
THE ENERGY REGULATION AND MARKETS REVIEW

EDITOR
DAVID L SCHWARTZ

LAW BUSINESS RESEARCH

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Adam.Sargent@lbresearch.com

THE ENERGY REGULATION AND MARKETS REVIEW

Editor
DAVID L SCHWARTZ

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Adam Sargent

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Nick Barette, Katherine Jablonowska

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EDITOR'S PREFACE

Safe and reliable delivery of electricity and natural gas has been the hallmark of energy policy and regulation in the industrialised world for the past 75 years. More recently, regulators, policymakers and the industry began to focus their attention on ways to improve economic efficiency, increase productivity and reduce costs through a seemingly endless series of reforms.

In some countries, utilities were encouraged to enhance transmission and interconnection facilities with neighbouring systems in order to pool energy resources. More recently, utilities have been encouraged to participate in regional organisations to buy and sell power, and to administer transmission, dispatch and scheduling of a variety of energy products. Certain countries have encouraged utility efficiency through a variety of performance-based incentives.

Policymakers have tried to reduce the barriers to entry by requiring non-discriminatory treatment among transmission users, and prohibiting affiliate abuse. Utilities were encouraged to unbundle certain utility services; in some cases, regulators required the divestiture of generation or transmission facilities. Utilities have even been encouraged to provide retail wheeling services to facilitate competition for delivery service customers.

Many markets have developed competitive bid-based electricity auctions to set energy and capacity prices, which often take into consideration the cost of transmission congestion. These markets tend to be administered by independent or governmental entities that do not have a market position bias. Clearing prices set in these markets are intended to send price signals to maximise short-term efficiency (scheduling, dispatching and selling energy), as well as long-term efficiency (building new or retiring old generation and transmission facilities).

In certain countries, lawmakers and policymakers have encouraged developers to build and finance new renewable resources and to develop more effective means of conserving energy, through a variety of 'carrots' and 'sticks'. These measures have included subsidies such as feed-in tariffs and renewable energy credits, as well as utility

requirements through renewable portfolio standards. In certain competitive markets, conserving electricity has been converted into a demand-side product ('negawatts') with near or equal value to supply-side generation (megawatts). New 'smartgrid' technologies have been created to increase the efficiency of transmission, generation, distribution and individual consumers' energy use.

Now, however, the myriad of efficiency mechanisms faces new and unprecedented challenges. Transmission and distribution systems are ageing and desperately need upgrading. Severe new environmental requirements are leading to mass retirements of baseload coal-generation resources. Fuel prices are volatile, adding long-term uncertainty to energy prices. Spikes in the price of raw materials are making the development of new infrastructure all the more expensive. Cyber-security threats are exposing the vulnerabilities of our energy networks. And the global economy continues to threaten our ability to obtain the necessary credit to build and finance energy infrastructure.

This is the sobering backdrop for this inaugural edition of *The Energy Regulation and Markets Review*. I would like to thank all of the authors for their thoughtful consideration of these difficult challenges. As can be seen in these chapters, we have much to consider and resolve before we can achieve the kinds of energy security and efficiency that we have been pursuing.

David L Schwartz

Latham & Watkins LLP

Washington, DC

June 2012

Chapter 17

NIGERIA

Ken Etim and Ayodele Oni¹

I OVERVIEW

The Nigerian oil and gas industry is made up of the upstream sector, comprising exploration, drilling and production of oil and natural gas, a midstream sector comprising transportation and refining of petroleum and gas,² as well as a downstream sector comprising the importation, storage and distribution of petroleum products – an aspect still highly regulated by the federal government of Nigeria. The Constitution 1999 of the Federal Republic of Nigeria (‘the Constitution’) vests all petroleum *in situ* in the federal government. As one of the largest producers of petroleum in the world, the Nigerian petroleum industry is a major source of income for both the federal government and the governments of the component states of Nigeria (‘the state governments’), with the federal government involved in the industry as both participant and regulator.

