economy, particularly the key industry players in the sub-sector. On the other hand, the moneys saved from this subsidy removal could be channelled towards the viable economic sectors in Nigeria. However, a downside to this move is the potential and immediate adverse impact it would have on the common man who largely depends on the PMS for its various domestic activities, coupled with the attendant increase in living costs.

Whilst this move is perhaps commendable - given its cost savings benefits for the economy, we however expect that the FGN will put in place (i) adequate palliative measures to cater for the common man on the street and (ii) exhibit a high degree of transparency and forthrightness in the entire transitioning process.

ii. Official Commissioning of Dangote Oil Refinery in Lagos

Prior to the completion of President Mohammed Buhari’s presidential tenure, he officially commissioned the Dangote oil refinery located in Ibeju Lekki, Lagos (the ‘**Dangote Refinery**’) on May 22, 2023. The Dangote Refinery is a massive 650,000-barrels per day (bpd) petrochemical complex which gulped a whopping \$19 billion in total investment, with an outstanding debt of around \$2.75 billion². The construction and installation of the Dangote Refinery was principally financed by a mix of equity injection from Aliko Dangote and loans from commercial banks and other financial institutions. The Dangote Refinery complex is surrounded by a 435-megawatt power station, deep seaport and fertiliser unit and it is expected to produce 53 million litres a day of refined petroleum products³.

Notably, the Dangote Refinery is the latest addition to a number of our existing, albeit moribund and dysfunctional, refineries in Port Harcourt, Warri and Kaduna. Whilst early reports indicated that it will become fully operational in June, the reality is that full

² Mary Izuaka “Buhari commissions Dangote Refinery amid high expectations” Premium Times, <<https://www.premiumtimesng.com/business/business-news/599798-buhari-commissions-dangote-refinery-amid-high-expectations.html>> , accessed on November, 11, 2023.

³ “Nigeria commissions Dangote Refinery in bid to end fuel imports” Al-Jazeera, <<https://www.aljazeera.com/economy/2023/5/22/nigeria-commissions-dangote-refinery-seeks-to-end-fuel-imports>> , accessed on November 11, 2023.

refining and commercial operations are yet to commence, with hopes that it will attain 50-70% operationality in 2025⁴.

By way of background, the Nigerian OG Sector has been largely bedevilled with a number of issues, including but not limited to repeated fuel shortages, excessive import dependency, oil theft, pipelines vandalism and significant underinvestment. Crucially, the commissioning of the Dangote Refinery is expected to address some of these issues, particularly the issue of excessive import dependency and repeated fuel shortages. Amidst high expectations, we expect that the emergence of the Dangote Refinery in the OG Sector will strengthen our local refining capacity, serve as an effective plug to our inordinate dependency on petroleum imports and potentially transform the country into a net exporter of petroleum products.

iii. Issuance of the First Petroleum Exploration Licence under the Petroleum Industry Act 2021.

The Nigerian Upstream Petroleum Regulatory Commission (“**NUPRC**”) granted its first petroleum exploration license (the “**PEL**”) under the Petroleum Industry Act 2021 (“**PIA**”) to TGS-PetroData Offshore Services Limited (the “**TGS**”). In essence, the core activity covered under the PEL is the acquisition of about 56,000 square kilometres of 3D seismic and gravity data. It further authorises the TGS to (a) carry out non-exclusive petroleum exploration operations on a multi-client basis within the licensed area; and (b) permits the use of the acquired 3D seismic and gravity data by exploration companies.

It is imperative to note that the NUPRC is the apex regulatory body responsible for the technical and commercial regulation of upstream petroleum operations in Nigeria, including the determination and recommendation of applicants who have fulfilled the conditions for the grant of petroleum prospecting licenses.

iv. Issuance of Wholesale Gas Supply Licence to Ohuru Trading Limited.

The Nigerian Midstream and Downstream Petroleum Regulatory Authority (“**NMDPRA**”) – the regulatory body in charge of petroleum midstream and downstream operations – officially granted the first wholesale gas supply license under the PIA to Ohuru Trading Limited, a local firm, to supply 500 million standard cubic feet of gas per day. Under the terms of wholesale gas supply license, the licensee is permitted and authorized to purchase natural gas directly from any lease or third party, effectively allowing them to sell and deliver wholesale gas to wholesale customers and natural gas distributors at any location in Nigeria.

v. Implementation of the Nigerian Gas Flare Commercialisation Program

On 12th September 2023, the NUPRC announced the winners of the bidding exercise for the Nigerian Gas Flare Commercialisation Programme (the “**Programme**”) which took place in the last quarter of 2022. Notably, the Programme was kicked off by the Minister of State for Petroleum Resources on December 13, 2016 and it largely involves the Federal Government of Nigeria (“**FGN**”) selling flare gas through a transparent and competitive bidding process. The Programme was implemented in

⁴ Ibid

recognition of the economic potential of flared gas in fostering growth, attracting investments, and creating jobs in oil-producing communities across Nigeria, while leveraging readily available innovative technologies.

In 2022, the Programme was re-launched to achieve the elimination of routine gas flaring by 2035 and to reach net zero emissions by 2060 within the country, underscoring the government's commitment to energy transition. The re-launch of the Programme was made feasible through the authoritative framework provided by the PIA,⁵ which empowers the government to enact such initiatives in the realm of petroleum. Following the re-launch of the Programme in 2022 and the subsequent auction process for forty-two (42) flare sites, three hundred (300) entities expressed interest in either reaffirming their prequalification status as current participants or submitting a Statement of Qualification (SOQ) as new participants.⁶ However, only forty-two (42) entities emerged successful. Out of these entities, forty (40) flare sites have been allocated to thirty-eight (38) entities for independent development, while four (4) entities have been given nine (9) sites each to develop as clusters.⁷

We expect that the allottees will commence full operations on their respective sites in 2024. It is critical that these allottees comply with the terms of their allocation to avoid regulatory backlash and in furtherance of the joint objective of gradually making gas flaring a thing of the past

vi. Afrexim Bank \$3 Billion Loan to Nigeria's NNPC Limited.

The Nigerian National Petroleum Company Limited ("NNPC") secured an \$3 billion (Three Billion United States Dollars) crude oil repayment loan from the African Export-Import Bank (AFREXIM Bank). Whilst the transactional documentation relating to the deal is yet to be completed, both parties have however jointly executed a commitment letter and term-sheet, demonstrating their commitment to initiating and consummating the deal. While the transaction dynamics are yet unclear, the overriding objectives of this initiative is to deepen the country's foreign currency reserves, stabilise the country's exchange rate and improve the liquidity in the foreign exchange market.

vii. Afrexim Bank \$60 Million for a Gas Processing Plant in Nigeria

AFREXIM Bank executed a seven-year term loan agreement with Nigeria's Alphaden Energy Oilfield Limited for the construction of a 20 MMcfd gas processing facility in Bayelsa State, Nigeria. The facility is the sum of \$60,000,000 (Sixty Million United States Dollars), equivalent of NGN45,000,000,000 (Forty Billion Naira only). The facility is expected to be built at the Obama flow station situate in Oil Mining License 63 with a projected capacity to produce 405 million tons per day of liquefied natural gas (LNG) and 294 bpd of crude condensates. The facility will be repaid from the sale

⁵ Section 7 (e) (iv) and Section 105(2) of the Petroleum Industry Act No. 6 2021.

⁶ Mray Izuka, "NUPRC Announces Successful Bidders for Gas Flare Commercialization Programme" (Premium Times, 13th October 2023), available at <https://www.premiumtimesng.com/news/top-news/625285-nuprc-announces-successful-bidders-for-gas-flare-commercialisation-programme.html> accessed on 10th November 2023.

⁷ Official website of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), available at <https://ngfcp.nuprc.gov.ng/nuprc-announces-successful-bidders-for-the-nigerian-gas-flare-commercialisation-programme/>, accessed on 10th November, 2023

of condensate gas, secured by six off-takers and transported using 20-ton ISO (Independent Service Operators) tanks to customers across Nigeria's six geopolitical regions. This project is significant for a number of reasons: reduction of gas flaring and generation of significant value from Nigeria's natural gas resources.

B) Legal and Regulatory Developments

This discussion in this section is divided into (a) the upstream sector and (b) the midstream and downstream sector.

1. Upstream Sector

Notably, the Upstream sector is primarily regulated by the NUPRC. Pursuant to its regulatory mandate under the PIA, the NUPRC issued a number of rules and regulations setting up a program under the PIA and regarding the various aspects of the upstream segment of the OG Sector.

a. The Nigeria Upstream Petroleum Measurement Regulations, 2023

The NUPRC issued the Nigeria Upstream Petroleum Measurement Regulations 2023 (the "**Measurement Regulations**") in the first quarter of 2023. The Measurement Regulations is a clear attempt by the government to boost metering of all operations in the country's upstream petroleum sector.⁸

The Measurement Regulations aim to eliminate the metering gap in upstream petroleum operations, facilitate the rapid deployment of meters in these operations, promote the creation of independent and competitive meters tailored for upstream use, attract private investment in metering services, and ensure precise measurement of petroleum. Accurate measurement serves as the foundation for calculating petroleum revenue accruing to the government. This regulation has become imperative in order to engender transparency in hydrocarbon accounting and reduce crude oil theft.

