

Power to the People (and the States)

**The Independence of a Regulator in the
Sub-national Nigerian Electricity Market**

Olayemi Olaloku and Oluwatobi Idowu

Introduction

Following the enactment of the Electricity Act, 2023 (the “Electricity Act”), and the Fifth Alteration to the Constitution of the Federal Republic of Nigeria, 1999, the Nigerian Electricity Supply Industry (“NESI”) and ultimately, the electricity sector has undergone significant reform. Chief among these is the decentralisation of electricity regulation,

which empowers state governments to regulate electricity within their respective states, including areas covered by a national grid system.

This article explores the importance of regulatory independence within this new decentralised framework, highlighting existing limitations and proposing actionable strategies to ensure that regulatory independence is guaranteed and safeguarded under the new regime.





Case Study

01. In an interview with Journalists in Abuja on behalf of the Distribution Companies (DisCos), the Executive Director of Research and Advocacy for the Association of Nigerian Electricity Distributors (ANED), Mr. Sunday Oduntan, strongly criticized government interference in the independence of the NERC. He condemned the practice of the Ministry of Power, Works, and Housing issuing directives not only to NERC but also directly to DisCos, describing it as a violation of regulatory autonomy. Unfortunately, this practice persists. Now that sub-nationals have the autonomy to establish their own electricity regulators, there is a growing risk that state commissioners may begin issuing directives to these regulatory bodies. This practice must be firmly resisted, as it threatens to undermine the efficiency and integrity of the autonomy granted under the Electricity Act.

02. In 2015, former President Goodluck Ebele Jonathan directed NERC to immediately review electricity tariffs downward, regardless of the underlying reasons for the earlier increase. This disclosure was made by the Minister of Power, Professor Chinedu Nebo, who explained that the President took the decision because he could not bear to see Nigerians continue to suffer under what he described as astronomically high electricity prices.

This action appeared to be aimed at gaining public support ahead of the presidential general elections, despite the existence of a specific process set out in the law for tariff reviews.

Regulatory orders must follow the due process established under the law to ensure transparency, fairness, and independence.

While the electricity market has become decentralised, the issue of regulatory independence remains in flux. Monitoring the independence of the regulator was initially focused on the Nigerian Electricity Regulatory Commission (NERC) at the federal level, this has now expanded to include the newly established regulators at the sub-national level following the enactment of the Electricity Act of 2023. Ensuring the independence of the sub-national regulator has clear and strategic implications for the investor confidence and the effective operations of potentially sub-national electricity markets across the country.

The Legal Basis of Regulatory Independence

Globally, regulatory independence is widely accepted and recommended as a key driver of market efficiency. In the European Union (EU), regulators under EU energy law are required to operate independently, exercising their powers impartially and free from interference by public authorities, private interests, or political bodies. The requirement

for regulatory independence is critical to ensuring compliance with energy rules and promoting the long-term stability of the energy sector, particularly in the electricity and gas markets. As Nigeria navigates this new phase of its electricity regime, it can draw valuable lessons from the EU's approach to regulatory independence to avoid a situation where regulators are disabled from exercising their powers independently due to political interference or influence from public officials.

Similarly, the African Forum for Utility Regulators (AFUR), in its Legal Guidelines of the African Model Mini-Grid Regulations Tools dated February 2025, emphasizes the importance of regulatory independence and its direct link to the effectiveness of the electricity sector. The Guidelines discourage regulatory authorities from acting as direct parties to contractual agreements such as Concession Agreements and Mini-grid Project Agreements. The rationale behind this position is that when regulators become signatories to such agreements, they risk encountering conflicts of interest. This can lead to distortions in market dynamics, reduced competition, and ultimately, compromised consumer welfare. The approach reflects a broader understanding of regulatory independence, not only from political interference but also from private sector influence that could undermine the impartiality and authority of the regulator.

