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**Current Developments in the Nigerian Energy Sector:
The Legal Implications of Energy Crises for Business
Organisations**

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This presentation shall be subdivided into two parts. Part I will focus on Current Developments in the Energy Sector and Part II will focus on the Legal Implications of the Energy crises for Business Organisations.

PART I

In as much as Part I necessarily impacts on Part II, the energy sector shall be conveniently classified under 3 principal headings:

1. Petroleum Products/Supply/Price
2. Domestic Utilization of Natural Gas
3. Power Generation and Consumption.

Current Developments in the Energy Sector

Any discussion as regards the first two principal headings must be underpinned by a brief introduction of the current role of the NNPC/DPR under the law.

NNPC/DPR

The **Nigerian National Petroleum Corporation Act Cap.320, Laws of the Federal Republic of Nigeria 1990** (The Act) established the Nigerian National Petroleum Corporation (NNPC). Under the Act, the NNPC is *inter alia* charged with the duty of exploration and production of petroleum, conveyance and transportation of crude oil and natural gas, purchase and marketing of petroleum products, and generally engaging in activities, which would enhance the petroleum industry in the overall interest of Nigeria.

functions of the erstwhile Petroleum Inspectorate Department as provided in Section 10 of the Act. The DPR is responsible for discharging all regulatory, supervisory roles and functions relating to the **Mineral Oils Safety Regulations**, the **Oil Pipelines Act**, **Petroleum Act** and the **Petroleum (Drilling and Production) Regulations 1969**.

REFINERIES/PPMC/NGC

There are four oil refineries namely the Kaduna Refinery and Petrochemicals Company Limited (KRPC), Port Harcourt Refinery Company Limited (PHRC) and the Warri Refinery and Petrochemicals Company Limited (WRPC), which are charged with the responsibility of refining crude into petroleum products and by-products. There is the Nigerian Gas Company Limited (NGC), which produces and markets natural gas. Finally, the Pipelines and Products Marketing Company (PPMC), transports crude oil to refineries in Nigeria and also distributes and markets petroleum products.

Office of the Minister of Petroleum.

About 2 years ago, the then head of State General Abdulsalami Abubakar dispensed with the portfolio of the Minister for Petroleum Resources and brought the Ministry of Petroleum Resources under his direct supervision. He thereon appointed a Special Adviser on energy matters who reported directly to him.

This position has remained so under President Olusegun Obasanjo.

It must be noted however, that the absence of a substantive Minister for Petroleum Resources has raised some questions as to the legality or otherwise of actions carried out by other officials of the Ministry and the NNPC. This is because the Minister for Petroleum Resources is empowered under the Petroleum Act amongst other things to make regulations for the purposes of implementing the provisions of the Petroleum Act.

He is therefore central to the operation of the Ministry and his functions under the Petroleum Act by any other person may prima facie be ultra vires. An instance that readily comes to mind and which remains a

Section 6 of the Petroleum Act provides thus:

Section 6(1) “The Minister may by order published in the federal gazette fix the prices at which petroleum products or any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof”

The above provision is self-explanatory.

In the absence of the Minister, doubts have been raised as to the legality of the exercise of the statutory function of the Minister by any official of the NNPC. The presence of such doubt causes a crisis of confidence in the public domain and undoubtedly causes uncertainty in the discharge of bureaucratic functions between the NNPC/DPR and the MPR. This is particularly so when the Minister would ordinarily have engaged in a consultative process prior to an exercise such as the fixing of prices of petroleum products.

The Constitution however supports the view that the President may exercise the functions of any Minister of the Federal Government of Nigeria (See Sections 5(1), Section 147, 148, 151, of the 1999 Constitution). The inference that could be drawn from this is that the President can legally exercise powers given to the Minister for Petroleum Resources under the Petroleum Act or any other law. He can equally delegate any other official of government to exercise such functions. But such delegation must be clear in its terms and be made by appropriate written official instrument under the hand and seal of the President.

Given the aforementioned background, we shall now focus on the topic of Petroleum Products.

1. Petroleum Products

The list provided hereunder represents the range of Petroleum Products as defined under the Act:

1. Motor Spirit (Petrol for cars)
 - Automotive Gas Oil (Diesel Oil)
 - Fuel Oil (HPFO)
 - Aviation Fuel
 - Kerosene

- LPG
- Lubricant Oil/greases- Base Oil.

