METER ASSET PROVIDER REGULATION 2018:
FRAMEWORK TO CLOSE THE METERING GAP IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

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BACKGROUND

The Nigerian Electricity Regulatory Commission ("NERC" or the "Commission") in exercise of the powers conferred on it by Section 96 of the Electric Power Sector Reform Act 2005 ("the EPSRA") has introduced the Meter Asset Provider Regulation 2018 ("the MAP Regulation"). The key regulatory objective of the Commission, is to provide standard rules to encourage the development of independent and competitive metering services within the Nigerian Electricity Supply Industry (NESI). Prior to the regulation, the obligation of metering electricity customers was the statutory responsibility of the Distribution Licensees ("Discos"), who perhaps due to liquidity challenges within the NESI were unable to finance the acquisition and installation of meters. In effect, a metering gap of about 4,740,275 was recorded as at December, 2017[1], and majority of electricity consumers subjected to an estimated energy billing regime.

The Commission had previously introduced initiatives such as the Credited Advance Payment for Metering Implementation (CAPMI) Scheme which failed to meet its objectives to close the metering gap and improve revenue collection. The Scheme allowed electricity customers to procure and install electricity meters through self-financing, and recover their investment through energy credits from the Discos. However, while the electricity customers made prompt payment for the electricity meters, the Discos were unable to meet their obligations to provide and install electricity meters to customers who participated in the scheme.

The MAP Regulation unbundles the NESI, and introduces a new market participant – the Meter Asset Provider by re-allocating the responsibility of providing metering services to electricity consumers. The regulations major objectives are to eliminate the estimated billing which has plagued the NESI, attract private investment, close the metering gap, enhance efficient revenue collection and improved liquidity within the NESI. All Discos Licensees shall engage the services of MAP in accordance with the provisions of the MAP Regulation towards meeting its metering targets.

OBTAINING A MAP PERMIT

The Distribution licensees shall request for competitive proposals for the provision of meters and metering services from interested bidders who must have obtained a "No objection" from the Commission. The Discos shall lead the procurement process for the MAP, and prepare bid documents with specifications for meters and the metering services to be provided to the Disco. Upon consideration of bid submissions, the Disco shall name the successful bidder and offer to enter into a Meter Service Agreement (MSA) with the said bidder for the provision of meter and metering services. The Commission on the other hand, shall engage the services of a Tender Auditor to audit the conduct and outcome of a Distribution Licensee's procurement process for the engagement of MAP.

Thereafter, the successful bidder may apply to the Commission for the grant of a MAP Permit, and, the Commission shall grant a Meter Asset Provider Permit ("the Permit") to the successful Applicant if it is satisfied

[1] Section 4 of MAP Regulation 2018

that the applicant has met the requisite regulatory, technical, technological, and local content criteria as stipulated in the MAP Regulation. In this regard, all Meter Asset Provider permits shall be specifically related to a successful procurement process with a Distribution Licensee. The Distribution Licensees are expected to conclude the procurement process for the engagement of the first set of MAPs within 120 days from 3rd April, 2018 based on their respective meter deployment plan and targets set by the Commission.

THE MAP FRAMEWORK

The MAP permit granted by the Commission authorises a MAP to provide metering services including meter financing, procurement, supply, installation, maintenance and replacement for a period of 15 (fifteen) years from the date of issuance by the Commission. The MAPs shall have legal ownership of the meter asset until fully amortised through payments of a metering service charge by the beneficiary customer. It is expected that the MAP recovers his cost of the meter and a return on investment over a 10 (ten) year period.

Under the MAP Regulation, Discos shall make periodic disbursements to the MAPs for metering services in line with the provisions of the MSA executed between the Distribution Licensee and MAP. The cost structure of the Metering Service Charge shall cover the costs of providing the meter asset and the ongoing associated costs of operating and maintaining the meter. The cost structure provides a transparent way of billing metering costs so that Customers only pay for own metering services.

However, whereas a Customer elects to pay for a meter asset upfront, such a Customer shall not be liable for the payment of a metering service charge. The amount payable to the MAP by such a customer shall be limited to the efficient cost of the meter asset and its installation costs as may be determined by the procurement process for the MAP conducted by the Distribution licensee.

In addition, meters deployed under the MAP regulatory regime shall not form part of the Discos distribution assets and only meters installed by Distribution Licensees prior to 31st December, 2018 shall form part of the regulatory asset base, as their electricity tariffs. In this regard, any further deployment of meters beyond the said date under a subsisting contract entered by the Distribution licensee shall be structured under the MAP regulatory framework. Customers provided with the meters under the latter arrangement shall be required to pay a monthly metering service charge and appropriate energy tariff reflecting the financial structure.

THE LEGAL AND FINANCIAL FRAMEWORK

The MAP Regulations requires that the Distribution Licensee and MAP enter into a Metering Service Agreement (MSA) and Service Level Agreement (SLA) benchmarked with the provisions of the Nigeria Metering Code. These Agreements shall form the constitution which bind the relationship between the parties as it provides for the volume, particulars, standards, allocation of risk and responsibilities of the respective parties in the provision of metering assets and services.

