

# **Transmission Company of Nigeria (TCN) Workshop**

## **Effective Compliance and Enforcement of Market Rules and Regulations**

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# OUTLINE

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- ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS
- PENALTIES AND FINES
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# INTRODUCTION

- The NESI is a regulated market
- Regulated markets operate by means of Laws, Rules and Regulations.
- The success of any Regulatory body to a large extent is predicated on or determined by its ability to monitor the compliance of regulated entities
- LAW means the instrument passed by the NASS and signed by the President that creates the enabled the regulation of the market: EPSR Act
- RULES are subsidiary instrument made by entities authorized by the LAW
- REGULATIONS could be guidelines made those entities in line with the rules

# INTRODUCTION (CONTD)

- The essence of markets rules and regulation is to achieve the strategic objective in the substantive law. In the case of Nigeria, the essence of market rules and regulation is to achieve smooth transition into a competitive electricity market that guarantees adequate, reliable and affordable electricity
- The ultimate responsibility of the management responsibility of these rules and regulations falls on the sector regulators
- But other market players, including licensees have strategic responsibility to promote rule-based governance in the sector
- Rule-based governance is the irreducible minimum of a regulated market

# Features of a Regulated Electricity Market

- Asymmetry of information-
- Adverse Selection
- Moral Hazard
- Improved incentives for efficiency in natural monopolies through sharing of efficiency gain between customers and operators
- Rebalancing of Tariff between different customer groups and classes
- Opening to competition- Competition in the market versus competition for the market
- Independence of regulatory authority

# Features of Transitional Electricity Market

TEM is a contracts-and-rules based market

- All electricity trading arrangements will be consummated through contracts
  - Gas Supply Agreements
  - Market Participation Agreement
  - Power Purchase Agreements
  - Performance Agreement
  - Vesting Contracts
  - Transmission Use of System
  - Ancillary Service
  - Connection Agreements

# Features of Transition Electricity Market

- The Commission and other stakeholders have put in place various Rules, Codes and Orders to regulate TEM including:
  - Licensed Terms & Conditions
  - Market Rules
  - Grid Code
  - Market Procedures and Operating Procedures
  - Multi-Year Tariff Order
  - Bulk Power Procurement
  - Embedded Generation Regulation
- Competitive power procurement by the Bulk Trader
- Attainment of the CPs for the commencement of the Medium Term Stage

# Features of Medium Term Market

Activities during the Medium Term stage:

- Each Distributor may enter into bilateral contracts for purchase and or sale of energy
- Flexibility in electricity trading arrangements through the implementation of a Balancing Market
- Open entry to the wholesale market subject to technical and environmental obligations
- Competition in dispatch



# Governance Structure of the Market-Regulatory

- NERC
- Market Operator
- System Operator
- Industry Stakeholder Advisory Panel
- Rules Working Group
- Operations Working Group
- Dispute Resolution Counsellor
- Dispute Resolution Panel
- Metering Panel

# Governance Instruments

- EPSR Act
- Business Rules of the Commission
- Market Rules
- Grid Code
- Distribution Code
- Metering Code
- Commission Regulations and Orders
- PPA, Vesting Contracts and other market contracts

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

➤ The enforcement powers of the Commission are contained in:

## ❖ **THE EPSR ACT 2005:**

- S.32 (2)(g) EPSR Act provides that the Commission shall undertake such other

activities which are necessary or convenient for the better carrying out or giving effect to the objects of the Commission.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- S. 32 (2)(b) provides that the Commission shall establish, as the case may be, approve appropriate operating codes and safety, security, reliability and, quality standards.
- S. 76 (1)(2)- prices shall be regulated in accordance with one or more methodologies adopted by the Commission for regulating electricity prices.
- S. 96 gives the Commission the power to make

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

Regulations prescribing all matters which are required by the Act, or which are necessary in the opinion of the Commission to be prescribed for carrying out or giving effect to the Act.

- Section 62 (1) states that no person shall construct, own, or operate electricity generation, transmission, distribution, system operation and, trading with a licence.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- Section 62 (6) authorises the Commission to order any person who contravenes S. 62 (1) to cease operations and, make such other Orders including an Order to another Licensee to disconnect such facilities, as may be necessary to discontinue contravention.

Section 62 (7) provides that the Commission shall have authority to penalise a licensee for violations of his terms and condition or to cancel such licence in accordance with the provisions of the Act.