In discussing the current modes of supply and pricing, one must necessarily compartmentalise the issues into the Regulated market and the Deregulated market.

(i) Modes of Supply

A. The Regulated market

The Minister of Petroleum, pursuant to Section 9 of the Petroleum Act, regulates the production of petroleum products at the four refineries, which the Federal Government owns and operates.

The NNPC is solely responsible for the supply of all refined products to the market through the eight Petroleum Marketing Companies namely Agip, Mobil, Elf, National Oil, AP, Unipetrol, Total, Texaco and a number of small independent rural Petrol Stations. Products are supplied from the NNPC's refineries, which have a total overall installed output of 20 million tons per annum. Over the past 10 years, poor 'Turn Around Maintenance' has led to erratic supply and near total shut down and this has in turn resulted in long spells of acute product shortage in the market.

Due to persistent short falls in refinery production over the years, the regulated market has been substantially augmented by the NNPC granting import contracts to foreign oil traders.

B. The De-Regulated Market

This came into effect in 1998 when in the wake of near total shutdown of our refineries, the Federal Government found it impossible to justify the continued subsidies attendant upon importation of Petroleum Products.

The 8 marketing companies licensed under Section 4 of the Petroleum Act were thus encouraged to engage in direct importation, which they have been doing since 1998.

These companies have since been joined by smaller indigenous petroleum trading companies to form a consortium of importers who were permitted to import (subject to an import tax of USD35 per metric ton) without contract or license. Under this deregulated system, supply of products were thus either direct to the open market or through the marketers. 1998 must therefore be viewed as a watershed in the development of the Petroleum Products Market and a crucial step in the deregulation of the supply of products.

(ii) Mode of Pricing

Section 6(1) of the Petroleum Act empowers the Minister to fix the prices of all Petroleum Products in Nigeria.

A. The Regulated Market

In the context of the refineries and contract supply to the NNPC, the Federal Government over the past decade has regardless of production or supply costs, maintained the regulated price of products to the consumer. Save for increases made in the late 80's under the General Ibrahim Babangida Regime and the recent increase of fuel this year, the government has subsidised the sales of products from the NNPC to the public at huge costs, particularly given our extensive reliance on imported cargo from foreign trading companies. As at today, all Petroleum Products Pricing is regulated with the exception of Liquefied Petroleum Gas and Base Oil.

B. The Deregulated Market

It is important to note that the success of the deregulated market is dependent on the importers' ability to land cargo below the local subsidised price.

The problem is that there is an inherent anomaly in a market, which operates a deregulated supply under a regulated price, more so, where imported cargo is price sensitive to the fluctuating global Crude Oil price.

Supply /Price Crises

The crises which we experience today typified by shortages, erratic supply, and price profiteering of petroleum products is the result of the uneasy co-existence between a price sensitive deregulated supply and regulated price mechanism.

SUPPLY ANOMALIES

The following inherent anomalies make for a supply mechanism, which inherently cannot meet demand.

- 1. Whilst operational, our Refineries operate at best at an average production level of 40% of installed capacity.**

Product carrying pipelines are often vandalised or tampered with the attendant result of 10% - 15% further depletion in product by the time it arrives at the distribution depot.

- 2. Importation by the NNPC of petroleum products mostly PMS, at subsidised cost is often insufficient to meet even minor increases in demand. This is worse confounded when one sees how in recent months, increased crude oil prices have adversely affected supply of Petroleum Products from foreign refineries.**

3. Tanker transportation rather than more efficient Railway transportation often forms a further weak link in the supply chain. Tanker supply causes delay as a result of our bad network of roads, attracts higher cost and further creates the ease with which products are diverted to neighbouring countries.

PRICE ANOMALIES

The sale by the NNPC to marketers at set margins for resale to the public at regulated prices or the direct importation (at international prices) for resale at regulated prices results in following anomalies:

1. Diversion of AGO at unregulated prices to end-users either on land or at sea, mostly through illegal bunkering.
2. Diversion of PMS into neighbouring countries such as Benin, Cameroon and Chad.

C. RECOMMENDATIONS:

1. It is recommended that the Federal Government continue its policy of deregulation of the downstream petroleum sector to its logical conclusion with a proviso that it addresses the state of affairs where over half the petroleum product marketers have no more than one filling station and are thus inclined to divert their product allocations to end users at unregulated prices or smuggle them out of Nigeria in the manner herein before described.
2. Given that the Federal Government cannot manage the refineries efficiently, it is recommended that the government extend its present programme of divestiture of its interests in petroleum marketing companies to the refineries, guaranteeing them regular supply of

3. To institute a program of managed deregulation of petroleum products pricing particularly PMS and AGO. An approach, which admittedly could lead moderately high prices in the short term but in the long-term result in low prices through competitive pricing.
4. Re-investment in the railway system, which will guarantee cheaper and more efficient, distribution of petroleum products.

