

Electricity Sector Update: Mini-Grid Regulations 2023

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Introduction

On 29 December 2023, the Chairman of the Nigerian Electricity Regulatory Commission (the Commission) signed the Mini-Grid Regulations, 2023 (2023 Regulations) replacing the Mini-Grid Regulations 2016. Pursuant to the Commission's powers under Section 226 of the Electricity Act 2023, the 2023 Regulations retain most of the provisions of the 2016 regulations while introducing amendments geared towards improved efficiency in the mini-grid power generation sector.

Permits or Registration by Developers

The 2023 Regulations still recognise that mini-grids may be operated as an isolated mini-grid or an interconnected mini-grid provided the mini-grid is servicing a specific geographical area¹. Developers of interconnected mini-grids may register with the Commission by delivering a tripartite agreement between the developer, the Distribution Company (DisCo) and the community to the Commission for approval². Developers of isolated mini-grids with capacity of up to 100kW may apply for a permit or registration with the Commission³.

Developers of isolated mini-grids with capacity of up to 1 MW may obtain a permit from the Commission following confirmation from the DisCo within the proposed area of the mini-grid's operations. However, the 2023 Regulations now require such DisCos to provide confirmation that the mini-grid's operations will not interfere with their expansion plan within fifteen (15) days of receiving a request⁴. Where the DisCo neglects, fails or refuses to respond within the specified timeline, it shall be deemed to have consented to the request by the developer. This streamlines and reduces the bottlenecks for obtaining permits for isolated mini-grid projects.

¹ Regulation 20.1 of the 2023 Regulations

² Regulation 9.2 of the 2023 Regulations

³ Regulation 8 of the 2023 Regulations

⁴ Regulation 7.2 of the 2023 Regulations

The 2023 Regulations maintain the previous position that as part of the application process, developers of isolated mini-grid projects must submit an executed agreement between themselves and the duly authorised representatives of the community which they aim to serve; while the developers of an interconnected mini-grid project must submit a tripartite agreement between themselves, the duly authorised representatives of the connected community and the DisCo.

Mini-grid developers may enter into exclusivity agreements with communities and DisCos for a period of up to twelve (12) months⁵. To obtain further assurance of the developer's preparedness to undertake the project, the community or the DisCo may request the developer to provide a letter of intent from an investor or an endorsement letter from the state government before signing the exclusivity agreement⁶. Such exclusivity agreements may be extended; however, such extension of the exclusivity period is subject to registration by the Commission⁷.

Obligations of Mini-Grid Permit Holders

The 2023 Regulations retain the requirement for mini-grid permit holders to:

- i use the MYTO methodology or any other methodology approved by the Commission (as prescribed under the regulations⁸) in determining its tariff which must have been agreed with the DisCo and the connected community⁹,



⁵ Regulation 23.1.a of the 2023 Regulations

⁶ Regulation 23.2 of the 2023 Regulations

⁷ Regulation 23.1.c of the 2023 Regulations

⁸ Regulation 10.4.a of the 2023 Regulations

⁹ Regulations 7.1.f, 9.2.a, 10.1 and 22.1.3 of the 2023 Regulations

- ii where operating an interconnected mini-grid, pay a Distribution Use of System Charge as agreed between the permit holder and the DisCo (or based on the methodology prescribed by the Commission where the parties fail to agree on the charge) for utilising the distribution network of the DisCo and approved by the Commission;¹⁰
- iii enter into standardised connection agreements with customers to be connected to the mini-grid;
- iv adhere to the provisions of the Metering Code except where the Commission has granted specific derogations for the operator to adopt other standards outside the Metering Code or pending a review of the Metering Code;
- v enter and observe the terms of a contract between the mini-grid operator and the customers in the community which must dictate the tariff and billing model for the mini-grid;¹¹
- vi maintain adequate accounting records and prepare accounting statement to be signed by a duly certified independent auditor for each financial year;¹²
- vii file (in hardcopy and also through digital platforms approved by the Commission) a report of its monitoring and evaluation activities with the Commission;¹³ and
- viii comply with environmental laws affecting mini-grid operations; as any infraction may lead to the suspension or termination of its permit¹⁴

Obligations of Registered Developers

As highlighted above, mini-grid permit holders are required to utilise the MYTO methodology in determining the retail tariffs and other charges for electricity supplied to customers;¹⁵ Registered mini-grid developers on the other hand may determine their retail tariffs and other charges by:

- i the use of the MYTO calculation tool outlined by the Commission; or
- ii an agreement between the mini-grid operator and the community¹⁶ provided that the Commission may intervene and review the tariff for equity and fairness¹⁷

Timeline for Registration

It is worth noting in the 2023 Regulations has increased in the timeline for processing and issuing a permit by the Commission from 30 days to 30 working days (i.e. excluding weekends and public holidays)¹⁸ As such, developers applying for permits may find that their application may take longer than provided in the 2016 Regulations while being processed.