The scope of the Measurement Regulations extends to all holders of a petroleum or oil mining lease, petroleum prospecting license, an awardee of a producing marginal field whether or not on a commercial scale or for test purposes only (collectively referred to as "**Lessees**"), metering service provider licensee ("**Licensee**"), and all persons who provide services in relation to measurement in the upstream petroleum operations.⁹ Pursuant to the Measurement Regulations, all Licensees and Lessees are required to have a metering plan approved by the NUPRC for measuring petroleum from producing or lease area, and Lessees are further required to carry out the installation of the metering equipment and services under a metering plan through a Licensee.¹⁰

In a bid to ensure professionalism and successful implementation of the objectives, the Measurement Regulations prescribe that metering services shall not be performed unless with the metering service provider license ("**License**") from the NUPRC. It

⁸ 'Petroleum Unitisation, Pollution Prevention – NUPRC Unveils 7 Regulations for Oil, Gas Industry', (OGV Energy, 30th May 2023), available at <https://www.ogv.energy/news-item/petroleum-unitisation-pollution-prevention-nuprc-unveils-7-regulations-for-oil-gas-industry> accessed on 11th November 2023.

⁹ Section 2, Nigeria Upstream Petroleum Measurement Regulations No. 48 of 2023.

¹⁰ Regulation 3 and 4, Nigeria Upstream Petroleum Measurement Regulations No. 48 of 2023

further prescribes two conditions for the grant of the License – i) the Licensee shall be a duly incorporated Nigerian company and ii) meet the minimum local content thresholds prescribed under existing Nigerian laws. Notwithstanding the foregoing, a license may also be granted to a qualified person to provide metering services to a Licensee or Lessee subject however to the terms and conditions as may be prescribed by the NUPRC.¹¹ The License is valid for a period of twenty (20) years and may be renewed for a further term of 10 years subject to the Licensee fulfilling all obligations prescribed by the Measurement Regulations and the NUPRC.¹²

As a quality monitoring measure, the Measurement Regulations further require metering equipment and services to conform to NUPRC prescribed standards. These specifications relate to the design, fabrication, manufacture, installations, calibration, operation, maintenance, upgrade and inspection or other requirements set by the NUPRC.¹³ The Measurement Regulations sets a penalty of US\$100,000 (One Hundred United States Dollars) for contravention of the Metering Regulations in addition to any penalty payable under the PIA. Additionally, a defaulter shall pay US\$1,000 (One Thousand United States Dollars) for each day the default continues.¹⁴

b. **Production Curtailment and Domestic Crude Oil Supply Obligation Regulations, 2023**

Given the need to insulate domestic refineries from the adverse impact of crude oil supply shortages on their operations, the PIA introduced the Domestic Crude Oil Supply Obligation (“**DCSO**”) to the OG industry.¹⁵ It is in furtherance of the DCSO that the NUPRC issued the Production Curtailment and Domestic Crude Oil Supply Obligation Regulations No 49 of 2023 (the “**PCDCSO Regulations**”).¹⁶

The PCDCSO Regulations anchors the routine production of petroleum on both a Technical Allowable Rate (“**TAR**”) and a production quota established by the NUPRC.¹⁷ The TAR represents the daily limit for extracting oil or gas from beneath the surface, spanning from a minimum to a maximum allowable amount.

In addition, the PCDCSO Regulations imposes on NUPRC the obligation to notify the public of domestic crude oil refining requirements.¹⁸ This is in addition to the obligation on the NMDPRA to promptly report crude oil requirement of operating refineries and conditions of shortages where shortages occur¹⁹ while the NUPRC publishes the information received from NMDPRA.²⁰

¹¹ Regulation 5, Nigeria Upstream Petroleum Measurement Regulations No. 48 of 2023.

¹² Ibid.

¹³ Regulation 6, Nigeria Upstream Petroleum Measurement Regulations No. 48 of 2023

¹⁴ Regulation 17, Nigeria Upstream Petroleum Measurement Regulations No. 48 of 2023

¹⁵ Section 109 of the PIA

¹⁶ Emmanuel Addeh, ‘NUPRC Moves to Enforce Domestic Crude Oil Supply Obligation to Feed Emerging Refineries’, (Business Day, 29th October 2023), available at <
<https://www.thisdaylive.com/index.php/2023/10/29/nuprc-moves-to-enforce-domestic-crude-oil-supply-obligation-to-feed-emerging-refineries>> accessed on 12th November 2023.

¹⁷ Regulation 3 of the Production Curtailment and Domestic Crude Oil Supply Obligation Regulations.

¹⁸ Regulation 10 PCDCSO Regulations.

¹⁹ Section 109 (3) of the PIA.

²⁰ Regulation 10 of the PCDCSO Regulations.

In the event there is a shortage or inadequacy of petroleum for operating refineries, the NUPRC is required to request for a written and detailed confirmation from the NMDPRA. Upon confirmation, the NUPRC shall issue a Request for Quotation (“**RFQ**”) to oil producers, inviting quotations to address the identified shortfall. Subsequent to this, negotiations are facilitated among the NUPRC, producers, and affected refineries.²¹

c. **Frontier Basins Exploration Fund Administration Regulations, 2023**

In June 2023, the NUPRC issued the Frontier Basins Exploration Fund Administration Regulations No. 46 of 2023 (the “**Basins Fund Regulation**”). Importantly, the PIA grants NUPRC the authority to promote exploration in frontier basins and manage portfolios for unassigned frontier acreages²². The scope of the Basins Fund Regulations covers unlicensed acreages in the frontier basins and any other operations authorized by the NUPRC for exploration activities in the upstream petroleum operations within these frontier basins.²³

The Basins Fund Regulations serves dual purposes. Firstly, it prescribes general rules governing the NUPRC's responsibilities concerning frontier basins in Nigeria. Secondly, it outlines a procedure for administering the Frontier Exploration Fund (“**FEF**”) as established under the PIA, with the aim of attracting investment into these frontier basins.²⁴ In collaboration with NNPC, the NUPRC is tasked with establishing an account for the FEF (“**FEF Escrow Account**”), where NNPC will transfer 30% of profit oil and 30% of profit gas.

Under the Basin Fund Regulations, the NUPRC's functions, amongst others, encompass (i) the administration of the FEF Escrow Account, ensuring the dedicated use of the FEF for the exploration and development of oil and gas resources in Nigeria's frontier acreages (“**Purpose**”), (ii) issuance of an annual ²⁵Frontier Basin Exploration and Development Plan (“**FBED Plan**”), outlining the strategies for exploration activities in the frontier acreages; and (iii) the creation of a committee for the FBED Plan's preparation.²⁶

Interestingly, NNPC achieved first oil in the Ebenyi-A exploration well, located in the Middle Benue Trough Frontier Basin in the first quarter of 2023.

d. **Nigeria Upstream Decommissioning and Abandonment Regulations 2023**

Pursuant to its powers under the PIA, the NUPRC issued the Nigeria Upstream Decommissioning and Abandonment Regulations No. 50 2023 (“**NUPDA Regulations**”).²⁷ Decommissioning refers to the conclusion of activities at an oil and gas platform. It is important to note that decommissioning generally involves the isolation of hydrocarbon reservoirs and removal of associated infrastructure, in order to leave the producing area in a safe and environmentally acceptable condition. On

²¹ Regulation 12 of the PCDCSO Regulations.

²² Sections 9 and 10(f) of the Petroleum Industry Act 2023.

²³ Regulation 2 of the Frontier Basins Exploration Fund Administration Regulations 2023.

²⁴ Regulation 1 of the Frontier Basins Exploration Fund Administration Regulations 2023.

²⁶ Regulations 6, 11 and 12 of the Frontier Basins Exploration Fund Administration Regulations 2023.

²⁷ Sections 232 and 233 of the Petroleum Industry Act 2021.

the other hand, abandonment entails discontinuing the use of and leaving behind materials in situ after the expiration of the life of the asset. In other words, it involves shutting down operations and restoring the seafloor to its original condition before production began, especially for structures that have reached the end of their productive life.²⁸

The central goal of NUPDA Regulations is to oversee the proper closure and abandonment of petroleum wells, installations, structures, utilities, plants, and pipelines used in land and offshore upstream petroleum operations.²⁹ It is also to ensure safe, efficient, and environmentally responsible decommissioning and abandonment activities. The NUPDA Regulations emphasize strict compliance with obligations and liabilities under the regulations and the PIA with respect to decommissioning activities, in order to (i) promote optimal resource use, (ii) protect the rights of host communities, and iii) foster local content development in the decommissioning and abandonment sector.³⁰

In furtherance of its objectives, an important provision involves the approval of a decommissioning and abandonment plan (the “**Plan**”) by the NUPRC for every upstream petroleum operation in Nigeria. This Plan must align with the NUPDA Regulations, the PIA, additional guidelines by the NUPRC, and good international petroleum industry practice(s). Expectedly, the Plan will outline annual contributions from every licensee and lessee to the respective decommissioning and abandonment fund (the “**Fund**”) – a fund required to be set up, established and managed by the licensee and lessee and exist in the form of an escrow account domiciled with a financial institution which is not an affiliate of the lessee or licensee³¹. The Plan is subject to periodic review and updates as directed by the NUPRC.³² Additionally, the NUPDA Regulations cover the establishment and management of the Fund, delineate roles and responsibilities of stakeholders, and outline penalties for non-compliance.