Petroleum Products will get to end users with minimum delay and there would be very little opportunity of diversion of the product as is case with tankers.

2. DOMESTIC UTILIZATION OF NATURAL GAS

With an estimated reserve of over 120 trillion scf/g made up of associated and non associated gas, Nigeria is ranked as the tenth largest gas province in the world.

In Nigeria, the issue of ownership of discovered natural gas produced in association with Crude Oil has always been the subject of controversy between the oil exploration companies and the Federal Government, more so with the revelation that Nigeria's unexploited gas reserves far exceed our Crude Oil reserves. This controversy originates from the provisions of Section 34(b) of the First Schedule to the Petroleum Act, which sought to impose special provisions on the discovery of natural gas namely:

- (i) The Federal Government's (FG) rights to take associated gas from the lessee free of cost at the flare or at an agreed cost without royalty.
- (ii) The obligation of the lessee to obtain the approval of the Federal Government as to the price at which Natural Gas produced (not taken by the Federal Government) is sold.

- (iii) A requirement for payment by the lessee of royalty on Natural Gas produced and sold.

(i) **Existing Laws**

A. **Petroleum Act**

Under Sections 2(1) (c) and 15 of the Petroleum Act, natural gas, like Crude Oil is defined as petroleum and is covered by the Oil Mining Lease. Despite extensive reserves of natural gas, this resource lies unexploited. The alarming level of flaring led to the imposition of penalties (at N10.00 per standard cubic feet of gas).

B. **Associated Gas Re-Injection Act Cap 26 LFN 1990**

This was aimed at further reducing or eradicating the flaring of Natural Gas by encouraging re-injection only when feasible and making concessions to the necessity of flaring.

C. **Nigeria LNG (Fiscal Incentives, Guarantees and Assurance) Decree 1990**

This law, with its amendments, confers on the NLNG Ltd and its shareholders, various fiscal incentives including tax relief for the production for export of liquefied natural gas.

D. **Finance (Miscellaneous Taxation Provisions) Decree 1998**

Section 28(g) thereon consolidated the fiscal incentives for companies involved in downstream gas utilization.

(ii) **National Gas Policy**

In furtherance of the above-mentioned laws, the Ministry of Petroleum Resources in the early '90s completed the preparation of a National Gas Policy, which was aimed at developing Production, Transmission, Distribution and Consumption of Natural Gas. The NGC, a subsidiary of the NNPC sought to implement this Policy by

This was the driver for the various Industrial Gas Distribution Projects in the large industrial cities like Lagos, Aba, Owerri, Port Harcourt and towns like Ikorodu, Otta and Agbara.

The legislative amendments having created the aforementioned incentives have been articulated in annual budget speeches throughout the 90's and incorporated into Associated Gas Frame Agreements (AGFA) executed between the government and Oil Producing Companies seeking to exploit gas deposits. The major gas projects embarked upon in recent years are the NLNG, the Mobil OSO Condensate Project 1&2, the Chevron Escravos Gas Pipeline 1,2 and 3 (with SASOL), Texaco and the Agip/ENEL Gas Power Projects.

Despite the foregoing it is still believed that the policy enunciated by the MPR is far from being realised principally due to the problem of pricing, the lack of sufficient distribution networks and commercial outlets for gas as well as the high incidence of gas flaring in which out of an estimated 36.3 billion scf/g produced daily in the country, 23.6 billion scf/g or 65% is flared daily. Happily the government has indicated that as from June 2001 a gas flaring penalty of N20 per 1000 Scf/g representing an increase from the N10 charged per 1000 scf/g from 1998 to date would be imposed on companies involved in this exercise.

With the advent of the deregulation of the power sector, the commercial utilisation of gas will doubtless increase, thus giving the lessee bargaining power to negotiate more favourable pricing with the Federal Government.

