

ELECTRICITY ACT 2023

DEEPENING THE EXPLORATION OF
NIGERIA'S RENEWABLE ENERGY
POTENTIALS





INTRODUCTION

Nigeria combines a large population and dynamic economy with the world's biggest unelectrified population.¹ Despite the abundance of various energy resources in the country, Nigeria struggles to meet its growing energy demands. Nigeria's energy poverty state is attributable to its overreliance on fossil fuel sources for energy supply. Other energy resources, particularly, renewable energy resources, were not sufficiently explored.

Nigeria's economic growth potential is severely hampered by epileptic power supply, as there is a wide gap between demand and supply of energy in Nigeria. About 92 million Nigerians do not have access to grid electricity² and this number of Nigerians without electricity access constitutes 43% of Nigeria's population, thus, making Nigeria the country with the largest energy access deficit in the world.

To address this situation, the Nigerian government in a transformative effort, enacted the Electricity Act, 2023 (the "Act" or "EA"). Amongst others, the EA, provides a robust legal and regulatory framework for the deep exploration and integration of renewable energy solutions into the country's energy mix.

Through the EA, the Nigeria government plans to diversify the energy generation mix, reduce reliance on fossil fuel generation and harness the vast potential of the country's renewable energy resources.

The Act further aims at depleting the country's unelectrified population through the exploration of energy off-grid and mini grid renewable solutions. The Act creates an opportunity for indigenous capacity building for the development of technology and skill for the exploration of renewable energy solutions. If implemented well, the Act positions Nigeria for a smooth transitioning to a sustainable and environmentally friendly energy ecosystem in line with its Energy Transition Plan designed to tackle the challenges of energy poverty and climate change crisis.

On the above backdrop, this article analyses the historical development of Nigeria's renewable energy sector, highlights the key provisions and implications of the Act.

1 Global Energy Alliance for People and Planet 2022 Report.

2 2022 Energy Progress Report released by Tracking SDG 7

HISTORICAL DEVELOPMENT OF NIGERIA'S RENEWABLE ENERGY SECTOR

Nigeria has a wealth of renewable energy resources, including hydro energy, solar, biomass, wind energy, and geothermal energy resources. While hydro energy has been exploited to an extent³, the other renewable energy resources have not been well explored.

There have been several policy initiatives and legislations by which the Nigerian government sought to develop the country's renewable energy space. While some of these policies were implemented to some extent, other policies were not implemented at all.



The commencement of significant development of Nigeria's renewable energy sector can be traced back to the year 2001 when the National Electric Power Policy (NEPP), 2001 was developed on the backdrop of the recommendations of the Electrical Power Sector Implementation Committee which was the body in charge of reforming and transforming the power sector in 1999.

Following the NEPP 2001, the Nigerian government in 2003 established a more comprehensive energy policy which captured conventional and renewable energy resources for energy supply in Nigeria, the National Energy Policy (NEP). The policy was developed by the Energy Commission of Nigeria (ECN) with the aim of diversifying energy supply in Nigeria by increasing the exploration of modern renewable energy solutions to increase energy supply and consumption in Nigeria.

After the NEP, the Nigerian government in 2005, rolled out the Renewable Energy Master Plan (REMP) which was developed by the ECN in collaboration with the United Nations Development Programs (UNDP). The plan was updated in 2012.

The REMP is an embodiment of national targets for short, medium, and long-term phases for renewable energy policy, legislative, technology, human resource, infrastructural and market development in the country. The short-term timeline was set for 2007, medium-term set for 2015 and long-term set for 2025. By REMP, Nigeria sought to increase renewable energy consumption from 13% in 2015 to 23% in 2025 and 36% by 2030.⁴ However, REMP did not receive legislative approval to be passed into law.

⁴ Renewable Energy master Plan (REMP) (2005). Energy Commission of Nigeria (ECN) and United Nations Development Programme (UNDP)



Since the development of the REMP, several other policies have been developed including but not limited to the National Economic Empowerment and Development Strategy (NEEDS), 2004; the Renewable Electricity Policy Guidelines (REPG), 2006 developed by the Federal Ministry of Power and Steel in 2006; the Renewable Electricity Action Programme (REAP), 2006; the Nigerian Bio-Fuel Policy and Incentives (NBPI), 2007; the now repealed National Electric Power Sector Reform Act, (EPSRA) 2005.

In recent times, newer policies have been developed to deploy more modern approach to the development of the country's renewable energy space. These policies include the National Renewable Energy and Energy Efficiency Policy (NREEEP), 2015; the Draft Rural Electrification Strategy and Implementation Plan (RESIP), 2016; the approved National Energy Masterplan (Revised 2022) and the Renewable Energy Roadmap for Nigeria 2023 (REMAP).

