NEWSLETTER

NIGERIA LAUNCHES ROADMAP FOR POWER SECTOR REFORM

President Goodluck Jonathan launched the most comprehensive plan which it tagged *'Roadmap for Power Sector Reform'* aimed at restructuring the power sector and achieve stable electricity in the country.

The President in his speech delivered on August 26, 2010 in Lagos, identified the factors that affected reliable electricity service delivery to include the absence of a sustained and deliberately deployed long term power development strategy, under exploitation of the nationôs abundant energy endowments and the absence of adequate implementation of reforms.

Highlights
Some key highlights of the roadmap as presented by the President include:

Divestiture of Successor Companies. Government in seeking to encourage the inflow into the industry of private sector investments and accompanying managerial and technical expertise has decided to divest a minimum of 51% of its equity in the 17 of the 18 successor companies, consisting of 11 power distribution companies and 6 generating companies, to core private sector investors. In the area of transmission, the Government will retain control of the Transmission Company of Nigeria (TCN); however, it will be under private sector management.

The Bureau of Public Enterprises (BPE) will grant operational concession of the hydro power generating plants (in Kainji, Shiroro and Jebba) while the thermal generating plants under the National Integrated Power Project (NIPP) will be managed under Operation and Maintenance (O&M) contracts upon completion and subsequently divested to core investors in the same way as the successor companies.

Establishment of an Appropriate Pricing Regime. The roadmap identified the tariff system as a very critical factor in resolving the entire value chain of supply of electricity. Consequently, the Nigerian Electricity Regulatory Commission (NERC) is undertaking a major review of the existing tariff structure which will be completed before the end of April 2011 with a view to replacing the national uniform tariff with a new genuinely cost reflective ceiling on end-user tariffs.

In pursuance of its powers, the NERC established a 15 year tariff path for the Nigerian electricity industry with limited minor reviews each year in the light of changes in a limited number of parameters (such as inflation and gas prices) and major reviews every 5 years, when all of the inputs are reviewed with stakeholders.

On July 1, 2008 NERC issued the Multi-Year Tariff Order (MYTO) for the determination of charges and tariffs for electricity generation, transmission and retail tariffs over the period of 1 July 2008 to 30 June 2013.

It is expected that the tariff review, when effective would result in at least a 100% increase in the effective tariff paid by consumers, thus giving a more reflective position of the power pricing as in comparable countries.

Establishment of a Bulk Purchaser. The Nigerian Bulk Electricity Trading Company Plc. (the Bulk Purchaser) will play an intermediate role between the generating and the distribution companies whereby it will purchase power from successor generating companies, existing Independent Power Producers (IPPs) and potential new entrants in the power generating market and resell to distribution companies. The establishment of the bulk purchaser however, will not impose a ósingle buyerô model upon the industry because the distribution companies, to the extent that they are able to, will be allowed to procure power bilaterally alongside the Bulk Purchaser.

The Provision of Federal Government of Nigeria (FGN) Credit Enhancement. The Federal Government has also factored into the roadmap credit enhancement guarantees to encourage investments in the construction of power plants. Current options for credit enhancement include those to support the more immediate investment by IPP developers in power generation by ensuring that the Bulk Purchaser is credit-worthy. To do this, the Federal Government will look to provide some form of credit enhancement to the Bulk Purchaser along with the instalment of an appropriate payment mechanism to ensure the liquidity of such credit support arrangement. Some potential options are:

a. An FGN-backed Letter of Credit (LC), to provide liquidity to the Bulk Purchaser;
b. A Rolling Guarantee of the obligations of the Bulk Purchaser, issued by a multilateral institution or domestic and/or international banks, with a counter guarantee issued by the FGN;
c. A World Bank Partial Risk Guarantee backed by an FGN indemnity;
d. An FGN treasury bond issue; or
e. A combination of two or more of these options.

Clarifying and Strengthening the Licensing Regime. Since the power sector involves high fixed costs of asset investment with a long duration, investors expect the life of the license to be more or less in line with the period required to recover their investments, typically 20-50 years. However, the Electric Power Sector Reform Act, 2005 (EPSRA) provides for licenses that shall not exceed 10 years duration although NERC may extend the validity of the licenses, on a rolling basis, for additional 5 year periods. To provide greater comfort to investors, mechanisms are being developed that will assure investors of renewal/extensions of their license provided they meet the necessary conditions.