3. Power Generation

A breakdown of the installed capacity of 5,875 Mega Watts derived from 8 power plants spread across the country is given below:

Hydro-Power Stations

Kanji	-	760MW
Shiroro	-	600MW
Jebba	-	912MW

Thermal Stations

Egbin	-	1320 MW
Afam	-	700.9 MW
Sapele	-	1020MW
Ijora	-	60MW
Ughelli	-	502.1MW

It is worthy of note that notwithstanding the installed capacity, there is a maximum available capacity of 3,549MW with most stations operating at less than 50% capacity and demand for industrial growth far exceeding supply. Factors such as lack of proper 'Turn Around Maintenance' due to funding constraints and irregular diesel supply are major contributors to this state of affairs.

Transmission Grid and Distribution

NEPA, with about 11,000 Kilometres of 330/132KV transmission lines and many stations, cannot meet the capacity demands of the country. Furthermore, transmission and distribution lines are old, overloaded, overstretched and often sabotaged, resulting in frequent system collapse.

(i) The laws

The **Electricity Act Cap 106 Laws of the Federation 1990** contains provisions for the regulation and control of electrical installations and of generation, supply and use of electrical energy. It also makes it mandatory that a licence must be obtained before the use of any apparatus for supply of electrical energy. The Act equally empowers the Minister charged with responsibility for electricity to amongst other powers make regulations prescribing the conditions on which licences for supply of electricity may be issued, their extension, suspension, revocation and fees payable thereon.

The **National Electricity Power Authority Act** established the NEPA to develop and maintain an efficient co-ordinated and economical system of electricity supply for all parts of the Federation. The Act also restricted the grant of licences under

the Electricity Act vide Section 35 of the NEPA Act which provides thus:

“Notwithstanding any of the provisions of the Electricity Act, no licence shall, on or after the vesting date, be granted under provisions of the said Act to any person or a State Government agency other than the Authority unless notice of the particulars of the application for such licence has been given to the Authority and except with the prior approval of the Minister”.

In order to protect NEPA’s monopolistic position, approvals from the Minister were seldom, if ever given, coupled with the inability to reach pricing agreements with the government. Applicants were thus discouraged from embarking on the establishment of Independent Power Projects.

Deregulation of the Power Sector.

The deregulation of the power sector in Nigeria could be traced to 2 decrees made on the 30th of September 1998 by the then Federal Military Government. The Decrees are :

1. Electricity Amendment Decree No. 28 of 1998
2. The NEPA Amendment Decree No. 29 of 1998.

Electricity Amendment Decree No. 28 of 1998.

The basis of this legislation is to enable persons other than the Authority, a state government or any of its agencies to be granted a licence under the act. It also gives such a person the same rights and obligations as the Authority, a State Government or any of its agencies. The Amendment introduced the following new sub-sections:

S3 “ (2) For the avoidance of doubt, a licence under subsection (1) of this section may be granted to any person, other than the National Electric Power Authority (in this Act referred to as “the Authority”), a State Government or any of its agencies for any of the purposes set out in that sub section.”

“ (3) A person granted a licence under subsection (1) of this section shall, subject to the terms and conditions of the licence, have the same rights and obligations which the Authority, a State Government or any of its agencies has with respect to the particular licence.”

“(4) The Issuance of a licence under this Act shall not be deemed to give to the licensee a monopoly or the exclusive right to supply electricity within the area authorised by the licence.”

The NEPA Amendment Decree No. 29 of 1998.

This Decree repealed the provisions of the NEPA Act, which inhibited competition in the Electricity Generating Sector. It also makes the position clear that any of the licences under the Electricity Act may be granted to any person other than NEPA. The Decree reaffirms the power of the Authority to supply electricity and repeals the provisions of the Act, which make it difficult to sue the Authority or its officials for damages resulting from negligence or breach of duty.

It also repeals Section 35 of the Act, which contained far-reaching restrictions on the grant of licences under the Electricity Act and in its place introduced the following section:

“35(1) For the avoidance of doubt, and notwithstanding the provisions of this Act, a licence under the Electricity Act may be granted to any person, other than the Authority, a State Government or any of its agencies, for any purposes set out in section 2 of that Act”.

“(2) A person granted a licence under the Electricity Act shall, subject to the terms and conditions of the licence have the same rights and obligations which the authority, State Government or any of its agencies has with respect to the particular licence.”

“(3) In this Section - “persons” includes a private enterprise.”

