Client Alert

Nigerian Power Sector Reforms: Opportunities and Challenges for Investment

Introduction*

The Nigerian electrical power sector is in a highly charged state. Currently, Nigeria has an installed electricity generation capacity for supply to the national grid of 8,644 MW, with available capacity of only approximately 3,200 MW¹, to cater for the needs of Nigeria’s population of approximately 150 million². By way of comparison, South Africa has an installed electricity generation capacity for supply to the national grid of over 52,000 MW with a population of only about one third the size of Nigeria’s³. On the other hand, demand for electricity in Nigeria presently is estimated to be between 10,000 MW to 12,000 MW⁴ and is projected to increase by 26,561 MW by 2020 if the Nigerian government is to meet its current economic development goals⁵. The historic gap between the demand for power in Nigeria and the electricity available from the grid has led to widespread self-generation of power both in the industrial and residential sectors. Most businesses must generate their own power in order to ensure an adequate and reliable supply⁶. The World Bank estimates that approximately 85 percent of businesses in Nigeria own electricity generators and that privately-owned self-generation power accounts for roughly 40 percent of the total capacity of Nigeria⁷. The historically poor performance of the power sector in Nigeria has been a significant barrier to private investment in the country⁸.

In 2005, the Government of Nigeria enacted legislation intended to restructure fundamentally the Nigerian electrical power sector. The Electric Power Sector Reform Act, 2005 (the 2005 Reform Act) was designed to move the electricity sector in Nigeria from a government controlled, heavily subsidized system to a privatized, largely market-based endeavour⁹. Implementing the 2005 Reform Act has been challenging for the Nigerian government and largely seems to have stalled in recent years. However, the process of implementing the 2005 Reform Act was revitalized when President Goodluck Jonathan established the Presidential Task Force on Power and published a roadmap for power sector reform in August 2010, potentially opening the door to significant private investment in the Nigerian power sector.

This Alert provides a brief summary of the existing power sector in Nigeria and key aspects of the reforms currently being implemented. This

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Alert concludes with considerations of the opportunities and challenges for developers, investors and lenders in becoming involved in the reformed Nigerian power sector, either through participating in the privatization of existing Nigerian power assets or as part of a greenfield independent power project (IPP).

Snapshot of Nigeria’s Power Sector

Nigeria's estimated available capacity from the grid of approximately 3,200 MW meets only approximately one third of the estimated current demand for power from the grid\(^1\). As demand for electricity in Nigeria is expected to more than double in the next 10 years\(^2\), an even greater supply gap would be created in the future without some form of market intervention and fundamental reform of the power sector.

Current electricity generation is from either gas-fired or hydro power plants. Most assets are owned by state-owned companies, though some private investors have been able to establish IPPs following recent legislative reforms. The charts below set forth the current power generation assets in Nigeria.

### Existing Government Owned Power Stations — Gas-Fired:

<table>
<thead>
<tr>
<th>Name of Generation Company</th>
<th>Year of Const.</th>
<th>Location</th>
<th>Installed Capacity (MW)</th>
<th>Available Capacity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 EGBIN POWER PLC</td>
<td>1986</td>
<td>Egbin, Lagos State</td>
<td>1320</td>
<td>1100</td>
</tr>
<tr>
<td>2 GERE GU POWER PLC</td>
<td>2007</td>
<td>Geregu, Kogi State</td>
<td>414</td>
<td>276</td>
</tr>
<tr>
<td>3 OMOTOSHO POWER PLC</td>
<td>2007</td>
<td>Omotosho, Ondo State</td>
<td>304</td>
<td>76</td>
</tr>
<tr>
<td>4 OGORUNSOGO POWER PLC</td>
<td>2008</td>
<td>Olorunsogo, Ogun State</td>
<td>304</td>
<td>76</td>
</tr>
<tr>
<td>5 DELTA POWER PLC</td>
<td>1966</td>
<td>Ughelli, Delta State</td>
<td>900</td>
<td>300</td>
</tr>
<tr>
<td>6 SAPELE POWER PLC</td>
<td>1978</td>
<td>Sapele, Delta State</td>
<td>1020</td>
<td>90</td>
</tr>
<tr>
<td>7 AFAM(IV-V) POWER PLC</td>
<td>1963/01</td>
<td>Afam, Rivers State</td>
<td>726</td>
<td>60</td>
</tr>
<tr>
<td>8 CALABAR THERMAL POWER STATION</td>
<td>1934</td>
<td>Calabar, Cross River State</td>
<td>6.6</td>
<td>Nil</td>
</tr>
<tr>
<td>9 OJI RIVER POWER STATION</td>
<td>1956</td>
<td>Oji River, Achi, Enugu State</td>
<td>10</td>
<td>Nil</td>
</tr>
</tbody>
</table>

