REVIEW OF THE SALIENT PROVISIONS OF THE METER ASSET PROVIDER REGULATIONS 2018

A major outcry, in the Nigerian Electricity Supply Industry ("NESI"), relates to the attendant collection losses and the concerns around estimated billing which has impacted in no small measure, the financial standing of most, if not all of the Distribution Company ("DisCo") in Nigeria.

Thus, in December 2017, in its bid to end the seemingly perennial challenges with estimated billing in Nigeria, the Nigerian Electricity Regulatory Commission ("NERC or "the Commission") released the *Draft Meter Asset Provider Regulations 2017* ("Draft Regulations"). Thereafter, following extensive consideration of comments from and reactions to the Draft Regulations, as received from relevant stakeholders, the Board of NERC eventually approved the updated Draft Regulations.

Consequently, on March 8, 2018, the **Meter Asset Provider Regulations 2018** (**"MAP Regulations"**) was finally issued under the common seal of NERC and became effective as the governing framework for the metering of electricity consumption in the NESI.

In a nutshell, the MAP Regulations establish standard rules which:

(i) Encourage the development of independent and competitive meter services in the NESI;
(ii) Eliminate estimated billing practices in the NESI;
(iii) Attract private investment to the provision of metering services in the NESI;
(iv) Close the metering gap through accelerated meter roll out in the NESI; and
(v) Enhance revenue assurance in the NESI.

NEW INITIATIVES

The MAP Regulations require a licensed DisCo to attain metering targets, as stipulated by the Commission, from time to time. To this end, each DisCo is expected to procure the services of a NERC–licensed **Meter Asset Providers** (**"MAP"**), defined in the Regulations as *"a person that is granted permits by the Commission to provide metering services which may include meter financing, procurement, supply, installation, maintenance and replacement".*

Further, each DisCo must make regular periodic disbursements to the relevant MAP for the metering services delivered, pursuant to a Metering Service Agreement (MSA) executed between the DisCo and the relevant MAP. In order to ensure proper energy accounting, Eligible Customers, *"properly so-designated"* under the *Eligible Customer Regulations,* are also permitted to engage the services of MAPs.

For clarity, it is important to note that, although the MAP Regulations are applicable to all DisCos, MAPs, electricity customers and all types of end-user customer meters in the NESI, ***same shall not override metering contracts which were executed by DisCos prior to March 8, 2018***. However, in the event of a conflict between the MAP Regulations and any other regulations or codes in the NESI, with respect to any matter relating to and or connected with metering, the MAP Regulations take precedence.

Specific provisions in the newly issued MAP Regulations include:

- **Licensing Requirements and Process for Qualification as a MAP**

  Subject to compliance with stipulated criteria covering "Application, Technical, and Technology Requirements", MAP Permits are issued to successful applicants.

  Accordingly, any applicant for the grant of a MAP Permit is required to submit with the completed application form, a set of documents namely:

  (i) certificate of incorporation and memorandum and articles of association (MEMART);

  (ii) tax clearance certificate;

  (iii) certified audited financial statements for three (3) consecutive years prior to the year of application;

  (iv) detailed resumes of the members of the applicant's board of directors, management and technical staff;

  (v) 10-year business plan; and

  (vi) relevant experience of the applicant in asset finance, metering and other relating business.

  Additionally, the MAP Regulations require DisCos and MAPs to comply with all relevant regulations issued by NERC, including the *Metering Code* and *Guidelines for Certification of Metering Service Provider and Related Matters*; as well as deploy a minimum back-office systems technology, by which the MAPs can maintain and retrieve financial, inventory, customer data and monitoring usage of deployed infrastructure records (at the minimum), on an on-line real time basis. This back-office systems technology must be able to interface with the DisCos' vending platforms.
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  In order to be granted a MAP Permit, DisCos are required to procure MAPs in accordance with the procedures stipulated in the MAP Regulations. These procedures include:

  - Request by a DisCo for Expressions of Interest ("EoIs") in at least two (2) Nigerian newspapers and the relevant DisCo's website

  - Request by a DisCo for competitive proposals for the provisions of meters and metering services from eligible interested bidders;

  - Preparation of bid documents by a DisCo with specifications for meters and metering services in accordance with the Metering Code and all other relevant Regulations issued by NERC;

- Issuance of a bid document by a DisCo to each eligible bidder;

- Issuance to the successful bidder of an Offer Letter to enter into MSA for the provision of meters and metering services, upon the completion of bids evaluation by a DisCo; and

- Execution of an MSA between a DisCo and the successful bidder, subject to the grant of a Permit by NERC and the submission of a performance bond by the bidder.

Essentially, for a MAP to be considered eligible for participating in the bidding process, it must first apply to NERC for a "No Objection" for the provision of meters and metering services to DisCos. A duly completed application form for "No Objection", is also required to be submitted with the same set of documents required for application for grant of MAP Permit (enumerated above), with additional documents which include:

- VAT registration certificate;
- Copies of the academic and professional qualifications of staff;
- Proof of warehousing facilities for metering systems;
- Proof of ability to secure funds for the procurement of metering systems; and
- Proof of the applicant's previous relevant experience.

