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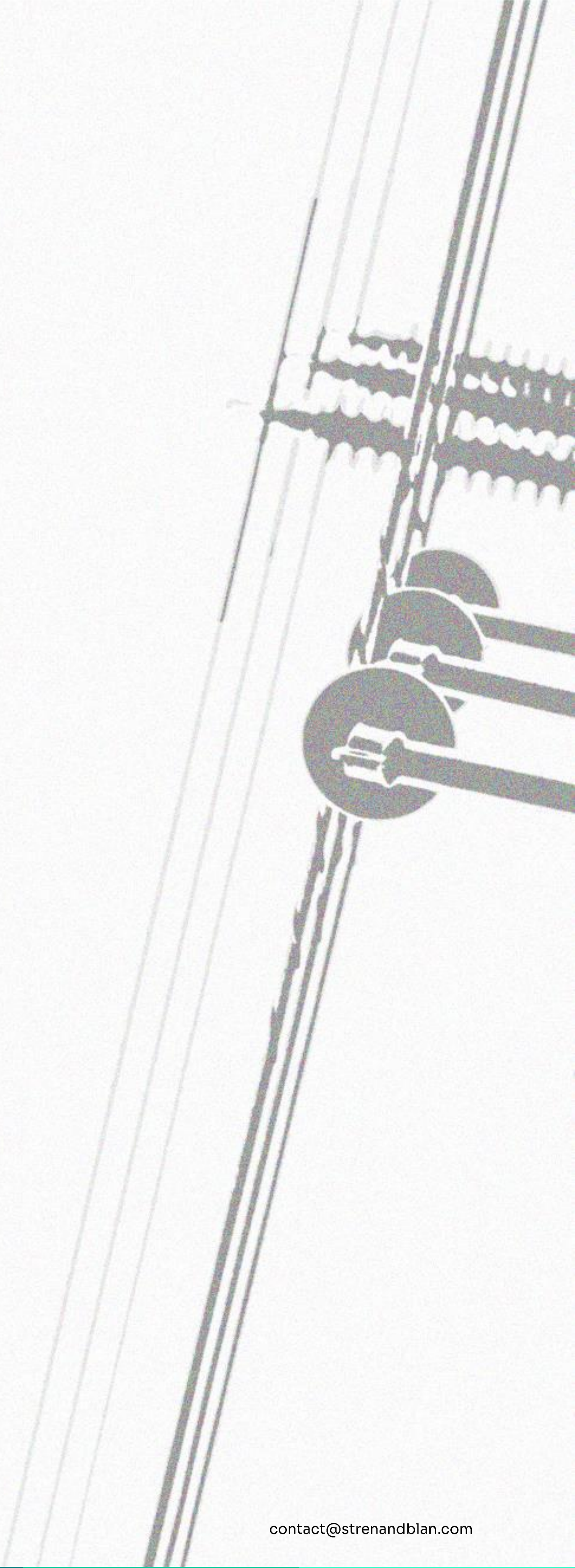
Recent NERC's Order on Delineation of Assets and Liabilities of Distribution Licensees



On 28 March 2025, the Nigerian Electricity Regulatory Commission NERC) issued Order No. NERC/2025/028 on the Delineation of Assets and Liabilities of Distribution Licensees (the "Order"). The Order represents a critical step in operationalising the Electricity Act 2023 (the "EA"), particularly its decentralisation mandate, which empowers States to establish their own electricity markets under the oversight of State Electricity Regulatory Commissions (SERCs).