**TOTALS**  
5,004.6  
1,978

*Source: Nigerian Bureau of Public Enterprises*
Existing Government Owned Power Stations — Gas-Fired:

<table>
<thead>
<tr>
<th>Name of Generation Company</th>
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<th>Available Capacity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 KAINJI/ JEBBA HYDROELECTRIC PLC – Kainji Power Station</td>
<td>1968</td>
<td>Kainji, Niger State</td>
<td>760</td>
<td>480</td>
</tr>
<tr>
<td>2 KAINJI/ JEBBA HYDROELECTRIC PLC – Jebba Power Station</td>
<td>1985</td>
<td>Jebba, Niger State</td>
<td>540</td>
<td>450</td>
</tr>
<tr>
<td>3 SHIRORO HYDROELECTRIC PLC</td>
<td>1989</td>
<td>Shiroro, Niger state, Nigeria</td>
<td>600</td>
<td>450</td>
</tr>
</tbody>
</table>

**TOTALS** 1,900 1,380

*Source: Nigerian Bureau of Public Enterprises*

In addition, the government is developing approximately 4,800 MW of installed capacity intended to be completed by 2013, known as the National Integrated Power Plants (NIPPs). The Presidential Task Force on Power has announced its intention to privatize the NIPPs in future rounds of privatization, following completion of construction\(^{12}\).

Independent Power Projects:

<table>
<thead>
<tr>
<th>Name of Generation Company</th>
<th>Location</th>
<th>Installed Capacity (MW)</th>
<th>Available Capacity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 AES POWER STATION</td>
<td>Egbin, Lagos State</td>
<td>224</td>
<td>224</td>
</tr>
<tr>
<td>2 SHELL AFAM VI POWER STATION</td>
<td>Afam, Rivers State</td>
<td>650</td>
<td>650</td>
</tr>
<tr>
<td>3 AGIP OKPAI POWER</td>
<td>Okpai, Delta State</td>
<td>480</td>
<td>480</td>
</tr>
<tr>
<td>4 ASG IBOM POWER STATION</td>
<td>Akwa Ibom State</td>
<td>155</td>
<td>76</td>
</tr>
<tr>
<td>5 RSG TRANS AMADI POWER STATION</td>
<td>Port Harcourt, Rivers State</td>
<td>100</td>
<td>24</td>
</tr>
<tr>
<td>6 RSG OMOKU POWER STATION</td>
<td>Omoku, Rivers State</td>
<td>1150</td>
<td>30</td>
</tr>
</tbody>
</table>

**TOTALS** 1,759 1,484

*Source: Nigerian Bureau of Public Enterprises*

In addition, the government is developing approximately 4,800 MW of installed capacity intended to be completed by 2013, known as the National Integrated Power Plants (NIPPs). The Presidential Task Force on Power has announced its intention to privatize the NIPPs in future rounds of privatization, following completion of construction\(^{12}\).