The rights to the exploration and production of petroleum are granted by the federal government through the issuance of oil exploration licences (‘OELs’), oil prospecting licences (‘OPLs’) and oil mining leases (‘OMLs’).³ The federal government also awards rights to explore and extract petroleum through production-sharing contracts, which are awarded in respect of OPLs and OMLs held by the state-owned oil company the Nigerian National Petroleum Company (‘the NNPC’). The NNPC is also a major stakeholder in several unincorporated joint ventures with international oil companies who act as operators in respect of numerous OPLs and OMLs. Recently, government policy has focused on increasing indigenous participation in all segments of the Nigerian oil and gas industry. The

1 Ken Etim is a partner and Ayodele Oni is a senior associate at Banwo & Ighodalo.

2 Liquefied natural gas (‘LNG’) is considered Nigeria’s key midstream product.

3 It is pertinent to note that, although, there is provision for the grant of OELs under the law, OELs are no longer granted in practice as the current practice is the engagement of a seismic data gathering service company to provide seismic information which is made available for perusal by oil companies.

Nigerian Oil and Gas Industry Content Development Act ('the NCA'), enacted in 2010, establishes a framework for ensuring increased Nigerian participation in the petroleum industry. Of note is the fact that, the NCA provides for preferential treatment in the award of licences and contracts to be accorded Nigerian incorporated companies in which Nigerians hold at least 51 per cent of the equity shares. The NCA also makes it mandatory for certain services to be sourced from Nigerian oil and gas industry service companies.⁴

The Petroleum Act, Cap P10 Laws of the Federation 2004 ('the PA') is the principal legislation regulating the oil and gas industry. The federal government is currently proposing wide reforms in the oil and gas industry through the enactment of the Petroleum Industry Bill ('the PIB'). The PIB seeks to consolidate all major Nigerian oil and gas laws, as well as introduce reforms to the rules, procedures and institutions regulating the industry. Although introduced in 2008, the PIB is still being considered by the National Assembly. Following the spate of nationwide strikes due to corruption in the oil and gas industry⁵ and the purported removal of the subsidy on the supply of premium motor spirit ('PMS') by the government on 1 January 2012, the federal government has established a committee to further review the PIB to address pertinent issues in the industry. It is expected that this exercise will be concluded shortly and the Bill represented to the National Assembly⁶ for its consideration.

The Nigerian electricity industry is also divided into three broad segments: generation, transmission and distribution. Until recently, the industry has been run almost exclusively by the federal government, through the federal government-owned vertically integrated monopoly (the National Electric Power Authority). Recognising the poor state of the industry, however, and the need for reform in order to attract the necessary investment to meet the electricity needs of the Nigerian economy, the federal government is undertaking a major reform of the industry.

These reforms are based on the Nigerian Electric Power Policy 2001/2002 ('the NEPP'), and the Electric Power Sector Reform Act 2005 ('the EPSRA'), which have opened up the electric power industry to participation by the private sector. The EPSRA provides for the licensing of private companies for the establishment of independent power projects. Also, the government, through the Bureau of Public Enterprises ('the BPE') is currently in the process of privatising, by open competitive bidding, the various generation⁷ and distribution successor companies established to hold assets formerly owned by the

4 It is pertinent to note that the NCA does not preclude the 100 per cent foreign or non-Nigerian ownership of companies in the oil and gas industry in Nigeria.

5 Corruption is allegedly more widespread than formerly believed in the downstream segment of the Nigerian oil and gas industry.

6 The federal government operates a bicameral legislative system, whereby there are two Houses that pass Bills into law, namely; the House of Representatives which is the lower house and the Senate.

7 Private-sector participation in the two hydrogeneration companies (Kainji and Shiroro) is expected to be through the granting of concessions as opposed to outright sale.

Power Holding Company of Nigeria ('the PHCN'),⁸ while retaining the electric power transmission network for national security reasons. The government is, however, proposing to award a management contract in this respect to ensure the effective running of, as well as increased investment in, the Nigerian electric power transmission network.

