



Protecting the rights of electricity consumers in Nigeria

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Abstract

One of the major drivers of economic development in any country in the world today is electricity. In Nigeria, this product is not always constant and comes with its own challenges and the consumers of electricity in Nigeria have been on the short end of this stick.

Consumers are users of products and without them, the supply chain is incomplete. Although Laws and regulations exist for the protection of electricity consumers in Nigeria, a lot of these consumers are still affected by the bad practises of the distribution companies and are left at the mercy of the Discos.

In this article the authors take an in-depth look at the challenges facing the consumers of electricity in Nigeria, protections presently available for them and the gaps. We also proffer solutions to the said gaps.

Keywords: electricity consumers, regulations, electricity in Nigeria

Introduction

Since the discovery of electricity in the 18th century ^[1], there has been a great reliance on it for domestic and industrial use. It has become a strong determinant of the economy of any society. Olalere, P.O. ^[2] expressed a similar view that electricity is central to the development of any economy.

The Nigerian power sector used to be a public monopoly controlled by the Federal Government but has been privatised and unbundled into several bodies such as Distribution Companies, Generating Companies, Transmission and the Regulatory company ^[3]. With the privatization of the sector, electricity consumers have been on the receiving end, bearing the grunts arising from poor service delivery by the Distribution Companies (hereinafter referred to as DisCos). These Consumers have been kept at the mercy of the DisCos whom are business looking to make higher returns on investments.

There is a common saying that the consumer is king but this is not the case with electricity Consumers in Nigeria who have continued to endure untold hardship due to the epileptic nature of the power sector and failure of the stakeholders to deliver on their mandate.

At different forums and through different mediums, consumers have not hesitated to complain about their plight arising from the activities of these DisCos. For example, at a meeting of the representatives of the Federal Competition and Consumer Protection Commission, Ikeja Electricity Distribution Company (IKEDC) and electricity consumers serviced by the DisCo consumers made several complaints such as “crazy bills”, high handedness by the staff of the DisCos, hoarding of meters etc, and called for intervention from the FCCPC ^[4]. Similarly, the activities of the DisCo in Enugu State, Enugu Electricity Distribution Company was brought before the Enugu State House of Assembly wherein a vote of no confidence was passed on the company ^[5].

However, it has been observed that irrespective of these complaints and expression of non-satisfaction, Government has not shown any willingness to withdraw the licence of

any distribution company despite several threats. DisCo’s in Nigeria still operate below expectation ^[6].

This paper is a review of existing literature on consumer rights in the electricity sector, and the possible ways in which these consumers can be protected in Nigeria.

History of the electricity sector in Nigeria

Power generation in Nigeria dates back to 1896 when two (2) generating sets were installed to serve the then Colony of Lagos. In 1929, the Nigeria Electricity Supply Company was established to build power generating plants in the different parts of the Nation. Following was the enactment of the Electricity Corporation of Nigeria Statute No. 15 of 1950, the Electricity Corporation of Nigeria was established, and in 1962, the Niger Dams Authority (NDA) was also established for the development of hydroelectric power. This didn’t solve the problem as there were still areas in Nigeria without electricity supply and by Decree No. 24 of 1st April, 1972, the Electricity Corporation of Nigeria and the Niger Dam Authority were merged to form the National Electric Power Authority (NEPA) ^[7]. NEPA which was saddled with the responsibility of generating, transmitting and distributing electricity for the whole country. NEPA was so popular for its failure that the coinage “Never Expect Power Always” was used to refer to the Body.

In 2003, it was unbundled and renamed Power Holding Company of Nigeria (PHCN) ^[8].

The Electric Power Sector Reform (EPSR) Act was signed into law in March 2005, enabling private companies to participate in electricity generation, transmission, and distribution. The government unbundled PHCN into eleven Electricity Distribution Companies (DisCos), six generating companies (GenCos), and a transmission company (TCN). The Act also created the Nigerian Electricity Regulatory Commission (NERC) as an independent regulator for the sector.

Who is a consumer

A consumer is user of a product who may or may not be the purchaser. The Electric Power Sector Reform (EPSR) Act defines a consumer as any person supplied with electrical energy by the licensee.

Rights of electricity consumers in Nigeria.

There are common sayings such as “consumer is King” and “customer is always right”. These create a premise that the customer is given some respect by the business owner, knowing that the customers/consumers are the reason the business owners are in business. This may be true in other sectors except in the electricity sector.

Consumer rights protection is essential in Nigeria to check and regulate the excesses of businesses and individuals against the consumer.

In a study conducted by Ighodaro and Oriakhi⁹ in Edo State, it was observed that the common complaints by small business owners was the power outage during business hours forcing the business owners to adopt alternative means of power supply. This affected the patronage of small businesses who had to either bear the grunt or make adjustment thereby increasing running cost.