¹⁰ Regulation 22.1 of the 2023 Regulations

¹¹ Regulation 19 of the 2023 Regulations

¹² Regulation 12.1 of the 2023 Regulations

¹³ Regulation 21 of the 2023 Regulations

¹⁴ Regulation 18 of the 2023 Regulations

¹⁵ Regulation 22.3 of the 2023 Regulations

¹⁶ represented by customers consuming not less than 60% of the electrical output of the mini-grid

¹⁷ Regulation 22.5 of the 2023 Regulations

¹⁸ Regulation 10.2 of the 2023 Regulations



Implications of Expansion by DisCo

Mini-grid developers that have received a permit from the Commission continue to enjoy protection under the 2023 Regulations as they are entitled to twelve (12) months' notice from a DisCo extending its network to the developer's isolated mini-grid. In such circumstances, the mini-grid developer operating with a permit¹⁹:

- i may convert to an interconnected mini-grid operator;
- ii may transfer all its distribution assets to the DisCo in return for compensation composed of the book value of the depreciated network assets or an equivalent of the pre-tax profit of the mini-grid developer earned from the mini-grid from twenty-four (24) months before the handover date;
- iii may continue to operate the mini-grid in accordance with the mini-grid permit until the developer is fully compensated by the DisCo during which time the DisCo shall not disrupt or obstruct the mini-grid permit holders activities; and
- iv shall (where possible) remove and recycle or dispose in an environmentally friendly manner and in accordance with the law, the assets and equipment which are no longer useful²⁰.

On the other hand, registered mini-grid developers shall decommission and remove all their assets and equipment within two (2) months after the DisCo has commenced operations in the area on which the mini-grid is located.²¹ As such, registered developers enjoy less protection than permit holders in the event of an expansion by the DisCo.

¹⁹ i.e. a developer that has received a permit from the Commission to operate the mini-grid

²⁰ Regulation 20 of the 2023 Regulations

²¹ Regulation 20.8 of the 2023 Regulations

Termination

When the tripartite contract for an interconnected mini-grid expires and is not renewed, the DisCo may re-integrate the interconnected mini-grid into its network subject to payment of compensation to the mini-grid permit holder, written proof of endorsement by the connected community, and notification to the Commission.²² This exposes developers who are operating mini-grids without permits to potential loss of profits as their business may be disrupted by the expansion of the Disco into their area of operations.

Transfer of Permit or Business

The 2023 Regulations provides that the prior written consent of the Commission is required for the transfer, assignment, sale or disposal in any other manner of all or any part of the permitted business carried on under a mini-grid permit granted by the Commission.²³ This provision is intended to ensure that any change in ownership or operation of the mini-grid is approved by the Commission. This rule may be applied in the same manner as the similar provisions in the oil & gas and the telecommunication industries.

Essentially, the courts may be inclined to align with the decision in *Moni Pulo Limited v Brass Exploration Unlimited & 7 Ors.*²⁴ where it was held that companies whose business is governed by statute must comply with the provisions of the said statute before they can benefit in the transfer of shares in the company. As such, though permit holders may pledge their shares or parts of their business, the consent of the Commission will be necessary for the transfer, assignment, sale and/or takeover of the mini-grid permit or any right, power or interest therein or thereunder.

Conclusion

In conclusion, the Mini-Grid Regulations of 2023 introduced by the Commission demonstrate a commitment to refining and expediting the regulatory processes for mini-grid developers in Nigeria. The amended provisions seek to address operational bottlenecks, enhance regulatory oversight in the evolving landscape and strengthen requirements for community engagement. This is all geared towards fostering a more efficient and investor-friendly environment.

²² Regulation 20.9 of the 2023 Regulations

²³ Regulation 14 of the 2023 Regulations

²⁴ (2012) 2 CLRN 153

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