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# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

Section 74 also provides that the Commission can on receipt of a complaint from consumers or on its own initiative, and for the purpose of carrying out an enforcement action (in this case, cancellation of license), commence an inquiry into the conduct of Licensees, in carrying out their obligation under the Act, Rules, Regulations and Licence Terms and Conditions.

Section 74 (5) however provides that instead of cancelling a license, the Commission may allow the Licence to remain in force, subject to such terms and conditions as the commission may deem necessary to impose.

- Section 75 authorises the Commission to investigate and order a Licensee to refrain from doing an act or impose a penalty in default of compliance.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- ❖ **Licence Terms and Conditions:** The generic Terms and Conditions under every licence category provides that Licensees are obliged to:
  - Comply with the Act, Rules, Regulations and, Licence Terms and Conditions as approved by the Commission.
  - Maintain adequate financial, technical and managerial resources and capabilities.
  - Pay licence fee upon approval by the Commission of an application for licence, prior to it's issuance.
  - Pay Annual Operating Charges (1.5% or as specified from time to time by the Commission) at the end of each month.
  - Obtain the written approval of the Commission, where the Licensee intends to engage in activities that are supplementary to the Licensed business.



# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- Prepare audited accounts for its licensed business, separate from any other business the Licensee may be engaged in.
- Undertake audits of its compliance with the Market Rules, Grid Code and other Regulations established by the Commission and make reports to the Commission.
- Licensee shall not transfer or assign the Licence without NERC's approval.
- Participate, at the Commission's request, in industry panels and working groups.
- Take all reasonable steps to protect persons and property from injury and damage, in the course of their business.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- File with the Commission and keep open for inspection, schedules showing all rates, tariffs, fees and other charges and classifications.

**Note:** that under the Licence Terms and Conditions, there are some technical requirements which are peculiar to the particular category of Licence .

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

## ❖ **HEALTH & SAFETY CODE:**

- The H & S Code stipulates the Employer's responsibility to focus on using employee's insight to prevent costly and potentially deadly accidents before they occur, creating a safer workplace by taking into account both the environment in which employees work and the culture that drives their daily work experience.
- The H & S Code is in 5 parts and each part makes provision for enforcement and penalties for violation.

## ❖ **THE GRID CODE:**

- The Grid Code contains the day to day operating procedures and principles governing the development, maintenance and operation of an effective, well co-ordinated and economic Transmission system for the

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

electricity sector in Nigeria.

- S.2.3.2 of the Grid Code states that the provisions of the Code shall be enforced by the System Operator in accordance with Rule 46 of the Market Rules, guidelines from the Commission, Grid Connection Agreement and relevant Industry Rules and Regulations”.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

## ❖ THE MARKET RULES:

- S. 46 of the Market Rules contains enforcement provisions.

The Market Operator shall ensure compliance with these Rules by all participants and all Transmitters. The Rules stipulate that all acts of violation should be reported to the Market Operator while violations by the System Operator and the Market Operator should be reported to the Stakeholder Advisory Panel (SAP), if not satisfied, then the case could be reported to the Commission by the SAP.

- S.46 also empowers MO to make suspension disconnection and termination,as well as impose Penalties.
- Reading through Section 46 of the Market Rules, it would seem that the Market Operator (MO) is responsible for the enforcement of the Market Rules.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

## ❖ THE DISTRIBUTION CODE:

- S. 2.4.2. stipulates that the provisions of this Code shall be enforced by the Distributor in accordance with guidelines from the Commission, Connection Agreement and relevant industry Rules and Regulation.

## ❖ THE METERING CODE:

- S. 3.1.2. Any issue relating to the metering system and compliance with the Code shall be referred to the Metering Committee who shall act as experts and whose decision shall be final and binding on, and communicated to, the Parties concerned (giving reasons for the decision).
- S.3.1.5 The metering committee may make recommendations to NERC on the payment of cost or/and expenses to any party in respect of any dispute referred to it.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

## ❖ **THE REPORTING COMPLIANCE REGULATION (RCR) 2009**

➤ The RCR stipulates reports that Licensees are obliged to send to the Commission. It does not have enforcement provisions.

The RCR contains Legal, Technical, Commercial and Customer related reporting which were mostly drawn from the Act, Regulations, Codes and Standards developed by the Commission.

➤ Under the legal requirement, Licensees are obliged to report on the following amongst others:

- Any changes in ownership structure exceeding 5% of the authorised Share Capital.
- Change of Directors.
- Change in the object of the company.

# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- Any resolution passed at any General Meeting (where it relates to the Licenced activity).
- Change in key management Staff of the Company (See Condition 3).
  - Under the Technical requirements, Licensees are obliged to:
    - Keep the required data on Accident.
    - Submit the required data for the computation of KPIs.
    - Adhere strictly to the Safety Orientation Training requirements.
  - Under the Commercial requirements, Licensees are obliged to:
    - Market Operator is expected to submit a forecast report.
    - Distribution Licensee is to submit actual expenditure report.



# ENFORCEMENT PROVISIONS IN NERC REGULATORY INSTRUMENTS

- For Customer Related Matters, Licensees are obliged to submit:
  - Monthly customer complaints register.
  - Monthly customer complaints report.

# PENALTIES & FINES

- S.74-75 EPSR Act 2005 provides for the Enforcement of Licence Terms and Conditions.
- 62 (7) of the EPSR Act stipulates that the Commission shall have the authority to penalise a Licensee for violations of his Licence Terms and conditions or, to cancel such Licence in accordance with the provisions of the Act.
- **S. 62 (5)** – Any person who contravenes S. 62 (1) [licencing requirement] commits an offence and is liable on conviction to a fine not exceeding N500, 000= or to imprisonment for a period not exceeding 2 years or to both fine and imprisonment.

# PENALTIES & FINES

penalties levied against a licensee in terms of the Act or any law or regulation shall not be rechargeable to the licensee's customers] shall be liable to a fine two times the charge to the Licensee's customers or to imprisonment of not more than 1 year or to both fine and imprisonment.

- **S. 82 (7)** – In the event that the Commission determines that there is an abuse of market
- **S. 76 (14)** – Any person or licensee who contravenes or condones the contravention of the provision of S.76 (13) [any fines or power (this is also contained in the Licence Ts & Cs and generally means prohibition of discrimination and anti-competitive practice), it may issue cease orders and levy fines not exceeding ₦50M.
- **S. 87** – Any person who fails to pay the Commission or a distribution licensee, within the prescribed time period, any amount owing under – The Power Consumer Assistance Fund – shall be liable to a fine not exceeding 3 times the amount owed.

# PENALTIES & FINES

- **S.92** – Any person who fails to pay the Rural Electrification Agency, within the prescribed time period, any amount owing under – Rural Electrification – shall be liable to a fine not exceeding 3 times the amount owed.
- S. 93** – Any person who in any declaration required to be under the Act, makes any statement which he knows to be false or does not have reasonable grounds to believe it be true commits an offence and is liable on conviction to a fine not exceeding N100, 000= or to imprisonment for a period not exceeding 6 months or to both fine and imprisonment.

# PENALTIES & FINES

- S. 94 (1)** – Any person who contravenes any provision of the Act or any regulations hereunder commits an offence and is liable on conviction to a fine not exceeding N100, 000 or to imprisonment of not more than a year (1<sup>st</sup> offender); or N500,000 or imprisonment for a period not more than 3 years (subsequent offender).
- **S. 94 (2)** Any person who fails or refuses to furnish a return or to supply information in the manner and in the time prescribed, or furnishes a false or incomplete return or supplies false or incomplete information, willfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed under the Act or, fails or refuses, without reasonable cause, to give information to an inspector or a police officer when required to do so under S. 95 or gives false or incomplete information; commits an offence and is liable on conviction to a fine not exceeding N100, 000= or to imprisonment for a period not exceeding 1 year or to both fine and imprisonment.

# PENALTIES AND FINES

- S.94 (3) stipulates that, notwithstanding anything contained in any other law, any person who wilfully destroys, injures or removes equipment or apparatus of a Licensee commits an offence and is liable on conviction to imprisonment for a period of not less than 5 years and not more than 7 years **(Note that here, there is not option of fine and only courts have the power to convict).**
- **S. 97 (3)** – Any person who contravenes S.97 (1) or S.97 (2) [disclosure of confidential information and use of information acquired for personal gain] commits an offence and is liable on conviction to the forfeiture of any proceedings accruing to him on account of the contravention and to a fine not exceeding N500, 000= or to imprisonment for a period not exceeding 2 years or to both fine and imprisonment.

# PENALTIES & FINES

## ❖ **Penalties & Fines under the Licence Ts& Cs:**

- Condition 11: The Commission shall have the power to enforce the condition of the Licence and impose appropriate penalties and sanctions for violations of Licence Conditions in accordance with the Act, Regulations and Codes.

