

State Legislation of Electric Power Silver Bullet to Nigeria's Power Woes?

Proem:

Recently, social media and the press generally were awash with the news that the Nigerian House of Representatives was making moves to alter the provisions of the 1999 Constitution to allow each State to make laws relating to the generation, transmission, and distribution of electricity in areas covered by Nigeria's national grid. Specifically, law-making relating to electricity generation, transmission, and distribution has been a matter under the concurrent legislative list such that both the federal government and individual States could make laws. Incidentally, the Constitution does make the distribution of power within a State, *strictu sensu*, a residual matter upon which only States should be entitled to make laws.

The debate had always been around the Constitutional provision that the States are permitted to make laws with respect to the generation, distribution, and transmission of electricity in areas not covered by a national grid system within the relevant State. The phrase 'areas not covered by a national grid system' was not defined or described in the Constitution. Thus, same has been controversial such that whilst States can make laws relating to distribution, provided it is not with respect to *the participation of Nigeria in any arrangement with another country for distribution of electricity for any area partly within and partly outside Nigeria*.

Interestingly, no State appears to be exploring its powers to make laws in connection with its local distribution within such State. Rather, many commentators, experts, and lawyers have been hung on the aspects around the powers of the States to make laws with respect to the generation, transmission, and distribution in areas not covered by a national grid system.

The Big Debate:

The big debate is whether a Constitutional amendment that now allows States to make laws in relation to the generation, transmission, and distribution of electricity in areas covered by the grid could be the silver bullet to the power sector woes of the Federal Republic of Nigeria.

From the outset, I am of the firm belief that same is a step in the right direction; provided that the same issues which plagued the system, as currently is, do not also render, of no real effect, the Constitutional amendments.

In fact, some people have stated that the move was 'music to their ears'. Is it though? If so, is it great music or noise? It may be music in the ears, for forward-looking States, particularly where the relevant authorities ensure that the problems that plagued the current system do not recur. It is the case, that electric power sector challenges are across the value chain and everyone does have a role to play as, if consumers steal electricity or simply refuse to pay for same, it will not matter that the system has been decentralized and States can legislate; if there is regulatory capture of the relevant regulator too, then it wouldn't matter that States can legislate more. Also, if the market indiscipline occasioned by some of the electricity distribution companies, in any State continues, then it wouldn't matter that such a State can make its laws.

Prior to this debate, there have been moves by the Nigerian Electricity Regulatory Commission ("NERC") to facilitate sub-franchising such that the electricity distribution companies can get third parties to perform some of their roles because of the sizes of their franchise areas- a form of decentralization. The problem, however, is that this hasn't exactly panned out as planned. There have also been issues around the eligible customer regime which appears to have now been abandoned.

NERC has continued to issue very useful and forward-looking regulations. The problem in many cases has been implementation and the fact that the citizenry does not appear to support some of these efforts by not reporting electricity theft, stealing electricity, or simply failing to pay their bills. Like most other sectors in Nigeria, the problem is not the inadequacy of laws, but that of implementation or the will to implement same.

More Questions than Answers!

Would the powers of States to make laws give impetus to the implementation of such laws? Will politicians not abuse the process?



Will the State regulator not be captured as claimed regarding NERC? Will residents of States stop stealing electricity and co-operate to ensure that electricity can be supplied efficiently? Will residents be able to afford the actual cost of electricity? Will invisible hands preventing the success of the electric powers sector also prevent the success of States? Will it not be a situation of some States prospering and others failing? Can the federal government intervene at some point or be the supplier of last resort?

These questions above and many more require practical answers for the steps being taken by Nigeria's federal legislature to make the desired progress required for the power sector. It would be pertinent for the laws to address some of these issues and the policymakers to determine the best ways to avoid the reoccurrence of same issues that have plagued the sector since its inception and have prevented the sector from reaching its potential, despite the privatization of the electric power sector.

Issues such as grid collapses which have become more incessant need to be dealt with by the States. Technical studies suggest that there are several system collapses due to low frequency and uneven/lopsided supply of power to the national grid caused by concentration of gas thermal plants in the southern part of Nigeria (especially the Niger Delta region) and low generation in the Northern part of the country. Consequently, amongst other step, States will need to fashion grid systems and load allocation systems that will help prevent such occurrences within their geographical locations.

Additionally, States will also need to solve the electricity theft conundrum, amongst several other pertinent issues worth considering.

Energy Federalism and Other issues- Way Forward:

One interesting thing that the constitutional amendment might do, is that it will allow for energy federalism such that each State can use the energy source best suited to it and benefit from comparative advantage too- Lagos could, for example, make do with small hydro and wind, amongst others. Enugu may look to coal, clean coal technology could be an alternative, as the World appears to be realizing that decarbonization for now, especially in regions such as Sub-Saharan Africa, is ambitious. The other States will also determine what best suits them to make engaging and or investing in electric power business more attractive to ensure that there is sufficient power supply, to create jobs and increase revenue from taxes, etc.

Energy federalism ensures each state/community, uses/contributes the least-cost fuel to generating electricity in Nigeria. Mini-grids and renewables will also be important in the conversations, especially in parts of the country, where even state grid extension is not viable! There will continue to be a role for distributed generation, especially in rural areas and suburbs. Like every true federal system, States will not develop at the same pace but there would be a common thread of minimum standards and levels of development, etc. The federal government may step in, upon request from any relevant State that needs its support. The States can also collaborate and as the power markets develop across States, those States may begin to trade electricity amongst themselves and in this case, the federal transmission system might have a useful role to play.

With respect to distribution generally and considering that most distribution companies straddle more than one State, it may be crucial for States and the federal government, via NERC, to collaborate, in the regulation of these electricity distribution companies and electricity distribution generally.

Conclusion:

The steps being taken to ensure that States can legislate on the various aspects (generation, transmission, and distribution- even retail issues) of the electricity market are in the right direction. However, the ability to make far-reaching laws alone, will not solve the problems in the sector. It is expected that certain States will make a success of it where they can adequately address the problems that have plagued the sector until this time. Research, data-driven legislation, strong implementation, and even native intelligence will be required to succeed.

Residents of States must co-operate and report breaches and such residents who are reporting must be compensated through a workable system or policy. States like Lagos, Edo, Rivers, Oyo and Ondo are already taking the initiative.

There will also be the need for States to collaborate and maybe need to collaborate with the federal government, in some cases. Technical and commercial issues need to be holistically considered for the powers of each State to make laws to be effective and achieve the desired results in the power sector.

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