According to *Ebhota and Tabakov*^[10] the power system in Nigeria is characterized by poor workmanship, poor quality materials, poor standards by foreign and local contractors, cable theft, power theft by consumers, vandalization of transformers, protests and lots more.

The Electric Power Reform Act, 2005 brought about the formation of companies to take over the assets, liabilities, and staff of the National Electric Power Authority and also created the National Electricity Regulatory commission. Olalere, P. O., expressed his view that privatization is the way to a sustainable and more efficient reform^[11].

By section 32(1) of the Act^[12] the commission has a duty to ensure adequate supply of electricity is available to consumers, ensure that the prices charged by licensees are fair to consumers and are sufficient to allow the licensees to finance their activities and allow for reasonable earnings, to ensure the safety, security, reliability and quality of service in the production and delivery of electricity to consumers. From these, consumer rights can be deduced.

However, NERC outlines the following rights of electricity consumers in Nigeria^[13]:

1. All new customers have a right to a meter before connection. This means that no new customer should be connected by a DisCo without a meter first being installed at the premises.
2. Right to electricity supply in in a safe and reliable manner.
3. Right to a properly installed and functional meter.
4. Right to be properly informed and educated on the electricity service.
5. Right to transparent electricity billing.
6. All Un-metered customers have a right to be issued with electricity bills strictly based on NERC's estimated billing methodology.
7. Right to notification in writing ahead of disconnection of electricity service by the DisCo serving the customer in line with NERC's guidelines.
8. Right to refund when over billed.
9. Right to file complaints and to the prompt investigation of complaints to DisCos and NERC Forum Office when unsatisfied by the response by the DisCo.

10. Right to contest any electricity bill.
11. An un-metered customer has the right to refuse payment of any disputed bill his or but pay only the last undisputed bill while the contested bill goes through the dispute resolution process of NERC.
12. Right to be connected to electricity without been burdened with the responsibility of buying, replacing or repairing electricity transformers, poles and related equipment used in the supply of electricity. In *NICON Town Management Company v. NERC*^[14], NERC stated that the responsibility of provision, distribution and connection of meters and transformers is on the distribution company and not the consumers.

Similarly, in *Adekoya v. VGC Management and Maintenance company*^[15] it was held that the installation, sale, distribution and maintenance and billing of meters is the responsibility of the distribution company. It was also held that the consumers cannot be charged above the rate consumed.

Similarly, the Nigerian Electricity Regulatory Commission (NERC) had reiterated that electricity consumers are not required to pay for the meters delivered to them under the National Mass Metering Programme, which was introduced by the Nigerian Federal Government October 2020 in to provide electricity consumers with meters free of charge^[16]. In reality, most of the meters imported into Nigeria through the programme were sold to consumers by the distribution companies, despite the intent of the Federal Government^[17]. With all these, there are instances of DisCos handing out estimated bills to consumers for services not enjoyed, collecting illegal monies from consumers for the procurement of transformers or parts thereof which the DISCO's ought to provide, deliberately refusing to provide electricity supply to some residential areas for unjustifiable reasons etc.

On the other hand, there are certain obligations expected from electricity consumers, as there is a principle of law which states that for every right there is a duty, the duties of the electricity consumers in Nigeria includes:

1. Duty to pay bills for electricity consumed within the stipulated timeframe.
2. Duty to provide requirements for connection as stipulated by NERC and DisCo.
3. Duty to be vigilant and protect electrical installations.
4. To be cordial towards electricity workers^[18].
5. Ensure receipt of monthly electricity bills if not on prepaid meters and lodge a complaint to the DisCo serving you should you not get your bills.
6. Ensure that metering and other electrical equipment within your premises belonging to the DisCo are not tampered with, or by-passed
7. Notify the DisCo of any tampering or bypass of electricity installations.
8. Notify the DisCo of any outstanding electricity bill before moving into new premises.

However, it is not uncommon to find some electricity consumers bypassing meters and performing illegal connection without registering with the distribution companies, thereby frustrating the efforts of the DisCos.

What is peculiar about energy consumers

Electricity consumers are special sect consumers. This is because unlike consumers of other products such as telecommunication consumers who may switch to another service provider if not satisfied by the product/service received, electricity consumers are stuck with the licenced DisCo in charge of the location.

The Consumer and service provider relationship presupposes the existence of a contract between the parties. In the Law of Contract, the consumer is entitled to information when the service provider cannot perform. This is not the case between electricity providers and electricity consumers as consumers may be put in darkness without any notice given. This goes against the rules of Contract as there is a legal relationship between the consumers and the electricity supply companies.