The table on the next page illustrates the contrast between the ratio of installed to available capacity in the government-owned versus IPP generation facilities. The Presidential Task Force on Power has pointed to this “capacity gap” as a key driver behind the government's privatization plans\(^{13}\).
Installed vs. Available Capacity

![Installed vs. Available Capacity Chart]

*Source: Nigerian Bureau of Public Enterprises

To address the supply and capacity gaps in the demand for power from the grid in Nigeria, the Presidential Task Force on Power has set a goal of increasing available capacity by 3,000 MW per year through 2020 and thereafter by 1,500 MW per year through 2033. The Presidential Task Force on Power has announced that it expects that such growth in generation capacity will be driven largely by the private sector.

The government anticipates that such new power generation facilities primarily will use gas, hydro and coal as fuel sources, through a combination of issuing concessions for hydro plants, privatizing government owned assets and creating a framework to incentivize the development of gas- and coal-fired greenfield IPPs.

Reform Process Revitalized

The Nigerian power sector reform process has been given fresh impetus by the new government of President Goodluck Jonathan. Just three months into office, President Jonathan announced an ambitious plan for the implementation of reform in broad accordance with the 2005 Reform Act. The government’s priority is to attract private investment to all facets of the power sector.
Key features of the reforms being implemented include the following:

Privatization of Existing Grid Assets

The Nigerian power system formerly was controlled by a single government entity. Pursuant to the 2005 Reform Act, the Nigerian power system now has been unbundled into one transmission company, six generation companies (GenCos) and 11 distribution companies (DisCos). The six GenCos and 11 DisCos now are in the process of being privatized pursuant to the government’s revitalized reform process:

- **Gas-fired GenCos**: The gas-fired GenCos will be privatized through the sale by the Nigerian government of at least a 51 percent equity stake to investors pursuant to a transparent bidding process. Expressions of interest are due February 18, 2011. Final technical and financial bids are due April 20, 2011.
- **Hydro GenCos**: The Nigerian government will grant long-term concessions for the operation of the hydro GenCos. The operators of the hydro GenCos will receive three key payments: the throughput charge, annual charge and upfront charge. The government will fix two of the charges up front and bids will be evaluated on the basis of the third (after technical bids have been assessed). Expressions of interest are due February 18, 2011. Final technical and financial bids are due April 20, 2011.
- **DisCos**: The DisCos will be privatized through the sale by the Nigerian government of a 51 percent equity stake to investors pursuant to a transparent bidding process. Bids will be evaluated as much on the ability of the bidding consortium to reduce technical and commercial losses as on cost/pricing. Expressions of interest are due February 18, 2011. Final technical and financial bids are due April 20, 2011.

The Nigerian government anticipates that it will sell its residual equity in each of the gas-fired GenCos and DisCos after a transitional phase so that ultimately the gas-fired GenCos and DisCos solely are held by private sector investors.

The government will retain control of Nigeria’s sole power transmission company. However, the government anticipates entering into operation and maintenance arrangements with private sector companies.

The Nigerian government estimates that operating entities will be required to invest approximately US$6 billion a year in the GenCos and DisCos in order to bring electricity supply in line with demand. While this represents a substantial financial commitment, certain investment incentives will be available to a successful bidder, such as tax exemptions/holidays, World Bank Group credit support for GenCos (see below), the establishment of a state controlled entity (NELMCO — see below) to take over outstanding liabilities, and a uniform tariff, all of which may increase investor appetite for Nigerian power assets.

The privatization process — and the fundamental reforms on which it is predicated — likely will have substantial spill-over effects for IPPs.

Regulatory Clarity: Establishment of the Nigerian Electricity Regulatory Commission

The Nigerian Electricity Regulatory Commission (NERC) was established as an independent regulator pursuant to the 2005 Reform Act to undertake both the technical and economic regulation of the Nigerian electricity sector.