Background

As part of the implementation of the transfer of regulatory oversight under Section 230 of the Electricity Act, Distribution Companies (“DisCos” or “HoldCos”) are required to incorporate successor companies (“SubCos”) and transfer to them all assets, liabilities, and relevant obligations associated with intra-state electricity supply and distribution, once a State Electricity Regulatory Commission (SERC) is established. However, stakeholders in the power sector had identified the absence of a clear and uniform framework for the delineation and transfer process as a significant impediment to decentralisation. In response to these concerns, the Order provides a structured methodology for delineating responsibilities across four key areas namely: assets, liabilities, contractual obligations, and employees, to ensure an orderly and transparent transition process

Key Objectives of the Order[1]

The Order seeks to:

1. Clarify the delineation process required under NERC's earlier transfer of regulatory oversight Orders.
2. Ensure all DisCos, regardless of the transition status of their franchise States, delineate assets and liabilities along State lines.
3. Provide a standard, equitable, and transparent methodology for the delineation of assets and liabilities.
4. Set clear timelines to support effective State-level electricity regulation.

Highlights of the Order

Delineation of Assets

The Order classifies assets to ensure regulatory clarity, proper transfer of essential infrastructure, and accountability during the transition to state-level oversight. It includes two main categories:

a) Core Assets refer to the critical equipment and infrastructure directly used for electricity distribution, such as transformers, distribution lines, substations, meters, and protective devices. These assets are integral to a DisCos' technical operations and revenue generation and are prioritised in delineation.[2]

b) Non-Core Assets are properties and other resources not directly tied to electricity delivery. These may include office buildings, land, warehouses, IT systems for non-operational functions, and non-service vehicles. Although they hold financial or strategic value, they do not affect electricity supply continuity.[3]

Regulatory Asset Value (RAV) Considerations[4]

The Regulatory Asset Value represents the asset base on which DisCos are permitted to earn regulated returns under the Multi-Year Tariff Order (MYTO) methodology. It includes both core and non-core assets. In determining RAV, NERC is not bound by the book or accounting value of assets. Instead, it applies regulatory valuation principles to ensure that only relevant and efficient investments are recognized. These principles include:

a) Prudent cost of purchase – the asset must have been acquired at a reasonable and justifiable cost in line with industry standards.[5]

b) Used and useful standard – the asset must actively contribute to the provision of electricity services to be included in the RAV.[6]

For delineation purposes, the combined RAV of all SubCos within a DisCo must exactly match the RAV of the parent DisCo as established in the latest MYTO . This aggregate RAV is then apportioned to each SubCo pro-rata based on historical energy consumption within each franchise State between January and December 2024.

Identification and Categorization of Assets[8]

S/N	Asset Type	Description	Delineation Strategy
1	Physical Assets vital to the supply of electricity	Transformers, substations, lines, etc.	Assigned based on location and economic value. Lines traversing multiple States prorated by geographical boundaries.
2	Inventory	Spare parts, consumables are in storage.	Allocated based on historical energy consumption used in RAV.
3	Operational Vehicles	Cars, trucks, maintenance vehicles.	Assigned to operational location. Pool unassigned/unserviceable vehicles retained by HoldCo.
4	ICT Infrastructure	Hardware, software, and communication tools.	Retained by the HoldCo and provided to the SubCos under a shared services agreement.
5	Meter Acquisition Fund (MAF)	A portion of the tariff paid by customers is set aside as the Metering Fund.	Allocated all uncommitted MAF monies accrued as of 31 May 2025 to SubCos based on the share of energy.
6	Receivables	Customer debts.	Split by location where receivables originated.
7	Common Assets	Assets shared and utilized collectively by multiple departments. E.g. Head office, pool vehicles, cranes, etc.	Retained by HoldCo; shared services agreements for use and cost-sharing.
8	Employees	Staff under a contract of employment with the DisCo	DisCo to determine the optimal allocation of personnel between the HoldCo and its successor companies.
9	Contingent Assets	Receivables E.g., judgment awards.	Allocated upon crystallisation, subject to NERC's approval.

Identification and Categorization of Assets[8]

S/N	Liability Type	Description	Delineation Principle
1	Market Shortfall	DisCos' liability to the electricity market for unsettled invoices not covered by the tariff shortfall	Allocated to SubCos based on historical energy delivered (Jan–Dec 2024).
2	Payroll-related Liabilities	Accrued pensions, gratuity and other employee benefits	Assigned to SubCos based on employee location post-transfer.
3	Tax Liabilities	Property tax, VAT, CIT, CGT.	Allocated to SubCos based on historical energy delivered to each State between January and December 2024
4	Contingent Liabilities	These cover obligations that could materialize if specific future conditions are fulfilled.	Allocated upon crystallisation; HoldCo must obtain NERC approval.

