

## ANALYSIS OF THE ELECTRIC POWER SECTOR REFORM ACT (AMENDMENTS BILL) 2018 FROM A COMMERCIAL AND ENFORCEABILITY PERSPECTIVE



### INTRODUCTION

The Electric Power Sector Reform Act (amendments bill) 2018 is a bill to prohibit and criminalize the use of 'estimated billing' of consumers by Nigeria's electricity distribution companies (DisCos).

#### ANALYSIS OF THE BILL

The Bill seeks to amend the Electric Power Sector Reform Act, (EPSRA) 2005 by creating new sections and paragraphs, (sections 67 to 71) to prohibit estimated billing methodology in Nigeria. Although the Bill does not expressly proscribe any regulation, being the principal legislation within the NESI, the Bill will invariably take precedent over any other regulation such as the regulation on estimated billing methodology, the Meter Asset Providers (MAP) regulation and such other attendant regulations within the NESI.

The Bill introduces a new section 68 which provides thus:

*"Estimated billing methodology is hereby prohibited in Nigeria"*

*"Every electricity consumer in Nigeria shall apply to the DisCos carrying out business within the jurisdiction for a pre-paid meter and such consumer shall pay the regulated fee for the pre-paid meter to be installed in the premises of the consumer and the DisCos shall within 30 days of receiving the application and payment install the pre-paid meter applied for in the premises of the consumer."*

*"If a Customer is not metered within 30 days after application has been duly made, the relevant electricity distribution company is prohibited from refusing to connect the customer or disconnect the customer in the event that the customer has been connected or estimate his bills"*



The effect of the proposed new Section 68 is to empower electricity consumers to ignore paying estimated bills and also exempts consumers from electricity disconnection in the event that no pre-paid meter was issued to them by their DisCos within 30 days of making the application and payment, thus making the provision of pre-paid meters compulsory.

Interestingly, the bill does not address a situation where a customer is satisfied with the estimated billing or charges served on him and therefore does not apply for a pre-paid meter.

The Bill introduces a sanction provision under subsection 4 of section 94 of the EPSRA, 2005 which proposes as follows:

*“Any person who performs any act or does anything or refuses, fails and or neglected to carry out his lawful duties with intentions to contravene or frustrate the implementation of section 68 and 71 of this Act is said to have committed an offence; and upon conviction shall be liable to (6) six months imprisonment or a fine of N1, 000,000 (One Million Naira) or to both such fine and imprisonment without prejudice to the right of the Commission to cancel or suspend any license under this Act.”*

The legal effect of this bill is to impose duties on the DisCOs towards compliance with the Bill, with steep penalties in the event of default.

The questions that arise from the foregoing are as follows:

1. How will the provisions of the Bill align with the NERC MAP Regulation 2018?
2. Will there be non-compliance when the DisCos are no longer mandated under the Meter Assets Providers (MAP) Regulation to bear the financial cost of metering customers within their network area especially considering that under the Bill, the customer is vested with the responsibility of paying for the meter?
3. What is the legal effect of not installing a customer by the MAPs within 30 days (although MAP provides a period of 10 days) after a customer has applied for pre-paid meters? Will the DisCos be liable for the neglect of the MAPs in this regard?
4. Will the NERC estimated billing methodology become extinct or can there be a consideration for a revision to the methodology and a phased extinction of the methodology to align with a phased metering roll out by the DisCOs?
5. Will there be non-compliance where customers are satisfied with estimated billing and have refused to apply for pre-paid meters?
6. In other words does the duty arise whether or not a customer applies for pre-paid meter or does the Bill mandate that all customers must apply for the installation of pre-paid meters?

7. Thus, will the duty be extinguished upon the customer refusing or rejecting the installation of pre-paid meters?
8. Can the DisCOs declare a FM on the basis of a Change in Law under the Performance Agreement considering that EPSRA is a primary legislation that overrides all other laws and regulations in the sector?

## CONCLUSION

In the absence of clarification on the above issues, it does appear that the Bill is simply a needless and officious intervention in the NESI as it has the ultimate effect of complicating the roles of the DisCOs with regards to the MAP regulation and other related attendant regulations which was specifically enacted to lift or relieve the financial burden of DisCOs in addressing the issue of estimated

billing through third party metering. It may just be that when eventually passed into law, it will merely remain a paper tiger without any attendant legal effect, since the logic underlying the Bill remains indecipherable. However, being a principal legislation, all other extant laws and regulations are secondary to the provisions of the Bill.

In light of these concerns, there will be need for a re-evaluation and alignment of the Bill by the sponsors in view of the existence of MAP regulation which is intended to address the similar issue of phasing out estimated billing, in order to avoid needless confusion of roles amongst the industry stakeholders and forestall any enforceability issues within the NESI with regard to the already existing program on metering.