Two of NERC’s key regulatory functions are:

- **Licensing**: NERC issues licences for on- and off-grid generation of power, as well as for distribution of electricity to end users.
- **Tariff**: NERC manages price regulation through the Multi-Year Tariff Order (MYTO). The MYTO provides a 15 year tariff path for the electricity industry with minor reviews each year in light of certain parameters (including inflation, exchange rate and gas prices) and major reviews every five years.
NERC has been a key participant in the current reform process. Among other things, NERC is tasked to provide regulatory clarity as it is intended to operate as a one-stop shop for all regulatory functions in the power sector.

Cost Reflective Tariff
A new uniform tariff — MYTO — has been established by NERC and is currently undergoing a major review. MYTO is calculated on a cost-of-power basis, with a capacity and an energy component, and includes adjustments to take into account the following factors, among others:
- Cost of financing
- A reasonable return for invested capital
- Inflation
- Exchange rate
- Depreciation
- Fuel costs
- Operating costs

Currently, MYTO is based on the efficiency level assumptions of an open cycle gas turbine plant.

The Presidential Task Force on Power expects that the current average tariff level must at least triple (to around NGN22/kilowatt hour (KWh)) if investment in the Nigerian power sector is to be an economically viable proposition for private investors — a step that each of NERC and the Nigerian government has indicated that it is willing and plans to take.

As noted above, MYTO also introduced to the Nigerian market the concept of periodic tariff reviews. The major tariff reviews, which are to be conducted every five years, are intended to take into account input from all relevant stakeholders, including investors.

Indeed, the government’s intention to factor in operating information from the current IPPs coupled with the building blocks approach of the overall tariff system should be viewed by investors with optimism that the reformation of the power sector in Nigeria will provide an attractive investment forum.

Gas Supply: Establishment of the Gas Aggregator
The lack of an adequate and consistent supply of gas to fuel the power sector often has been given as a reason for power sector reforms having stalled in the past in Nigeria. The Nigerian government has implemented a gas master-plan strategic framework to tackle the gas supply problem. As a key part of such framework, the Gas Aggregation Company Nigeria Limited (the Gas Aggregator) has been established to manage the government’s domestic gas supply obligations. One of the main aims in establishing the Gas Aggregator was to coordinate a streamlined process for wholesale gas supply from gas producers to eligible gas purchasers, including GenCos.

Among other things, the Gas Aggregator has developed a form gas supply agreement to be used with GenCos. The Gas Aggregator has indicated that such form gas supply agreement was developed to conform to international industry standards and to be a part of a financeable package of power project contracts.

Offtake: Establishment of the Bulk Electricity Trader
The Nigeria Electricity Bulk Trading Company Limited (the Bulk Electricity Trader) has been established as a government owned trader with bulk purchase and resale licences. The Bulk Electricity Trader will enter into what are intended to be industry acceptable and financeable power purchase agreements (PPAs) with IPPs and other GenCos (including the newly privatized GenCos). The Bulk Electricity Trader will on-sell electricity to the DisCos until such time as the DisCos are able to enter into direct purchase arrangements with the GenCos on market terms.
Key Players in Nigeria’s Reformed Power Sector

<table>
<thead>
<tr>
<th>Key Players</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presidential Task Force on Power</td>
<td>Drives implementation of reform by uniting different stakeholder agencies; monitors planning, execution and implementation of projects</td>
</tr>
<tr>
<td>Bureau of Public Enterprises</td>
<td>Drives the privatization of existing government-owned power companies (GenCos and DisCos)</td>
</tr>
<tr>
<td>Nigerian Electricity Regulatory Commission (NERC)</td>
<td>Sector regulator; issues licenses and sets tariff</td>
</tr>
<tr>
<td>Gas Aggregation Company in Nigeria Limited</td>
<td>Manages domestic gas supply requirements</td>
</tr>
<tr>
<td>Nigeria Electricity Bulk Trading Company Limited</td>
<td>Special trader with bulk purchase and resale licences; manages PPAs with IPPs and other GenCos</td>
</tr>
<tr>
<td>Nigeria Electricity Liability Management Company (NELMCO)</td>
<td>Manages legacy liabilities and stranded assets</td>
</tr>
<tr>
<td>Electricity Management Services Limited</td>
<td>Carries out consulting services and provides shared services such as logistics and meter testing</td>
</tr>
<tr>
<td>National Power Training Institute of Nigeria</td>
<td>Provides training to support the power sector</td>
</tr>
</tbody>
</table>