Overall, the issuance of the NUPDA Regulations is targeted at enhancing regulatory oversight in Nigeria's decommissioning and abandonment sector, aligning with global industry standards, stimulating investment, encouraging innovation, creating job opportunities, and contributing to the sustainable development of the Nigerian oil and gas industry.

e. Significant Crude Oil and Gas Discovery Regulations, 2023

The Significant Crude Oil and Gas Discovery Regulations 2023 (“**SCOGD Regulations**”) are a set of rules issued by the NURPC pursuant to section 10(f) of the PIA 2021. It applies to prospecting petroleum licenses issued or preserved under the PIA, who have declared significant oil or gas discovery in accordance with the PIA.³³

²⁸ Emmanuel Addeh, ‘NMDPRA Rolls Out Decommissioning, Abandonment Regulation, Three Others’ (This Day Live, July 2023) available at < <https://www.thisdaylive.com/index.php/2023/07/24/nmdpra-rolls-out-decommissioning-abandonment-regulation-three-others>> accessed on 18th November 2023.

²⁹ Regulation 1 of the Nigeria Upstream Decommissioning and Abandonment Regulations 2023

³⁰ Regulation 2 of the Nigeria Upstream Decommissioning and Abandonment Regulations 2023

³¹ Section 233(1) of the Petroleum Industry Act 2021

³² Regulation 3 of the Nigeria Upstream Decommissioning and Abandonment Regulations 2023

³³ Regulation 2 of the Significant Crude Oil and Gas Discovery Regulations 2023.

The central objective of the SCODG Regulations is to ensure optimal commercial exploitation of significant crude oil and gas discoveries, in full compliance with the licensee's and lessee's obligations and liabilities under the PIA and the SCODG Regulations.³⁴

The SCODG Regulations construes a significant crude oil discovery as a discovery of crude oil that is substantial in terms of reserves and is potentially commercial but cannot be declared commercial due to the lack of pipeline or facility availability in the existing systems, or the need for joint development with other existing or future discoveries. On the other hand, a significant gas discovery is a discovery of gas that is substantial in terms of reserves and is potentially commercial but cannot be declared commercial due to the lack of gas infrastructure or market availability in the existing systems, or the need for joint development with other existing or future discoveries.³⁵

The SCODG Regulations mandates every petroleum prospecting licensee to declare a significant crude oil or gas discovery to the NUPRC within sixty (60) days of such discovery. The NUPRC may grant a retention period of up to ten (10) years for a significant crude oil discovery and up to fifteen (15) years for a significant gas discovery from the date such discovery is declared, subject to the terms and conditions of the SCODG Regulations. The Regulations also establish the offences and accordingly prescribed penalties for non-compliance.

f. The Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations, 2023

In May 2023, the NUPRC issued the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations, 2023 (the "**Gas Flaring Regulations**") pursuant to its powers under the PIA.³⁶ The Gas Flaring Regulations seek to reduce the environmental and social impact caused by flaring and venting of natural gas and fugitive methane emissions into the atmosphere, protect the environment and prevent waste of natural resources, enhance energy transition in Nigeria and create social and economic benefits from gas flaring and venting capture.³⁷ Its scope of application covers licensees, lessees and producers of gas in the upstream petroleum sector.³⁸

The Gas Flaring Regulations empowers the NUPRC to (i) take gas free of charge from a flare point without royalty, a power originally allocated to the NUPRC under the PIA³⁹ and (ii) issue exclusive permits referred to as Permit to Access Flare Gas (the "**Permit**") for access to flare-gas, tailored for one or more specified flare sites. The Permit encompasses the commercialization or utilization of disposed gas, with terms

³⁴ Regulation 1 of the Significant Crude Oil and Gas Discovery Regulations 2023.

³⁵ Regulations 3 and 4 of the Significant Crude Oil and Gas Discovery Regulations 2023.

³⁶ Sections 7 (e), 10 (f), 104 – 108 of the Petroleum Industry Act 2023.

³⁷ Regulation 1 of the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023.

³⁸ Regulation 2 of the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023.

³⁹ Section 105 (2) of the Petroleum Industry Act; Regulation 3(1) of the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023.

intricately determined by the NUPRC.⁴⁰ In addition to its permit issuing powers, the NUPRC also enjoys the right to any route, right of way or easement within any licensed or leased area. These rights are equally enjoyed by holders of the Permit.⁴¹ Notably, the regulations impose a fine of US\$10,000 on licensees, lessees, or gas producers who neglect to grant access to a Permit holder for a flare site. It is imperative to note that foreign companies are also eligible for the Permit, which permit can only be secured through a competitive bidding process and upon registration as a Nigerian company.

The Gas Flaring Regulations permits licensee, lessee, or gas producer to engage in gas flaring subject to the provisions of Sections 104 and 107 of the PIA. The foregoing provisions summarily prohibit gas flaring unless in permitted circumstances (a) the case of emergency, pursuant to an exemption granted by the Commission (for start-up facility or for strategic operational reasons including testing), and (b) such gas flaring is an acceptable safety practice under applicable regulations. Any gas flaring outside of these exceptions will attract a penalty prescribed under the Gas Flaring Regulations. Notwithstanding the permitted exceptions, the gas flaring is also subject to the threshold set by the NUPRC and upon payment of flaring fees, unless there is an emergency, in which case the flaring threshold and fees will not apply.⁴² The fees and threshold for permitted flaring are to be established by the NUPRC.

The Gas Flaring Regulations delicately balances industry needs and environmental considerations, emphasizing the nation's commitment to sustainable energy practices.

g. **Nigeria Upstream Petroleum Unitization Regulations, 2023.**

The Nigeria Upstream Petroleum Unitization Regulations No. 41 of 2023 sets out the guidelines and processes for implementation of the unitization of oil and gas (“**Unitization**”). Pertinently, unitization involves combining oil and gas from a petroleum reservoir that stretches beyond the borders of one license or lease area into another area covered by a different license or lease.

The licensees or lessees engaged in geophysical activities can extend these operations into adjoining, unlicensed, or unleased areas, not exceeding a distance of more than two (2) kilometers. However, this extension is subject to obtaining NUPRC's prior approval and notifying the licensee or lessee of the adjoining area of such plans.⁴³

In the case where a licensee or lessee discovers a petroleum reservoir that straddles another licensed or leased area (the “**Straddling Reservoir**”), such licensee must promptly notify the NUPRC within two (2) weeks of well suspension or abandonment. This notification must be accompanied, within 60 days of notification to the NUPRC, by a comprehensive report detailing specific aspects of the petroleum discovery.⁴⁴ This must be confirmed by the licensee of the adjoining area. Where the adjoining licensee

⁴⁰ Regulation 6(1) of the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023.

⁴¹ Regulation 6 (5) and (6) of the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023.

⁴² Regulation 12 of the Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023.

⁴³ Regulation 3(2) of the Nigeria Upstream Petroleum Unitization Regulations 2023.

⁴⁴ Regulation 4(2) of the Nigeria Upstream Petroleum Unitization Regulations 2023.

denies the facts, as given by the notifying licensee, such disputes will be resolved conclusively by the NUPRC, taking into account information submitted by both parties.⁴⁵

The NUPRC has the authority to mandate the joint development of the Straddling Reservoir, requiring the parties to enter and execute a Pre-unitization Agreement (“**PUA**”). Alternatively, the concerned parties can independently execute a PUA where the reservoir is a brown-brown, that is, a Straddling Reservoir which has been in production from each concession prior to the Unitization. In any case, PUAs are to be executed within a stipulated 12-month period, subject to the NUPRC’s approval.⁴⁶ Where a petroleum reservoir extends beyond licensed or leased areas into unlicensed or unleased territory and is deemed commercially viable, the NUPRC can either incorporate the area into the existing license or lease with prescribed conditions, or initiate a bidding exercise for such unclaimed territories.⁴⁷

2. Midstream and Downstream Sector

The NMDPRA (“**Authority**”) regulates the midstream and downstream. As mandated by the PIA, the Authority issued several rules and regulations pertaining to the various aspects of the downstream segment of the OG Sector in 2023. Below is an analysis of these regulations;

a. Midstream and Downstream Petroleum Safety Regulations 2023

The Midstream and Downstream Petroleum Safety Regulations 2023 (the “**Safety Regulations**”) stipulates the safety standards required to be observed during midstream and downstream petroleum operations.⁴⁸ The Safety Regulations impose duties on the licence holders, permit holders and managers. Every license holder or permit holder shall provide its personnel with appropriate safety equipment and personal protective equipment of internationally approved standards and ensure that such equipment is always maintained in good condition.⁴⁹ Similarly, a manager shall ensure that equipment is operated and kept within its Integrity Operating Window (“**IOW**”) and that process equipment has required controls and safety systems that monitor and actively control its IOW.⁵⁰ The manager shall also ensure that safety signs are prominently displayed to provide awareness, caution, direction, and relevant information about emergency contact and numbers such as nearby emergency firefighting outfits are displayed; and appropriate hazard communication channels are developed, such as the use of posters, bulletins, slogans and jingles.⁵¹ Moreover, a person under the age of 18 years shall not be engaged to work in a dangerous area.⁵²

The Safety Regulation imposed an administrative penalty of not more than USD250,000 (Two Hundred and Fifty Thousand United States Dollars) for licence and permit holders as a sanction for contravention of its provisions. In the event the

⁴⁵ Regulation 5 of the Nigeria Upstream Petroleum Unitization Regulations 2023.

