

## ANALYSING THE LAGOS STATE ELECTRICITY LAW



### Background

The need to decentralise what was hitherto perceived as a centralised Nigerian Electricity Supply Industry (“**NESI**”) to give the sub-national governments clear regulatory autonomy over their respective States’ electricity markets has been pushed by different stakeholders in the NESI for years. Consequently, the Constitution of the Federal Republic of Nigeria (Fifth Alteration) Act, No. 33, 2022 (the “**Constitutional Amendment Act**”) was enacted in March 2023 to amend the Concurrent Legislative List contained in Part II of the Second Schedule to the Nigerian Constitution. The Constitutional Amendment Act empowers States to generate, transmit and distribute electricity in areas covered by the national grid within their States.

Following the Constitutional Amendment Act enactment, the Electricity Act 2023 (the “**Act**”) was signed into law by President Bola Tinubu in June 2023 to replace the Electric Power Sector Reform Act 2005 (“**EPSRA**”) as the governing law in the NESI. The Act makes elaborate provisions on the decentralization of the NESI and provides the procedure for the handover of regulatory powers from the federal regulator, the Nigerian

Electricity Regulatory Commission (“**NERC**”) to the States regulators.

Following the above events, different States of the federation such as Imo, Kogi, Lagos, Edo, Kaduna, Oyo, Ekiti, and Enugu States have taken various steps to enact their respective State electricity laws with a view to assuming full regulatory control and autonomy over their States’ electricity markets and have given notification to this effect to NERC. These States have further requested NERC to transfer regulatory authority over electricity operations in the States to their respective State Regulators. The transfer processes have been concluded for Enugu and Ondo States with NERC

effectively ceasing to regulate the electricity markets in those States.

In the case of Lagos State, the State on 29th November, 2024 enacted the Lagos State Electricity Law (“**Lagos Law**”) and gave notice to this effect to NERC. NERC on its part issued two (2) Orders of Transfer of Regulatory Oversight of the Electricity Market in Lagos State from the Nigerian Electricity Regulatory Commission to the Lagos State Electricity Regulatory Commission both dated 5th December, 2024 (“**Transfer Orders**”). The Transfer Orders mandate the electricity distribution companies operating in Lagos State (i.e. Ikeja Electric Plc and Eko Electricity Distribution Plc) to respectively incorporate subsidiaries that will assume the responsibilities for intrastate supply and distribution of electricity within Lagos State amongst other directives within a specified timeline.

This newsletter analyses the Lagos Law and potential impacts on the Lagos State electricity market.

## Key Highlights of the Lagos State Electricity Law



**Objectives:** The Lagos Law has as part of its objectives to (a) establish a Lagos Electricity Market that is commercially and technically sound, and is well-funded and financially viable; (b) establish a regulatory framework and licensing regime for the conduct of regulated activities in the Lagos Electricity Market and for the delivery of services by undertakings to electricity consumers located in the State amongst other notable objectives.

**Establishment of the Lagos State Electricity Regulatory Commission (“LASERC”):** Section 5 of the Lagos Law established LASERC, an independent regulatory body responsible for overseeing the electricity market in the State as well as outlines its authority to regulate various aspects of the electricity market, including licensing, tariff setting, and compliance monitoring.



### **Establishment of the Lagos State Electrification Agency (“Agency”):**

The Agency is established under section 121 of the Lagos Law to work alongside LASERC in implementing electrification projects aimed at improving access to electricity in underserved areas. The Agency is tasked with executing state policies related to electrification and renewable energy initiatives.

Section 124 of the Lagos Law clarifies the collaborative relationship between LASERC and the Agency, emphasizing that both entities work together to achieve common goals related to electricity supply and electrification. The synergy between LASERC's regulatory oversight and the Agency's implementation capabilities ensures that policies are effectively translated into actionable projects.

**LASERC’s Power to make Regulations:** Sections 31(1) and 177(1) of the Lagos Law state that, subject to prior stakeholders’ consultation, LASERC may make regulations and issue guidelines, rules, directives, decisions, orders and notices for the effective implementation of the provisions of the Lagos Law and for the safe, reliable and efficient operation of the Lagos Electricity Market in accordance with the Regulations Approval Law, Laws of Lagos State 2015 (the “**Regulations Law**”). The Regulations Law mandates that such regulations must be approved by the Lagos State House of Assembly.

**Licensing Requirements for Existing Licensees:** Section 49(2) of the Lagos Law states that any person carrying on regulated activities or operating an undertaking in the State must apply to LASERC for a license within three (3) months of coming into effect of this Law. However, we consider that this does not apply to persons or entities undertaking grid-connected activities.



**Negotiation of License Agreements Between LASERC and Proposed Licensees:** Section 56(2) of the Lagos Law introduces a groundbreaking concept of license agreement under which proposed licensees will negotiate the terms and conditions of their licenses with LASERC. This approach is innovative in Nigeria, as it deviates from the traditional model where regulatory agencies simply issue licenses with predetermined terms without input from the proposed licensees. By enabling negotiation, this provision fosters a more collaborative relationship between regulators and market participants, potentially leading to more tailored and effective regulatory frameworks that better address the specific needs and circumstances of the electricity market in Lagos.

**Duration of a Licence:** By Section 60 of the Lagos Law, the duration of licenses issued by LASERC cannot exceed ten (10) years.