Opportunities and Challenges for Investment

The recent revitalization of the reform process for the Nigerian power sector — and the concerted push by the government to privatize much of the existing grid — opens the door to significant private sector investment in the Nigerian power sector, presenting opportunities and challenges to potential investors. These include the following:

License Duration
The 2005 Reform Act and NERC regulations provide for a generation license to have a duration of 10 years, renewable for a further five years. While this aligns with the total duration of the uniform tariff envisaged by the MYTO, a total license duration of 15 years may present challenges to potential investors and their lenders given that such a 15-year period likely is well short of the useful life of the assets involved, either in a privatization or an IPP transaction. In addition, 15 years likely would be shorter than the tenor of long-term debt financing that an investor would target in a finance plan for a green-field IPP.

NERC representatives recently stated at the Nigeria Power Sector Investment Forum in London that it would address concerns surrounding the duration of licenses by granting a further 10-year license towards the end of the initial 10-year license (which such second 10-year license would then be followed by the five-year renewal license) — resulting in a 25-year total license period. Though helpful, investors have questioned the level of discretion given to NERC at each renewal phase during such 25-year period. In response to this, NERC representatives indicated that so long as the operator was compliant with its license obligations, the second 10-year license and the five-year renewal license would be granted automatically. While certainly a step in the right direction, investors will want to be sure that such undertakings are reflected properly in law and in regulations.
Cost Reflective Tariff — But Subject to Periodic Review and Modification

The proposed uniform tariff for the power sector — the MYTO — presents many appealing characteristics for potential investors: it is derived from a building blocks approach that intends a cost-reflective outcome, including a capacity and an energy component; financing costs and other key costs (operating costs, depreciation) are intended to be accommodated; and key fluctuating costs (fuel costs, foreign exchange, inflation) also are intended to be reflected. However, investors will want to analyze the level of uncertainty inherent in any review, in particular in the major reviews that are intended to be held every five years. Investors will note that the duration of the MYTO is only 15 years — likely well short of the useful life of the assets involved and shorter than the tenor of longer-term debt financing that is most attractive to many investors in the sector.

Quality of Privatized Assets and Government Equity Retention

Investors likely will have concerns about the quality of the existing assets to be privatized, particularly given the government's intention to retain a significant amount of the equity in the enterprises that own such assets. As the assets will require significant investment in order meet the government's power supply objectives, there may be conflicting interests between the private investors and the government acting as equity stakeholders. If the government as an equity stakeholder is unwilling to contribute the substantial sums required to upgrade any significantly deteriorated assets, an investor would want to know that it will have full control of the asset, as well as protections in respect of their equity position, at a minimum. The Presidential Task Force on Power has sought to reassure investors in this regard by stating that successful bidders from the outset would exercise control over the privatized companies. The degree of investor control and other protections will be studied once the form of documentation, including share purchase agreements and shareholders' agreements, are made available to potential investors.

Credit Support

World Bank Group representatives have indicated Partial Risk Guarantees and possibly a MIGA termination guarantee may be available for appropriate projects in the Nigerian power sector to backstop Nigerian government obligations. This is valuable credit support that can underpin Nigerian country risk and may make the difference in an investor reaching a final investment decision.

PPA Counterparty and Duration

The establishment of the Bulk Electricity Trader provides a degree of certainty in managing PPA counterparty risk, but the Nigerian government's plan regarding the future transition to a wholesale market (including with respect to timing) remains uncertain. PPAs entered into with the Bulk Electricity Trader should provide adequate protection to projects, investors and lenders for any transition arrangements and the duration should be sufficient to attract long-term debt financing. Investors may wish to consider a range of options that have been put in place in other locations around the world in PPAs with monopoly offtakers to address this risk including appropriate credit support and/or “put” options.