⁴⁶ Regulation 6(3) and 9 of the Nigeria Upstream Petroleum Unitization Regulations 2023.

⁴⁷ Regulation 7 of the Nigeria Upstream Petroleum Unitization Regulations 2023.

⁴⁸ Regulation 1(a) Safety Regulations

⁴⁹ Regulation 3 (c) Safety Regulations

⁵⁰ Regulation 11 Safety Regulations

⁵¹ Regulation 27 Safety Regulations

⁵² Regulation 34 Safety Regulations

manager fails to comply or ensure compliance with the Safety Regulations, makes a false declaration or willfully furnishes false or insufficient information, the Manager shall be liable to an administrative penalty of not more than NGN5,000,000 (Five Million Naira).⁵³

b. Midstream and Downstream Environmental Remediation Fund Regulations 2023

The Midstream and Downstream Environmental Remediation Fund Regulations 2023 (The “**Environmental Remediation Fund Regulations**”) establishes the Midstream and Downstream Environmental Remediation Fund (the “**MDER Fund**”) to be managed and administered by the NMPRA.⁵⁴ The MDER Fund shall be applied towards funding the management of environmental impact, and rehabilitation of negative environmental impacts caused by midstream and downstream petroleum operations.⁵⁵ The financial contribution shall be paid by licensee on or before 31st December of every calendar year for each licence including the year in which the licence is granted.⁵⁶ The Environmental Remediation Fund Regulations stipulates robust mechanisms towards a proper and efficient utilization of the Fund.⁵⁷

c. Midstream and Downstream Decommissioning and Abandonment Regulations 2023

The Midstream and Downstream Decommissioning and Abandonment Regulations 2023 (the “**Abandonment Regulations**”) outline the requirements and procedures for the decommissioning and abandonment of petroleum facilities in the midstream and downstream sector as well as the general rules for the establishment of Decommissioning and Abandonment Fund for midstream and downstream petroleum operation.⁵⁸

Crucially, midstream and downstream petroleum decommissioning and abandonment operations shall be conducted in accordance with a decommissioning and abandonment plan approved by the Authority. This must conform to the Abandonment Regulation and the PIA irrespective of any prior plan approved by any other regulatory authority.⁵⁹ Whilst the Abandonment Regulations permit abandonment of facility, it however requires a licensee intending to abandon any midstream and downstream facility to obtain the prior approval of the Authority.⁶⁰ In addition, the Authority may, irrespective of the timing proposed under the approved decommissioning and abandonment plan, at any time and by written notice, require a licensee to commence decommissioning and abandonment of any midstream and downstream facility where such decommissioning and abandonment may be required under international petroleum industry best practices.⁶¹

⁵³ Regulation 53 Safety Regulations
⁵⁴ Regulation 3(1) & (2) the Environmental Remediation Fund Regulations 2023
⁵⁵ Regulation 4 the Environmental Remediation Fund Regulations 2023
⁵⁶ Regulation 5 the Environmental Remediation Fund Regulations 2023
⁵⁷ Regulations, 10 & 11 the Environmental Remediation Fund Regulations 2023
⁵⁸ Regulation 1 Abandonment Regulation
⁵⁹ Regulation 3 Abandonment Regulation
⁶⁰ Regulation 12(1) Abandonment Regulation
⁶¹ Regulation 20 Abandonment Regulation

d. Gas Distribution Systems Regulations 2023

The Gas Distribution Systems Regulations (the “**Systems Regulations**”) set out the procedure for the grant of a gas distribution licence.⁶² The PIA construes the gas distribution licence as a licence for the distribution of natural gas through a low-pressure pipeline system in a specific geographic area. It is typically granted based on a fair, transparent and competitive bidding process in compliance with the provisions of the PIA, the Systems Regulations and the licensing round guidelines issued by the Authority for each licensing round.⁶³ Notwithstanding the foregoing, a qualified person may apply to the Authority for the grant of a gas distribution licence in the manner prescribed in the guidelines issued by the Authority.⁶⁴ The Systems Regulations mandates the holder of a petroleum pipeline licence with an existing gas distribution system to apply to the Authority for a gas distribution licence.⁶⁵ The Systems Regulations impose an administrative penalty not exceeding USD1,000,000, (One million United States Dollars) for contravention of its provisions, any directive issued by the Authority or the condition(s) of a license.⁶⁶

e. Midstream Gas Flare Regulations 2023

In exercise of the powers conferred on the Authority under section 33(y) of the PIA, the Authority issued the Midstream Gas Flare Regulations 2023 (the “**Midstream Regulations**”). Specifically, Regulation 3 of the Midstream Regulations construed safety flaring to expansively cover initial start-up flaring, pilot gas, and relief devices, continuous flaring during normal operation, and non-continuous operational flaring for scheduled maintenance, equipment shutdowns, and mechanical equipment failures. It further provides that any person operating in the midstream sector will be prohibited from flaring gas beyond the limit(s) prescribed by the Authority. The penalty for flaring or venting gas is tiered depending on the volume of gas flared or vented in excess of the limit set by the Authority. Regulation 9(1) of the Midstream Regulations also imposes reporting obligations on a licensee or permit holder to maintain a daily log of each occurrence of flaring and venting of flare gas within its facilities and to submit the same to the Authority within 21 (twenty-one) days following the end of each month. Failure to provide or submit the information required under the Midstream Regulations within the stipulated timeframe is an offence punishable by a penalty of not more than USD100,000 (One Hundred Thousand United States Dollars).

Prior to the issuance of the Midstream Regulations by the Authority, the Flare Gas (Prevention of Waste and Pollution) Regulations 2018 (the “**Flare Gas Regulations 2018**”) was the principal subsidiary legislation relating to gas flaring in the oil and gas industry in Nigeria. The legal implication of the issuance of the Midstream Regulations is the effective repeal and replacement of the Flare Gas Regulations 2018 as it applies to midstream operations in Nigeria.

⁶² Regulation 1 Gas Distribution Systems Regulations

⁶³ Regulation 5 Gas Distribution Systems Regulations

⁶⁴ Regulation 7 Gas Distribution Systems Regulations

⁶⁵ Regulation 11(1) Gas Distribution Systems Regulations

⁶⁶ Regulation 13 Gas Distribution Systems Regulations

f. Assignment or Transfer of License and Permit Regulations 2023

The Authority issued the Assignment or Transfer of License and Permit Regulations 2023 (the “**Assignment and Transfer Regulations**”) pursuant to section 117(2) of the PIA. Pertinently, the PIA mandates every license or permit holder to only transfer or assign its license or permit, including any obligation arising thereunder, with the prior written consent of the Authority. The PIA then permits the Authority to issue regulations relating to the transfer and assignment of a license.

