

## CONSUMER PROTECTION FOR USERS OF ENERGY UNDER THE NIGERIAN ELECTRICITY ACT 2023

**\*Ngozi Maureen Idih      \*\*Chinedu Titus Njoku**

### Abstract

*The Nigerian Electricity Act of 2023<sup>1</sup> introduces comprehensive measures aimed at protecting consumers within the energy sector. This legislation marks a significant milestone in the reform of the power sector, with important implications for consumer protection. The Act consolidates existing regulations and establishes a strong legal framework to ensure that the rights and interests of electricity consumers are safeguarded. Key provisions of the Act include the establishment of the Nigerian Electricity Regulatory Commission (NERC), which is tasked with overseeing and enforcing consumer protection regulations. The Act mandates clear procedures for the connection and disconnection of electricity services, ensuring transparency and fairness in billing, meter reading, and cash collections. Additionally, it sets standards for customer service and complaint handling, aligning with international best practices. The overarching goal of the Act is to create a competitive and efficient electricity market while prioritizing consumer rights and service quality. This paper examines the legal framework established under the Act to protect the rights of electricity users in Nigeria. It highlights key provisions designed to tackle challenges such as unfair billing practices, unreliable electricity supply, and disputes between consumers and service providers. Moreover, the paper evaluates the establishment of consumer advocacy mechanisms, regulatory oversight, and penalties for non-compliance by electricity distribution companies. By analyzing the practical implications of these provisions, the study underscores the Act's potential to enhance accountability, improve service delivery, and promote equitable access to electricity. In conclusion, this paper offers recommendations for ensuring the effective implementation of the Act to achieve its consumer protection objectives.*

**KEYWORDS – Electricity, Energy, Consumer, Power.**

### 1. Introduction

Electricity is an essential utility that directly impacts the economic and social well-being of individuals and communities. In Nigeria, the power sector has faced persistent challenges, including irregular supply of electricity, poor infrastructure and regulatory framework on electricity, and inadequate consumer protection of electricity users. These issues have often left electricity users vulnerable to exploitation, service failures, and limited avenues for redress. Recognizing these challenges, the Nigerian government enacted the Electricity Act 2023. The

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\* **Ngozi Maureen Idih**, LL.B, BL, LLM, PhD, Chief Lecturer, Department of Social Sciences, Federal Polytechnic Nekede, Owerri Imo State Nigeria, 08034752958, nidih @fpno.edu.ng; juridicajournal@gmail.com: ngidih@yahoo.com

\*\* **Chinedu Titus Njoku**, LL.B, BL Lecturer, Department of Social Sciences, Federal Polytechnic Nekede, Owerri Imo State Nigeria, Phone No.:08033219263

<sup>1</sup> The Electricity Act 2023 repealed the Electricity Power Sector Reform Act 2005

Nigerian Electricity Act 2023 marks a significant milestone in the country's energy sector, aimed at improving service delivery, enhancing consumer protection and ensuring a fair, transparent, and efficient electricity market. The Act seeks to address longstanding inefficiencies by promoting competition encouraging private sector participation and fostering accountability among electricity providers. This legislation consolidates various existing regulations and introduces new measures to safeguard the rights and interests of electricity consumers. The Act empowers the Nigerian Electricity Regulatory Commission (NERC) to oversee and enforce consumer protection standards, addressing issues such as billing transparency, service quality, and dispute resolution. By prioritizing consumer rights and aligning with international best practices, the Nigerian Electricity Act 2023 seeks to create a more competitive and reliable electricity market, ultimately benefiting both consumers and the broader economy. This paper will explore the key provisions of the Act, its impact on consumer protection, and the challenges and opportunities it presents for the Nigerian energy sector.

## **2. Background and Development of the Electricity Act 2023**

Electricity was first generated in Nigeria in 1896. Three decades later, the country established its first electricity utility company in 1929, known as the Nigerian Electricity Supply Corporation (NESCO). NESCO was responsible for generating, transmitting, and distributing electricity.<sup>2</sup> In 1959, the Electricity Commission of Nigeria (ECN) was created by an Act of Parliament to regulate and manage power supply systems in the country. In 1962, the Niger Dam Authority (NDA) was established to develop the Kainji Hydroelectric Dam. A decade later, in 1972, the NDA merged with the ECN to form the National Electric Power Authority (NEPA).<sup>3</sup>

The existence of NEPA (National Electric Power Authority) was largely monopolistic, with the government controlling the country's power supply. During this time, there were only a few privately owned power generation plants scattered across the nation, but NEPA maintained unrestricted control over the power sector.<sup>4</sup> For years, Nigerians complained about irregular power

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<sup>2</sup> Olushuyi Leke, 'Deconstructing the past reforms and the current structure of Nigeria's electricity sector' *Business Day* (23 January 2023) <<https://businessday.ng/opinion/article/deconstructing-the-past-reforms-and-the-current-structure-of-nigerias-electricity-sector/>> Accessed 23 December 2024.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

supply. In recent years, the Nigerian government has made efforts to improve the efficiency of the electricity market. In 2001, the National Electric Power Policy was enacted. This policy aimed to transfer the ownership and control of power sector infrastructure to private investors in order to enhance the effectiveness of the power sector.<sup>5</sup>

To foster competition, transparency, and efficiency within the Nigerian Electricity Supply Industry, the Electricity Power Sector Reform Act 2005 was passed into law. The Electricity Power Sector Reform Act 2005 sought to reform the power sector by unbundling the then Power Holding Company of Nigeria (PHCN) into 18 successor companies comprising 6 generation Companies (GENCOs), the transmission company of Nigeria, and 11 distribution companies (DISCOs).