Targets

Generation. To meet the Vision 20:2020, Government has set a generating target of 40,000 MW. Moreover, to reach this relatively modest ambition will require investments in power generating capacity alone of at least USD$35 billion, which represents a conservative estimate. An additional USD$15 billion will be required in the other parts of the supply chain (i.e. the fuel-to-power infrastructure, and the power transmission and distribution networks) which will then bring the total expected investment in the power sector to USD$50 billion over the next 10 years.

The Federal Government is convinced that it would not be desirable for such enormous investments to be funded and directed by it (in light of the erratic and inefficient management of capital expenditures by the State-owned power company over the past two decades). More importantly, the Government recognises that it would not be possible for investments on this scale (in a single industry sector) to be made by it. Hence, this Administration has stressed, repeatedly, that the requisite investments in the power sector will only be achievable if the private sector is incentivised to make these investments.

Transmission. The Government's target to raise transmission capacity from 330kv to 700kv is being aggressively pursued as it has made investment of USD $3.5 billion for construction of a 700 kilovolt super transmission grid that would enable power generation companies to transmit more than 6000MW of electricity by 2011.

It is imperative that new investments are pushed forward as rapidly as possible. To that end, the TCN management contractor will be responsible for significant investments in the expansion, reliability and stability of the network infrastructure.

Distribution. The immediate distribution target of the Government is to-

- Increase the capability of the distribution network by circa 20%;
- Reduce aggregate distribution losses (technical and non-technical) by at least 5% by April 2011; and
- Secure a noticeable increase in the average number of hours of electricity supplied to consumers by April 2011.

In the long run however, the roadmap envisages privatisation of all the distribution companies in order to induce efficiency and professional management in a sector that has, hitherto, been an easy source of leakage. At the end of the day, the financial viability and operational effectiveness of the entire supply chain rests upon the revenues collected by the distribution companies. And it is the Government's opinion that the fastest way to restore the industry to financial and operational health is to subject each of the 11 distribution companies to the full discipline of the private sector.

The Federal Government also acknowledges that its policy decisions on electricity tariffs will have a direct and critical effect on the financial viability of the privatised distribution companies and (as noted earlier) it is committed to the introduction of a genuinely cost-reflective tariff which will secure the financial viability not just of the distribution companies but of the sector as a whole.

Legal Framework

Government has decided to follow through on the EPSRA which already provides an enabling regulatory framework for private sector participation in the electricity industry. The Act gives legal authority and support to the restructuring of the single vertically-integrated, Government owned, power sector utility. Some of the key changes provided for in the Act have already been effected, including- the creation of the initial holding company (i.e. PHCN) to assume the assets, liabilities and employees of National Electric Power Authority (NEPA); the subsequent initial unbundling of PHCN into 18 successor companies and the partial transfer thereto of the assets, liabilities and staff of PHCN; and the establishment of the NERC.

The Act further stipulates that all electricity generated in the country must be wheeled through a transmission grid and allotted to distribution companies. Currently, the NERC is limited to licensing off grid producers that are permitted to establish mini power plants of less than 20MW. Where excess capacity is available, it can be transmitted through the national grid for onward sale in other parts of the country.

Fuel Source

The President stated that coal will be exploited in the next few years to install power plants in parts of the country where they could be found, but the largest resource from fuel to power will come from natural gas.

In the medium term, available generation capacity is projected to outstrip the available gas supply to power producers. As such, additional support and incentives will be required to attract private sector investment into the gas sector so as to enable international oil companies (IOCs) and other investors to produce stranded gas locked up in various fields.

Government is therefore encouraging IOCs operating in the country to embark on IPPs, as part of the reform. The IPPs will not only boost electricity supply but also provide necessary infrastructural support for economic growth, and also guarantee additional revenue to the participating IOCs. The IPPs will further strengthen the oil companies' social responsibility in the local economy as well as protect the environment through environmentally sustainable operations and industry best practices.

Recently, the Ministry of Petroleum unfolded a two-point agenda for the gas sector to meet the Administration's aspiration of delivering enough gas to the power plants to ensure adequate power supply in the country.

