

# The Power of Electricity Distribution Companies to Disconnect Customers from Distribution Networks

## Introduction

On February 17 2017, it was reported by the tabloids that residents of Gowon Estate (the "Estate") located in Idimu, Lagos State disrupted the operations at the Ikeja Electric Plc ("Ikeja Electric"), Akowonjo Business Unit over a three (3) week blackout allegedly occasioned by the indebtedness of a military quarters situated in the Estate.

The members of the Estate, in barricading the offices of the Akowonjo office of Ikeja Electric asserted that the Estate had been disconnected from the feeder by Ikeja Electric and thrown into darkness as a result of Ikeja Electric's inability to collect outstanding electricity bills from the military quarters. It is unclear how this dispute was resolved between the parties.

Fast forward to June 2019, it was reported that Ikeja Electric had disconnected and cut off power supply to seven streets in the Estate in protest against the alleged manhandling of one of its officials by a customer. Additionally, it was reported that apart from disconnecting the affected streets from the 33KVA high-tension line, Ikeja Electric also shut down the transformer.

The actions of the Ikeja Electric in disconnecting the seven (7) streets within the Estate have created widespread outcry as to the rights of a distribution utility to unilaterally disconnect a community from the distribution network. The purpose of this article is to outline the provisions of Nigerian electricity laws vis-à-vis the actions of Ikeja Electric as well as proffer suggested solutions to the larger issues relating to the acts of violence meted out staff of power utility companies. It proceeds to consider the propriety or otherwise of the action of Ikeja Electric in disconnecting all those affected and its general implication on the Nigerian power sector.

## Right of a Distribution Company to Disconnect a Community from its Distribution Network

According to members of the Estate, Ikeja Electric officials had a problem with a particular building which was initially used as a hotel but later converted to residential premises. The reports indicate that the owner of the building in question was upset that Ikeja Electric was still billing the building as if it was still being used as a hotel as opposed to a residential unit. The owner is purported to have assaulted an official of Ikeja Electric and this was what prompted Ikeja Electric to disconnect the seven (7) streets within the Estate. This then raises the pertinent question as to the legal basis for a distribution utility to disconnect a community from its distribution network plunging the community into perpetual darkness.

### (i) General Obligation of the Distribution Companies to provide Customers with Electricity

The primary legislation guiding the Nigerian power sector, and the connection of end-users is the Electric Power Sector Reform Act 2005 (the "EPSRA"). Section 67 (1) (a) of the EPSRA stipulates the one of the primary obligations of Distribution Companies ("Discos"). It provides that a Disco shall be licensed to (amongst other things) carry out the "connection of customers for the purpose of receiving the supply of electricity".

Furthermore, the licence terms and conditions issued to the Discos mandates that a Disco shall supply electricity to every customer connected to its distribution system except for distribution system constraints or shortage conditions. Condition 30 of licence terms and condition additionally requires that the supply of electricity to the customers shall be in an efficient and economical manner.



Flowing from the above, there is a primary responsibility on the part of the Discos (including Ikeja Electric) to ensure that customers are duly connected to the distribution network so as to get electricity from the national grid.

#### (ii) Can Distribution Companies Disconnect Customers from the Distribution Network?

The Nigerian Electricity Regulatory Commission ("NERC") established by the EPSRA as the regulator of the Nigerian power sector, has been granted the authority (via section 32 of the EPSRA) to make regulations governing the Nigerian Electricity Supply Industry ("NESI").

One of such regulations is the Connection and Disconnection Procedures 2007 ("NERC Connection Regulations"), which provides in succinct details, the circumstances under which a Disco is allowed to disconnect a customer from the supply of power. Specifically, Regulation 5 of NERC Connection Regulations contemplates that a customer may be disconnected **ONLY** in the event that a customer has not paid the amount correctly billed for that supply address provided by the customer. It further provides for the prerequisites before such disconnection can take place.

For the avoidance of doubt, Regulation 5(1) NERC Connection Regulations reads:

*"A Distribution Company may only disconnect supply to a customer's address when the Customer has not paid the amount correctly billed for that supply address by the relevant payment date:*

*PROVIDED the –*

- (a) *Payment date is clearly shown on the bill;*
- (b) *Payment date is at least 10 working days from the date of delivery of the bill to the supply address or a delivery address provided by the customer, which is acceptable to the Disco;*
- (c) *Payment date has not been suspended by a subsequent payment date issued to the same Customer for the same supply address;*
- (d) *Period between the payment date and the date of disconnection is not less than 3 months;*
- (e) *Disco has verified from its records that the bill has not been paid; and*
- (f) *Disco has given the Customer a written warning that the electricity supply shall be disconnected if payment is not made by the payment date and the warning contains the date of its delivery to the supply address or any other address provided by the customer and a telephone number and/or addresses acceptable to the Disco, where the customer can request assistance for paying the outstanding bill.*

Aligned with this, the Disco licence terms and conditions provides that a Disco shall not lessen or discontinue the supply of electricity to a customer except in the following cases:

- (a) *The customer has failed to pay charges lawfully due;*
- (b) *The customer has failed to comply with conditions of supply and has failed to remedy such default within a period of fourteen (14) days of notice to do rectify such default.*

A careful reading of Regulation 5(1) NERC Connection Regulations and the Disco licence terms and conditions will reveal that Ikeja Electric is precluded from resorting to self-help by unilaterally de-energizing paying customer(s) in a bid to 'punishing' certain customer(s).