Furthermore, the Electricity Power Sector Reform Act established the Nigerian Electricity Regulatory Commission (NERC), vested with the regulatory powers over the generation, transmission, and distribution of electricity across Nigeria. Despite these reforms mentioned above, immense challenges troubling the electricity sector remain, such as generation deficit, poor or defective transmission lines, illegal connections and sabotage, and inadequate distribution networks, among others. According to NERC<sup>6</sup>, only 53% of available (electricity) capacity is utilized due to challenges with gas supply, transmission and distribution constraints, and commercial challenges. This in turn has resulted in poor power supply to homes and businesses across Nigeria. By the end of 2013, the PHCN ceased to exist as all six generating companies and ten of the distribution companies had been privatised. By November 2014, the last distribution company was privatised. The transmission company – Transmission Company of Nigeria (TCN) was not privatised. It is currently under the control of the Federal Ministry of Power.

The latest reform in this sector is the Electricity Act of 2023 which repealed the EPRSA. President Bola Ahmed Tinubu (GCFR) assented to the Electricity Bill on June 9, 2023, thereby making it an Act, empowering States, companies, and individuals to generate, transmit, and distribute electricity. The Electricity Act 2023 repealed the Electricity Power Sector Reform Act 2005 and created a comprehensive legal and institutional framework to guide the Nigerian Electricity Supply

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<sup>5</sup> *ibid.*

<sup>6</sup> Musiliu O. Oseni, NERC Vice Chairman/Commissioner Market, Competition & Rates at a NERC Stakeholder Workshop on the Constitutional Amendment and Electricity Act 2023 on July 12-13, 2023.

Industry. The Act provides the necessary boost for the continued decentralization and liberation of the Nigerian Electricity Supply Industry and stands to promote competitiveness and efficiency in the market.<sup>7</sup>

Electricity is generated by generating companies (GenCos), which own power-generating plants and have the capability to produce electricity. Once generated, the power is transmitted by the Transmission Company of Nigeria (TCN), also known as the TransCo. The TCN is responsible for electric power transmission, system operation, and electricity trading. Its primary role is to evacuate the electricity generated by GenCos and transport it to distribution companies. Distribution companies (DisCos) are in charge of delivering electricity to final consumers. For most consumers, their main interaction will be with the DisCos, which manage the connection to the electrical grid, as well as maintenance, metering, billing, and payment collection. There are currently 11 DisCos in Nigeria, each responsible for distributing power to specific regions of the country.<sup>8</sup>

### **3. Key Features of the Electricity Act 2023**

The Electricity Act 2023 introduced novel provisions which are key features aimed at revolutionizing Nigeria's power sector. Some of these features are as follows:

#### **3.1 Market De-regulation and De-Monopolization of the Power Sector:**

One of the central tenets of the Electricity Act 2023 is the increased deregulation and privatization of the Nigerian electricity market. The Act provides guidelines for privatizing state-owned assets within the power sector, encouraging private sector participation and investment.<sup>9</sup> The Act aims to de-monopolize electricity generation, transmission, and distribution at the national level. It empowers states, companies, and individuals to generate, transmit, and distribute electricity.<sup>10</sup> These measures are designed to enhance private sector involvement, attract new investors, and

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<sup>7</sup> Gabriel Onojason, Ngozi Chinwa Ole and Linda Ugochinyere Ezike Alliance Law Firm, 'The Electricity Act 2023 and The Constitutional Amendment Act 2023: Implications For The Power Sector' <<https://www.mondaq.com/nigeria/renewables/1363558/the-electricity-act-2023-and-the-constitutional-amendment-act-2023-implications-for-the-power-sector>> accessed 20 December 2024

<sup>8</sup> Olushuyi Leke *op.cit.*

<sup>9</sup> Electricity Act 2023, s.8

<sup>10</sup> Alex-Adedipe A and Ogunjimi Q, 'Powering Nigeria's Future: Introducing the Electricity Act 2023' (20 June 2023) <<https://www.mondaq.com/nigeria/renewables/1331724/powering-nigerias-future-introducing-the-elec%20tricity-act-2023>> accessed 25 December 2024

promote innovation within the sector.<sup>11</sup> States now have the authority to enact their laws and establish electricity regulatory commissions concerning generation, supply, and transmission.<sup>12</sup> They are permitted to operate and set up power stations within their territories and to regulate electricity markets. Additionally, states can issue licenses to private investors for operating mini-grids and power plants, manage independent power plants, and distribute electricity to consumers. However, the Act does not allow for interstate and transnational electricity distribution. The licenses available to private investors under the Act include: (i) generation licenses, (ii) transmission licenses, (iii) system operations licenses, (iv) trading licenses, and (v) distribution and supply licenses. These licenses enable private entities to engage in various aspects of the electricity value chain, fostering competition and encouraging innovative solutions to meet Nigeria's growing energy needs.<sup>13</sup> Notably, individuals may construct, own, or operate facilities for generating electricity of up to one megawatt at a site, or for distributing electricity with a capacity not exceeding 100 kilowatts at a site, without requiring a license. Currently, Lagos, Edo, and Kaduna States have enacted their electricity market laws and can regulate their markets independently, while the Nigerian Electricity Regulatory Commission (NERC) oversees other states that lack such laws. These developments aim to create an open and competitive market structure that encourages private sector participation and investment. The Act introduces provisions to promote transparency, fair competition, and increased efficiency in the generation, transmission, and distribution of electricity.<sup>14</sup>