II REGULATION

i The regulators

The Federal Ministry of Petroleum Resources ('the FMPR') has overall regulatory oversight of the Nigerian oil and gas industry. The FMPR acts primarily through the Department of Petroleum Resources ('the DPR'), the regulatory agency of the FMPR. The DPR is responsible for the monitoring of the operation of petroleum companies and compliance with petroleum laws and regulations, as well as the collection of rents and royalties. Other regulatory bodies include the Petroleum Products Pricing Regulatory Agency ('the PPPRA'), which regulates the rates for the transportation and distribution of petroleum products; the Federal Ministry of Environment, Housing and Urban Development, which is responsible for approving environmental impact assessment reports in respect of oil and gas projects; the Nigerian Content Development and Monitoring Board, which is responsible for ensuring compliance with the NCA; and the Joint Development Authority, which is responsible for the supervision of petroleum activities within the Nigeria–São Tomé and Príncipe Joint Development Authority.

The principal Nigerian law is the Constitution, while the primary piece of legislation regulating the exploration, production and distribution of petroleum and its derivative products is the PA. The Constitution and the PA vest in the federal government, the entire ownership and control of the petroleum resources in, under and upon any land in Nigeria. Pursuant to the PA, the prospecting, exploration, production and distribution of petroleum resources may only be undertaken with the consent of the Minister of Petroleum ('the Minister') through the DPR's issuance of leases, licences and permits for the prospecting, exploration or distribution of petroleum and petroleum products.

The Petroleum (Drilling and Production) Regulations ('the Petroleum Regulations') made pursuant to the PA regulates technical matters relating to petroleum production and the licensee or lessee's conduct of operations, including issues related to filing of monthly progress reports of operations with the DPR, abandonment, assignments of participating interests, permits to carry out seismic data surveys and fees, rents and royalty rates.

The Oil Pipelines Act regulates the construction, operation and maintenance of gas pipelines and associated infrastructure. This legislation is also enforced by the DPR and provides for the grant of licences and permits for the construction and operation of oil or gas pipelines. It confers the right to construct, maintain and operate installations that are ancillary to the construction, maintenance and operation of such pipelines. The Petroleum Regulations, also administered by the DPR, regulate the transportation of petroleum and natural gas derivatives in Nigeria.

⁸ The PHCN was the holding company (now unbundled) for the assets and employees of the former state-owned vertically integrated company NEPA.

The fiscal regime of the oil and gas industry primarily comprises the Petroleum Profits Tax Act ('the PPTA') and the Companies Income Tax Act ('the CITA'), which regulate the taxation of profits made from the production and distribution of petroleum, and the Deep Offshore and Inland Basin Production Sharing Contracts Act ('the DIPSA') and the Petroleum Regulations, which prescribes the rates for royalties and rents. The PPTA governs the taxation regime of upstream petroleum operations in Nigeria and provides for an applicable tax of 85 per cent of the company's chargeable profits.

The CITA governs the taxation regime of midstream and downstream petroleum operations in Nigeria and provides an applicable tax of 30 per cent of the company's chargeable profits. The DIPSA provides fiscal incentives for companies operating in the inland basin and deep offshore areas of Nigeria.

The National Environmental Standards and Regulations Enforcement Agency Act, the Environmental Impact Assessment Act and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria prescribe environmental and emission standards applicable to petroleum activities in Nigeria.

There are a number of laws, statutory instruments and policies that may also apply to companies engaged in natural gas operations, including the Companies and Allied Matters Act, Nigerian Investment Promotion Commission Act, Pension Reforms Act, the Immigration Act, the National Insurance Commission Policy Guidelines 2008, the Foreign Exchange (Miscellaneous and Monitoring) Provisions Act, the Pre-Shipments Inspection of Exports Act, the Customs and Excise Tariff, Etc (Consolidation) Act, the Customs and Excise Management Act, the Personal Income Tax Act and the Harmful Waste (Special Criminal Provision, Etc) Act.