The procurement process for the engagement of the first set of MAPs is required to be concluded within 120 days from the day the MAP Regulations came into force (April 3, 2018) while the process, for subsequent MAPs, is to be completed within 120 days from the commencement of the procurement.

Fundamentally, in order to qualify as a MAP, an applicant must have successfully completed the relevant DisCo procurement process and submitted an application to NERC for a permit to become a MAP. Notably, a MAP Permit issued to an applicant is specifically related to a successful procurement process with a DisCo only. Thus, a holder of a MAP Permit may acquire several other permits under distinct procurement processes conducted by different DisCos.

The tenure of a MAP Permit issued by the Commission shall be for a period of 15 years in the first instance, effective from the date of issuance.

The MAP Regulations stipulate that MAPs must mandatorily procure a minimum of 30% of their contracted metering volumes from local meter manufacturing companies in Nigeria. **The local content** threshold, from time to time, shall be as specified in the NERC Local Content Regulations.

Agreements between Parties

Under the MAP Regulations there are two (2) main agreements that must be executed by the relevant players along the value chain.

(a) *Metering Service Agreement (MSA):* This is an agreement entered into between a DisCo and a MAP for the provision of the relevant metering services; and

(b) *Service Level Agreement:* This is a contract between the MAP and DisCo, which defines the level of service that the DisCo expects the MAP to provide to its customers.

In the main, the rights and obligations of parties cut across vital issues, which include:

- ✓ access to customer meters installed by MAPs;
- ✓ use of data derived from customer meters for monitoring;
- ✓ billing and planning;
- ✓ development of meter-deployment plans;
- ✓ payment of metering service charge by electricity customers;
- ✓ legal ownership of the meter asset until fully amortized through payment of a metering service charge by beneficiary customers;
- ✓ meter asset specifications and installation standard;
- ✓ periodic inspection of meters to ensure integrity and reading accuracy;
- ✓ repair and replacement of faulty meters;
- ✓ key performance indicators (KPIs) for MAPs as agreed between parties;
- ✓ safety of installed meters within the customer's premises;
- ✓ willful damage to meters; and
- ✓ transfer of services within a franchise area.

Prohibition of Related Party Transactions

To ensure good corporate governance and the integrity of processes, the MAP Regulations prohibit a DisCo, its core investors, subsidiaries, affiliates, directors and their relatives from setting up, owning shares or holding directorships and senior management positions in the MAPs.

Insurance and Disaster Recovery Plans

Under the MAP Regulations, it is the obligation of the MAP to insure the meter assets and secure all metering equipment deployed in accordance with the Metering Service Agreement (MSA) while the DisCo and the MAP are jointly obliged to ensure frequent back-up of relevant data, to ensure integrity of the metering system.

Capping of Unmetered Customers Bills

To address the issue of estimated billing in the NESI, the MAP Regulations provide that within 120 days of its commencement, NERC shall issue an *Order on the Capping of the Bills of Unmetered Customers*.

Customer Financing of Meters

Another significant initiative in the MAP Regulations is the provision for self-financing of meter acquisition by electricity customers, who elect to pay for a meter asset upfront. In this case:

(i) a DisCo shall provide the customer with authorization specifying the amount to be paid for the installation of a meter, after inspection of the customer's premises and certifying the readiness of the premises for a safe and secure installation of the meter asset;

(ii) the customer shall pay to the MAP the full price of the meter as specified in the DisCo's authorization; and

(iii) the MAP shall supply and install the meter at the premises of the customer within ten (10) working days of the Customer's full payment.

Under the customer financing arrangement, a customer shall not be liable for the payment of metering service charge through the DisCo, and the amount payable to the MAP by the customer shall be the efficient costs of the meter and its installation, as determined by the procurement process for MAPs conducted by the DisCo.

Dispute Resolution

All agreements entered into by parties further to these Regulations shall contain appropriate dispute resolution clauses for settlement of disputes by arbitration.

CONCLUSION

The development and issuance of the MAP Regulations indicate the commitment of NERC to using its rule-making powers under the Electric Power Sector Reform Act (2005), to address critical challenges affecting the Nigerian power sector.

Essentially, the MAP Regulations make transitional arrangements to the effect that, pursuant to the tariff reset in the year 2018, ***only meters installed by DisCos by December 31, 2018 shall form part of their Regulatory Asset Base.***

Furthermore, any further deployment of meters beyond December 31, 2018 under a subsisting contract entered by DisCos is to be structured under the MAP regulatory framework. Again, customers who are provided with meters under this arrangement are to pay a monthly metering service charge and appropriate energy tariff reflective of the financing structure while DisCos are expected to present to the Commission for approval, additional customer classes disaggregating customer tariffs, based on the mode of financing of the meter asset that are installed on their premises.

Whilst figures released by NERC indicate a metering gap of 4,740,275 meters for all DisCos as at December 31, 2017 (with the gap projected to widen significantly by the time the ongoing customer enumeration in the NESI is concluded), it is expected that the operation of the MAP Regulations will bridge the metering gap and eliminate the billing crisis currently ravaging the NESI.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo

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