The tariff reflected in the PPA also will be a primary focus for investors. Other key factors will include the proposed duration of the PPA (does it match the tenor of the investor's financing; the duration of the fuel supply); commercial reasonableness of terms (i.e., pricing, pass through costs); risk of non-dispatch; and foreign currency risks.

Gas Supply Counterparty and Duration

Gas supply remains a real concern for investors. Investors should review the form gas supply agreements being developed by the Gas Aggregator. Key factors will include the proposed duration of such agreement (does it match the tenor of the investor's proposed financing; the duration of the PPA); commercial reasonableness of terms (i.e., pricing, pass through costs); and risk of non-supply, both in reasonably foreseeable circumstances and in the event of force majeure.
Nigerian Domestic Bank Participation
Nigerian domestic banks traditionally have been reluctant to participate in long-tenor debt financed projects in Nigeria (it has been rare to see debt financing for longer than a five year tenor in recent energy financings). A challenge for power projects will be to try to attract longer-term Naira debt, which is a good match with the Naira-based revenues that Nigerian power assets will generate.

In 2010, the Central Bank of Nigeria announced the establishment of a NGN300 billion (approximately US$1.97 billion) Power and Airline Intervention Fund to foster investment in the power and aviation sectors in Nigeria. The funds will be channelled through the Nigerian Bank of Industry for on-lending at a concessionary “all-in” interest rate of not more than 7.0 percent and for a tenor of 10-15 years. The African Finance Corporation will serve as technical adviser to the fund.

Conclusion
The Nigerian government appears to be taking concerted action to reform the Nigerian power sector to drive expansion of capacity so as to enable the growth of the overall Nigerian economy. The establishment of the Presidential Task Force on Power and the publication of the roadmap for power sector reform has revitalized the reform process that was initiated with the enactment of the 2005 Reform Act. The renewed governmental commitment to privatize the gas-fired GenCos and DisCos, its commitment to enter into concession agreements for hydro GenCos and the regulatory and commercial framework that has been put in place to make Nigeria an attractive market in which to explore IPPs, has the potential to open the door to significant private sector investment in the Nigerian power sector, presenting opportunities and challenges to potential investors.

Endnotes
1 “Installed capacity” is the production capacity of a power plant based on its rated (technically achievable or “nameplate”) capacity. “Available capacity” is the amount of electricity actually produced (practically determined) by a power station and made available for distribution. For example, a plant may have an installed capacity of 1000MW, but due to faulty equipment or shortage of labour, the plant may be able to produce an available capacity of only 200MW.
5 Ibid.
7 Ibid.
11 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.

20 To date, NERC has issued more than 25 generation licences for an installed capacity of over 10,500MW. The generation IPP licences issued by NERC predominantly have been for gas-fired projects, but licences also have been issued for a hydro-station and for a coal-fired power plant.

21 Before the introduction of MYTO as the new tariff system, the tariff for the domestic electricity market in Nigeria was one of the lowest in the world. Even now, according to Business Monitor International, the current average tariff level in Nigeria is approximately NGN6.31 per kilowatt hour (KWh) or 4.3 US cents. By way of contrast, the current average tariff level in South Africa is 10.15 US cents per KWh. ESKOM, “2008/9 Tariffs and Charges”, available at http://www.eskom.co.za/content/Tariff%20book.pdf.


24 Such form gas supply agreement is intended to be available on the Gas Aggregator’s website in the coming weeks.


27 As an indication of timing, representatives of the World Bank Group have recently indicated that the World Bank Group intends taking no longer than six months to finalize support in the ordinary course (subject to the Nigerian government’s support of the project and the reasonableness of the project and financing documentation).


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