TEMPLARS

IS THE NERC METER ASSET PROVIDER REGULATIONS 2018 THE PANACEA TO THE METERING MENACE IN THE NIGERIAN ELECTRICTY SUPPLY INDUSTRY?

INTRODUCTION

Inadequate metering in the retail end of the Nigerian Electricity Supply Industry (NESI) has been a bane of the NESI. It has been reported that as at December 31, 2017, the metering gap or shortfall for all Distribution Companies (Discos) in the NESI was about 4,740,275[1] meters. This is projected to significantly increase upon the conclusion of the ongoing customer enumeration exercise in the NESI. This menace has led to estimated billing of a large segment of the consumers in what is commonly referred to as 'crazy billing' where unmetered customers are billed based on an estimated quantity of consumed energy, rather than their actual consumption. This has also led to loss of goodwill in the NESI as customers believe that the Discos are unscrupulous and are benefitting from the metering gap. As a result, the portfolio of debts owed the Discos by their customers due to customer's apathy to pay the estimated charges has also increased.

Earlier attempts to solve this problem led to the enactment of the NERC (Methodology for Estimated Billing) Regulations 2012, which sought to regulate the billing of consumers without meters. Thereafter, the Nigerian Electricity Regulatory Commission ("NERC"), came up with the voluntary Credited Advance Payment for Meter Installation (CAPMI) which was designed to enable willing consumers to make upfront payment for meters, with the cost of such meters being gradually deducted by a reduction in such consumer's fixed charge over the amortized period. The CAPMI scheme which was intended to reduce the metering gap, improve revenue generation for the Discos, eliminate estimate billing and reduce commercial losses for the Discos did not achieve its intended objectives and was subsequently cancelled - thus resulting in the enactment of the present NERC Meter Asset Provider Regulations 2018 (the "MAP Regulation"). The enforcement of the provisions of the MAP Regulations by NERC will begin today – April 3, 2018.

[1] See Clause 4 (2) the MAP Regulation

OVERVIEW OF THE MAP REGULATION 2018

The MAP Regulation has the main objective of encouraging the development of independent and competitive meter services, eliminating estimated billing practices, attracting private investment to the provision of metering services, closing the metering gap through accelerated meter roll out and ultimately enhancing revenue assurance and improved customer service in NESI.

Under the MAP Regulation, a person - called a meter asset provider ("MAP") - may apply for and be granted a permit by the NERC to provide metering services which may include meter financing, procurement, supply, installation, maintenance and replacement. The NERC may issue a permit to a MAP for a tenure of 15 years in the first instance. The MAP is required to enter into a metering service provision agreement with an agreed Disco. The MAP with a service agreement with a Disco therefore supplies and installs meters for the Disco consumers. Thus, as a consequence of the MAP scheme, the hitherto exclusive preserve of the Discos to provide electricity meters to consumers has been abolished and a new class of operators – the MAPs - have been introduced albeit as service providers to the Discos under a meter service agreement. The MAPs will not only be responsible for the provision of meters, but also for their installation, maintenance and the replacement of faulty ones.

The MAPs will be procured by the respective Discos subject to a tender process approved by the NERC. The holder of a MAP permit may enter into meter service agreements with more than one Disco. In essence, the permit to be granted to a MAP will enable the MAP conduct business across Nigeria.

Other notable provisions are the fact that 120 days after the effective date of the MAP Regulations, the billing of unmetered consumers will be capped in line with an order to be issued by NERC. In addition, the MAP Regulation provides that it shall prevail over other regulations that may conflict with it like the Estimated Billing Regulations. This implies that all provisions of existing NERC regulations that are inconsistent with the MAP are consequentially repealed.

Another important point to note is that a Disco, its core investors, subsidiaries, affiliates, directors and their relatives are prohibited from setting up, owning shares in, or holding directorships and senior management positions in a MAP. Although this may be aimed at making the MAPs transactions arm's length, it would be beneficial to have the Discos involved in the MAP as ultimately, metering at the distribution end of the NESI is supposed to be the primary role of the Discos.

FISCAL STRUCTURE OF THE NEW REGIME

The MAP regime provides for two payment mechanisms. Under the first arrangement, the consumer may choose to pay upfront and in full the cost of a meter to the MAP. In this case, the relevant consumer will not be liable to the pay any meter service charge to the Disco. The second arrangement is where the consumer is supplied a meter by a MAP and is registered by the relevant Disco which subsequently collects a meter service charge from such consumers for the meter supplied by a MAP. The Discos are required to ring-fence the sums collected from the consumers under this arrangement and remit same to the MAPs in each billing circle. This payment arrangement makes the MAPs susceptible to the vagaries of a Disco's revenue and collection challenges. It would also seem that this signals the return of the fixed charge in the consumer billing circles but now christened meter service charge.