In relation to the electric power industry, the primary regulator is the Nigerian Electricity Regulatory Commission ('the NERC') mandated to regulate and issue licences to participants in the industry. The main regulatory framework for the electric power industry is provided by the EPSRA. By virtue of the EPSRA, the NERC is empowered to issue licences in connection with activities such as electricity generation, transmission, system operation, distribution or trading.

ii Regulated activities

As previously noted, the granting to investors of rights to develop natural gas reserves is done via the issuance of permits and licences. In respect of licensing, there is generally no distinction between oil and natural gas, and the relevant licences – OELs, OPLs and OMLs – apply to both. The installation of oil terminals cannot be undertaken unless by or under the authority of a licence or lease granted under the Minerals and Mining Act or the express written approval of the Minister. Other governmental authorisations required are a permit to survey a route for a proposed gas pipeline and an oil pipeline licence, both issued under the Oil Pipelines Act.

The right to construct, maintain and operate a gas pipeline is granted via an oil pipeline licence as well as rights to construct and operate ancillary installations, such as pumping stations, storage tanks and loading terminals. A licence is also required for the construction and operation of refineries. This is the same licence required to construct and operate gas-processing facilities.

Nigerian law also requires the pre-shipment inspection of goods including petroleum before export. Additionally, pursuant to the guidelines for the importation of petroleum products into Nigeria ('the Guidelines'), any company wishing to engage in the business of importation of refined petroleum products is required to obtain an import permit from the DPR. The Guidelines stipulate that all facilities for the storage of imported petroleum products must be inspected by the DPR prior to grant of the storage or sale licence. The DPR also issues licences for the transportation of petroleum derivatives pursuant to the Petroleum Regulations, which prohibits the transportation of many of such derivatives without an applicable licence. Where LNG is to be stored, a licence to store LNG must also be obtained from the Minister.

Regarding the electric power industry, the EPSRA requires any person intending to engage in the business of electricity generation, transmission, system operation, distribution or trading to obtain the applicable licence from the NERC.

Applications for licences in relation to the aforementioned activities are to be submitted to the NERC. The issuance of licences under the EPSRA is at the discretion of the NERC. Applications are required to comply with the form prescribed in the relevant regulations, and are required to be accompanied with the relevant application fees, as well as non-refundable processing fees. Relevant application forms are provided by the NREC. Within 30 days of NERC's acknowledgment of the application, the applicant is required to publish its intention to obtain a licence in one national newspaper and a newspaper in the area it intends to operate and invite any objections thereto to be submitted to the NERC for its consideration.

In granting a licence, the NERC is required to consider the interests of consumers and the development of the industry generally. Other key criteria in granting licences include that the applicant is suitably qualified to hold a licence, the applicant will comply with all relevant laws and regulations as well as the terms and conditions of the licence, and the grant of the application is in the public interest.

Where the application relates to transmission and distribution licences, the NERC must be satisfied that the network has the relevant capacity to transmit or distribute electricity in a safe market, and that open access is provided to all users with transparent and non-discriminatory prices. It is also important to note that licences are not required in respect of the generation of electric power not exceeding 1MW (in aggregate at a site) or the distribution of not more than 100kW. Also, applicants that have acquired 10 per cent or more of a company that holds a licence are required to disclose same to the NERC.

iii Ownership and market access restrictions

There are generally no restrictions in relation to the ownership of energy assets, service providers or licence holders in the energy industry. The PA provides, however, that the Minister may revoke an OML or OPL if the licensee or lessee company becomes controlled directly or indirectly by a citizen of, or subject of, or a company incorporated in a country whose laws do not permit Nigeria citizens or Nigerian companies to acquire, hold or operate petroleum concessions on conditions which, in the opinion of the Minister, are reasonably comparable with those applicable to Nigerian citizens or companies.