Energy Crises in the Power Sector

Despite the aforementioned measures, the near monopolistic position of NEPA remains unaltered. As a result, there remain fundamental areas of difficulty in the power sector, which require specific attention by the Federal Government and which impede true deregulation. Such areas are listed hereunder:

1. State of NEPA facilities - Old, obsolete and inadequate
2. Funding of the investment requires upgrading, expanding and maintaining the facilities
3. Energy Tariff Structure
4. Indebtedness of Governments and their Agencies
5. Illegal connections and Meter tampering
6. Vandalisation and sabotage of power supply
7. Public enlightenment on the use of power facilities
8. Privatization of NEPA

It is believed that the legislative moves to deregulate the power sector, resulted in an influx of Independent Power Projects (IPPS).

Mobil Power Project

In this regard, it would be apposite to review the Mobil Independent Power Project (IPP) and the more recent Enron Emergency Power Project (EPP).

The Mobil Gas Powered Plant Project is a 350MW plant located in the Bonny Island off Port Harcourt. It is structured on a Build Operate and Transfer (BOT) basis for a period of 25 years.

To date however, Mobil is yet to settle the Power Purchase Agreement (PPA) with NEPA, the off-taker of the power, until the issues of pricing (N2.30k per kilowatt hour proposed by Mobil and tentatively accepted by NEPA) and guaranteed terms of payment are resolved. Various modes of

payment are presently being debated such as – offshore bonds, payment to Mobil by convertible commodities such as crude oil – Deposits in Escrow Accounts or bank guarantees from local banks with foreign affiliates. However, to date parties have not resolved this and the project remains on the drawing board.

In a nutshell, the main difficulties remain:

1. Security of payment/ Assurance of returns on investment
2. Cover against political risk.

Enron Power Project

This was the first major attempt at IPPs in Nigeria undertaken by Enron Power Inc. It is associated with Yinka Folawiyo Power Ltd. and backed by the Lagos State Government for the generation and the sale to NEPA, of 270MW of electricity in its first phase. Another 540MW would be generated in the second phase through a turbine plant to be sited in Morogbo, Lagos State.

The Memorandum of Understanding (MOU) which was signed in August last year between the Federal Government, NEPA, Lagos State Government, Enron and Folawiyo Power Ltd initially ran into a hitch owing to disagreements between the State, the Federal Government and NEPA. Stemming primarily from the issue of pricing which Enron fixed at N8.30 (and which was initially rejected), the Emergency power barges were converted from AGO powered to Gas powered, thereby bringing the price down to N2.50k per kilowatt hour. Payment is allegedly guaranteed by 'Irrevocable Confirmed' Letters of Credit issued by the Federal Government in Enron's favour.

The question of investment guarantee remains a fundamental part of and major stumbling block to the realisation of IPPs. Whether the government when called upon to honour its guarantees will in fact do so is an open question. To guard against this, the Federal Government through NEPA must be in a position to give a continuing guarantee over a period of 10 years.

It is suggested that Agreements be drafted, such that the obligation for instance, to pay for power on a quarterly basis is a continuing one unlike a

restricted guarantee which extinguishes all obligations upon one payment. The privatisation of NEPA will no doubt have a profound effect on such guarantees and provision should be made for this in drafting such agreements. Furthermore, agreements must be drafted such that the payment obligation on an agreed price is calculated without deductions or withholding tax.

Recommendations

Short term

1. Using internal resources but supplemented by credible contractors to effect repairs of broken down facilities/equipment.
2. Rehabilitate critical, broken down power generating units and execute scheduled maintenance as planned.
3. Commence licensing private power operators beginning with Independent Power Producers.
4. Deregulate energy pricing (gas, electricity and petroleum).

Long Term

5. Privatised NEPA and subdivide it into component or independent, private companies to carry out the functions of Generation-Transmission -Distribution.
6. Deregulate the Electricity Sector and draft a legislation, which will make for competition in the sector under a Regulator who will supplant the Ministry of Mines and Power and oversee two Independent Regulatory Bodies established for:
 1. Electricity Pricing
 2. Licensing of Prospective IPPS.

Environmental Law Developments

In order to properly ensure the protection of the environment, the government, by virtue of the Federal Environmental Protection Agency Act Cap 131, Laws of the Federal of Nigeria 1990, established the Federal Environmental Protection Agency (FEPA) as the environmental watchdog of the government to ensure compliance with environmental legislation.

The Act spells out procedures for establishing water and air quality standards, and a means of controlling air and water pollution so as to protect public health and welfare, and also wildlife.