### **3.2 Focus on Renewable Energy and Sustainability:**

Recognizing the importance of clean energy sources and Nigeria's commitment under the Paris Agreement, as well as aligning with global trends toward sustainable development, the Electricity Act emphasizes the development and utilization of renewable energy. It encourages the integration of renewable energy technologies into the existing power grid system.<sup>15</sup> Under this Act, electricity generation licensees are required to fulfill renewable energy generation obligations as prescribed by the Nigerian Electricity Regulatory Commission. Additionally, the Act introduces mechanisms

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<sup>11</sup> *ibid.*

<sup>12</sup> Electricity Act 2023, ss. 2(2)(b), 63(1) & 230(2)-(9)

<sup>13</sup> Alex-Adedipe *op.cit.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

to encourage investment in renewable energy projects, such as feed-in tariffs—a policy that guarantees a fixed price for renewable electricity supplied to the grid—as well as tax incentives. It also sets renewable energy targets aimed at reducing reliance on fossil fuels.<sup>16</sup> The emphasis on renewable energy and sustainability within the Act aligns with global efforts to mitigate climate change, reduce greenhouse gas emissions, and promote a sustainable energy sector.

### **3.3 Regulatory Reforms and Oversight:**

The Electricity Act of 2023 establishes the Nigerian Electricity Regulatory Commission (NERC hereinafter also referred to as the Commission) as the primary authority regulating the power sector. The Act enhances the powers and autonomy of the NERC, allowing it to enforce compliance, set standards, and promote competition within the industry. It also introduces provisions for regular performance assessments of market participants, thereby ensuring accountability and transparency in the sector.<sup>17</sup> Furthermore, the Act strengthens the independence of regulatory bodies overseeing the power sector. It not only provides the Commission with increased authority to enforce compliance, regulate tariffs, and effectively resolve disputes but also allows for the delegation of regulatory authority to state regulators once they are established.<sup>18</sup> Currently, Lagos, Edo, and Kaduna States have implemented their own power market regulations and are expected to begin regulating their respective markets. In states where such regulations are not in place, the NERC will continue to carry out its regulatory responsibilities. To promote transparency and accountability, the Act establishes clear guidelines for the licensing, monitoring, and supervision of market participants. These guidelines create a framework that prevents anti-competitive practices and ensures a level playing field for all industry stakeholders. In addition to empowering the Commission, the Act also establishes other specialized bodies with distinct mandates, including the National Hydroelectric Power Producing Area Development Commission, the Rural Electrification Agency, the Nigerian Electricity Management Services Agency, and the National Power Training Institute of Nigeria.

### **3.4 Independent System Operator (ISO)**

To ensure the smooth operation and coordination of the power system, the Electricity Act

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<sup>16</sup> Electricity Act 2023, s. 164

<sup>17</sup> Electricity Act 2023, s 33

<sup>18</sup> Kotey A ‘Powering Nigeria’s Energy Sector: Key Features of the Electricity Act 2023’ (7 July 2023) < <https://siao.ng/powering-nigerias-energy-sector-key-features-of-the-electricity-act-2023/>> accessed 25 December 2024.

establishes an Independent System Operator (ISO). This involves separating the System Operator (SO) from the Transmission Systems Provider (TSP) as currently structured under the Transmission Company of Nigeria (TCN).<sup>19</sup> The ISO will be responsible for managing the transmission network, maintaining system stability, and ensuring fair access to the grid for all market participants. This separation of system operations from market activities aims to enhance grid reliability and promote private investment in transmission infrastructure. The Act outlines the functions and powers of the ISO, including system planning, operation, and maintenance.<sup>20</sup>

### **3.5 Rural Electrification:**

The Act recognizes the critical importance of extending electricity access to rural and underserved areas of Nigeria. To address this crucial aspect, the Act establishes the Rural Electrification Agency (the "Agency") and tasks it with the responsibility of implementing rural electrification initiatives and bridging the electricity gap in remote and marginalized communities.<sup>21</sup>

### **3.6 Consumer Protection Measures:**

The Act places a strong emphasis on consumer rights and protection. Recognizing the importance of safeguarding consumer interests, it mandates the establishment of mechanisms to ensure fair pricing, accurate billing information, a transparent tariff structure, quality service delivery, and prompt complaint resolution.<sup>22</sup> Consumer complaint resolution processes are streamlined, providing avenues for customers to seek redress and voice their concerns. While the recent Customer Protection Regulation of 2023 by the Commission aligns with the consumer protection provisions of the Act, it is essential to modify this regulation to ensure it harmonizes with the Act's specific provisions. Additionally, the Act mandates the establishment of the Power Consumer Assistance Fund (PCAF), which is designed to subsidize underprivileged power consumers as well as manage assets and oversee the procedures for disbursement.<sup>23</sup>

### **3.7 Tariff Regulations and Transparency:**

The Act establishes a transparent process for setting electricity tariffs, ensuring that they are reasonable, cost-reflective, and based on efficient cost structures. This aims to maintain the

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<sup>19</sup> Electricity Act 2023, s 15.