Legacy Contracts and Loans[10]

The Order recognises the complexity and long-term implications of legacy contracts, particularly those stemming from the privatisation of the power sector in 2013. Under the existing arrangement, DisCos entered into Vesting Contracts with the Nigerian Bulk Electricity Trading Plc (NBET), which in turn executed Power Purchase Agreements (PPAs) with generation companies (GenCos) and independent power producers (IPPs). These agreements remain in force and are backed by strong legal protections, including arbitration clauses that extend beyond Nigeria's jurisdiction.

Importantly, the Order reaffirms that all obligations under existing NBET Vesting Contracts must be honoured by DisCos and appropriately allocated to their SubCos. While full bilateral electricity trading between DisCos and GenCos is envisioned under the Electricity Act 2023, this structure is not yet fully operational. As such, the immediate mechanism for power procurement remains via the NBET-mediated Vesting Contracts.

To ensure no stranded capacity, the Order mandates that each DisCo must transfer its entire minimum energy offtake obligation to its constituent SubCos. This obligation will be shared based on the proportion of historical energy delivered to each State between January and December 2024To ensure a fair and data-driven allocation of energy responsibilities, the Order prescribes the following formula:

$$\text{Vested Energy (SubCo X)} = \frac{\text{Energy delivered to State X (Jan – Dec 2024)}}{\text{Energy delivered to DisCo (Jan – Dec 2024)}} \times \text{DisCo Offtake Obligation}$$

Furthermore, the Order anticipates that as bilateral trading matures, existing NBET PPAs once novated to DisCos may then be further novated to the SubCos. Until then, NBET remains the counterparty through which bulk power supply is guaranteed, and this regulatory continuity is vital for system stability.

Employee Transfers: DisCos must identify and allocate the employees necessary for SubCo operations as standalone utilities. Transfers must comply with employment contracts and statutory provisions, including the Labour Act for workers.

Obligations of DisCos [11]

Each DisCo using the delineation principles aforementioned is required to:

- Identify geographic boundaries and install boundary meters;
- Create an asset register by State;
- Apportion contracts and liabilities;
- Identify SubCo trading points;
- Submit staffing requirements to NERC.

Mandatory Submissions (within two weeks of the Order)[12]

- Preliminary asset and liabilities register (by State);
- Updated staff allocation register between its constituent SubCos and the HoldCo.
- Single line diagram for inter-state connections;
- Three most recent audited financials for 2022–2024.

Implementation Timeline: NERC will convene a delineation workshop within 21 days of receiving the above submissions. DisCos must also notify relevant SERCs of the Commission's final Order within seven days of receipt.

Implications for Stakeholders in the Power Sector

For stakeholders, including investors, DisCos, financial institutions, and consumers, the Order provides much-needed regulatory certainty in the decentralisation process. Investors and lenders gain clarity on asset ownership, liability apportionment, and revenue expectations, which can inform risk assessments and financing decisions. DisCos and SubCos now have a structured path for compliance, reducing the risk of operational disputes or regulatory infractions. Consumers stand to benefit from improved regulatory oversight and service delivery through State-level engagement.

