



ELECTRICITY
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SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

NIGERIAN ELECTRICITY REGULATORY COMMISSION
MINI GRID REGULATION 2023





OVERVIEW

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MINI GRID REGULATION 2023

OVERVIEW



In 2017, an all-encompassing framework specific to mini-grids, the Regulation for Mini-Grids 2016 (Mini-Grid Regulation or the Regulation), was adopted by the Nigerian Electricity Regulatory Commission (NERC). In August 2022, NERC released a Consultation Paper on the Proposed Review of Regulation for Mini-Grids 2016 (Consultation Paper) to obtain comments, objections, and representations from all stakeholders in the Nigerian Electricity Supply Industry (NESI) and the public regarding the proposed amendments to the Mini-Grid Regulations.

On December 29, 2023, the Nigerian Electricity Regulatory Commission (NERC) released the 2023 Mini-Grid Regulations (the Regulation), which is an updated version of the 2016 Regulations, to govern the development and management of mini-grids in Nigeria, in line with the recently enacted Electricity Act, 2023.



OBJECTIVE

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OBJECTIVE



The 2023 Mini-Grid Regulations in Nigeria aims to incentivize private investment in the mini-grid sector, promoting the expansion of electricity access in both rural and urban areas. Additionally, the framework encourages implementing small-scale renewable energy projects, aligning to foster sustainable and inclusive energy development in the country. The Regulation replaces the 2016 Mini-Grid Regulations, providing an updated and conducive environment for increased private sector participation in the mini-grid industry.

ENABLING LAW

NERC is empowered by the Electricity Act, 2023 as the federal electricity regulatory body responsible for formulating regulations to facilitate the implementation and enforcement of the provisions of the Act. NERC is vested with the authority to develop regulations relating to areas of administration, licensing, market structure, connection and disconnection procedures, pricing, and tariffs etc.



KEY PROVISIONS

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KEY PROVISIONS



Introduction of Portfolio of Isolated and Interconnected Mini-Grids

The Regulations introduced allowance for filing a portfolio of mini-grids. It defined "Portfolio of Interconnected Mini-Grids" as a set of interconnected mini-grids as determined by the mini-grid developer, for which tripartite agreements with the same Distribution Licensee have been signed and filed simultaneously with the Commission for approval, while "Portfolio of Isolated mini-grids" means a set of isolated mini-grids as determined by the mini-grid developer, which is filed with the Commission for approval simultaneously. This development allows for single simultaneous filings regarding multiple operations by mini-grid developers, which will save both time and costs for the mini-grid developer (encouraging more deployment of mini-grids) and the Commission.

Confirmation of DisCo Consent

A welcome development in the new regulations is the provision regarding the confirmation and consent required under Sections 7(1)(b) and (c) of the

regulation, to be provided by the DisCo within 15 business days of being addressed to the DisCo's managing director and served at the DisCo's headquarters. Where the DisCo neglects, fails, refuses, or to respond within 15 business days of being served the request for confirmation and consent by the mini-grid developer, the regulations provide that it shall be deemed that the DisCo has consented to the request of the mini-grid developer. This new provision regarding deemed consent will help to fast track the permit procedures for mini-grid developers and reduce the bureaucracy that may occur in waiting for consent from DisCos.

Transfer of Mini-Grid Permit and Business:

Section 14 of the new Mini-Grid Regulation focuses on the procedure for transferring Mini-Grid Permits and Business. While this addition aims to curb the influx of permit requests, ensuring business continuity, it lacks provisions for post-operations activities and relationships between mini-grid developers, DisCos, and the community. The absence of guidance on



these aspects implies the need for new agreements, leaving a regulatory gap unaddressed.

Environmental Protection

Under the new regulations, environmental protection is taken more seriously by making an infraction of relevant environmental laws to lead to the suspension or termination of permits. This provision will encourage mini-grid operators to take more seriously the environmental implications of their respective operations.

Extension of DisCo Network to registered Mini- Grid

Section 20(8) of the new regulation addresses DisCos extending their distribution network into areas covered by isolated registered mini-grids. This introduces a mandatory decommission plan jointly filed by the mini-grid operator and DisCo to ensure a safe transition and asset removal. The plan includes defining project boundaries, complying with laws, obtaining approvals, and allocating resources. Despite its commendable nature, decommissioning

projects may face challenges, leading to potential cost overruns. Technological advancements may also necessitate regular updates for sustained efficiency.