<sup>20</sup> *ibid.*

<sup>21</sup> Electricity Act 2023, ss. 127 and 128.

<sup>22</sup> *ibid.* s.119.

<sup>23</sup> *ibid* ss. 122 and 123

financial viability of the power sector and enhance service delivery. It requires the publication of tariff methodologies, which allows consumers and stakeholders to understand how tariffs are calculated. The regulations surrounding tariffs strive to balance the financial sustainability of power providers with the affordability of electricity for consumers. Additionally, the Act provides a framework for gradually implementing tariffs that accurately reflect the costs associated with electricity generation, transmission, and distribution. This shift towards cost-reflective tariffs aims to address revenue shortfalls in the sector and promote infrastructure development.<sup>24</sup>

#### 4. Who is a Consumer of Electricity?

The Electricity Act 2023 defines a consumer as any end-user of electricity who is a distribution licensee, franchisee, mini-grid operator or other permit holders that is not an eligible customer and for purposes of filing a complaint with the Commission and for any other reason that the commission may determine, a person who is temporarily disconnected otherwise without service provided that a person who has applied for but yet to receive service shall also be a consumer.<sup>25</sup> The Act further stated that an eligible customer means and include a customer that is eligible, under the directives issued by the Minister under the Repealed Act and under the declaration made by the Commissioner under the provisions of the section 12 of the Act, to purchase power from a licensee other than a distribution licensee.<sup>26</sup>

The Court of Appeal gave a broader view of who an electricity consumer is; in reference to the repealed Electricity Act and National Electric Power Authority Act. In *Amadi v Essien*,<sup>27</sup> the Court of Appeal held:

*“the combined effect of section 1(1)(c) of the National Electric Power Authority Act Cap. 256 Laws of the Federation of Nigeria 1990 and section 4(b) of the Electricity Act Cap. 106 Laws of Federation of Nigeria 1990 is that any person who has been dealing directly with the National Electric Power Authority, with regard to the settlement of electricity bills he consumed is a consumer of electricity provided by the National Electric Power Authority. This manifestly raises a contractual relationship between the two parties. Thus, for a person to qualify as a consumer of N.E.P.A. he needs not to be a registered consumer of the National Electric Power Authority.”<sup>28</sup>*

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<sup>24</sup> *ibid.* s. 168.

<sup>25</sup> Electricity Act 2023, s 232.

<sup>26</sup> *ibid.*

<sup>27</sup> [1994] 7 NWLR (Pt 354) 91

<sup>28</sup> *Amadi v Essien* [1994] 7 NWLR (Pt 354) 91, 124 paras F -G

From the foregoing, it is clear that any person, institution, company, or organization that is an end user of electricity and pays the required electricity bills is an electricity consumer and, therefore, enjoys all rights accruable to a consumer under the Act, regardless of whether they are directly registered in their names with the DisCo or not.

In *NEPA v Alli*,<sup>29</sup> pursuant to its statutorily-assigned duty, the appellant installed the necessary electrical fittings and equipment and supplied electricity to the 1st respondent's ultra modern sawmill factory at the Industrial Area, Irewon Road, Ijebu-Ode in Ogun State. The said sawmill of the first respondent was set going by virtue of an agreement between the first respondent on the one hand and the second respondent on the other dated September 6, 1977, whereby the second respondent sold one Long Saw Machine Model ST110; Band Saw Sharpener, Model CITV25, KS; Tensioning Machine; and Extra Blades and Spare Parts to the first respondent upon terms that the first respondent having paid N15,000.00 to the 2nd respondent, the machines were assigned and delivered to the first respondent subject to the first respondent paying to the second respondent the balance of N45,000.00 plus interest thereon at the rate of 12% from that date. Due to the negligence of the appellant, its transformer at Ijebu-Ode went up in flames. The fire from the transformer spread to the first respondent's factory and destroyed all the machines and machineries aforesaid, whereupon the first and second respondents jointly and severally instituted the action at the High Court claiming against the appellant special damages upon several heads of claim totalling N314,450.00 and also interest thereon at the rate of 5% from the 3rd of August 1982 till the date of judgment and thereafter, 10% from the date of judgment until payment of the judgment debt. At the trial, the respondents gave and called evidence in support of their pleadings. The appellant called no evidence. At the conclusion of the hearing, the learned trial Judge, Delano, J. found for the respondents in respect of some of the claims and dismissed some other claims. In the end he awarded to the respondents the sum of N105,839.34.

Both parties were dissatisfied with the decision. The appellant appealed to the Court of Appeal while the respondents cross-appealed. In allowing the cross appeal and dismissing the appeal, the Court of Appeal held that the trial Judge was wrong in failing to consider and evaluate the evidence of loss of income by the 1st respondent. The Court then varied the judgment of the High Court by the addition of N5,600.00 on that head of claim. Both parties being dissatisfied, the appellant

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<sup>29</sup> (1992) 8 NWLR (Pt 259) 279.

appealed and the respondent also filed a cross-appeal.<sup>30</sup>

In determining the duty of care owed to consumers of electricity by electricity companies, the Supreme Court held:

*“The appellant generates electricity, provides bulk supply of same for distribution and provides supply of electricity to consumers in Nigeria. It is my view that electricity is a very dangerous thing being handled and carried by the appellant. If it should escape, it owed a duty to the consumers to exercise reasonable care and skill that the consumers should not be damaged. The degree of care which that duty involved must be proportioned to the degree of risk involved.”<sup>31</sup>*

## **5. Rights of Consumers under the Electricity Act 2023**

On March 29, 2023, the Nigerian Electricity Regulatory Commission (NERC) issued the Consumer Protection Regulations 2023 (the Consumer Protection Regulations) to safeguard consumers from the activities of electricity distribution companies (DisCos) in Nigeria. This is also in line with the responsibility of the Commission under the Electricity Act enacted later in June 2023. These regulations consolidate existing consumer protection measures, reinforce frameworks for consumer protection, promote access to electricity, align service standards with international best practices, and establish minimum standards for service delivery. The Consumer Protection Regulations provide a consolidated framework for consumer protection in NESI, and in the following paragraphs, the changes introduced by the Consumer Protection Regulations are discussed.