Pursuant to the EPSRA, licensees are precluded from acquiring or otherwise affiliating with other licence companies without the prior approval of the NERC. It is

also important to note that the NERC may issue licences upon such terms and conditions as it may deem fit, which may include restrictions in relation to assignments or change of control in the shareholding of the licence.

iv Transfers of control and assignments

The Securities and Exchange Commission ('the SEC'), the regulatory body of the Nigerian capital market, has regulatory oversight in respect of mergers and acquisitions. Further to the Investment and Securities Act of 2007 ('the ISA'), mergers and acquisitions are generally subject to the prior review and approval of the SEC. The SEC has issued guidelines and rules in respect of these to guard against anti-competitive practices and they are applicable to all sectors, including the energy sector.

In considering whether a merger or acquisition is anti-competitive, the SEC will consider whether same will result in any technological or other pro-competitive gain that will be greater than, and offset, the effects of any prevention or lessening of competition, which may result or is likely to result from the merger, and whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the merger. After making this initial determination, the SEC may grant an approval in principle to the merger. The timing for approval of such transaction varies based on the complexity of the transaction. Where approval is given, an application is required to be made to the Federal High Court to obtain approval for the merger.

Also, where a merger or change in control results in the direct or indirect assignment of an OPL or OML, ministerial consent may be required. While these licences may be transferred and even sometimes pledged as security, the enforcement of such security, which could typically translate to an assignment of the OML, the OPL or any right, power or interest arising therein, may only be done with the prior consent of the Minister. An application for consent to an assignment shall be made in writing, accompanied by the prescribed fee. There may also be a requirement for the payment of other fees and or premium at the discretion of the Minister.

The consent requirement extends to the farm-out of marginal fields. Where interests in OMLs or OPLs are transferred without the requisite consent, such a licence or lease may be revoked. This is in addition to any pre-emption rights or rights of first refusal that may exist by virtue of contract. There is, however, no restriction on booking the rights for accounting purposes.

III TRANSMISSION/TRANSPORTATION AND DISTRIBUTION SERVICES

i Vertical integration and unbundling

A substantial part of the transportation pipelines, gas-processing facilities and other associated infrastructure is currently owned and utilised by individual gas producers. However, owners are required by law to provide access to available capacity, if any, upon mutually agreed terms and under the supervision of the Minister.

In order to promote the utilisation of gas in the domestic and export markets, the FMPR has developed a gas master plan and an infrastructure blueprint. The infrastructure blueprint aims to optimise the development of gas facilities in line with government

policy. It envisages the establishment of three central processing franchise areas, which are to be concessioned to preferred bidders. These facilities will form the major hubs for the processing of gas.

In the electric power industry, there are no vertically integrated players. The federal government remains the dominant player in the industry, holding the majority of the industry infrastructure. The government, through the BPE is currently in the process of privatising the various generation and distribution successor companies established to hold assets formerly owned by the PHCN.

Under the government's privatisation plans, the various generation companies and distribution companies will be sold to private companies under a competitive bidding process.⁹ The national transmission network, which is currently the only transmission network in Nigeria will be retained by the federal government. It is expected that the management of the Transmission Company of Nigeria, which holds the transmission assets, will be contracted out to ensure the optimal running of the transmission network.

ii Transmission/transportation and distribution access

As regards, the electric power industry, regulations that require holders of transmission and distribution licences to provide non-discriminatory open access to other licensees provided there is available capacity to do so, have been recently issued. Notwithstanding third-party access rights, existing electricity distribution companies have exclusivity with respect to their areas of coverage, which typically is about three to five component states of Nigeria, except for two of the 11 distribution companies that cover only Lagos state.

