NERC, SERCs and the Great Regulatory Turf War:
Who Regulates What, in Plain English

Nigeria currently has one electricity problem and, depending on how you count, seventeen (17) electricity regulators. Sixteen (16) States have taken over regulation of their electricity markets, the Nigerian Electricity Regulatory Commission (**"NERC"**) remains firmly in place at the centre, and somewhere in between sits a generating company holding a NERC licence, staring at a letter from a State Electricity Regulatory Commission (**"SERC"**) asking why it has not applied for another licence.

If you are confused, you are in excellent company. Investors are confused. DisCos are confused. Judges are being taken through seminars so that they will not be confused. Even the regulators occasionally look confused, although they are far too professional to admit it.

So let us do what we did with the net billing regulations: strip away the noise, read the actual instruments, and answer the only question anyone really cares about. Who regulates what?

First, What Actually Happened?

The Electricity Act 2023 did not "hand over" the power sector to States. It operationalised a constitutional amendment that had already recognised the right of States to legislate for electricity generation, transmission and distribution within their borders, in areas covered or not covered by the national grid. Where a State enacts its own electricity law, establishes its regulator and requests a transfer, NERC issues a transfer order and hands over regulatory oversight of the **intrastate** market to the SERC. That is the machinery. It is orderly, it is statutory, and sixteen(16) States have now completed it.

What the Act did not do, and could not do, is repeal the Constitution. And this is where the turf war begins.

The Constitution, Without the Latin

The division of powers is genuinely simpler than the commentary suggests. Think of it as a passport question.

If the electricity crosses a border, it is federal. Generation and transmission of electricity in or affecting more than one State, and any arrangement involving another country, sit with the National Assembly and, by delegation, NERC. Power flowing from Niger State to Lagos State is a federal affair. Power imported from or exported to a neighbouring country is a federal affair, even if every kilowatt ends up in a single community.

If the electrons live, work and retire within one State, the SERC is home. Generation, distribution and supply that begin and end inside a State that has completed the transfer belong to the State regulator. Tariffs for intrastate supply, consumer complaints, metering disputes, licensing of purely in-state operators: that is now SERC territory, and consumers in States with transferred regulatory oversight have rightly been directed to take their complaints there.

Hydro: the water is federal, but the electrons may not be. This is the point on which most commentary is loudest and least careful, so it deserves a moment of precision. The Constitution gives the National Assembly power to regulate the right of any person to dam up or otherwise interfere with the flow of water from sources in any part of the Federation. Notice what that provision actually regulates: the damming and the interference. It is a water provision, not an electricity provision. It federalises the Hydrological Act, and it says nothing at all about who licenses the generation, sets the tariff or supervises the sale of the electricity produced.

The two regulatory objects are separable, and the sector already separates them. A thermal plant needs a gas supply framework and a generation licence from different sources of authority; nobody finds that strange. A hydro plant likewise needs Federal consent for the dam and the water use. But if the plant sits on a watercourse that rises and flows entirely within one State, and its output is consumed entirely within that State, there is a respectable constitutional argument that the generation licence itself belongs to the SERC. The Exclusive Legislative List reinforces the point: it reserves to the Federation only water from sources declared by the National Assembly to affect more than one State. An undeclared, purely intrastate stream is not obviously federal property.

None of this threatens the big picture. Nigeria's significant hydro assets sit on the Niger, the Benue and their tributaries, which are emphatically interstate waters, and any plant of scale will remain federal on any reading. But "hydro is federal, full stop" is a slogan, not an analysis.

The accurate statement is that the dam answers to Abuja, and whether the electricity does depend on where the water rises, where it flows and where the power is consumed.

Standards are Federal, and thank goodness. The power to prescribe and enforce technical standards for plant, equipment and apparatus for the supply of electricity is a federal mandate, exercised through NERC and enforced through Nigerian Electricity Management Services Agency (**"NEMSA"**). This is not centralist nostalgia; it is common sense. A country cannot run on thirty-six different meter standards. Devolution of markets is healthy. Devolution of physics is chaos.

The Phrase Doing All the Heavy Lifting: "National Grid"

Here is where much of the current shouting originates. Some commentators argue that because the Constitution reserves the "establishment and regulation of a national grid system" to the Federal Government of Nigeria, and because a grid arguably includes distribution networks, distribution can never truly belong to States.

That argument proves too much. Taken to its logical end, nothing was devolved at all, and the constitutional amendment, the Electricity Act and sixteen transfer orders were an elaborate waste of stationery. That cannot be right, and it is not.

The Electricity Act resolves the puzzle by defining the national grid as a power system that extends beyond the boundaries of one State or connects to another country. In other words, the national grid is the interstate highway. It is not every street, close and cul-de-sac in the country. A DisCo network serving customers within one State does not become "the national grid" merely because it takes supply from it, any more than your driveway becomes a federal road because it joins one.

What connection to the grid does do is create an interface, and interfaces need rules. Grid code compliance at the delivery point, wholesale market settlement, transmission-connected transactions: these remain NERC's business. Everything downstream of that interface, within a State with transferred regulatory oversight, is the SERC's business.

Five Rules of Thumb

For the practitioners, investors and long-suffering compliance officers, here is the entire jurisprudence on a postcard:

1. **Follow the electrons.** If they cross a State or national border at any point, NERC is in the room.
2. **Follow the water.** The dam and the watercourse answer to the Federal Government; whether the electricity does depends on whether the source is interstate or has been declared to affect more than one State. Small intrastate hydro is genuinely arguable territory.
3. **Follow the wire.** Transmission and the interstate grid are federal; intrastate distribution and supply in a State with transferred regulatory oversight are for the SERC.
4. **Follow the meter.** Technical standards for meters, transformers, conductors and safety are set federally and enforced nationally.
5. **Follow the transfer order.** In a State that has not completed the statutory transfer, NERC remains the regulator, however enthusiastic the State's press releases.

Solving It, Not Just Describing It

Diagnosis is easy; the sector needs treatment. Three things would end most of the current friction.

Mutual recognition of licences. A generator licensed by NERC should not be re-licensed from scratch to sell into a State market, and vice versa. A simple recognition and registration protocol, agreed between NERC and the SERCs, would replace duplication with notification. The alternative is a tollgate economy in which every regulator charges admission, and the consumer pays for all the tickets.

A standing intergovernmental forum with teeth. The recent committee convened to address Federal and State disagreements is welcome, but ad hoc peace talks after each skirmish are not a system. A permanent NERC-SERC forum, with published protocols on tariff interfaces, data sharing and transitional arrangements, would resolve disputes before they become headlines or lawsuits.

Discipline at the interface. NERC should regulate the interstate market vigorously and resist the temptation to reach into transferred intrastate markets through the back door of market-wide orders. Equally, SERCs should resist the temptation to regulate hydro, standards or grid matters through the front door of State legislation.

Each side staying in its lane is not weakness; it is the whole point of the design.

The Bottom Line

Decentralisation is not a hostile takeover of NERC, and NERC's continuing federal mandates are not a plot against the States. The Constitution built a two-storey house. NERC lives upstairs with the grid, the dams, international trade and standards. The SERCs live downstairs with their intrastate markets. The stairs, meaning the interfaces between the two, are where the lawyers will earn their fees for the next decade.

The sooner both floors accept the architecture, the sooner we can return to the actual problem, which was never who regulates the power. It was always whether there is enough of it.

For more information on this article, please contact:

Dr. Ayodele Oni
Partner
ayodele.oni@bloomfield-law.com

or your usual contact at Bloomfield LP.