### **5.1 Right to Timely Connection of Premises to Electricity Supply**

The Act ensures the right to electricity supply in a safe and reliable manner. In Nigeria, electricity consumers have the right to prompt, safe, and dependable connections to electricity upon making a request. This right is applicable only when the customer has formally requested electricity supply and has met all legal requirements and conditions set by the Distribution Company (Disco) for such a connection.<sup>32</sup> Typically, the customer is expected to take the following steps:

- (1) file an application in the form required by the Disco,
- (2) accept the terms and conditions for provision of the service by the DisCo,

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<sup>30</sup> (1992) 8 NWLR (Pt 259) 279.

<sup>31</sup> *NEPA v Alli* (1992) 8 NWLR (Pt 259) 279, 296 paras F-G.

<sup>32</sup> Koko Asuquo, ‘Hike in Electricity Tariff: A Quick Guide on Rights & Obligations of Electricity Consumers in Nigeria’ (Berkeley Legal, 16 April 2024) <<https://berkeleylp.com/insights/rights-obligations-of-electricity-consumers-in-Nigeria/>>. Accessed 25 December 2024

- (3) make arrangements for the connection of power supply in the premises,
- (4) provide an acceptable means of identification and also
- (5) provide acceptable connection materials.

Once all these requirements are met, the DisCo is obligated to connect the premises to power supply within 48 hours. Under the Consumer Protection Regulations, DisCos must respond to customer complaints within 24 hours if the fault is a result of a DisCo's equipment failure.<sup>33</sup> The Consumer Protection Regulations specify that minor faults and faults related to a DisCo's fuse should be rectified within 24 hours, while other faults should be resolved within 48 hours.<sup>34</sup> DisCos are obliged to make additional or new connections to a customer's premises upon request within 10 working days, subject to inspection, approval, and payment of necessary charges.<sup>35</sup>

The Consumer Protection Regulations also outline specific timelines for DisCos to meet consumer requests related to materials for connection, planned outages, supply at intolerable levels, meter disputes, reconnection after non-payment, repositioning of meters, fixing prepaid meters, and estimating connection costs.<sup>36</sup> The Consumer Protection Regulations introduce certain improvements and updates to consumer service standards in NESI, ensuring that DisCos are held accountable for meeting the needs and resolving issues faced by consumers in a timely manner.

## **5.2 Safeguard from Illegal/Wrongful Disconnection**

In order to avoid breaching the rights of electricity consumers in Nigeria, disconnection of consumers from power supply by DisCos must comply with the provisions of the Act. The consumer has a right to be notified in writing ahead of disconnection of electricity service by the DisCo serving the customer in line with NERC's guidelines.

Disconnections are in two folds which are disconnection with notice and disconnection without notice. A DisCo is only required to disconnect a customer for failure to pay a bill which has been properly brought to the notice of the customer. The customer must be given a minimum of 10 days from the date of service of the bill to make payment. In addition, the period after the expiration of

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<sup>33</sup> Section 54(1) of the Consumer Protection Regulations 2023

<sup>34</sup> Section 54(1)(a)-(c) of the Consumer Protection Regulations 2023

<sup>35</sup> Section 55 of the Consumer Protection Regulations 2023

<sup>36</sup> Consumer Protection Regulations 2023, Chapter V.

the 10 days period for settlement of outstanding bill and disconnection must be a minimum of 2 working days.<sup>37</sup> In *Vigeo Power Ltd. v. Bamisile*,<sup>38</sup> the Court of Appeal held:

*“It is obvious that the appellants failed to serve the respondent with a written warning and/or a disconnection notice before proceeding to disconnect electricity supply to her premises on the 8th of November, 2013. A further reading of the regulation for the connection and disconnection procedure for electricity services 2007 shows that in its regulation 11, it criminalized the flouting of the regulation by a distribution company in disconnecting electricity from the premises of a customer and it stipulated a penalty therefor, thus making such disconnection illegal, null and void. The declaration that the disconnection of electricity supply was unlawful and wrongful and was a breach of the appellants’ duty of care to the respondent.”*<sup>39</sup>

On the flipside, under certain circumstances, a DisCo is permitted to disconnect a customer without notice where the connection of the customer is illegal/unauthorized, the customer’s connection poses a danger to others, or a DisCo is refused access to read a meter within the customer’s premises.<sup>40</sup> It is also worthy of note that a DisCo is disallowed from disconnecting the power supply of a customer who has lodged a complaint against the bill, however, the customer would be required to pay the last uncontested bill pending the resolution of the complaint.<sup>41</sup>

Further to the above, disconnection of power should be done with care so as not to cause injury to the consumer. In *NEPA v Auwal*,<sup>42</sup> the respondent instituted an action against the appellant at the Federal High Court for negligently causing the death of his son, Nazifi Muhammed Auwal on 16th September 2003. According to the respondent, on 15th September 2003, the appellant’s officials went to Angwan Mai Gwodo, Zaria in Kaduna State on a massive electricity supply lines and wires disconnection exercise. After the exercise they left live wires with electricity current on the ground and on a metal pole. Early in the morning of 16th September 2003, the live wires electrocuted two boys passing by the way at different times. They fell down and were carried away. The two incidents were each reported to the officials of the appellant, but they failed to rectify the fault. At

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<sup>37</sup> *ibid*, section 20.