Remarkably, the Nigeria energy sector has witnessed some renewable energy projects across the country in line with her renewable energy development plans.

Whereas, most developed and even some African countries have developed their renewable energy market to sufficient commercial/market level,⁵ Nigeria's renewable energy space has not attained the desired commercial activity level. Currently, the greater portion of renewable activities in Nigeria is undertaken by private, foreign, and non-governmental agencies, and particularly, in the rural areas of Nigeria.

Notwithstanding the several policies, laws, and plans of the Nigerian government, Nigeria's energy generation mix is still dominated by non-renewable energy resources. Currently, the on-grid energy mix in Nigeria is dominated by thermal (80%) and hydro (20%) power generating sources, while other renewable energy generation such as solar and biomass is heavily deployed for the electrification of rural areas and semi-urban who are out of the distribution companies reach.⁶

The development of Nigeria's renewable energy space is plagued by several factors including but not limited to lack of political will, inadequate access to funding, lack of technological expertise, low level of public awareness on the availability and usefulness of alternative energy systems; inadequate fiscal and economic incentives to attract local and foreign investment in alternative energy systems; inadequate policy, regulation and institutional framework for the development and adoption of alternative clean and renewable energy sources; inadequate indigenous human capacity in the design, construction, installation, and maintenance of alternative energy systems; lack of appropriate Standards and quality control for modern technologies; lack of capacity for the local manufacturing of alternative energy system components, resulting in limited supply and higher cost, amongst others.

Thankfully, the EA 2023 was developed and enacted with extensive policies that will harness Nigeria's renewable energy potentials if well implemented. The key provisions and implications of the new Act are analyzed below.

⁵ Countries such as Canada, Denmark, France have developed their renewable energy resources to different commercial levels. Similarly, South Africa has developed her renewable energy uptake beyond policy statements.

⁶ International Trade Organization Report on Electricity, Power Systems and Renewable Energy (Nigeria- Commercial Guide Report), June 2023

HIGHLIGHT OF KEY PROVISIONS AND IMPLICATIONS OF THE EA ON RENEWABLE ENERGY EXPLORATION IN NIGERIA

1. Promotion of electricity generation from Renewable Energy: One of the key provisions of the EA is the promotion of electricity generation from renewable energy sources. Unlike the repealed Act, which placed little emphasis on renewable energy development, the EA 2023 embodies several provisions aiming at the exploration of energy generation and distribution from renewable energy sources. During the reign of the former Act, renewable energy development was undertaken through several policy strategies and initiatives of the government implemented by various governmental agencies such as the Nigerian Electricity Regulatory Commission (NERC), the Rural Electrification Agency (REA) and other agencies. These initiatives were mostly without legislative backing. Thankfully, these various initiatives now have legislative backing vide the provisions of the EA. First, the EA compels the Nigerian Electricity Regulatory Commission (NERC) and the Independent System Operators (ISOs) to actively promote the generation of electricity from renewable energy sources⁷ through the issuance of generating licenses for embedded generation, hybridized generation, co-generation, and the generation from renewable energy sources⁸. Further, as a pivotal change from the practice obtainable under the former Act, which did not permit issuance of generation licenses for renewable energy generation to independent power producers (IPPs), the EA now empowers the NERC to issue multiple generation licenses to independent power producers for the generation of electricity from renewable energy sources.⁹

The mandate given to NERC and the ISO and the incidental powers to grant generation licenses for renewable energy generation will undoubtedly deepen the exploration and integration of renewable energy solutions in Nigeria to reduce energy poverty in Nigeria. Simultaneously, this will greatly reduce the country's reliance on fossil fuels for energy supply and help it realize its clean energy objectives.

⁷ Section 80(1), 164 EA, 2023

⁸ Section 81(2) EA, 2023

⁹ Section 65(3) EA, 2023

¹⁰ Sections 72, 80, 164, 167(2) EA, 2023.

2. Renewable Energy Purchase obligations: Another commendable initiative introduced by the EA 2023 is the obligation placed on distribution and supply licensees to purchase and distribute energy from renewable energy sources. By this, holders of distribution or supply license and even bulk customers are required to purchase a minimum quantity of their power needs from renewable energy sources as determined by NERC¹⁰.

This initiative will undoubtedly encourage and facilitate the integration of renewable energy into the country's overall energy mix which will in turn reduce the reliance on fossil fuel energy consumption and increase clean and sustainable energy into our generation mix. This initiative will also stimulate trade activities in the renewable energy trading.