One of the key features of the MAP Regulation is the introduction of the "Meter Service Charge", which stipulates that Customers who are metered under the regulation shall be required to make periodic payments to cover the cost of the meter and metering service charge financed/installed by the MAP on the distribution network. The MSA shall provide for the payment model of the Metering Service Charge payable to the MAP. The charge shall be paid to Discos by electricity customers as rental for meter asset usage.

In the above regard, the MAP shall be entitled to payment security as may be agreed between the parties. This will ensure that the revenue stream of the investor/MAP is secured and guaranteed. The MAP Regulation mandates the Distribution Licensee to issue a payment security to the MAP either by irrevocable letter or credit, dedicated ring-fenced account to charge collection, securitisation framework in collaboration with a financial institution, or any other payment security structure as may be agreed between the parties. The payment of Metering Service Charge by the customer to the MAPs shall cease upon full amortization of the meter asset over its technical life.

OUR OBSERVATIONS

The MAP Regulation may potentially close the metering gap and improve energy accountability through accelerated meter roll out in the NESI. The introduction of MAP as a new category of market participants, can address the complexities which have long plagued the NESI, as Discos have largely struggled to close the metering gap. The new market participants licensed to finance, procure, supply, install, maintain and replace meter assets, will ensure that customers have timely access to electricity meters, and provide after sales support services, as the MAP optimal maintenance and operations of the meters will condition their revenue stream.

Further to the above, the MAP framework will ease the balance sheet of the Discos, who had until now shouldered the statutory responsibility of investing in the metering assets within its distribution network. Electricity customers may now pay outright for electricity meters or request same from a MAP in consideration of a meter service charge. This framework, we believe will reduce the challenges of estimated billing within the NESI.

However, we are uncertain as regards the enforcement procedure which the Commission intends to deploy to ensure strict compliance of the Discos to implement the MAP regulation within the stipulated 120 days from the commencement date of 4th April, 2018. We note that the regulations projects that the Commission shall subsequently issue an order on the capping of the bills of unmetered customers to address the issue of estimated billing. We are of the opinion that the Commission in issuing the capping order, introduce an energy tariff cap which is less than the estimated consumption value of electricity by the average customer. This will ensure that the Discos are held responsible for closing the metering gap in order to avoid revenue losses, by engaging MAP through an open transparent competitive process.

Pursuant to the MAP Regulation, the Distribution licensee, its core investors, subsidiaries, affiliates, directors and relatives are prohibited from settling up, owing shares or holding directorships and senior management positions in the MAP. The purpose of this clause is vague to the extent that words such as “affiliates” and “relatives” are largely undefined and could by implication preclude investors from engaging in the MAP framework solely because a relative of the said investor has an interest in a Disco. While we appreciate that the provisions seeks to foster transparency in the bid process, and tackle the challenges of insider dealings, and conflict of interests which has plagued the NESI, the provision may prove unhelpful, as NERC has no judicious mechanism of identifying proxies and associates of core investors and directors of a Disco.

Some of Nigeria’s leading local meter manufacturing Companies have demonstrated capacity, technical and technological capabilities when benchmarked with global metering standards. The mandatory local content threshold, which requires all successful MAPs to procure a minimum of 30% of contracted metering volumes from local manufacturers will grow the local metering manufacturing sector, and potentially cushion the pressures on the Nigerian foreign exchange. However, it is unclear how the Commission intends to monitor or ascertain the actual ratio of the volume procured from local manufacturers by the MAPs and the sanctions which may be levied on airing MAPs.

We observed that the MAP Regulations restricts a MAP permit to the successful bid of a particular Disco and requires that MAPs obtain separate permits from the Commission for the provision of meter and metering services to other Distribution licensees. We find that this structure may prove bureaucratic and complicated for MAPs or investors. The MAP Regulation already stipulates as a pre-condition for entering the bidding process, that a MAP shall obtain a “No Objection” after thorough due diligence has been carried out by the Commission. In this regard, it is therefore not pertinent for MAPs to obtain permits for each distribution network which it intends to offer meter assets and metering services. It should be sufficient that the Commission pre-qualifies a MAP, MAP participates in a procurement process, and if successful is able to offer metering services to the Discos without further recourse to the Commission.

CONCLUSION

The MAP Regulation is a welcome development, the framework allows parties to autonomously enter into Agreements, and structure the said Agreements flexibly enough to accommodate the peculiarities of the investor, Disco and MAP. However, there are a few issues yet to be addressed by the Commission. Some of the issues include the enforcement procedure for erring MAPs and Discos, and credibility of the procurement process. The transparency of the implementation process shall determine the progress which shall be recorded in respect of inflow of private investment into the NESI, and closing the metering gap.

We are optimistic that a successful implementation of the MAP Regulation will put an end to the liquidity challenges, and eliminate estimated billing practices in NESI. Nigerian owned metering companies will directly benefit from technology transfer and growth in industry through active participation in the growing sector.

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