The regulation enhances transparency by requiring DisCos to notify isolated mini-grid operators 12 months before network extensions, allowing adequate preparation time.

Additionally, Section 20(9)(c) grants compensation rights to interconnected mini-grid permit holders. If a DisCo seeks to reintegrate an interconnected mini-grid post the tripartite contract's expiration, the mini-grid operator is entitled to compensation, ensuring continued operations until payment. This positive departure explicitly outlines compensation rights for interconnected mini-grids, filling a prior regulatory gap.

Monitoring & Evaluation (M&E) of Mini-Grids

Section 21 of the regulation mandates mini-grid operators to conduct regular monitoring and evaluation (M&E) to ensure compliance, sustainability, and data-driven electrification planning. Operators



must submit M&E reports, utilizing an approved template, either in hardcopy or through Commission-sanctioned digital platforms. This comprehensive M&E data aids developers in making informed decisions, whether related to infrastructure upgrades, energy source changes, or technology implementations. The proactive identification of risks through M&E supports the implementation of mitigation strategies, reducing the likelihood of system failures and financial losses.

Tariff Adjustments

The new regulations also redefine the process for tariff adjustment(s) and calculation of the depreciated value of assets in the event of discrepancies between the initially provided tariffs and actual costs or revenues, based on account inspections required to be undertaken once every year. Unlike the 2016 regulation, which focused on deviations during tariff definition, the 2023 regulation measures actual costs against approved benchmark costs and actual revenues against tariff figures stated during the application. Moreover, the consequence of discrepancies is now more emphatic and directional,

with the regulation stating that tariffs and the calculation of the depreciated value "shall be adjusted," signifying a stricter directive compared to the previous "may be adjusted, which leaves room for choice.

Commercial Arrangements

The new regulation adopts the Multi-Year Tariff Order (MYTO) methodology, with notable reductions in allowable caps for technical and non-technical losses (now set at 4% and 3%, respectively), enhancing overall sector efficiency. Furthermore, by virtue of Section 22 (4), the introduction of portfolio mini-grids enables permit holders to file a single tariff application for all sites within a portfolio or individual applications for each site: the operator may file a single tariff application for all sites under a portfolio of isolated mini-grids or a portfolio of interconnected mini-grids; file an individual tariff application for each site under a portfolio of isolated mini-grids or a portfolio of interconnected mini-grids; and the tariff control period in the MYTO model is 5 years. Section 22(5) introduces flexibility for registered mini-grid operators



to adopt MYTO methodology or set tariffs based on community agreements, emphasizing community representation. While the Commission retains the right to intervene, the new criteria focus on equity and fairness, offering a broader scope for consideration beyond strict financial thresholds.

Compensation Methodology

By Section 19 (3) of the previous regulations where the parties fail to agree to the terms of the compensation, the Commission shall act as an arbiter to determine the compensation to be paid. This provision is expunged in the new regulations and has been replaced with a compensation procedure in Section 20(3); and the regulation also makes room for parties to mutually agree on an appropriate compensation procedure, based on the provision in Section 20(12) of the regulation. This provision being expunged and as replaced, will reduce the level of conflict(s) between stakeholders and will promote increased collaboration.

Embedded Generation

Section 20 (3)(c) of the new regulations provide that having transferred its distribution asset to the DisCo, the mini-grid may, if mutually agreed, deploy its generation asset(s) as an embedded generator to the DisCo or become an emergency supplier to niche customers during DisCo supply outages. This provision, which is absent in the previous regulations will aid energy access to communities, by giving the mini-grid operator an opportunity to serve as a back-up power provider; even after its transfer of distribution assets to the DisCo and will also allow the mini-grid operator earn additional revenues to allow for cost recovery.

Continued Operation following Compensation

In Section 20(4), the new regulations secure the mini-grid permit holder's right to continue operations until fully compensated by the DisCo, preventing disruptions, and ensuring a seamless transition. This key provision, absent in previous regulations, emphasizes the commitment to an uninterrupted process.



Additionally, the regulation introduces a compensation mechanism for Interconnected mini-grid permit holders, outlined in Section 20(9)(c). Activated when the DisCo reintegrates the interconnected mini-grid after a tripartite contract expires, this provision ensures fair compensation covering all costs incurred by the mini-grid permit holder. This mechanism ensures a fair deal between the parties involved and fosters smoother integration, subject to the value of compensation factoring all costs expended by the mini-grid permit holder.