3. Renewable energy connection to transmission and distribution systems: The Act provides for the connection of electricity generated from renewable energy sources to a transmission and distribution systems.¹¹ The connection of electricity generated from renewable energy source is subject to a request made by such electricity generator and satisfaction of the certain conditions such as the execution of a connection agreement with the electricity generator and the operator of the transmission or distribution system, upgrade of the transmission/distribution system and other conditions specified in the Act.¹² this provision will also stimulate trading activities in the renewable energy sector.

4. Renewable Energy Fiscal Incentives: In recognition of the financial implications of embarking on renewable energy projects, the EA empowers the Federal Ministry of Finance to introduce appropriate tax incentives in accordance with the provisions of the Industrial Development (Income Tax Relief) Act or other fiscal policy framework for the promotion and facilitation of renewable energy projects.¹³ Generally, renewable energy projects incur more financial implications compared to the conventional energy generation sources. Renewable energy incentives will greatly reduce the financial burden for renewable energy projects, thereby stimulating the development of a commercial renewable energy market in Nigeria and ensuring substantial investment inflow in the sector.

5. Feed In Tariff Rates: Further encouraging investment and participation in renewable energy generation, the Act directs NERC to prepare and provide feed-in tariff rates for electricity generated from renewable energy sources.¹⁴ The Act also mandates NERC to ensure stable and long-term favourable pricing mechanism for renewable energy and facilitate unhindered access to the national grid and distribution network through the prescribed measures.¹⁵ These provisions in the new Act is in furtherance of the feed-in tariff rates guidelines earlier introduced by NERC in 2015 - Regulations on Feed-In-Tariff Renewable Energy Sourced Electricity in Nigeria, 2015. The Act reinforces the 2015 feed-in-tariff rate regulations principles in Nigeria's renewable energy space. Importantly, in fixing tariff rates, NERC is minded to consider a number of factors as provided in the Act¹⁶ including the technology being used in the renewable energy generation; location of the generation facility; operating norms, cost associated with the maintenance, installation, operation of the plant; reasonable rate of returns; balance between the interest of consumer and the investor in making the guidelines.

¹¹ Section 171(1) EA, 2023

¹² Section 171(1)-(5) EA, 2023.

¹³ Section 166 EA, 2023.

¹⁴ Section 168

¹⁵ Section 164(1)(j) EA, 2023

¹⁶ Section 168(3) EA, 2023

The benefits of feed-in-tariff rates for the promotion of renewable energy development cannot be overemphasized. Amongst others, feed-in-tariff rates ensures a degree of price certainty for the sale/supply of renewable energy through the grid system. It also reduces the financial risks associated with the fluctuating energy prices in the conventional energy market.

The stability and predictability created by feed-in-tariff-rates in renewable energy trading incentivizes more participation in renewable energy development from investors and project developers. Predictability of pricing boosts more access to funding for renewable energy projects, and ensures reasonable return on investment for financiers. Overall, feed-in-tariff rates for renewable energy trading encourages private sector participation and foreign investment for renewable energy project development.

6. Local Content Development: To enhance indigenous development of the renewable energy industry, the Act compels NERC to make provisions for local content participation in the power sector including the review of the extant National Content Development Regulations for the power sector to address local content requirements for local skills acquisition, local production and assembly of solar PV components, deep cycle batteries, electro-mechanical components of SHP technology, wind boilers, and turbines for cogeneration of less than 30MW or other components as may be specified by the Commission for local contents requirements.¹⁷

The Act further compels all players (licensees, contractors, or sub-contractors) in the renewable energy sector to ensure local content is a component of their operations in renewable energy activities.¹⁸

The benefits of local content participation in Nigeria's renewable energy industry is limitless. Asides job creation and employment opportunities for Nigerians, local content participation ensures domestic economic growth and fosters local skilled workforce in the renewable energy industry.

Local content participation ultimately enhances domestic capabilities and helps Nigeria harness its renewable energy potentials.

CONCLUSION

The enactment of the Electricity Act, 2023 marks a significant milestone in the country's journey towards exploring and integrating renewable energy into its energy generation mix.

If effectively implemented, the Act contains provisions that would stimulate massive development of its renewable energy potentials. With strong political will and collaboration from all stakeholders in the industry, addressing infrastructure deficit and sufficient government incentives, the full potentials of Nigeria's renewable energy will be fully unlocked.

¹⁷ Section 164(1)(i) EA, 2023

¹⁸ Section 171(5) EA, 2023



Dayo ADU
Partner
dayo.adu@famsvillesolicitors.com



Samuel Olawepo
Associate
samuel.olawepo@famsvillesolicitors.com



CONTACT US



+234 (0) 90 68909 300

+234 (0) 80 62801 020



info@famsvillesolicitors.com



128B, Association Road, Dolphin Estate, Ikoyi, Lagos