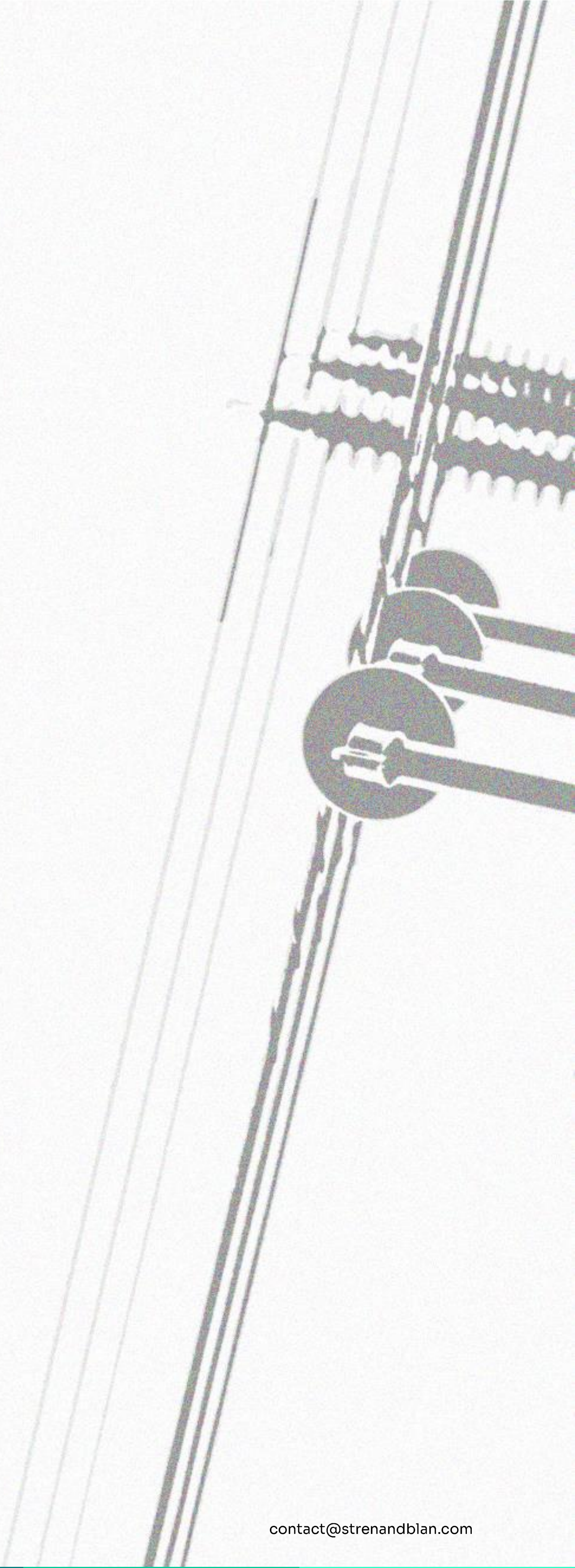
However, stakeholders must also prepare for transitional challenges. These include reconciling existing financing arrangements, navigating employee transfer frameworks, and addressing infrastructure ownership tied to legacy obligations.

Implications for State-Level Electricity Transition

For States establishing their own SERCs, the Order enables a clearer and more coordinated transition to independent electricity markets. The delineation of assets and liabilities provides the foundation for licensing new SubCos, setting tariffs, and planning infrastructure investments tailored to local needs.

States must ensure that the delineation is executed transparently and that capacity exists within their regulatory bureaus to supervise the resulting market entities. Furthermore, cooperation with NERC remains essential during the transitional period, especially regarding the pro-rata transfer of legacy obligations and alignment of policy objectives. In the long term, States that effectively manage the transition process stand to gain from enhanced energy security, investment inflows, and increased accountability in power sector governance.

Conclusion



While the Order is a necessary and timely intervention, several legal and commercial issues remain unresolved, including the ownership structure of SubCos, lender consent for asset and loan transfers, the viability of small-asset SubCos, and the alignment of tariffs with inherited liabilities. It is critical for NERC to work collaboratively with SERCs and stakeholders to ensure effective implementation.

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Authors

Ozioma Agu
Partner
OziomaAgu@strenandblan.com

Chizitereihe Oti
Associate
ChizitereiheOti@strenandblan.com

Kolajo Onasoga
Associate
KolajoOnasoga@strenandblan.com

David Olajide
Associate
DavidOlajide@strenandblan.com

www.strenandblan.com
contact@strenandblan.com
@strenandblan

+234 (0)702 558 0053
3 Theophilus Orji Street, Off Fola Osibo
Road, Lekki Phase 1, Lagos, Nigeria