Mini-Grid Acceleration Scheme (MAS)

Legal and Regulatory Framework for Mini-Grid Projects

Rural Electrification Agency
On behalf of the Federal Ministry of Power, Works and Housing
With the support from the Nigerian Energy Support Programme (NESP)
Overview

- Legal and Regulatory Framework for Mini-Grids
- NERC Mini-Grid Regulations: Background and Objectives
- Types of Mini-Grids
- Licensing/Permitting – Isolated Mini-Grid and Interconnected Mini-Grid Development Process and Permit Requirements
- Key Provisions of the Mini-Grid Regulation – Compensation Mechanics, Compliance and Technical Requirements, Tariffs etc.
- Other Permits/Approvals
- Acquisition of Land for Mini Grid Projects
Framework - Key public stakeholders

- Ministry of Power (MOP) - Policy
- Energy Commission of Nigeria (ECN) - Policy
- Ministry of Environment (MOE) - Policy
- Nigerian Electricity Regulatory Commission (NERC) - Regulator, Licensing, MYTO, Codes, Manuals & Regulators
- Ministry of Water Resources (MWR) - Water Licenses, Water Permits
- Nigerian Electricity Management Services Agency (NEMSA) - Quality Control, Certifications
- Rural Electrification Agency (REA)
- National Environmental Standards and Regulations Enforcement Agency (“NESREA”)
- State Ministry of Energy
- State Ministry of Environment
- State Ministry of Local Government and Community Affairs
- State Ministry of Planning and Urban Development

Note: The list of state government agencies and parastatals have been developed using Lagos State as an example. Kindly note this may vary from state to state.
NERC Mini-Grid Regulations

• Background
The Nigerian Electricity Regulatory Commission (NERC) on the 24th of May 2017 released Mini-Grid Regulations to govern the development of integrated electricity generation and distribution supply systems between 0-100kW - 1MW either in isolation from the Distribution Companies (Discos) or interconnected to the Discos’ existing network infrastructure.

• The NERC Mini-Grid Regulations defines a Mini-Grid as:
“any electricity supply system with its own power Generation Capacity, supplying electricity to more than one customer and which can operate in isolation from or be connected to a Distribution Licensee’s network. Within this Regulation, the term Mini-Grid is used for any Isolated or Interconnected Mini-Grid generating between 0kW and 1MW of Generation Capacity”.

This programme is funded by the European Union and the German Government
Objective of the Mini-Grid Regulations

- Incentivize Mini-Grid Investments in Nigeria.
- Increase access to electricity in unserved and underserved parts of Nigeria (rural and urban areas).
- Grid extension, increase profitability of loss making areas and wider coverage of paying customers.
- Encourage the use of renewables on a small scale (particularly small hydro and solar).
Types of Mini-Grids

- **Isolated** Mini-Grids:
  - Isolated Mini-Grid with distributed power larger than 100kW and up to 1MW of generation capacity; and
  - Isolated Mini-Grids with distributed power of up to 100kW.

- **Interconnected** Mini-Grids with distributed power between 0kw and 1MW.

*Note: A cluster of feeders connected to the same generator may be classified as one or separate Mini-Grids.*
Isolated Mini-Grid Development Process

1. Identify site *(outside of Disco’s approved Expansion plan for a min of 5 years)*

2. Establish contact with community

3. Sign 12 month exclusivity agreement with the community

4. Collect building permits from municipality

5. Apply to NERC for permit or registration *(as required)* and tariff approval

6. Install, commission & operate mini grid system

This programme is funded by the European Union and the German Government
Requirements for Permits for Isolated Mini-Grids

- Submission of a duly completed application form;

- Submission of the executed agreement between the Community and Mini-Grid Developer for approval by the Commission;

- NERC confirmation that the Mini-Grid activities will not interfere with the expansion plans of the Disco as approved by NERC as it relates to the designated Unserved Area;

- Written consent of the Disco of the intended area (where the proposed area is within the 5 year expansion plan of the Disco);

- Proof that the intended geographic location is an Unserved Area which has not been assigned to an IEDN or any other Mini-Grid Developer;

- Proof of acquisition or lease of all necessary land for construction and installation of all assets;

- Proof of any other necessary permits in favor of the Mini-Grid Developer;

- Tariff based on the MYTO methodology and approved by NERC;

- Execution of the Health and Safety confirmation form.
Requirements for Permits for Isolated Mini-Grids

Compliance Requirements

- Accounting Requirements
- Environmental Protection Requirements (EIA requirement)
- Health and Safety Requirements
- Insurance Requirements
- Reporting Requirements

Technical Requirements

- Permit holders are required to meet relevant Technical Codes and Standards and relevant regulations.
- Registered Mini-Grid Operators are not bound by Technical Codes and Standards but are required to maintain min. tech. requirements (Annex 7).
Registration Process for Isolated Mini-grids

- **For Isolated Mini-Grids with distributed power of up to 100kW**, a Permit is *optional*, as the Isolated Mini-Grid Developer may only choose to register as a Mini-Grid Developer.
- A Developer is required to complete the Registration process by completing the *Registration form for Mini-Grids below 100kw* (*Annex 2 of the Regulation*).