The overriding objective of the Assignment and Transfer Regulations is to establish a procedure for the assignment of license or permit by the licensee or permit holder.⁶⁷ The licensee or permit holder is obligated to notify the Authority prior to any change of name arising from corporate restructuring.⁶⁸ Procedurally, the Authority (i) must be notified prior to transfer or assignment of license or permit; (ii) shall communicate its decision within three weeks; and (iii) in the event that the Authority fails to do so, the transferor may continue with the transaction.⁶⁹

We note the administrative penalty for contravention of the provision of the Assignment and Transfer Regulations is (i) USD100,000 (One Hundred Million United States Dollars) per license or permit in the case of a midstream facility ii) USD50,000 (Fifty Thousand United States Dollars) in the case of blending facilities and petroleum storage facilities and (iii) NGN 2,000,000 (Two Million Naira) for oil and gas retail outlet per licensee or permit.⁷⁰ Notably, the permit or license may also be revoked, suspended or cancelled for contravention of the provisions of the Assignment and Transfer Regulations.⁷¹

g. Natural Gas Pipeline Tariff Regulations 2023

It set out the regulatory architecture for (i) the determination of a sustainable gas transportation pipeline tariff regime in accordance with the Act; and (ii) establishment of a tariff methodology for the transportation and transmission of natural gas through gas transportation pipelines and gas transportation networks.⁷² Primarily, shippers shall be charged transportation tariff for capacity charge, commodity charge and any other charge as may be prescribed by relevant code. The Authority may approve different classes of capacity charge for the same gas transportation pipeline or gas transportation network. The transportation tariffs shall be determined and charged in United States Dollars (“USD”) or any other foreign currency. The payment shall be made in the foreign currency or its Naira equivalent⁷³ and the transportation tariff shall be paid by shippers on monthly basis in arrears.⁷⁴

The commodity charge shall be set to recover the cost of fuel gas and related expenses. A shipper shall pay commodity charge per unit of actual natural gas

⁶⁷ Regulation 1 Assignment and Transfer Regulations 2023
⁶⁸ Regulation 4 Assignment and Transfer Regulations 2023
⁶⁹ Regulation 5 Assignment and Transfer Regulations 2023
⁷⁰ Regulation 11, Assignment and Transfer Regulations 2023
⁷¹ Ibid.
⁷² Regulation1 Natural Gas Pipeline Tariff Regulations 2023
⁷³ Regulation 3(2) Natural Gas Pipeline Tariff Regulations 2023
⁷⁴ Regulation 3(3) Natural Gas Pipeline Tariff Regulations 2023

transported on their behalf. A shipper may, in lieu of paying for fuel gas, provide a share of the total quantity of fuel gas to the operator.⁷⁵

h. Petroleum Measurement Regulations 2023

The objective of the regulation is to regulate and ensure accurate measurement and allocation of natural gas or its derivatives, crude oil or its derivatives, condensate, petroleum liquids and any other form of petroleum products and determine the basis for calculating revenue accruing to government, licensees, contractors and other parties in the midstream and downstream petroleum operations.⁷⁶

The license and permit holders shall ensure that the measurement systems are installed at the appropriate measurement points in the midstream and downstream operations and comply with the Petroleum Measurement Regulations 2023 and ensure compliance by its contractors, employees or agents.⁷⁷ A licensee or permit holder shall not operate or maintain a measurement system without the approval of the Authority.⁷⁸ The primary measurement method for determining the quantities of natural gas or its derivatives, petroleum products, petroleum liquids shall be dynamic measurement method and where dynamic measurement is inapplicable, static measurement method shall apply subject to conditions prescribed by the Authority.⁷⁹ A licensee or permit holder shall provide the Authority with information on the annual performance of the measurement system, annual maintenance plan, record for previous year and malfunction of measurement system.⁸⁰ The Petroleum Measurement Regulations 2023 prescribe penalties for contravention of its provisions.⁸¹

i. Midstream and Downstream Petroleum Environmental Regulations 2023

The Midstream and Downstream Petroleum Environmental Regulations 2023 (the “**Environmental Regulations**”) is designed to (i) regulate, monitor and enforce health and environmental measures relating to midstream and downstream petroleum operations; and (ii) stipulate relevant environmental standards to be observed during midstream and downstream petroleum operations.⁸² Under the Environmental Regulations, a licensee or permit holder is required to establish an Environmental Management System (**EMS**) for its petroleum operations in conformity with the guidelines issued by the Authority.⁸³ In addition, the Environmental Regulations permits the licensee or permit holder to conduct regular Environmental Management Reviews (**EMR**) and verifications to evaluate the status and adequacy of its EMS in relation to environmental issues, regulations and changing circumstances.⁸⁴ Notably,

75 Regulation 5 Natural Gas Pipeline Tariff Regulations 2023
 76 Regulation 1 Petroleum Measurement Regulations 2023
 77 Regulation 3 Petroleum Measurement Regulations 2023
 78 Regulation 13 Petroleum Measurement Regulations 2023
 79 Regulation 10 Petroleum Measurement Regulations 2023
 80 Regulation 4 Petroleum Measurement Regulations 2023
 81 Regulation 18 and Third Schedule Petroleum Measurement Regulations 2023
 82 Regulation 1 Petroleum Environmental Regulations 2023
 83 Regulation 3 Petroleum Environmental Regulations 2023
 84 Regulation 4 Petroleum Environmental Regulations 2023

the EMS is one of the requirements for renewing a permit or license with the Authority.⁸⁵

The Environmental Regulations mandates the license or permit holder, engaged in onshore and offshore petroleum liquids and gas transportation pipelines and systems, to submit an environmental management plan to the Authority for approval.⁸⁶ In addition to the foregoing, the licensee or permit holder must submit a waste management plan for the management of waste emanating from its petroleum operations to the Authority for approval.⁸⁷ A licensee or permit holder shall monitor Green House Gases (“GHGs”) and methane emissions generated from its activities, estimate the volumes and report the information periodically, in accordance with the guidelines issued by the Authority.⁸⁸ The Environmental Regulations 2023 prescribe penalties for contravention of its provisions.⁸⁹

SECTION 2 – THE POWER SECTOR

The year 2023 was indeed a defining one for the power sector in Nigeria (the “**Power Sector**”). Primarily, the Power Sector saw the repeal of the erstwhile Electric Power Sector Reform Act 2005 (“**EPSRA**”) and ushered in the enactment of a new Electricity Act 2023 (the “**EA**” or “**Act**”). The promulgation of the EA was hitherto preceded by the amendment of the constitutional provision relating to the generation, transmission and distribution of electricity within Nigeria. Whilst legal and regulatory changes were notable in 2023, the power sector also witnessed a number of important industry trends and critical developments.

Accordingly, we have outlined below relevant industry news, market trends and legal updates, particularly emphasizing how the changes have impacted the sector in 2023 and potentially define the power sector in 2024.

A. Industry Trends/Updates

i. Proposed Increase in Mini-grid Generation Capacity Threshold

Preliminarily, there is a dearth of financing in the off-grid sector in Nigeria. Most financing efforts in the Nigerian off-grid sub-sector have been through the Nigerian Electrification Project – which is primarily funded by development partners of the Rural Electrification Agency (“**REA**”) such as the World Bank, the African Development Bank (“**AfDB**”) etc. Except for performance- and results-based financing by these development partners, most commercial banks are reluctant to deploy finance to developers participating in Nigeria’s off-grid sector. In a move aimed at curing this anomaly, the REA recently announced that efforts are in the works to increase the mini-grid threshold capacity. It is instructive to note that, the 2016 Mini-Grid Regulations (“**MGR**”) issued by the Nigerian Electricity Regulatory Commission (“**NERC**”) defines a “mini-grid” as “*any isolated or interconnected mini-grid generating between 0kW and 1MW of generating capacity*”. The REA has now announced the

⁸⁵ Regulation 7 Petroleum Environmental Regulations 2023

⁸⁶ Regulation 12 Petroleum Environmental Regulations 2023

⁸⁷ Regulation 17 Petroleum Environmental Regulations 2023

⁸⁸ Regulation 21 & 22 Petroleum Environmental Regulations 2023

⁸⁹ Regulation 35 & Second Schedule of Petroleum Environmental Regulations 2023

commencement of efforts to revise the MGR to increase the mini-grid generating capacity threshold from 1MW to 5kMW (the “**Threshold Increase**”) with the hope that this will woo potential investors to invest in the off-grid sectors.

With more than 100 mini-grids already operational in Nigeria, and to the extent that the REA is able to complete the Threshold Increase before the end of year 2023 and resolve the critical issue of collection, we envision that Nigeria’s off-grid sector will, in the short-to-medium term, experience more financings from investors who will see more bankability in the sector.

ii. **Proposed⁹⁰ Commencement by the West Africa Power Pool (WAPP) of Day-Ahead Market**

The West Africa Power Pool (“**WAPP**”) recently announced the completion of its Information and Coordination Centre (“**ICC**”) which marks the imminent commencement of the day-ahead market (“**DAM**”). The outstanding authorisation is the approval by the ECOWAS⁹¹ Electricity Regulatory Authority (“**ERERA**”) of the regulatory document for the activation of the next phase of the DAM. It is important to note that, WAPP is a specialised institution of the Economic Community of West African States (“**ECOWAS**”) which covers 14 of the 15 ECOWAS countries. The launch of the ICC and the DAM is thus in furtherance of the objectives of WAPP’s to coordinate power exchanges amongst ECOWAS member states. Accordingly, the DAM will allow transactions for the sale and purchase of electrical power one day prior to the delivery day and thereby boost liquidity in the power sectors of participating ECOWAS member states.

iii. **The State of the Nigerian Electricity Supply Industry**

The NERC prepared and issued the 2022 Market Competition Report (the “**Competition Report**”) pursuant to Section 24(2) of the repealed EPSRA which mandates NERC to review the level of competition/degree of privatisation so far achieved in the Nigerian Electricity Supply Industry (“**NESI**”) and offer recommendations to the government on the next steps towards transition to a more competitive market. It is important to note that the NESI is expected to develop through four stages⁹² – being the pre-transitional electricity market, the transitional electricity market, the medium-term electricity market and the long-term electricity market. It is important to note that we are currently in the transitional electricity market since 2015.