Discos are required to issue any of the many forms of payment security to MAPs. This payment security could be in the form of an irrevocable direct pay letter of credit or other forms of security executable on demand and provided by a bank or in another form acceptable to the MAP; a back-office structure mutually agreed between the parties under which all payments for metering services by customers at the time of vending are ring-fenced to a dedicated account established for the purpose of securing payment to the MAP; a securitization framework that may be developed in collaboration with financial institutions such as development finance institutions, Central Bank of Nigeria, The Infrastructure Bank, and any other payment security structure that may be acceptable to them. The Disco is also required to create a variance account for the purpose of harmonizing payments to the MAPs arising from bulk or irregular purchase of energy credits by Customers.

LOCAL CONTENT REQUIREMENTS

The MAPs are required to source a minimum of 30% of their contracted metering volumes from local meter manufacturing companies in Nigeria. This implies that, going forward, at least 30% of the metering requirements of the NESI will be met from Nigerian domestic market. This is made subject to changes as may be provided under the extant but, as yet, inactive NERC Local Content Regulations which generally deals with local content requirements in the sector.

METER OWNERSHIP UNDER THE MAP

Until fully amortized through payment of a metering service charge, legal ownership of the meters shall vest in the MAPs.

Furthermore, the MAP Regulation provides that in line with guidelines for asset enumeration by Discos, customers meters are associated with feeders and distribution transformers and as such shall not be moved by customers. This seems to imply that post amortization of the meter costs, meter ownership under the MAP regime will rest with the owner of the premises where they are installed as they cannot be moved by the customers who paid for them. If this interpretation is correct, this could mean that occupiers or non-owners of premises like tenants will be shortchanged in the process as they will be paying for assets that they do not, and may not, eventually own when they vacate the premises. In addition, where they move to any premises that is not metered, they may have to recommence the payment process all over again. In this regard, prospective occupiers of premises may make the issue of electricity meters one of their due diligence points and take adequate measures including seeking necessary rebates on rents to address any metering concerns or insisting that meters should be procured and paid in full by the home owners.

The foregoing position in the MAP Regulation notwithstanding, the NERC has recently clarified that where a customer relocates within the franchise area, the customer shall apply to the relevant Disco for the transfer of services including applicable credits for energy. This certainly will be a better outcome for non-owners of premises who paid for meters before changing premises.

WILL THE MAP BARK AND BITE?

Unlike its predecessor, the CAPMI regime, the MAP appears to present a more sustainable alternative in the sense that it gives the consumers two payment options, that is to pay upfront or to pay overtime via the meter service charge. This means that, going forward, electricity consumers will now be able to pick the option of upfront financing where title to the meter passes immediately, or obtaining meters from MAPs under the structured repayment framework.

A significant point of departure from the former regime is the fact that supply and installation, a function hitherto performed by the Discos is now to be performed by the MAP. Indeed, one of the widespread complaint of participants under the CAPMI was that consumers had paid for meters but these were not installed. Under this new framework, the exclusive preserve of the Discos to the provision of electricity meters has now been abolished. MAPs are to be licensed as separate entities that will be contracted by the Discos in their respective coverage areas subject to the approval of the NERC. MAPs will not only be responsible for the provision of meters but also for their installation, maintenance and the replacement of any faulty meter.

Under the new framework, all technology systems deployed by MAPs shall be capable of interfacing into the vending platforms of Discos. This raises serious concerns regarding issues of tampering, by-pass of meters and other unwholesome practices bothering on electricity theft. There is need for a robust regulatory oversight of the MAPs and a working synergy with the Disco to address this concern.

We believe that the MAP approach will significantly close the metering gap in the NESI and open up another window of new investments in the sector. However, this intervention will not solve the metering problem completely. Ultimately, there has to be a tariff regime that will enable the Discos to fund their capex needs, including metering, given that the primary obligation to meter remains with the Disco or any other electricity supplier and not necessarily on third party contractors like MAPs. In addition, given the sensitivity of metering to the bottom line of Discos and the entire value chain, it is important for the Discos to take ownership of metering its customers. Otherwise, the MAP initiative, like other metering interventions may end up only barking at the problem without having the necessary bite.

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