The Act prohibits the discharge of hazardous substances into the air or waters except where authorized (a hazardous substance is any substance designated as such by the Minister for the environment). The Act makes any violation of its provisions punishable upon conviction by payment of fines of no more than N500,000.00 or imprisonment for a term of years not exceeding 10 years – See Section 20.

Section 21 of the Act stipulates the liability for discharge of hazardous substances (except it is shown that such discharge was by an act of God/natural disaster) and further provides that the offender must bear the cost of clearing and removal of the substances, as well as restoration or replacement of natural resources, reparation, restoration, restitution or compensation to third parties.

The Environmental Impact Assessment Decree No. 86 of 1992 inter alia set out the procedures and methods of enabling prior consideration of environmental impact assessment on certain public or private projects (which necessarily include oil and gas exploration and production). The Decree also gives specific powers to the FEPA to facilitate environmental assessment of these activities and projects.

The lack of compliance in the Petroleum Sector is attributable in the main to the leniency of the penalties and lack of effective monitoring and enforcement of regulations stipulated in the FEPA Act. Corrupt practices are also prevalent amongst Agency officials.

Recommendation

It is suggested that the legislature revise the FEPA Act and related legislation (which directly or indirectly provide for penalties for environmental damage) and provide steeper pecuniary and criminal liability for defaulters.

PART II

Legal Implications of Energy Crises for Business Organisations

Energy Crises

Part I of this presentation has discussed the problem areas and current development of the energy crises. This part seeks to focus on the legal implication for businesses and what legal rights and responsibilities organisations may have to contend with.

Businesses and businessmen affected by the crises must understand that they do have legal recourse by virtue of both legislation and common law. For instance, Section 12(1) of NNPC Act (supra) provides that:

“Notwithstanding anything in any other enactment, no suit against the Corporation, a member of the Board or any employee of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof.”

This provision is to the effect that an aggrieved person has a right of action in tort against the NNPC for injury or loss arising as a result of acts of the Corporation, its negligence or default. It follows from the above that a business concern, which has suffered pecuniary loss as a result of sporadic supply of petroleum products, or a total lack of it, or defective products, could sue the NNPC within a period of 12 months from the time the injury or loss occurred.

Such a potential plaintiff can proceed under the Sale of Goods Act, which is an English statute of general application in Nigeria, or if proceeding under common law tort, must overcome the threshold principle of causation. In other words, he must show that the damage suffered was a direct and foreseeable result of the NNPC's negligent action. Legal suit could also lie against the Corporation for damage to equipment and premises as a result of its negligent acts.

Likewise, Section 3 of the NEPA Act (Amendment) Decree No. 29 of 1998 abrogates the long standing immunity from legal action which NEPA enjoyed for many years and provides that affected persons can now sue NEPA for damages and compensation for loss of profit or other economic loss resulting from the Authority's actions, default and or negligence. Again, the same threshold rules of common law tort apply as aforementioned.

Industrial Relations/Third Party Liability

From the internal perspective of the business entity, an energy crisis also has potentially far reaching consequences on trade and industrial relations between business organisations and their employees. This can manifest in a number of ways.

An energy crisis may lead to an industrial or trade union action or other industrial strife. Problems with power supply may lead to accidents in the course of employment, especially in industries, which can expose the organisations to employee liability and impacts their insurance liability.

Power problems ultimately lead to low industrial productivity and increase the overhead costs of companies and businesses, which have to depend on alternative sources of power such as diesel and petrol powered generators.

If this leads to a reduction/shutdown in production/business, loss of profits may result, along with a corresponding increase in costs of production. This may ultimately lead to pay cuts or redundancies in order to reduce corporate overheads. These businesses are thus open to litigation from the affected employees.

In order to augment their power sources, businesses rely heavily on the availability of petrol/diesel. However, constant supply of these products in Nigeria is never a guarantee due to price fluctuations, artificial scarcities, strikes and even sabotage. This situation has the same effect on industrial relations as discussed above.

There is the possibility of a successful action against NEPA by aggrieved persons in the following situations:

1. Where, as a result of omission or commission on the part of NEPA, a party is unable to comply with stipulated terms of a contract.
2. Where as a result of omission or commission on the part of NEPA, a person who is entitled to some benefits under a contract is denied such benefit.

Conclusion

The conclusion to be drawn from above discourse is that there is a need for a complete deregulation of the energy sector. But the big issue is whether Nigeria is politically ready to indulge in this exercise. I leave the answer to your further deliberations.

Ladies and Gentlemen, thank you for listening.