**Required Information to be provided in the Registration Form**
- Particulars of the Applicant (Including details of a Contact Person)
- Legal Status of the Applicant (Partnership, Private Company, Public Company)
- Nature of the Application (Fresh application or Renewal)
- Main Business Activities of the Applicant
- Description of the Project (Including maps and drawings)
- Breakdown of Customer base

**Note:** For the MAS, all selected projects (irrespective of their size) need to go obligatorily for a Mini-grid Permit.
Requirements for Permits

- Submission of a duly **completed application** to the Commission;
- Proposed retail **tariff** is calculated using the **MYTO** methodology, agreed by the **Mini-Grid Developer**, the **Distribution Licensee** and **Connected Community** and approved by the Commission;
- Execution of a **Tripartite Contract** between the Mini-Grid Developer, the Distribution Licensee and the Connected Community with specifications as provided in S9(1)(c).
Compensation Mechanism (1/2)

- Where a Disco extends its network to an Isolated Mini-Grid, the Operator has the option of either converting to an Interconnected Mini-Grid or transferring its assets for compensation.
  - **Extension prior to Initial Period of 5 years** – remaining depreciated value (including development and construction costs) as defined by the Commission plus revenue generated commencing 12 months prior to connection of the Mini-Grid to a Distribution Network.
  - **Extension after Initial Period of 5 years** – remaining depreciated value as defined by the Commission plus revenue generated commencing 12 months prior to connection of the Mini-Grid to a Distribution Network.

➤ **Note:** *In both instances, the Mini-Grid Assets will not be handed over until compensation is paid.*
Compensation Mechanism (2/2)

• Where tariff definition by NERC has changed, the Operator may initiate an inspection of accounts to determine the depreciated value. In the interim, the Operator will be paid the value of the asset based on NERC’s definition and difference will be paid after the inspection.

• Where the Parties fail to agree in compensation, NERC shall act as an Arbiter.

• Same mechanism applies to a Registered Mini-Grid Operator who applies for a permit.

• No compensation applicable to Registered Mini-Grids. On extension, a registered Mini-Grid needs to decommission and relocate within 2 months after commencement of grid supply.

• For Interconnected Mini-Grids where the Tripartite Agreement is not renewed, the DisCo may reintegrate the Mini-Grid into its network subject to proof of endorsement by the community, and notification to NERC.
Tariff Payments

Permit Holders

- The tariff has to be calculated using the methodology provided in the regulations (Annexure 15) based on the **MYTO Methodology** designed for Mini-Grids.
- Tariffs are to be subject to technical and non technical losses of a max. of 10% each.
- Tariffs for permit holders can be subject to review based on an application by a Permit Holder or an Inspection of accounts by an **authorised person**.

Registered Operators

- Option 1: Tariff based on the **MYTO methodology**.
- Option 2: An **Agreed Tariff** between the **Operator** and at least 60% of the **community**. The Agreed Tariff may be subject to intervention by NERC where the Operator’s rate of return exceeds typical non recourse commercial local currency debt by 6%.
Other Permits/Approvals

- **Environmental and Social Impact Assessment Certificate**: This is granted by the Federal Ministry of Environment (FME).

- **Building/Installation Permit**: Issued by State and Local Government agencies, and the requirements for obtaining the permits vary across the States in Nigeria.

- **Approval and Development License**: Where the installation constitutes a “Development” under the Urban and Regional Development Act, then a Development Permit from an agency performing the duties of urban and regional planning and development control at the Federal, State or Local Government level would be required.

- **Factory permit**: This permit is issued by the Director of Factories of the Federation.
## Acquisition of Land for Mini Grid Projects

<table>
<thead>
<tr>
<th>Land Acquisition Applicable Options</th>
<th>NERC Requirements</th>
<th>Preference for Lenders/Investors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outright Purchase Option</td>
<td>The supporting documents listed under application for registration/permit specifies either (i) Certified copy of Certificate of Occupancy or (ii) Lease Agreement for Project Site.</td>
<td>Investors or lenders will generally prefer proof of title that shows a clear devolution of title which could be a Deed of Assignment/Long Lease/Deed of Gift</td>
</tr>
<tr>
<td>Complete transfer of interest in land by a seller to a purchaser for a given price.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lease Option</td>
<td>The template Contract Agreement between the Mini-Grid Operator and the Community annexed to the Mini-Grid Regulation provides that parties shall jointly identify suitable land within the Community for the Mini-Grid Project.</td>
<td></td>
</tr>
<tr>
<td>Long Term Lease</td>
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<tr>
<td>Land as a Gift</td>
<td>The template also includes a provision that states that the Community shall at its own expense procure the land jointly identified to be leased to the Mini-Grid Operator at no cost or a nominal fee of no more than N10, 000 annually.</td>
<td></td>
</tr>
</tbody>
</table>
QUESTIONS
Thank you!

Dolapo Kukoyi
Partner
Detail Commercial Solicitors