**Penalties for Non-Compliance:** The Lagos Law includes robust provisions criminalizing activities such as electricity theft under Sections 30, 163, and 171.



## Analysis of the Lagos State Electricity Law

The Lagos Law introduces some changes that differ from the extant Electricity Act that regulates the NESI with the exception of the States that have assumed full regulatory control of their electricity markets. It also contains provisions that challenge the status quo. The impacts of these changes and some of the notable changes are discussed as follows:

Firstly, Section 177(2)(d) of the Lagos Law provides that the regulations made by LASERC may provide for the establishment of a framework for a regulatory sandbox for the Lagos Electricity Market. A regulatory sandbox essentially means a framework that allows entities to test run innovative products, services, solutions and business models within the Lagos Electricity Market. This is quite innovative as it permits entities to come forward with any innovative ideas they may have and receive regulatory approval for said ideas.

Also, section 49(3) the Lagos Law allows individuals uncertain about licensing requirements to seek clarification from LASERC.

Furthermore, Section 32 of the Lagos Law allows LASERC to create advisory forums through which electricity consumers, licensees, market participants and other persons who have interest in the Lagos Electricity Market may provide advice or make recommendations in general or on a particular matter for consideration. This provision enhances stakeholder engagement, ensuring that diverse perspectives are considered in the regulation of the Lagos Electricity Market, ultimately leading to more informed and effective policy outcomes. We also note that the regulatory functions

previously exercised by the National Electricity Management Services Agency (“NEMSA”) at the federal level are now allocated to LASERC at the State level. For instance, section 18(3)(g) of the Lagos Law empowers LASERC to inspect and certify electrical installations typically overseen by NEMSA at the national level. By doing so, the Lagos Law seems to streamline the processes for compliance.

However, it begs the question whether LASERC will have the competence and manpower to undertake these technical functions in the short to medium term.

Also, as it relates to projects or power plants that are connected to the national grid, it begs the question who the appropriate authority to certify the personnel working on such projects will be between NEMSA and LASERC. A possible drawback of the new legal order is that entities wishing to provide services outside the State and within the State will need to navigate both state and federal regulations or various states and federal laws as the case may be.

For example, if a company licensed by LASERC seeks to operate in another state governed by NERC, it must comply with both sets of regulations. This dual compliance requirement could create operational challenges and increase costs for businesses attempting to expand their services across the State's lines.

Another point to note is that while Section 177(1) of the Lagos Law grants the power to LASERC to make regulations and issue guidelines, it makes it subject to Section 1(1) of the Regulations Law which provides that no regulation shall have effect unless laid before and approved by the Lagos State House of Assembly. This provision has the potential to hamper the regulatory power and operations of LASERC as it could delay the timeline within which the LASERC may make regulations and issue guidelines, rules, directives, decisions, orders and notices as well as impact on LASERC's autonomy.

We also observe a potential conflict between Sections 76(1)(b) and 80(2)(a) of the Lagos Law on one hand and section 63(2)(b) and (7)(b) of the Electricity Act on the other hand which grants NERC regulatory oversight over the generation, transmission, distribution, supply and sale of electricity that occurs inter-state and transnational or activities utilising the national grid. For instance, while section 80(2)(a) of the Lagos Law empowers a holder of a trading license issued by LASERC to engage in the bulk purchase of electricity from Generation Companies ("**GenCos**"), including those licensed by other regulators to generate electricity outside of Lagos State, we consider that the scope of any trading license issued by LASERC should be limited to the purchase of electricity from GenCos operating within Lagos State that do not utilize the Transmission Company of Nigeria (**TCN**) infrastructure for power evacuation to intended offtakers.

However, we are aware that there is no known case law at this time opining on the constitutionality of the power sharing arrangements between NERC and the various State Electricity Regulatory Commissions (**SERCs**) as expounded in the Act, particularly regarding regulation of trading licensees operating within a state while utilizing TCN's network for their business operations. This analysis similarly applies to Section 76(1)(b) of the Lagos Law, which permits transmission licensees regulated by LASERC to connect to the national grid/TCN network.

Another important point we noted from the review of the Lagos Law is that the law limits the duration of licences issued by LASERC to a maximum of ten (10) years. However, given the nature of power sector arrangements which require execution of long-term Power Purchase Agreements of up to 20 – 25 years to enable investors pay up the debt for developing the power project and recoup their investments, the provision creates uncertainties for investors and hence, puts their investments at risk. This is especially as investors are unsure on whether the license may be renewed by the regulator at its expiration.

Finally, clarity is required on the import of section 74 of the Lagos Law. The provision is to the effect that a person or entity who owns a captive generation plant in excess of 1MW and which is not for personal use shall require a permit for that purpose from LASERC. This provision is unclear as it seems to be suggesting that if the plant in excess of 1MW is for personal use, then no permit is required. On the other hand, the national regulations administered by NERC is to the effect that persons operating captive generation plants in excess of 1MW require captive generation permits issued by NERC.

## CONCLUSION

The Lagos Law is quite innovative in its approach and if well implemented will go a long way in curing energy poverty in the State. However, to bring the objectives of this Law into reality, strong political will is required from governmental stakeholders whilst also ensuring that the environment is conducive for all persons wishing to participate in the Lagos Electricity Market.



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