In the Competition Report, the NERC considered factors such as (i) the degree of privatisation that has occurred in the market; (ii) the existence of a large number of potentially competitive entities to avoid the likelihood of an abuse of market power; and (iii) the existence of other preconditions, including the necessary metering and information technology infrastructures required for the operation of a more competitive market as provided in Appendix 1, paragraph 2 of the Market Rules 2014. There is also a 4th factor (i.e., the “*presence of creditworthy distribution participants no longer*”

⁹⁰ Originally scheduled for inauguration on Friday, 17th of November, 2023.

⁹¹ Economic Community of West African States

⁹² Section 6.1 of the Market Rules 2014

holding vesting contracts”), which NERC has noted to still be in progress, as only three (3) Discos have met the prerequisite to qualify for direct contracting with Gencos⁹³.

NERC has also reported that the NESI has evolved substantially and is now ripe for transition to a more competitive market. Where the NERC’s recommendations in the Competition Report are approved, the NESI will progress to the market stage – the medium-term electricity market which will, among other things, reflect flexibility in the design of bilateral contracting through the implementation of the balancing market where each participant will be able to buy and sell the difference between metered quantities and contracted quantities at fair and efficient market-determined prices. The balancing market will be an open and non-discriminatory market of last resort for participants whose contracts do not cover the electricity that they produce or consume.

B. Legal and Regulatory Developments

iv. Constitutional Amendments on Electricity

On 18th March 2023, the President of the Federal Republic of Nigeria assented and signed into law, the Fifth Alteration (No. 17) Bill to decentralize the generation, transmission and distribution of electricity in Nigeria (the "**Constitutional Amendment**").

The Constitutional Amendment effectively amends the Constitution of the Federal Republic of Nigeria 1999 ("**Nigerian Constitution**") to empower State Governments within Nigeria to make laws in relation to the generation, transmission, and distribution of electricity in areas covered by the national grid system within the relevant state. Prior to the Constitutional Amendment, the legislative powers of State Governments in Nigeria under the concurrent legislative list provides that a State House of Assembly may legislate in respect to:

- (i) *electricity and the establishment in that State of electric power stations;*
- (ii) *the generation, transmission and distribution of electricity to areas not covered by a national grid system within that State; and*
- (iii) *the establishment within that State of any authority for the promotion and management of electric power stations established by the State.*

The implication of the above provisions is that state governments can only legislate on generation, transmission and distribution in areas outside the national grid, while the federal government legislates on the licensing dynamics for electricity generation, transmission and distribution in respect of areas of covered by the national grid.

However, in view of the Constitutional Amendment, State Governments are now constitutionally empowered to make policies, laws, and regulations for the purpose of operating electricity markets within the borders of their States, including areas covered by the national grid. Consequently, state governments can now, in the same manner

⁹³ Page 53 of the 2022 Market Competition Report.

as the federal government, take actions to provide remedies catering for the inadequacies of power generation within areas covered by the national grid in their respective States.

v. The Enactment of the Electricity Act 2023

The Electricity Act 2023 (the “**Act**”), among other things, detailed the modalities for the co-existence and cooperation of the NERC and emergent State electricity regulatory agencies in the de-centralized electricity system contemplated under the Constitutional Amendment.

The Electricity Act 2023 introduced a number of key changes as follows:

- (a) *Creation of State Electricity Markets:* Based on the Constitutional Amendment, the Act provides that State Government may, through their respective state houses of assembly, legislate on the operation of electricity markets within their states. Given that the energy future of state governments is now firmly in their own hands, it is expected that these States will structure their regulatory regime in a manner that will incentivize and crowd in investments into the respective States.
- (b) *Separation of the Independent System Operator from the Transmission Service Provider:* Prior to the separation, Nigeria’s Transmission Company of Nigeria (“**TCN**”) served as the transmission service provider and the independent system operator (“**ISO**”) effectively performing the functions of the market and system operators. The Act mandates the TCN to incorporate a company to be licensed as an ISO and transfer all assets and liabilities relating to the market and system operation functions while retaining, as transmission service provider, the functions pertaining to transmission licence, assets and liabilities. However, the Act empowers NERC to approve an application to participate in the transmission network via a long-term concession of portions of the transmission network.⁹⁴
- (c) *Trading and Supply Licenses:* The Act provides for the disaggregation of distribution licenses into distribution and supply licensees. Accordingly, the NERC may at any stage of the market which it considers appropriate, recognize electricity supply as a separate business activity from distribution and issue a directive for distribution companies (“**Discos**”) to disaggregate their distribution operations from their supply operations and that the NERC shall implement a transfer scheme for this disaggregation. The Act also provides for trading licensees with the permission to sell, purchase and trade in electricity in accordance with the terms and conditions of such trading licences. It is expected that the sale/purchase of the trading licensees across the electricity value chain will boost liquidity in the NESI.

⁹⁴ Sections 109, 110 and 112 of the Electricity Act 2023.

- (d) *Renewable Energy Penetration*: The Act obligates the NERC to implement measures to increase renewable energy in Nigeria's energy mix.⁹⁵ As such, the Act provides for renewable generation obligations by generating companies and renewable purchase obligations by bulk power purchasers – these renewable portfolio standards are to be enforced by NERC through the suspension or revocation of the relevant licences of the defaulting licensees.

vi. **Creation of State Electricity Markets**

Following the constitutional amendment granting the State Governments, and by extension, the State Houses of Assembly, the powers to create laws for generation, transmission and distribution of electricity within their coverage areas, it appears that the enactment of an enabling state law is an important legislative step and the State Governments must be carefully guided by the need to attract sustainable investments in crafting their laws. It is also critical that such enabling state electricity law is fully aligned with the Act because the state electricity markets form part of the NESI. In setting up their respective electricity markets, States must also position themselves for strategic partnerships with local and foreign investors who may be interested in different areas of the electricity value chain within the States. This positioning will involve such State consulting with the NERC on the fair treatment of existing investors by striving to uphold the sanctity of existing contractual arrangements in order to gain credibility in the hearts of the new investors. As of the date of this report, Enugu State has enacted their enabling state law and set up a State regulatory entity while Ondo State has set up an electricity regulatory bureau and has reportedly issued a notice to the NERC for the transition to state regulatory regime.

vii. **Consumer Protection Regulations 2023**

Prior to now, the consumer protection regime in the NESI was scattered across a body of legal instruments, namely (i) *Consumer Complaints Handling Standards and Procedures 2006*; (ii) *Meter Reading, Billing, Cash Collections and Credit Management for Electricity Supply Regulations 2007*; (iii) *Connection and Disconnection Procedures for Electricity Services 2007*; (iv) *Customer Service Standards of Performance for Distribution Companies 2007*; and (v) *Methodology for the Determination of Connection Charges for Electricity Supply Regulations 2012*, all of which have now been abrogated⁹⁶ and consolidated into the Customer Protection Regulations 2023 ("**CPR 2023**").

The CPR 2023, unlike the previous complaint handling standards, affords customers a wide latitude to lodge complaints through phone call, SMS, email and any other medium established by the Disco for receipt of customer complaints including call centers and social media platforms. The CPR also changes the composition of the Disco Forum to be more representative of a wider section of stakeholders unlike the previous complaint handling standards which simply constituted the Disco Forum as

⁹⁵ Section 164 of the Electricity Act 2023

⁹⁶ Section 4(1) of the Consumer Protection Regulations 2023

comprising only individuals, NACCIMA⁹⁷, MAN⁹⁸ and CPC⁹⁹-nominated customers and an NGO within the Disco's coverage area.

viii. Introduction of Bilateral Market Regime

According to news reports¹⁰⁰, NERC had instructed Eko, Ikeja and Abuja DisCos, to commence the implementation of bilateral contracts with GenCos of their choice effective 31st March 2023. The bilateral power contract follows an unsuccessful implementation of the partial activation exercise of the Power Purchase Agreement (PPA) in June 2022 which was overseen by NERC and the Nigerian Bulk Electricity Trading Plc ("NBET"). The PPA created a long-term contract with GenCos with conditions for purchase of electricity generated by the companies.

ix. Order on the Mandatory Filing of Annual OPEX, Capital Investment Plans and Outcomes of Procurements conducted by the Transmission Company of Nigeria Plc

On 24th May 2023, the NERC issued an order on the mandatory filing of annual operational expenditure, capital investment plans and outcomes of procurement conducted by TCN (the "Order"). The Order became effective on July 1st, 2023.

One of the objectives of the Order is to ensure an alignment of the performance improvement plans of TCN and Discos, with no stranded dependencies for providing service – this will effectively prevent misalignment between projects undertaken by TCN and the Discos as is evident from objective (d) of the Order. The Order seeks to ensure prudence and value for money for all network development projects by TCN and Discos.

Accordingly, TCN is required to submit its transmission revenue requirement data and system investment plan every financial year to NERC for approval. This is commendable to the extent that Discos form part of a value chain that is physically connected to the TCN. Accordingly, there is a need for alignment between the capital investment projects of TCN and that of the Discos. This will also reduce the occurrence of load rejection by Discos, increase certainty of power evacuation by Discos and boost the reliability of power supply to paying consumers.