Section 33(3) of the Electricity Act establishes the Nigerian Electricity Regulatory Commission (NERC) as the leading regulator of the Nigerian Electricity Sector and empowers it to operate as an independent body in the performance of its functions

and the exercise of its powers under the Act. This existing framework of autonomy ought to guide the design and operation of State Regulators, ensuring that they too function independently and free from undue influence in the execution of their mandates. However, the limitation of this provision lies in its failure to explicitly empower the regulatory body with the sufficient authority and institutional mechanisms to function independently. Essentially, the regulator possesses de facto independence, but not de jure - under the law. For instance, the appointment of NERC commissioners is made by the President of the Federal Republic of Nigeria subject to confirmation by the Senate. This process, by implication, creates potential susceptibility to political interference as the commissioners are likely to face undue pressure to align with government positions on certain issues, even when such positions are politically motivated.

Additionally, the Act does not guarantee NERC full financial autonomy. Prior to the commencement of each financial year, NERC is required to submit a budget for such financial year to the Minister of Power at a date specified by the Minister. The Act, however, is silent on whether the Minister should review, amend, or incorporate NERC's budget into the broader ministry budget before submission to the National Assembly. This poses a risk of undermining NERC's operational and financial independence. More so, the Act mandates NERC to maintain proper accounts and records of its activities, funds and property including any such accounts and records as may be required by the Minister of Power. Without attempting to state the obvious, this approach, although

aimed at ensuring accountability, further subjects NERC to ministerial oversight in a manner that may compromise its independence. Ultimately, the Act appears to confer autonomy on the commission with one hand, while constraining it, with the other. It is therefore recommended that States, in enacting their own electricity laws, address this gap by clearly defining the scope of regulatory independence and conferring the necessary powers to enable regulators to exercise that independence effectively. The absence of these powers has brought about political interference in the roles of NERC and the performance of its functions.

In the Electricity Regulatory Index for Africa 2024, released by the African Development Bank (AfDB), the Regulatory Governance Index (RGI), which measures the strength of a country's primary regulatory law and how effectively it empowers the regulator to operate independently, shows that 95% of the 43 participating countries recorded high RGI scores. Nigeria is among these countries, with a score of 0.8 out of 1.0. While this is indeed commendable, there appears to be a disconnect between the data and the realities observed in practice. It appears, therefore, that the interference affecting regulatory independence often occurs internally and is hidden from public view. As a result, it is frequently stakeholders, those directly engaged with the sector, who advocate most strongly for regulatory independence, as they witness first-hand the subtle but persistent forms of internal interference that undermine the regulator's autonomy. In a 2015 interview, a Deputy General Manager of Engineering, Standards, and Safety at NERC identified

political interference as a key factor affecting the power sector. This statement from a senior official within the regulatory body highlights the critical and persistent nature of external interference and the adverse impact in the power sector.



Significance of Regulatory Independence

In a sector characterised by complex and often conflicting interests among investors, government, and consumers, the regulator's independence is essential. Such independence enables the regulator to serve as an impartial arbiter, balancing the interests of all stakeholders, including consumers, whose rights and interests require strong protection and representation. When a regulator becomes subject to political interference or is influenced by private stakeholders, it undermines the very market it is meant to manage. The independence of the regulator is essential for reducing investment risk, attracting investor confidence, promoting healthy competition, and ensuring long-term sustainability of the market. When a regulator is able to enforce rules transparently and resolve disputes impartially, it creates a more predictable environment, thereby lowering investment risks and reducing the cost of capital for sector participants. Drawing lessons from other countries, one of the motivations for the independence of the regulator was to insulate them from external influences in critical areas, such as tariff-setting and other regulatory decisions. There are several reasons why regulatory independence is essential, particularly in the electricity sector.

| Builds a predictable market

One of the foremost advantages of regulatory independence is that it provides stability and predictability to investors. Electricity projects need significant amounts of investment and often require financing with repayment horizons spanning decades. A regulator that is free from political interference will have the capacity to ensure the sustainability and growth of electricity markets, as investors are more inclined to commit resources in environments where the perception of risk of policy reversals is minimal. In Nigeria, political interference has historically created regulatory uncertainty in the sector and strengthening independence would provide assurance that decisions are grounded in law and practical economic realities, rather than political expediency. In the face of regulatory independence, there are assurances that policies will not change in an arbitrary or unpredictable fashion merely for political reasons.