Geographical Delineation of Distribution System and Asset(s) Ownership

Section 6 of the new regulation includes an additional information to be provided by mini-grid developers for applications for mini-grid permits, which is details of the generation system that shall supply the mini-grid network. This additional requirement invariably implies that the generation assets of the mini-grid is owned by the mini-grid developer. This is pertinent because the regulations do not define or properly

delineate ownership of generation and distribution assets in Sections 7-9 which relates to isolated and interconnected mini-grids. This may cause frictions between the DisCo and mini-grid developers. As such, ownership of assets may need to be inferred from other sections of the regulation or as clearly defined by parties in their respective agreements.

Asset(s) Delineation

The regulation, per Section 20(3)(c), highlights the mini-grid developer's retention of ownership for generation assets. This implies that both generation and distribution assets in isolated mini-grids remain under the control of the mini-grid operator, determined by the operator's choice post-DisCo extension. The tripartite agreement (Section 9(2)(b)(ii)) stresses ownership rights for extra infrastructure. Sections 11(1) and 15(1) affirm the mini-grid operator's rights to construct, operate, and maintain the distribution network, suggesting ownership. Noteworthy is the term 'its' in Section 15(1), implying ownership. This signifies that the mini-grid operator possesses new distribution infrastructure



until a potential transfer, involving compensation, stated in Section 20(3)(c).

Miscellaneous

Section 21 (4) of the old regulations provide that the Commission shall not grant an extension of an Exclusivity Period beyond 12 months, where the site is within the 5-year extension plan of a Distribution Licensee. The Mini-Grid Developer is recommended to consult the Commission or the Distribution Licensee before signing the initial exclusivity agreement with the community. The removal of this provision in the new regulation will allow for increased deployment of isolated mini-grids in underserved areas and will promote collaboration between DisCos and isolated mini-grid operators.



KEY STAKEHOLDERS

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Nigerian Electricity Regulatory Commission (NERC):

NERC is empowered by the Electricity Act, 2023 as the federal electricity regulatory body responsible for formulating regulations to facilitate the implementation and enforcement of the provisions of the Act.

Electricity Distribution Companies (DisCos):

A distribution company is described in the Regulation as a holder of a distribution license who operates a distribution network that is connected to the transmission system operated by the system operation licensee.

Mini-grid Operators:

As defined in the Regulation, includes a person or an entity that is issued a permit by the Commission for the operation of isolated or inter-connected Mini-grids.

The background of the slide is a dark, monochromatic image of a high-voltage power transmission tower and its associated power lines. The tower is a lattice structure, and the lines stretch across the frame, creating a sense of depth and industrial scale. The overall tone is professional and technical.

PRICING AND TARIFFS

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PRICING AND TARIFFS



Under the new regulation, tariffs for permit holders are calculated using the Multi-Year Tariff Order (MYTO) methodology. Notably, the allowable caps for technical losses and non-technical losses are set at 4% and 3%, respectively; while also providing that the MYTO methodology can be adopted, or tariffs can be set through agreements with the community, represented by customers consuming a minimum of 60% of the electrical output.





INCENTIVES AND INVESTMENT OPPORTUNITIES

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INCENTIVES AND INVESTMENT OPPORTUNITIES



The regulation also addresses instances where a DisCo extends its network to an isolated mini-grid operated under a permit. In such cases, the mini-grid developer is empowered to transfer all distribution assets to the DisCo. Compensation, as prescribed by the regulation, becomes the reciprocal agreement. This mechanism ensures a fair exchange between the parties involved and fosters smoother integration.

The Regulation grants compensation rights to interconnected mini-grid permit holders. If a DisCo seeks to reintegrate the interconnected mini-grid into its network after the expiration of a tripartite contract, the mini-grid operator is entitled to compensation.



SANCTIONS AND PENALTIES

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The Regulation provided that any Mini-grid operator that does not adhere to the environmental protection section, by making an infraction of relevant environmental laws, would be subject to the suspension or termination of permits granted by the Commission.

DISCLAIMER



This document titled the “Simplified Legal and Regulatory Guide” of the referenced country is not expected to form the basis of, or be construed as standard legal advice; nor should any of its contents and representations be strictly relied upon for any activities. Electricity Lawyer (EL) will not be liable for decisions whatsoever that are made based on the contents of the document.

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