Regarding oil and gas, the Oil Pipelines Act provides that any person who requires access to any pipeline may make an application to the Minister, who considers the application in consultation with the owner of the pipeline. The Minister will grant the application if he is satisfied that the pipeline can conveniently convey the substance the applicant wishes to convey. The terms and conditions of the access will be as negotiated and agreed upon between the parties; where the parties fail to reach an agreement, the Minister may impose such terms and conditions that he deems expedient to secure the access rights of the applicant and to regulate the access charge. Notwithstanding the foregoing, gas distribution companies typically have exclusive rights to their franchise areas.

iii Rates

The NERC is mandated under the EPSRA to regulate prices in the industry with a view to ensuring fair pricing for consumers of electricity as well as ensuring sufficient returns for market participants. The EPSRA further empowers the NERC to establish one or more tariff methodologies for regulating electricity prices. The NERC, in consultation with market participants, established the Multi-Year Tariff Order ('the MYTO'), a tariff structure for all levels of the industry, which incorporates all cost elements in order to arrive at electricity prices that are reasonable and guarantee a minimum return on investment for market participants.

9 Two generation companies that are hydropowered would be under concession and not sold.

The MYTO also provides incentives for participants who are able to achieve a higher efficiency in their operations. The structure is such that at the commencement of the MYTO all prices will be regulated; however, this will be reduced over time as competition increases in the market and electricity supply is sufficient to meet requirements of the market.

The PPPRA, on the other hand, regulates the rates for the pricing and distribution of petroleum products. The pricing template is a pricing information sheet detailing the components used in deriving the PPPRA daily or monthly guiding products prices, which in turn affects the rates paid. Access charges to gas pipelines are negotiated and determined by the parties but are subject to the approval of the Minister.

iv Security and technology restrictions

The National Office for Technology Acquisition and Promotion Act ('the NOTAP Act') requires the registration of all contracts involving the transfer of technology between Nigerian and foreign companies. The NOTAP Act sets maximum limits for charges that may be imposed by foreign companies in connection with the provision of such technical, training, management and other such technology acquisition or transfer agreements. Failure to register such contracts with NOTAP will result in the Nigerian company not being able to access official Forex markets and approved government channels for the purpose of making payments under such contracts.

With respect to security of critical information on the energy sector and the role of cyber security in this respect, concrete steps are being taken by the federal government, to ensure same, through a number of cyber-security bills as well as critical infrastructure protection being considered by the Nigerian legislative houses.¹⁰ Further to the federal government's desire to, *inter alia*, protect such information, a committee was recently set up by the executive arm of the federal government to review the Bills before the legislative houses with a view to assisting in fine-tuning same before enactment into law.

IV ENERGY MARKETS

i Development of energy markets

As previously noted, the electricity industry is currently undergoing significant changes with the introduction of private industry participation. Currently, there are several licensed active independent power projects ('IPPs') operating in the industry. Many of these IPPs were established for the sole purpose of supplying electricity to particular areas, companies or cluster of industries or industrial areas, while others supply electricity directly to the national grid. As there is only one electric power transmission network in the country, dedicated IPPs are typically located around the areas or companies that they supply.

The federal government established the Nigerian Electricity Bulk Trading Company plc ('the Bulk Trader') to act as an interface between the electric power generation segment and the electric power distribution segment of the electric power industry, because of concerns as to the creditworthiness of companies in the power distribution segment

10 Nigeria's federal legislative houses are the House of Representatives and the Senate.

of the industry.¹¹ The Bulk Trader's functions include negotiating and executing power purchase agreements ('PPAs') with the privatised PHCN successor-generation companies, assuming the responsibilities under existing PPAs entered into by the PHCN, as well as negotiating PPAs with interested IPPs. It is understood that the World Bank will provide partial risk guarantees in respect of the payment obligations of the Bulk Trader.

Natural gas trading is mainly controlled by the Nigerian Gas Company ('the NGC'), which, due to its ownership of the major transmission infrastructure, plays the role of gas merchant in Nigeria and grants franchises to private companies for the distribution of gas within established distribution zones.

ii Energy market rules and regulation

The government has issued National Gas Supply and Pricing Regulations, which set out a pricing framework for gas supplied to different sectors of the domestic market. The Pricing Regulations also impose a domestic supply obligations on natural gas producers, the fulfilment of which is a prerequisite for an export gas project. Outside the domestic supply obligations of gas producers, natural gas is sold on a willing-buyer, willing-seller basis, and the pricing is negotiated on a bilateral basis.