<sup>38</sup> (2023) 18 NWLR (Pt 1916) 255.

<sup>39</sup> *Vigeo Power Ltd. v. Bamisile* (2023) 18 NWLR (Pt 1916) 255, 293 paras D – F.

<sup>40</sup> Section 21, Consumer Protection Regulations 2023.

<sup>41</sup> Koko Asuquo, ‘Hike in Electricity Tariff: A Quick Guide on Rights & Obligations of Electricity Consumers in Nigeria’ (Berkeley Legal, 16 April 2024) <<https://berkeleylp.com/insights/rights-obligations-of-electricity-consumers-in-Nigeria/>>. Accessed 25 December 2024.

<sup>42</sup> (2023) 6 NWLR (Pt 1879) 1.

about 2 p.m. on the same 16th September 2003, Nazifi Muhammed Auwal, the 10-year-old son of the respondent, on his way home from school, stepped on the naked wires and was instantly electrocuted to death. It was following the report of the third fatal incident that the officials of the appellant went to remove the wires at 2.40 p.m. In stating the administrative power of NEPA to engage in disconnection of power, the Supreme Court held:

“The disconnection of wires supplying electricity to houses by officials of the appellant in the execution of its statutory or public duty, is clearly an executive or administrative action or decision of the appellant. The characterization of the execution of that action or decision as wrongful or negligent or reckless or careless or illegal or void has no effect on the fact that it was the action or decision of the appellant carried out in the execution of its statutory and public function, duty or responsibility.”<sup>43</sup>

The Apex Court further held: “The appellant is a provider of services who owes a duty of care to ensure that the nature of the service they render is not dangerous to the consumers of their service. I have read thoroughly the record of appeal and I am convinced of the appalling carelessness of the appellant which led to the death of the deceased. In the Law of Tort, a duty of care is a legal obligation that is imposed on an individual, or organization, requiring adherence to a standard of reasonable care while performing any acts that could possibly harm others. Thus, duty of care is the legal and moral obligation to safeguard others from harm while they are in your care, using your services or exposed to your activities.”<sup>44</sup>

### **5.3 Right to be Given Accurate Bills**

Every customer has the right to be billed accurately in line with the applicable Band, this means that the consumer has a right to transparent electricity billing. Customers are generally classified into 5 major bands which are Band A (customers with minimum of 20hrs electricity supply daily), Band B (customers with 16-20hrs supply daily), B and C (customers with 12-16hrs supply daily), Band D (customers with 8-12hrs supply daily) and Band E, customers with minimum of 4hrs supply daily).<sup>45</sup> Each band is further classified into non-maximum demand (MD) customers who

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<sup>43</sup> *NEPA v Auwal* (2023) 6 NWLR (Pt 1879) 1, 26 paras. A -D.

<sup>44</sup> *ibid.* 37 paras A-D.

<sup>45</sup> Koko Asuquo, ‘Hike in Electricity Tariff: A Quick Guide on Rights & Obligations of Electricity Consumers in Nigeria’ (Berkeley Legal, 16 April 2024) <<https://berkeleylp.com/insights/rights-obligations-of-electricity-consumers-in-Nigeria/>>. Accessed 25 December 2024.

have single or three phase connections. Next to this are customers with low voltage maximum demand connection (MD1) and medium/high voltage maximum demand (MD2) customers. The applicable rate for each band differs. For instance, the recent increase in tariff from N68 to N225 per kilowatt is only applicable to Band A customers.<sup>46</sup>

The consumer also has the right to contest any electricity bill. In *Vigeo Power Ltd. v. Bamisile*,<sup>47</sup> the respondent claimed that she has been a customer of the appellant (Distributing Electricity in the Business Name of Benin Electricity Distribution Company) since she built her hotel, and that the hotel was using a 3Phase meter for its electricity needs without complaints. She stated that she was always paying her electricity bills when due and that at no point was she owing the appellants. The respondent averred that there was no complaint about the 3 Phased Meter and it was functioning properly until the appellants, without notice or justification, removed the said 3 Phased meter and replaced it with a Maximum Demand Meter.