| Protecting Consumers

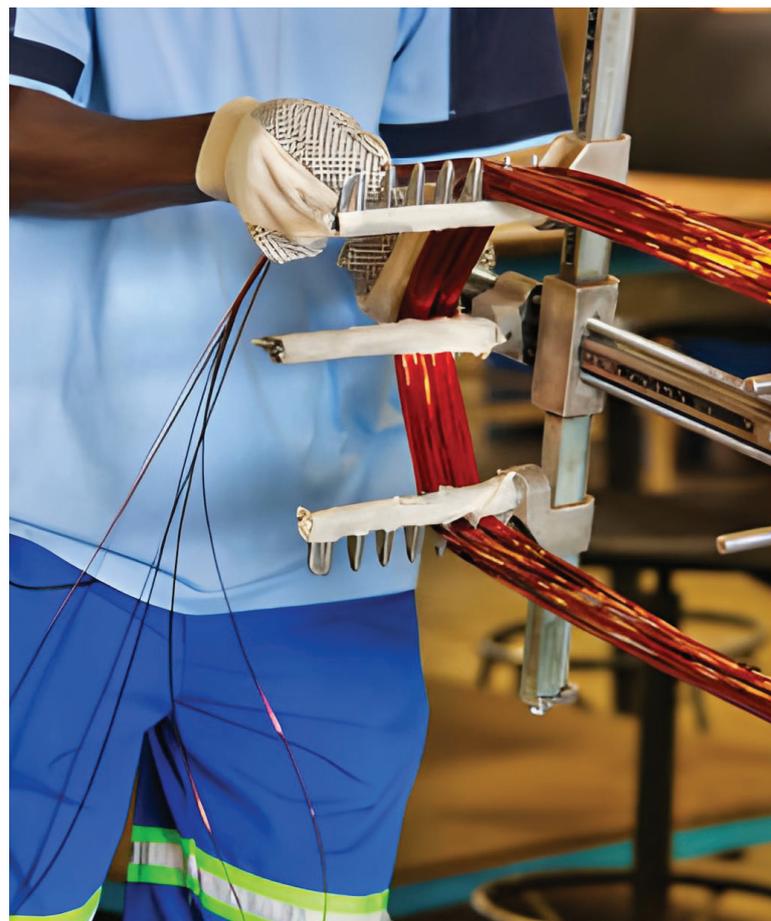
An independent regulator can more effectively balance the interests of profit-motivated electricity companies with those of consumers who need affordable and reliable power. It also helps protect consumers from short-term political decisions, while making sure that companies meet the required service standards.

| Preventing Market Capture

Ensuring the independence of the regulator

is crucial to insulate the regulator from undue influence, either from political actors or dominant utility companies. This in turn helps to establish the credibility of the institution. The energy sector is highly technical and requires expert-based decision-making. Safeguarding the regulator from political actors will ensure that decisions are made on technical grounds rather than by arbitrary political. When regulatory actions are based on expert opinion, the institution gains legitimacy and trust among stakeholders.

Nigeria's regulatory history highlights the risks of political interference in the power sector. The NERC was initially established under the Electric Power Sector Reform Act of 2005, and its independence is reinforced under the Electricity Act 2023. However, successive administrations have repeatedly encroached on its autonomy, undermining the regulator's ability to function effectively.



Creating an independent State Regulator

To guarantee a truly independent regulatory environment in Nigeria's electricity market whether at the federal level through NERC or at the state level through state regulators, several reforms and safeguards are necessary.

APPOINT COMMISSIONERS ON TECHNICAL MERIT

While acknowledging that the political economy will treat electricity sector regulators as political appointments, recruitment to these important, market-shaping roles should be guided by proven technical expertise, professional competence, and integrity rather than solely on political affiliation or patronage. Commissioners and senior officials ought to possess experience relevant to electricity market regulation. This merit-based approach strengthens the credibility of the regulator and builds confidence among investors and consumers that decisions are grounded in technical and economic principles rather than political expediency.