With the privatization of the electricity sector and the issuance of licenses to DisCos, the provision and distribution of electricity for a particular area is handled by the DisCo. These consumers are stuck with the quality of service provided by the DisCo and are not given the right of choice. Each service provider has local monopoly in each geographical market based on the national grid. To Agbadua^[18], this local monopoly rescinds the much-touted free market ideology proposed by the proponents of privatization. The alternative for consumers who do not succumb to the treatment from distribution companies is disconnection of their electricity supply.

The role of NERC in consumer protection

NERC plays dual roles in the provision of services to consumers as they are both regulatory and adjudicatory. The Act created the National Electricity Regulatory Council^[19] and its functions amongst others include to ensure sufficient supply of electricity to consumers, to ensure prices charged are fair to consumers, to maximise access to electricity services by consumers in rural and urban areas etc^[20]. The Council also has a duty to promote competition and private sector participation.

The Act seems to impose a lot of responsibilities on the NERC especially in relation to consumer protection. One of such is in section 80(3) where the Act provides that the Commission shall establish standards for compensation to consumers who do not enjoy regular power supply. This means that the commission has a duty to ensure that customers enjoy constant power supply and when they default, the customer may exercise his right by seeking for compensation.

The Act provides for the Power Consumer Assistance Fund^[21]. The makers of the Law recognising how important light is to a society and considering that some persons may not be able to afford the payment. The aim of the fund is to create a subsidy for underprivileged power consumers. The researcher is yet to find any proof of compliance with the legislative provision by NERC.

It has been stated that the presence of a regulatory body irrespective of the ownership has a very important role to play in determining the quality of electricity service to Consumers^[22]. NERC has been able to play its role in cases such as:

In *Crown Realities Management Ltd, v. Power holding Company of Nigeria and ano*^[23] (Crown estate case), the plaintiff had sued the defendant over electricity bills, disputing the bills that was brought to the estate and in the

process of disputing the electricity tariff/bills, the plaintiff was disconnected by the defendant. The defendant filed and preliminary objection claiming that based on the NERC regulations such petitions ought to be entertained by the Consumer Complaint Unit of the Discos and then the Consumer Complaint Forum (CCF) that NERC was like an appellate court and it is on very few instances that it has original jurisdiction, but that disputes between the consumer and the Discos was not one of them.

The Commission agreed with the objection filed by the defendant and held that it was the Consumer Complaint Forum (CCF) ought to be the appropriate body that the complaint should be tabled and sent the matter there. NERC further ordered for the immediate reconnection of Crown estate Lekki Peninsula pending the hearing at CCF that it was wrongful to disconnect a consumer who is disputing the electricity bill that he/she is paying.

In the case of *NERC v. Abuja Electricity Distribution Company*^[24], the case arose following a complaint by a staff of the petitioner, NERC, Mr. Ahmadu Zubairuo on the 19th of April 2007, that an explosion had occurred on 18th April, 2007, at the sub-station of the Respondent at Blantyre street, Wuse II, Abuja which is adjacent to where the staff lives. The explosion resulted in the electrocution of a little girl who died the day after the explosion. Following this report, officials of the Petitioner visited the site of the explosion and in a letter to the Respondent dated April 19, 2007, requested for an official notification of the accident and a detailed report within the time frame stipulated in section 3.11 of the Distribution Code. The letter further directed the Respondent to carry out an audit of its Distribution sub-stations and ensure that the appropriate safety standards are applied as regards making them inaccessible to unauthorized persons. In response, the Respondent through its Business manager, in a report dated 27th April 2007, stated that the deceased might have thrown something that bridged the cable sockets while she was near the compact unit thereby causing the explosion, as it did not seem that she came in contact with live apparatus. Dissatisfied with this report, the Petitioner by a letter dated 24th April, 2007 invited the Respondent for a meeting with a view to further discuss the matter. At the meeting of 26th April 2007, the Respondent was directed to:

- a. clear the bush and trees in the sub-station;
- b. construct a barbed wire fence and fit a gate to separate the substation from the walkway
- c. carry out an audit of the Company's sub-stations in its area of operation and come up with a program for securing them;
- d. Assist the victim's family to obtain a police report on the accident and a doctor's report as to the cause of death;
- e. Take stock of all their installed equipment, ensure the safety of life and property in accordance with existing regulations and come up with a programme for making them secure;
- f. To compensate the deceased's family for the loss. By a letter dated 24th July 2007, the Petitioner observed that as at that date, the Respondent had not complied with the Commission's directives and reiterated same to the Respondent. The Petitioner also gave a time frame of seven (7) working days within which the Respondent was to comply, failing which the Commission would commence Enforcement proceedings against the

Respondent. However, the Respondent by a letter dated 31st July, 2007, in response to the Commission's letter of 24th July, 2007, submitted what it referred to as a "compliance report" to the Commission. In February 2008, the Engineering Safety and Standards Division of the Commission took pictures of some of the Respondent's sub-stations which showed that the installations of the Respondent were in a technically unsafe state.