⁹⁷ Nigerian Association of Chambers of Commerce, Industry, Mining and Agriculture
⁹⁸ Manufacturers' Association of Nigeria

⁹⁹ Defunct Consumer Protection Council (now the Federal Competition and Consumer Protection Council)

¹⁰⁰ <https://www.thisdaylive.com/index.php/2023/04/11/discos-illiquidity-others-may-constrain-implementation-of-nerc-ordered-bilateral-contracts-with-gencos>

SECTION 3- RENEWABLES INDUSTRY

A. INDUSTRY TRENDS/UPDATES

1. Launch of a Solar PV Manufacturing Plant in Ibeju-Lekki

As part of the core steps towards reduction of its greenhouse gas emissions, Nigeria is deemed to be in a reorientation phase. Given the current transition to cleaner energy sources away from fossil fuel usage, investors are advised to channel their efforts towards the development of Nigeria's abundant renewable energy sources to advance environmental sustainability and help the nation achieve carbon neutrality by the year 2060.

All On, an impact investment firm supported by Shell, successfully commissioned Nigeria's largest fully automated solar photovoltaic (PV) module assembly factory, with a 100-megawatt (MW) capacity, on Thursday, September 28, 2023 at Ibeju Lekki, Lagos. The central goals of the project are to leverage economies of scale while utilizing climate-smart alternative energy sources, lessen Nigeria's dependency on imported solar panels, and cut its foreign exchange expenses. In addition, the initiative is in line with the Federal Government of Nigeria's Energy Transition Plan, which was created to reduce carbon emissions and attain net zero in the transportation, industry, oil and gas, power, and cooking sectors by the year 2060.

2. Construction of the First Solar Cell Factory in Nigeria

The National Agency for Science and Engineering Infrastructure (**NASENI**) earlier this year laid the groundwork for constructing the first solar cell production factory Plant in Gora, Nasarawa State, as part of the Federal Government's efforts to transform Nigeria's power and energy sector. A little over ten years ago, NASENI also built a 7.5 MW solar panel production factory with a 21 MW installed capacity. This move by NASENI will in turn boost the use of solar power in the Nigerian energy mix, and ultimately promote environmental sustainability.

The Federal Government stated that the Factory was sited in Gora, Nasarawa State due to its abundance of Silicon and Silica, which are the major raw materials required for the production of Solar Cells.

3. Ground Breaking Ceremony of a USD250 Million Lithium Factory in Nigeria

Ganfeng Lithium Industry Limited initiated the construction of a USD250,000,000 (Two Hundred and Fifty Million United States Dollars) lithium factory at Endo community of Udege Development Area in Nasarawa Local Government Area, Nasarawa State, Nigeria. The factory is expected to process approximately 18,000 metric tons of lithium per day and 4.5 million metric tons annually.

In support of the project, the Federal Government of Nigeria (FGN) noted that the project is in line with the administration's industrialization policy aimed at providing adequate energy and bridging energy deficit in the country. It is believed that this project will catalyze significant investments in Nigeria's solid minerals, and further

discourage the exportation of solid minerals, which has inhibited the growth of the local market. In addition, the project is expected to add value to the nation's product market whilst creating direct and indirect jobs for Nigerians.

4. Debt Financing of Solar Energy Deal in Nigeria

In 2023, Empower New Nigeria, a renewable energy financier established in 2017, executed a USD6,500,000 (Six Million Five Hundred Thousand United States Dollars) debt facility agreement with Powercell Limited, a renewable energy solutions provider. This deal was executed in Lagos State and was supported by the Lagos State Government (“**LASG**”).

This central purpose of the deal is to develop with solar photovoltaic (PV) and batteries at 10 stores of the Justrite Limited group, a company dedicated to bringing healthy groceries to unserved communities in Nigeria, thereby effectively replacing diesel generation in the premises. In recognition of this support, the LASG noted that the deal is in accordance with the state's plans of deploying renewable energy sources towards promoting electricity access within the state as well as strengthening the proposed State Electricity Market.

5. Launch of a Renewables Investment Platform for Limitless Energy (RIPLE)

The Nigerian Sovereign Investment Authority (**NSIA**), being Nigeria's foremost sovereign wealth fund manager, launched a USD500 million (Five Hundred Million United States Dollars) Renewables Investment Platform for Limitless Energy (**RIPLE**) for the development, investment, and operation of renewable energy projects across the entire value chain in Nigeria. The launch of RIPLE is an offshoot of a strategic partnership agreement executed between the NSIA and the International Finance Corporation (IFC). The initiative will be executed in phases with the pilot phase expected to be located within the Tokarawa Industrial Hub in Kano state. The pilot involves setting up a generation and distribution system to meet 70MW of unsuppressed energy demands of industrial activities, commercial enterprises, and residential customers in an area covering about 9000 connections.

This project is a clear demonstration of NSIA's dedication to sustainable energy transition, with the end goals of advancing renewable energy developments, expanding energy access, energy efficiency and energy security in Nigeria. Expectedly, this project will be sustained and scaled up to cover more strategic locations within Nigeria.

6. Potential Launch of Electric Vehicle Assembly in Lagos

Although the plans are in the works, there is a proposed establishment of an electric vehicle assembly (EV) plant in Lagos. Indeed, the prospective establishment of the plant is pivotal to Nigeria's ETP. This initiative aligns with the goal of phasing out gasoline vehicles, emphasizing accessibility and affordability in cleaner transportation. Operating the plant with renewable energy, like solar power, contributes to the broader objective of achieving clean electrification. The shift towards EV adoption not only addresses environmental concerns but also plays a significant role in reducing

Nigeria's substantial dependency on fossil fuel. Utilizing domestic resources, particularly metals and minerals for EV batteries, supports the country's effort to diversify away from oil dependence. The creation of jobs within the EV plant reflects a commitment to a just and inclusive transition, emphasizing workforce reskilling.

In addition, local production of more affordable EVs helps retain capital within the country, bolstering the circular economy and mitigating capital outflows associated with importing EVs. The assembly plant will serve as a catalyst, propelling broader transitions in infrastructure, including the development of charging networks and battery recycling facilities. The success of the EV plant holds a great potential to stimulate further advancements in the manufacturing sector, encompassing components, batteries, and related services.

B. LEGAL AND REGULATORY DEVELOPMENTS

1. Impact of the Electricity Act 2023 on Renewables

The Act now specifies the requirements for the growth of renewable energy which, if properly implemented, may put Nigeria at the forefront of energy transition and decarbonization in Africa and globally. Notably, Nigeria is rapidly expanding and developing its renewable electricity as one of its initiatives for mitigating climate change in furtherance of the Paris Climate Change Agreement 2015.

The Act contains certain features that promote the use of renewable energy sources. Amongst others, the core features are:

- i. it requires licensees to produce a specified approved percentage of their total power generation from a hybridized generation or renewable energy sources,
- ii. encourages embedded generation, hybridized generation, co-generation, and the generation of electricity from renewable energy sources,
- iii. simplifies licencing procedures for renewable electricity projects,
- iv. promotes renewable electricity investments in rural and underserved areas of Nigeria, and
- v. it authorizes NBET and other licensees to purchase electricity generated from renewable energy sources.

The coming of the Act and the inclusion of renewable energy in the Act is a clear demonstration of a firm legislative commitment towards promoting the adoption of renewable energy in Nigeria. This is a clear departure from the previous regime where the policy intent behind the development of renewable energy in Nigeria is scattered across a number of policies, plans and masterplans.

2. Proposed passage of Biofuels Energy Industry Framework

In a significant stride toward fostering a greener and more sustainable energy landscape in Nigeria, a Bill for an Act to Provide a Policy Framework for the Development of the Bio-Fuels Energy Industry in the country has passed the second reading stage at the House of Representatives of the Federal Republic of Nigeria. The proposed legislation is geared towards establishing the Bio-Fuels Energy Regulatory

Commission and the Bio-Fuels Research Agency. This move represents a crucial step in Nigeria's commitment to combat climate change and diversify its domestic economy.

Despite these intentions, progress in the bio-fuels sector has been limited over the past 16 years, primarily due to the absence of a regulatory framework. The bill aims to rectify this gap, providing the necessary legal and institutional foundation for the industry's growth. Incentives such as tax exemptions and waivers on VAT and import duties are proposed to encourage investment in the sector. The development of the bio-fuel energy sector is expected to enhance petroleum product quality, generate tax revenue, create jobs, boost economic development, empower rural communities, and contribute to environmental improvements by reducing emissions and replacing toxic additives in gasoline.

Our Opinion Piece

Nigeria Energy Transition Plan: A Transformative Path to Net Zero by 2060

Nigeria, a key player in Africa's energy landscape, has taken a bold step towards sustainability through its ambitious Energy Transition Plan (“ETP” or “Plan”). This strategic initiative reflects a commitment to achieve net-zero emissions by 2060. This is further reinforced by the enactment of the Climate Change Act in 2021.