Furthermore, Regulation 6 of the NERC Connection Regulations provides that a customer may be disconnected by a Disco without notice where: (i) the customer is connected to the Disco's network illegally; (ii) where the Disco determines that the customer's installation is dangerous to its network or capable of interrupting supply to end-users; (iii) where the customer's meter cannot be read for 3 consecutive months.

By implication, the actions of Ikeja Electric in disconnecting the 7 streets within the Estate may be deemed to be arbitrary particularly as it has not been established that:

- (a) The 7 streets were in default of payment to Ikeja Electric.
- (b) The 7 streets were connected illegally to the Disco's network;
- (c) The connections of the 7 streets have not been adjudged to be dangerous to the Disco's network
- (d) The meters of the households on the 7 streets have not been read for 3 consecutive months.

It is important to note that the provisions of the laws and regulations do not permit a distribution utility operating in Nigeria to disconnect a community due to acts of violence carried out on staff/personnel of such distribution utility.

#### (iii) What Options are/were available to Ikeja Electric?

It is important to mention that from a regulatory perspective, the draft NERC Regulation on Electricity Theft and Other Offence permits officers authorized by NERC to enter into any place or premises where such officers believe that electricity has been, is being, or is likely to be used unlawfully. This Regulation is however in draft form and is yet to be promulgated into law.

On the state level, section 52 (5) of the Lagos State Electric Power Sector Reform Law 2018 (the "Lagos State Law") provides that "any person who willfully or unlawfully obstructs, restrains, prevents and harasses or injures any person lawfully carrying on his duties of generation, transmission and distribution of electricity commits an offence and on conviction is liable to a pay a fine of not less than N 1,000,000 or a term of imprisonment of not more than 5 years or both". There are also provisions in the relevant penal laws and under tort principles and rules.

Thus, penal provisions of several laws including those of the Lagos State Law ought to have been the proper recourse of Ikeja Electric for claims on harassment of its officials being that the Lagos State Law would be applicable to the affairs of the Ikeja Electric. They may also sue for torts.

#### (iv) Would Distribution Companies incur liabilities for unlawfully Disconnecting Customers from the Distribution Network?

From the foregoing paragraphs, it can be rightly asserted that the customers of Discos, are not without legal protection under the extant legal framework, even when in default of payment for electricity supply.



It is, therefore, rather disturbing that Ikeja Electric followed the path it did in disconnecting the 7 streets within the Estate.

A careful reading of the extant provisions of NERC Connection Regulations suggest that Ikeja Electric failed to comply with the mandatory preconditions stipulated in the extant legal framework for electricity distribution in Nigeria before taking matters into its own hands and resorting to self-help in carrying out the disconnection activities.

Fortunately, the customers are not without remedy for the arbitrary actions taken by Ikeja Electric. Regulation 11 of the NERC Connection Regulations provides that any Disco which disconnects electricity supply to a customer's premises in violation of the NERC Connection Regulations commits an offence and is liable on conviction to pay the customer a penalty of between N1,000 – N2,000 per day or part of the day depending on the customer classification. It remains to be seen if this provision would be bought to bear on Ikeja Electric.

### Role of Smart Meters in the NESI

It can be argued that the currently discord relating to the disconnection of the Estate largely stems from the fact that the particular customer in question did not have pre-paid smart meters installed on his premises. No doubt, the dispute as to the electricity bills being paid by the said customer arose from exorbitant estimated bills charged by Ikeja Electric.

The NERC Smart Metering Regulations 2017 ("Smart Metering Regulations") advocates for the adoption of smart metering systems operation in Nigeria. The NERC Meter Asset Provider Regulations 2018 ("MAP Regulations") mandate that Discos shall be responsible for meeting its metering obligations. The MAP Regulations further require that Discos engage with Meter Asset Providers (for the procurement of adequate smart meters) to steer the NESI away from post-paid meters to prepaid meters, thereby improving collection efficiency of electricity bills by Discos.

The combination of the Smart Metering Regulations and the MAP Regulations ought to drive the massive influx of smart meters into the NESI to ensure that issues such that that witnessed in the Estate can be avoided or totally eliminated.

We understand the plight of Disco's when it relates to the billing of customers and the ensuring effectiveness in the value chain by reducing energy loss and theft. However, it is crucial that these smart meters are deployed thereby allowing customers to "Pay as you Go" for electricity consumed and effectively scrap estimated billings by Discos.

Taking into consideration these developments which have evolved as safeguards for participants in the NESI, particularly Disco's, it is alarming to find that the Discos have resorted to self-help remedies in the recovery of their costs.

### Conclusion

This article has provided a background to the legal issues surrounding the disconnection of customers in the Estate as well as access the legality of the actions taken by Ikeja Electric. It is important that distribution entities comply with the provisions of applicable laws in their operations. Additionally, the deployment of smart meters is essential to reduce incidents of customers venting out as a result of estimated bills which are considered outrageous by such customers.

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