The respondent claimed that the action of the appellants in changing her meter led to an exponential increase in her electricity bill with an additional monthly charge of the sum of N22,680. In response to the astronomical increase in her electricity bill, the respondent claimed that she complained to the appellant severally all through 2012 but to no avail. It was the case of the respondent that in January 2013, she stopped paying the electricity bills in order to spur the appellants into resolving her complaints. She further claimed that on 23rd of January, 2013, a team of engineers from the appellant came to inspect the premises of the respondent and they confirmed that the electricity bills she was receiving were indeed abnormal for her kind of business. Thereafter, in a letter dated 30th January, 2013, the appellant wrote to the respondent promising to replace her meter with a Pre-paid meter when available. Equally, the respondent claimed that 6 months after the promise of the appellant, on 13th June, 2013, she wrote to the appellant complaining that the meter had not yet been changed and that her bill had also not been reviewed downward. She demanded for a refund of the monthly fixed sum of N22,680 which she had paid as fixed charges between July and December 2012. In response to her letter, the appellants visited her premises again and promised to install 2 three phased meters. According to the respondent, the appellants again failed to deliver the said meters but instead her electricity bills increased as the fixed monthly charge

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<sup>46</sup> *ibid.*

<sup>47</sup> (2023) 18 NWLR (Pt 1916) 255.

moved from N22,680 to N34,020. The respondent claimed that the appellants have been unable to explain the reason for which she was been charged a fixed charge fee. The respondent further stated that in November 2013, the fixed charge fee stopped appearing in her electricity bill, but the appellants failed to refund the sum previously collected from her as fixed charge fee, and still neglected to remove the Maximum Demand Meter.

The respondent alleged that on 8th of November, 2013, the appellants disconnected her electricity without first serving her with a disconnection notice. At the conclusion of trial, the trial court entered judgment in favour of the respondent. Dissatisfied with the decision of the trial court, the appellants appealed to the Court of Appeal. In determination of the right of consumers of electricity, the Court of Appeal held:

*“Where a statute empowers a body to carry out a technical audit of the electricity needs of premises to determine the electricity needs and requirements of the premises, in coming to a decision of whether or not to replace meters in the premises of its consumers which do not meet the performance, functional and technical requirements, it cannot be interpreted as granting that body unlimited, uncontrolled and uninhibited access to the premises of each and every of its customers to carry out technical audits and replace meters without notification to and the knowledge and consent of the concerned consumer. The logical and commonsensical interpretation, and which accords with reason and rules of decency in any decent society, is that the body is expected to liase with and seek the cooperation of the customers in carrying out the technical audit and to explain to the customer the outcome of the audit and the need to replace the meter, before proceeding to replace the meter. As stated earlier, the appellants did not carry out a technical audit of the electrical needs and requirements of the premises of the respondent before replacing the meter in 2011 and neither did they liase with and/or notify the respondent before they entered into her premises to replace her three phase meter with a maximum demand meter. The exercise of the power to replace meters carried out in the premises of the respondent by the appellants was thus done arbitrarily and it is settled law that an arbitrary exercise of statutory power is wrongful and should be condemned by the court.”<sup>48</sup>*

#### **5.4 Right to Request for a Review of a Bill**

Another important right of electricity consumers in Nigeria is the right to request for a downward review of the bill.<sup>49</sup> Once a complaint is lodged, the customer would be required to pay the last uncontested bill pending resolution. After investigations, if it is discovered that the customer was

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<sup>48</sup> *Vigeo Power Ltd. v. Bamisile* (2023) 18 NWLR (Pt 1916) 255, 289 – 290 paras G – E.

<sup>49</sup> Consumer Protection Regulations 2023, s 36.

over billed, the DisCo must make a refund of the excessive charges to the customer within five working days or in the alternative, apply same as energy credit.<sup>50</sup>

## 5.5 Metering

The consumer has a right to a properly installed and functional meter. Under the Meter Assets Providers (MAP) 2018 framework, DisCos are obligated to reimburse customers that pay for meters by means of energy credit.

The cost of the meter would be applied as energy credit and deducted based on the energy consumption of the customer over a maximum period of 36 months according to the billing rate for the band where the customer belongs. A customer may request that a meter reading be obtained to check a previously obtained meter reading which appears to be incorrect or where the meter appears to be recording inaccurately.<sup>51</sup> Any un-metered customer who is disputing his or her estimated bill has the right not to pay the disputed bill, but pay only the last undisputed bill as the contested bill goes through the dispute resolution process of NERC.

In addition to the above discussed rights, pursuant to the provisions of the NERC's Customer Service Standards of Performance for Distribution Companies, Customer Complaints Handling Services and Procedures, Connection and Disconnection Procedures for Electricity Services, and Meter Reading, Cash Collections & Credit Management for Electricity Supply, all electricity customers also have the following rights:<sup>52</sup>

- (a). Right to a properly installed and functional meter.
- (b). Right to be properly informed and educated on the electricity service.
- (c). Right to be issued with electricity bills strictly based on NERC's estimated billing methodology where the customer is unmetered.<sup>53</sup>

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<sup>50</sup> Koko Asuquo, 'Hike in Electricity Tariff: A Quick Guide on Rights & Obligations of Electricity Consumers in Nigeria' (Berkeley Legal, 16 April 2024) <<https://berkeleylp.com/insights/rights-obligations-of-electricity-consumers-in-Nigeria/>>. Accessed 25 December 2024.

<sup>51</sup> Consumer Protection Regulations 2023, s 30.

<sup>53</sup> *ibid*, s. 35.

- (d). Right to a refund when over billed.
- (e). Right to file complaints and to the prompt investigation of complaints.
- (f). Right to send all complaints on electricity supply and other billing issues to the nearest business unit of the DisCo serving the customer.
- (g). Right to escalate the issue, when not satisfactorily addressed by the business unit of the DisCo to the NERC Forum Office within the coverage area of the DisCo.
- (h). Right to appeal the decision of the NERC Forum Office by writing a petition to the NERC.
- (i). Any un-metered customer who is disputing his or her estimated bill has the right not to pay the disputed bill, but pay only the last undisputed bill as the contested bill goes through the dispute resolution process of NERC.
- (n). It is not the responsibility of electricity customer or community to buy, replace or repair electricity transformers, poles and related equipment used in the supply of electricity.