A major milestone has been achieved in the area of gas to power pricing review; the President has given approval for an increase that would boost investment.

Currently the price of gas to power is USD$0.2 (two cents) per mmbtu of gas. By the end of 2010, the price of gas would increase to $1/mmbtu. The price would graduate to $1.50/mmbtu by 2011 and $2/mmbtu by the end of 2013. Beyond 2014, it would increase based on inflation rate.

The Federal Government listed the objectives of the two-pronged action to include sustainable supply of gas to the power sector, implementation of a sustainable commercial framework for domestic gas through a review of gas pricing to encourage investors by enabling them secure bankable agreements.

Time Lines

The action plan for reform of the Nigerian electricity supply industry, key tasks and milestone dates have been broadly set over a period of one year by the presidential committee on power. Activities commenced in July of this year and are expected to attain a steady speed by June 2011. Definite timelines set by the committee include- Investorsô fora to be organized between October and December 2010 while privatization of generating companies, distribution companies and other generating assets (new transactions with core investors/concessionaires) will commence in November 2010 and continue until June 2011. Preparation of bidding documents will start in December 2010-January 2011 and the exercise for pre-qualification of bidders will run from November 2010-January 2011 to be immediately followed by approval of EOI evaluation reports in January 2011.

Actual bidding and selection of selected bidders will begin in January through April 2011. Negotiation and signing of final agreement, payment of purchase price balance (for equities) are fixed for the second quarter of 2011 while handover and commencement of operations have been scheduled for June next year.

It is hoped that the Jonathan Administrationôs determination and effort will result in increased access to affordable and reliable electricity to all Nigerians and also create an environment that would attract private sector participation in the power sector.

Ref. No.	Action Plan for Reform of the Nigerian Electricity PRESIDENTIAL TASK FORCE on POWER	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
	Regulatory and Transactions Timelines													
1	Obtain NCP Approval for respective Privatization Strategies and Execution of Fresh and Outstanding transactions			■										
2	Engagement of Transaction Advisers for approved transactions			■	■	■								
3	Other Pre-transaction actions - Settlement of outstanding labour issues, Employment contracts, technical boundary delineation etc.		■	■	■									
4	Investors Fora					■	■	■						
5	Privatization of GenCos, DisCos and other Gen Assets (New Transactions with Core Investors/Concessionaires)						■	■	■	■	■	■	■	■
5.1	Preparation of Bidding Documents							■	■					
5.2	Pre-Qualification of Bidders						■	■	■					
5.21	Approval of EOI Evaluation Report								■					
5.3	Bidding and Selection of Preferred Bidders								■	■	■	■		
5.4	Negotiation and signing of Final Agreement											■	■	
5.5	Payment of Purchase Price Balance												■	■
5.6	Handover and commencement of operations													■
6	Privatization of GenCos Asset Sale					■	■	■	■	■	■	■		
6.1	Advisers Due Diligence					■								
6.2	Finalise and Sign vesting contract					■	■	■	■					
6.3	Finalise and sign Gas supply Agreement					■	■	■	■					
6.4	Conclusion of Negotiation and payment of Purchase price									■	■			
6.5	Handover											■		
7	Conclusion TCN Management Contract			■	■	■	■	■	■	■	■	■		
7.1	Re-Engage BPI as advisers			■	■									
7.2	Issue a new EOI to the 3 preferred bidders from previous exercise				■	■								
7.3	Selection of new Management Contractor						■	■	■					
7.4	Negotiation and signing of Final Agreement									■	■			
7.5	Handover											■		

Source: Roadmap for Power Sector Reform

GBENGA BIOBAKU & CO.
Barristers and Solicitors
www.gbc-law.com
If you would like to know more about the subjects covered in this publication or our services, please contact:

Gbenga Biobaku
Managing Partner
Tel: +234 1 8990764-5
D/L: +234 1 8990762
Fax: +234 1 2707320
Email: gbengabiobaku@gbc-law.com

Aaron Agada
Associate
Tel: +234 1 8990764-5
Mobile: +234 806 539 1663
Fax: +234 1 2707320
Email: aaronagada@gbc-law.com