SEPARATE THEM FROM THE MAINSTREAM CIVIL SERVICE

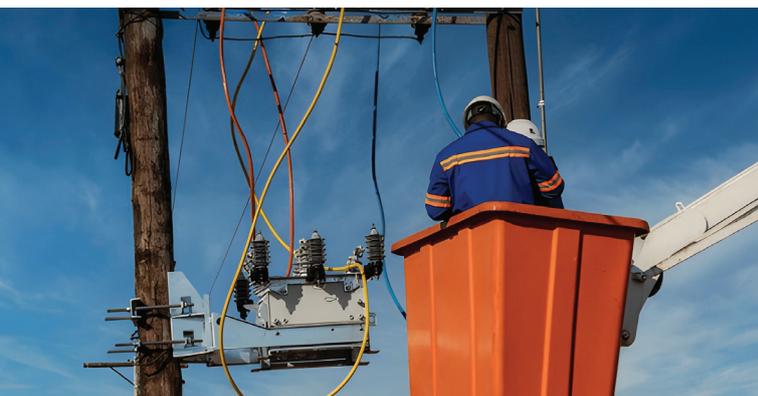
The regulatory cadre should not be treated as part of the mainstream bureaucracy. Applying civil service rules to its operations, especially on recruitment, remuneration, or procurement will limit its flexibility and undermine its ability to attract and retain high-quality talent. Instead, the regulator should have independent authority to design its staffing structure, set competitive salaries, and maintain a performance-based culture suitable for the technical and dynamic nature of electricity regulation.

LEGAL SEPARATION FROM THE CORRESPONDING MINISTRY (OR POWER OR STATE EQUIVALENT)

There must be a clear legal demarcation between the regulator and the Ministry of Power at both federal and state levels. The ministries and other government parastatals should not encroach on the regulator's responsibilities on technical oversight, licensing, tariff setting, and enforcement. This division prevents conflicts of interest and reduces the risk of ministries directly or indirectly overruling regulatory decisions for political purposes.

GUARANTEE FINANCIAL AUTONOMY

Financial independence is essential for



regulatory independence. Although the Electricity Act 2023 already provides for NERC and its state-level counterparts to fund themselves primarily through licence fees, levies, and penalties, it is important to ensure that these provisions are fully enforced. Regulators should be discouraged from relying on budgetary allocations from government ministries, as this creates opportunities for political manipulation. Instead, ring-fenced funding mechanisms directly appropriated or generated from industry participants should be strengthened and transparently managed. Together, these measures would entrench regulatory professionalism and market confidence across the emerging sub-national electricity markets.”

ENFORCE ACCOUNTABILITY MECHANISMS

Beyond self-funding, regulators must adopt strict accountability measures, including periodic audits, public reporting, and transparent budgeting. This ensures that financial autonomy does not become a loophole for inefficiency or abuse, but rather a tool for effective regulation.

Ultimately, these measures will insulate electricity regulators from undue political, financial, and administrative pressures, enabling them to focus squarely on their statutory mandate of ensuring efficiency, fairness, and sustainability in the electricity market. Additionally, it makes for clear separation of responsibilities between the regulators and other related bodies.

Conclusion

The intention of the Electricity Act of 2023 is to speak to the practical need to create efficient markets in the electricity sector within sub-national jurisdictions. To achieve this, the independence of the regulator is not a concept that should exist only in theory. It must be reflected in practice. It is the very foundation upon which a credible, sustainable, and investor-attractive electricity market is built. Where regulators are constrained, investments are not likely to be made and consumers will ultimately bear the brunt of the inefficiencies.

On the contrary, where regulators are independent, it sets the tone for efficiency and credibility in the electricity market. The credibility of a regulator is inseparable from its independence, and without credibility, regulation cannot deliver its intended outcomes.

As states begin to operationalize their electricity laws, ensuring this independence will be the true test of Nigeria’s power sector reform.

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Editorial Oversight



OLAYEMI OLALOKU

PARTNER, ALP NG & CO

T: +234 803 324 0137

E: oolaloku@alp.company

Author

OLUWATOBI IDOWU

ASSOCIATE, ALP NG & CO

T: +234 201 700 257 0

E: oidowu@alp.company



CONTACT US:

📍 Lagos

15 Military Street, Onikan, Lagos

☎ +234 201 700 2570-9

📍 Abuja

3 Lobito Crescent, Wuse 2, Abuja

☎ +234 209 700 2570-9

🌐 www.alp.company

✉ alp@alp.company

🏢 [ALP NG & Co](#)

🌐 alp.ng.co

✖ [ALPNigeria](#)