## **6. Redress against Infringement of Right**

Except customers (in the R2 and C1 tariff categories) with complaints related to billing after issuing of the Order, complaints relating to breach of electricity customer rights are expected to follow the steps below.<sup>54</sup>

- (a). Report breach of right to the DisCos' Customer Complaints Unit (CCU). When an electricity customer has suffered a breach of his rights as an electricity customer, the complaint shall first be reported to the CCU of the DisCo responsible for supplying electricity to the electricity customer's area.<sup>55</sup>
- (b). Report breach of right to the NERC Consumer Forum. The NERC has a Consumer Forum which is set up to respond to complaints of electricity customers who are dissatisfied with the outcome of the handling of the electricity customer's complaints by the CCU or where the CCU delays or fails to handle the electricity customer's complaints.<sup>56</sup>
- (c). Report the decision of the NERC Consumer Forum to NERC. Where an electricity customer is dissatisfied with the decision of the NERC Consumer Forum, the electricity customer is entitled

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<sup>54</sup> Adetayo A and Williams N, 'Understanding your rights as an Electricity Customer in Nigeria' Brooks and Knight Legal Consultant <<https://brooksandknights.com/2020/06/15/understanding-your-rights-as-an-electricity-customer-in-nigeria/>>. Accessed 25 December 2024

<sup>55</sup> Consumer Protection Regulations 2023, s 43

<sup>56</sup> *ibid*, s. 44

to submit a petition to the NERC.<sup>57</sup> Customers in the R2 and C1 tariff categories with complaints related to estimated billing after February 2020 are expected to report the breach of their electricity rights directly to the NERC by filling out an online Complaints Form and attaching a copy of the bill. Such electricity customers must be unmetered and must have been billed above the NERC stipulated capped energy by their DisCos after February 2020 i.e. for the month of March 2020 and beyond.<sup>58</sup>

Furthermore, *section 51(1)(h) and(i)* provides that any person who is aggrieved with the decision of the Commission with respect to prices and tariffs or any other decision of the Commission may apply to the Commission for review of the decision, order or refusal of which will be completed within 30 days. Within 30 days from the date the final decision of the Commission was reached, any person dissatisfied with the decision of the Commission may file an appeal to the Federal High Court.<sup>59</sup> An action shall not be instituted by any person aggrieved by the decision of the Commission without exhausting all internal dispute settlement mechanisms provided under the provisions of the Electricity Act.<sup>60</sup>

A Federal High Court sitting in Lagos State struck out a case filed by the Manufacturers Association of Nigeria challenging the implementation of Band A electricity tariff review by the Abuja Electricity Distribution Company and 11 other DisCos.<sup>61</sup> In the judgment, the court was said to have considered all parties' arguments and ruled that MAN's suit was an abuse of court process, being premature and without due regard to the provisions of *section 51* of the Electricity Act 2023. The court held that MAN's case disclosed no reasonable cause of action as it had not exhausted the dispute resolution mechanism.<sup>62</sup>

## 7. Recommendation/Conclusion

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<sup>57</sup> *ibid.* s. 52

<sup>58</sup> Adetayo A and Williams N, 'Understanding your rights as an Electricity Customer in Nigeria' Brooks and Knight Legal Consultant <<https://brooksandknights.com/2020/06/15/understanding-your-rights-as-an-electricity-customer-in-nigeria/>>. Accessed 25 December 2024

<sup>59</sup> Electricity Act, s 51(3).

<sup>60</sup> *ibid.*, s 51(5).

<sup>61</sup> Olawin O and Aina D, 'Court Strikes out MAN's Suit Challenging Electricity Tariff Hike' <<https://punchng.com/just-in-court-strikes-out-mans-suit-challenging-electricity-tariff-hike/?amp>>. Accessed 26 December 2024.

<sup>62</sup> *ibid.*

It is unarguable that the Electricity Act has made gaint strides in the provision and protection of the rights electricity consumers in Nigeria. However, to enable the effectiveness of the Act, here are some recommendations to enhance consumer protection under the Nigerian Electricity Act 2023:

- i. **Strengthen Regulatory Oversight:** Ensure that the Nigerian Electricity Regulatory Commission (NERC) has adequate resources and authority to enforce consumer protection standards effectively.
- ii. **Enhance Billing Transparency:** Implement advanced metering infrastructure to provide accurate and transparent billing information to consumers, reducing disputes and enhancing trust.
- iii. **Improve Customer Service:** Establish clear and efficient procedures for handling consumer complaints and disputes, ensuring timely resolution and satisfaction.
- iv. **Promote Consumer Awareness:** Conduct public awareness campaigns to educate consumers about their rights and responsibilities under the Act, empowering them to make informed decisions.
- v. **Encourage Renewable Energy Adoption:** Provide incentives for consumers to adopt renewable energy sources, contributing to a sustainable and reliable electricity supply.
- vi. **Monitor and Evaluate:** Regularly review and assess the effectiveness of consumer protection measures, making necessary adjustments to address emerging challenges and improve service quality.

By implementing these recommendations, Nigeria can establish a more consumer-friendly electricity market, ensuring that the rights and interests of electricity users are effectively protected.