The pricing of grid electric power supply is, however, regulated by the MYTO. Where the electric supply is to be off-grid, parties may negotiate such terms and conditions, including pricing that would regulate their relationship under the electric power sale agreement.

There is at the moment, no exchange-traded energy derivatives market in Nigeria. Any such derivative arrangement would typically be over the counter.

iii Contracts for sale of energy

Market participants are free to enter individual contracts for the sale of power or natural gas. Where such natural gas sale is for sale of gas that falls within the purview of a company's domestic supply obligation, a standard template gas sale and aggregation agreement, already being finalised by stakeholders, is required to be used with many of the terms, such as pricing formulae, *force majeure* definition, and such other pre-determined terms. Only a few terms that are party-, plant- or location-specific are typically negotiated on bilateral basis.

With respect to power, there are also the template bulk PPAs and vesting contracts that are used for grid power sale and purchase pursuant to the ongoing reform programme. Like the template gas agreement, many of its terms are fairly standard and fixed with only a few terms considered as bilateral terms subject to negotiations.

It is expected that the regulatory bodies for both the petroleum industry and power may mediate in negotiations. It is also the case that the prudence of utility purchases of power or natural gas is subject to regulatory scrutiny.

11 Please note that this does not create a single-buyer model, such that a generation company is still allowed to sell to a distribution company of its choice.

iv Market developments

The ongoing reform and power sector privatisation remain the primary developments in the electric power sector. It is expected that the privatisation process will be concluded during the course of 2012, with an industry review of proposed transaction documents currently in progress. The current deadline for submission of financial and technical bids is currently set at 31 July 2012, with the announcement of preferred bidders to take place in October 2012.

Also, following the recent nationwide strikes in response to the purported removal of the subsidy on PMS, the federal government has established a committee to review the PIB with a view to re-presenting same to the National Assembly for consideration. The PIB is expected to introduce wide reforms in the oil and gas industry. However, there is no indication on when the bill will be passed into law.

V RENEWABLE ENERGY AND CONSERVATION

i Development of renewable energy

A national energy policy was approved by the federal government in 2003 with the overall thrust of optimal utilisation of the nation's energy resources; both conventional and renewable, for sustainable development and with the active participation of the private sector. There is also the Renewable Energy Master Plan ('Renewable Energy Plan'), which aims to upscale the use of renewable energy in Nigeria. The Renewable Energy Plan articulates Nigeria's vision for achieving sustainable development. The plan also aims at moving the economy from a monolithic fossil economy to one driven by an increasing share of renewable energy in the national energy mix. It involves the exploitation of renewable energy in quantities and at prices that will promote the achievement of equitable and sustainable growth.

In the year 2005, a Presidential Directive was issued to the NNPC to explore the development of renewable energy in Nigeria. The NNPC, through its Renewable Energy Division, has promoted the production and importation of biofuels such as biodiesel and fuel-ethanol to be blended with PMS with a view to reducing carbon emissions. The regulation of the production and importation of biofuels is carried out by the DPR.

ii Energy efficiency and conservation

Energy efficiency regulations are currently absent in Nigeria. The process of extraction, conversion and utilisation of energy is prone to wastage. Apart from direct losses, the inefficient use of energy has resulted in increased cost of energy products and services, faster depletion of energy resources and environmental degradation. The concept of sustainable development, therefore, dictates that deliberate efforts be made to promote efficiency in the production, conversion and utilisation of energy. The Energy Commission of Nigeria ('the ECN') has developed a draft national energy policy and the draft Energy Master Plan that contains basic policies and strategies for energy efficiency and conservation. Specifically, the policy provides for the promotion of energy efficiency and conservation in industrial, residential and transport sectors. The master plan also provides for the designing of a national programme on industrial energy efficiency and conservation in collaboration with the Manufacturers' Association of Nigeria and experts

in higher institutions and research centres. The policy also aims at the introduction of fuel-efficiency labelling programme in the transportation sector for various vehicle types.