The Commission noted that the Respondent being a Licensee is subject to the provisions of the Electric Power Sector Reform (EPSR) Act 2005, the Terms and Conditions of the Licence issued it by the Nigerian Electricity Regulatory Commission (NERC), the Electricity Supply Regulations (made under the Electricity Act, CAP 106/E7, which subsists by virtue of Sec. 98 of the EPSR Act 2005 and the Distribution Code. It was also noted that being subject to these enactments, the Respondent owes a duty of care and safety to its employees and the public in its operations, and in the instant case, that duty was breached due to the negligence of the Respondent; a breach which resulted in the electrocution and subsequent death of the little girl. Also, that the Respondent although bound by law to obey the Directives of NERC, ignored, refused and or neglected to fully comply with the Directives of NERC.

While delivering the ruling, NERC stated that the Respondent shall undertake a safety audit of all its installations in its area of operation and shall submit such Report to the Commission within 30 days of the issuance of this Order; forward to the Commission for approval, a work plan with timelines on how it intends to secure its installations within 30 days of the issuance of this Order, The Respondent shall embark upon a public enlightenment campaign on the dangers posed by the electrical installations and the dangers inherent in handling such equipment by unauthorized persons within 28 days of the date of this Order. The Respondent was also to obey all instruction given by NERC which includes the payment of compensation to the family of the deceased girl.

There have been complaints by consumers of DisCos disconnecting or failing to connect an entire community or residential area. DisCos are in the business to make money and get return on their investments and so, they may not be sympathetic to areas with poor income earners. The Onus is on the government to invest in the sector. The Osun State High Court sitting in Osogbo on 3rd June, 2020, in a suit filed against the IBEDC by two Legal Practitioners Kanmi Ajibola and Olayinka Sokoya, awarded damages against IBEDC. The DisCo shut down power supply to Olorungbola and Bolorunduro Communities in Ilesa in March, 2019. They stated that the action of the DisCo adversely affected them, to the extent that alternative arrangements had to be made. The Court agreed that the action of the Company was in negation of the Power Sector Reform Act which provides that at least 24 hours notice must be given to Customers before disconnection and the notice must be in writing ^[25].

Also, in *Crown Realities Management Ltd. v. PHCN* (Crown Estate case) ^[26], the Commission ordered the immediate reconnection of Crown estate Lekki Peninsula which was wrongfully disconnected by the Electricity Company.

Recommendations

In other to ensure that Electricity Consumers in Nigeria receive optimum service delivery, are assured of the protection of their rights, we make the following recommendations:

1. The need for Consumer education and an improved regulation of the Power supply sector by NERC, Federal Competition and Consumer Protection Commission and other agencies of the Government.
2. Elimination of monopoly by encouraging private investors to generate power; the government must make policies that would further encourage private investment in electricity generation and supply, this includes policies that would support small and medium scale electricity generation and supply targeted at particular communities, industries and locales.
3. Sequel to the above, there is need by the government to eliminate the bottlenecks involved in getting a licence to become independent power producers or suppliers.
4. The Government need to invest more in the Electricity sector particularly in the areas of generation and transmission of electricity.
5. There is need for the DisCos to recapitalize they would have access to more capital and resources so that they can provide more prepaid meters and better services to their consumers.
6. There is need for better accountability by DisCos.
7. There is also a need for better consumer education. The people need to be aware of their rights and obligation in a manner easily understandable preferably in their local language.
8. Discos must ensure that there is a quick resolution of consumer complaints. The DisCos should be encouraged to put up online platforms for consumers to make complaints.
9. The DisCos should be given time frame by NERC to attend to consumer complaints failing which they (the DisCos) would pay a stiff penalty, this would also lead to quicker resolution of disputes. Also, there must be a means to track complaints made by consumers.
10. There is need for quicker and easier access to justice by the consumers, this include the need for Consumer Complaint Forums in every Senatorial District and Consumer Complaint Unit in every Local Government Area. The Consumers should also be able to file their complaints and disputes online.
11. There is need for more criminal convictions/ fines of persons who bypass the prepaid meter this act as a deterrent.

Conclusion

The Electricity consumer in Nigeria is faced with a lot of uncertainties, and enjoys it only when provided. This shouldn't be the case as he has a right to quality service. This means that all stakeholders/electricity investors join hands to provide quality service to consumers. They need to efficiently manage the industry and provide quality service so that in the near future, electricity consumers would have access to stable, safe and adequate electricity supply.

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