The ETP, introduced by the Federal Government in 2022, is a multifaceted approach that focuses on several key strategies:

1. ***Diversification of the Energy Mix:*** *The Plan emphasizes the need to move away from a reliance on traditional energy sources and aims to diversify the energy mix. This involves incorporating a variety of energy sources to enhance sustainability.*
2. ***Embracing Renewable Sources:*** *A central pillar of the ETP involves a strong emphasis on renewable energy sources such as solar, wind, and hydroelectric power. This shift is pivotal for reducing carbon emissions and mitigating the impact of climate change.*
3. ***Fostering Economic Growth:*** *The Plan recognizes the potential for economic growth within the renewable energy sector. By investing in clean energy technologies and creating a conducive environment for related industries, the ETP aims to stimulate economic development.*
4. ***Addressing Energy Poverty:*** *The Plan is designed to ensure that the benefits of sustainable energy reach all segments of the population. This includes efforts to improve access to reliable and affordable energy services, thereby addressing energy poverty.*

The decarbonization efforts outlined in the Plan are centered on five key sectors:¹⁰¹

1. ***Power:*** *Reforms and innovations in the power sector are essential for transitioning to cleaner energy sources and reducing carbon emissions.*

¹⁰¹ [Nigeria Energy Transition Plan](#)

2. **Oil and Gas:** This sector is a focal point for decarbonization efforts, involving strategies to minimize the environmental impact of traditional fossil fuel extraction and production.
3. **Transport:** The plan recognizes the need for sustainable practices in the transport sector, emphasizing the transition to cleaner and more energy-efficient modes of transportation.
4. **Industry:** Industrial activities are targeted for decarbonization through the adoption of cleaner technologies and processes, reducing the overall carbon footprint of the industrial sector.
5. **Cooking:** The Plan acknowledges the importance of transitioning cooking practices to more sustainable methods, potentially through the use of cleaner cooking technologies.

By concentrating on these five key sectors, Nigeria's ETP demonstrates a holistic and comprehensive approach to decarbonization, aligning with global efforts to combat climate change and foster a sustainable future.

The Role of Hydro Energy

Nigeria has significant untapped hydro-energy potential currently utilized. Under the ETP, strategically expanding hydropower capacity is a priority to provide reliable clean baseload electricity generation and complement solar and wind energy which can be intermittent. Major hydropower projects in development like the 3,050 MW Mambilla and 700 MW Zungeru plants demonstrate the significant commitments being made to boost hydropower. Smaller scale and micro/mini hydro projects also have an important role, especially for decentralized rural electrification. Pumped storage hydropower is also recognized as an energy storage solution, where water can be pumped uphill to a reservoir and later released to generate electricity when required. Increased domestic hydropower aligned with social and environmental safeguards will assist Nigeria in meeting its expanding power demand in a sustainable manner and support the broader goals of its ambitious ETP.

Funding Nigeria's Energy Transition Plan: Mobilizing Multi-Sectoral Investment

Nigeria aims to achieve net-zero emissions by 2060 through its ETP, requiring **approximately \$10 billion** annually beyond regular spending. To kickstart ETP implementation, Nigeria seeks an initial **\$10 billion** support package from development partners and climate funds, anticipating this early capital to attract larger investments. The overall investment opportunity is valued at over \$23 billion, with a focus on mobilizing domestic public finance, especially through fossil fuel subsidy reforms and strengthened carbon pricing. Specific priority projects for public-private partnerships include solar, electric mobility, and gas flare capture. The African Development Bank plans to mobilize **\$12 billion** for Nigerian climate finance initiatives over the next 5 years. Access to international climate funds will be crucial, necessitating diverse funding sources such as multilateral banks, institutional investors, carbon markets, and philanthropy. A coordinated funding strategy involving government agencies, corporations, and communities is essential for the successful realization of the transformative potential of the ETP.¹⁰²

¹⁰² [Nigeria Energy Transition Plan](#)

As Nigeria undertakes its ambitious energy transition, power sector reforms will crucially underpin the sustainable modernization of the country's electricity infrastructure in line with climate goals.

OUTLOOK FOR 2024

Whilst 2023 started on a rather slow note due largely to preparations for the national elections, it however peaked at the Q3 of 2023 following the inauguration of the new president. This is noticeable in the number of deals, transactions and projects that were either inaugurated or kicked off, clearly evidenced by the signing of definitive project and financing agreements, the release of ambitious policies, and commissioning of the private oil refinery. Notwithstanding the slow nature of deals in 2023, we expect that 2024 will start on a very fast note, from a commercial and regulatory standpoint. Accordingly, we have set out below our outlook for the year 2024 spanning the entire spectrum of the Industry;

Full Operationalisation of the Dangote Refinery

As earlier noted, the Dangote Refinery was commissioned in May 2023 but yet to become fully operational. We expect that the refinery will attain near partial refining and commercial operations in 2024 in furtherance of the already set expectation of 50-70% operationality in 2025. This development will gradually strengthen Nigeria's objective of attaining improved local refining capacity and reducing undue import petroleum import bills.

Trading of Electricity/Gas on a Commodity Exchange

We also envisage the full introduction and commencement of the trading of electricity/gas on the commodity exchange. The exchange will enable the sale of energy at terms prescribed by the exchange. Undoubtedly, this will support the growth of independent power producers who can sell to a wide range of buyers at fair market rates. Expectedly, this initiative will enable transparent price discovery and risk management in power markets through standardized contracts. Well-designed trading platforms will bring efficiencies that facilitate the integration of renewable energy at scale into grids.

Disaggregation of Distribution and Supply Licenses in the Electricity Market

The NERC will fully disaggregate the distribution and supply licenses under the EA. This initiative is expected to foster more competition and innovation on the retail side. Separating the distribution wires monopoly from customer supply opens up free consumer choice and enables easier adoption of renewable energy. Suppliers can differentiate their offerings based on renewable energy mix, smart technologies, and other value-added services. With independent power suppliers and the distribution-supply separation, consumers can seamlessly procure electricity from renewable energy projects or producers. Overall, this electricity trading and licensing reforms will create the right environment for clean energy to thrive. They encourage transparent costs, competition, empowered consumers, and technology innovation.

Establishment of State Electricity Markets

Following the decentralisation of the NESI based on an amendment of the Nigerian Constitution and the passage of the Electricity Act 2023 prescribing full modalities for a transition to State-based electricity markets, we expect state Governments to begin to establish their respective electricity regulators. Notably, Enugu and Ekiti States have enacted their own Electricity Laws, Ondo State has set up its own State Electricity Regulatory Bureau and reportedly written to Nigerian Electricity Regulatory Commission (NERC) and Lagos State is currently working on its own Electricity Bill. Given these important regulatory developments, we envisage that 2024 will see a take-off of these new State Electricity Markets and businesses must therefore be ready to be among the first movers in these emergent markets.

Further Growth of Off-Grid and Distributed Energy Sector

Following from the take-off of State Electricity Markets (“SEMs”), these emergent SEMs are likely to initially struggle with dearth of transmission infrastructure considering the nature of investments required in constructing transmission infrastructure. An estimated USD\$1M is typically required for the development of 1 KM-long transmission infrastructure at 330KV velocity – that cost drops to USD\$400K where the velocity is 132KV. In light of this, the SEMs will therefore require off-grid and distributed energy sources to strengthen their capacity to meet the varying electricity demand. Accordingly, we expect a further growth and expansion of the off-grid and distributed sector with the entrant of new market players, willing to supply the energy sources required by generation companies and new companies licensed by the State Electricity Regulators.

Further Penetration of Renewable Energy

While Nigeria lacks grid-scale renewable energy facilities, it boasts of a substantial decentralized renewable energy sector. Given the introduction of significant provisions in the Act relating to renewable energy generation obligations and renewable energy purchase, we envisage a further growth of the renewable energy industry. This important statutory introduction indicates that more stakeholders will now be statutorily obligated to generate and purchase power generated from renewable energy sources thereby translating to a sharp rise in renewables’ contribution to Nigeria’s energy mix. Noting the emergence of more players manufacturing solar panels, it is expected that solar and renewables-based electricity will be further expanded.

Transition from NBET as a Credible Offtaker of Power

Notably, NBET was intended to act as an interim/transitional structure in the power sector to provide assurance of payment to GenCos, as well as to provide assurance electricity supply to DisCos post-privatization of the nascent electricity market. NBET was issued its operational trading license in November 2011 for the term of 10 years, which lapsed in 2021 and was subsequently renewed for another term of 3 years which will lapse in 2024.

The Act provides that¹⁰³ preparatory to the initiation of medium term and long-term electricity market stage, NERC shall by its directive and within such period as it may specify, direct NBET to cease to enter into contracts for the purchase and resale of electricity and ancillary services

¹⁰³ Section 7(2)(d)

and novate its existing contractual rights and obligations to other trading licensees. In view of the pending expiration of NBET's license next year, it is therefore anticipated that more trading licenses will be issued and the transition to phase out NBET will commence next year.

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