The policy also provides for establishing codes and standards for energy efficiency and conservation technologies. The Commission has also recently established an Energy Conservation Research Centre. There is also a pilot compact fluorescent lamps ('CFLs') programme being anchored by the ECN in collaboration with the Economic Community of West African States (ECOWAS) and the Cuban government to replace 1 million incandescent lamps with CFLs. In the power sector, the NERC has initiated some processes towards developing energy efficiency regulation. Specifically, the NERC is currently developing energy efficiency labelling standards for domestic appliances, energy efficiency standards for luminaries and other household appliances.

iii Technological developments

Smartgrid technologies are yet to be implemented in Nigeria.

VI THE YEAR IN REVIEW

The Shell Petroleum Development Company, which currently holds a large number oil and gas concessions in Nigeria is currently exiting some of its onshore oil and gas concession areas as a result of the conflicts it has been having with host communities in those areas. Its decision to exit those concessions has opened up the industry for participation by several indigenous Nigerian companies and other independents. Shell is currently concluding negotiations in respect of its assignment of its participating interest in a number of its concession areas.

Additionally, as regards the power sector, the federal government is in the process of finalising the sale of its majority stake in 17 power generation and distribution companies and concluding the negotiation of a management contract for the transmission network. In the downstream petroleum segment, there are plans by the federal government to deregulate the sale and marketing of petroleum products, remove subsidies, encourage companies to build more refineries and, consequently, refine more crude oil in Nigeria.

VII CONCLUSIONS AND OUTLOOK

Although Nigeria has its fair share of challenges in the energy sector, it appears that the ongoing reforms in the entire energy supply chain, have come at an auspicious time and if the federal government forges ahead with its reforms, the energy sector generally would open up further for private sector participation, with improved energy security. For success to be recorded, however, issues such as corruption, nepotism and inconsistency in government policy must be adequately dealt with. Additionally, the federal government must act transparently while showing that it has the political will to conclude the ongoing reforms. The outlook therefore appears to be positive, largely because of the yawning gap in energy demand and supply and the ongoing reforms. Nigeria may well be particularly attractive to prospective investors if the ongoing reforms are successful.

Appendix 1

ABOUT THE AUTHORS

KEN ETIM

Banwo & Ighodalo

Ken Etim is the managing partner and a partner in the energy practice at Banwo & Ighodalo. He has almost 20 years' experience of advising on, negotiating and closing intricate and highly challenging multi-million-dollar transactions. He specialises in Nigerian and international oil, gas and electricity work and is also experienced in corporate, commercial and project finance transactions and has been involved in almost all of the firms energy and project finance transactions. He regularly acts for a cross section of companies and governments and is recognised in international guides as one of the world's leading energy lawyers. He is a member of the Nigerian Bar Association, the Association of International Petroleum Negotiators (AIPN), Nigerian Maritime Law Association and the Commercial Law & Taxation Committee of the Lagos Chamber of Commerce & Industry, among other associations.

AYODELE ONI

Banwo & Ighodalo

Ayodele Oni, a Shell Scholar and winner of the young lawyer of the year award in the maiden edition of the Nigerian Legal Awards, is a senior associate in the energy and natural resources team of Banwo & Ighodalo. He has a broad range of experience in energy (oil, gas and power), corporate and commercial matters with particular focus on energy. Mr Oni has acted for a broad range of clients in the energy sector assisting on various energy transactions. He also writes a column on energy in a Nigerian business newspaper.

BANWO & IGHODALO

98 Awolowo Road

South West Ikoyi

Lagos

Nigeria

Tel: +234 1 4615203-4

Fax: +234 1 4615205

ketim@banwo-ighodalo.com

aoni@banwo-ighodalo.com

www.banwo-ighodalo.com