Condition 3: Where a Licensee fails to pay the licence fee on the due date the Commission will be entitled to receive interest on the amount unpaid, at a rate that is above the prevailing inter-bank lending rate.

- Condition 17: The Commission may suspend or withdraw a Licence in accordance with the Application for Licences Regulation, 2010, or as amended.
- Condition 18: Commission may cancel a Licence if a Licensee breaches any of the conditions in accordance with NERC Application for Licences Regulation, 2010.

# CHALLENGES TO ENFORCEMENT

- ❖ Flowing from the enforcement provisions in the Commission's Regulatory Instruments, we can see and appreciate the enormous landscape of enforcement that needs to be covered by the Commission and the enormity of funds required for effective enforcement.
- ❖ These challenges will be categorised into External and Internal Challenges.



# CHALLENGES TO ENFORCEMENT

## ❖ External Challenges:

- Current ownership structure and the financial status of Successor Companies. Though political and implementation is on course.
- The Act provides for cancellation of Licence, possibility of taking over the company, but this is not feasible in the face of lack of capacity facing the industry. This tool can only be used when the market is fully developed and is usually a last resort in enforcement.

# CHALLENGES TO ENFORCEMENT

- The Act makes provision for offences and convictions. Conviction can only be through a judicial process . Even when the market is fully developed, the challenge would be the time consuming processes of courts that are expected to convict offenders.
- In electrocution cases, the Act does not give the Commission the power to recommend or grant compensation, even though the

# CHALLENGES TO ENFORCEMENT

Commission can apply sanctions in cases of violation/negligence.

- The Act does not give the Commission the power to suspend or sack CEOs of Licenced Companies that are not performing or disregarding the Commissions directive/orders.

# CHALLENGES TO ENFORCEMENT

## ❖ **Internal Challenges:**

- Absence of an Enforcement Regulation.
- One of the hallmark or regulation is that components and processes should be clear and transparent, anything short of this will be arbitrarily done and this would not be fair.

# CHALLENGES TO ENFORCEMENT

- There is also the lack of effective monitoring and coordination of reports of non-compliance to NERC's enforcement unit.
- There is need for adequate and effective monitoring and inducing compliance of the regulated entities. This is very paramount and can not be over-emphasised.
- NERC's failure to fully authorize and support the Market Operator on fines imposed on defaulting Discos.

# CHALLENGES TO ENFORCEMENT

- Inadequacy of some of the penalties and fines contained in the EPSR Act as compared to the gravity of the offence.
- Presently, there is no parameter for determining fines.
- In view of the magnitude of the electricity industry, the present staff strength of the Commission cannot effectively investigate and monitor

# CHALLENGES TO ENFORCEMENT

compliance.

- Monitoring is in 2 parts: The reports licencees are obliged to send to the Commission and the on-site monitoring and investigation. This makes the human resource availability for close monitoring very crucial.
- Lack of publicity of the Commission's activities. This invariable affects public awareness.

# STRATEGIES FOR EFFECTIVE ENFORCEMENT

Commission, so that the Commission should not be seen as being a Judge in its own cause.

- Effective collaboration with law enforcement agencies for enforcement.
- The division is proposing the use of a separate letter heads for enforcement (letters) purposes.
- In view of the implementation of MYTO, there is need for the Commission to ensure that consumers see improvement in the industry. KPIs must be adequately monitored and enforced, so that consumers see this efficiency



# STRATEGIES FOR EFFECTIVE ENFORCEMENT

- Sanctions must be effective to attract the desired consequences.  
Sanctions may include:
  - i. Warning letters
  - ii. Name and shame
  - iii. Adequate publicity when there are violations and sanctions.
  - iv. Fines (stipulated under the Act and Regulations)
  - v. Suspension
  - vi. Revocation of licenses

# STRATEGIES FOR EFFECTIVE ENFORCEMENT

## ❖ **LONG TERM STRATEGIES:**

- Amend the EPSR Act to give the Commission powers to suspend and or sack CEOs of regulated entities or provide in the enforcement regulation.
- Consider payment of administrative fines and compensation in accident cases.
- Establish special courts for electricity offences.

# CONCLUSION

- For effective enforcement:
  - Proactive monitoring
  - Immediate enforcement action after enforcement
  - Collaboration with external stakeholders towards effective enforcement
  - Finalization of enforcement process regulation and inclusion of fines.