



## BANWO & IGHODALO

### **NEW DPR GUIDELINES SET GOVERNING FRAMEWORK FOR FLARE GAS AND ASSOCIATED GAS UTILIZATION PROJECTS IN NIGERIA**

Recently, the Department of Petroleum Resources (“DPR”) issued a tetrad of Guidelines in furtherance of the objectives of the *Flare Gas (Prevention of Waste and Pollution) Regulations, 2018* (the “**Flare Gas Regulations**”).

The Guidelines essentially provide an operational framework for the implementation of the Flare Gas Regulations, which were, earlier issued to ultimately promote the monetization of gas from flares whilst curbing harmful environmental impact arising from such gas flaring and venting. .

The new Guidelines, which also derive legal and regulatory backing from some primary legislation and policy documents in the industry<sup>1</sup> besides the Flare Gas Regulations, are separately titled:

- I. Guidelines for Grant of Permit to Access Flare Gas;**
- II. Guidelines for Flare Gas Measurement, Data Management & Reporting Obligations;**
- III. Guidelines for Flare Payments; and**
- IV. Guidelines for Producer’s Associated Gas Utilization Project.**

On a preliminary note, the Guidelines, to a large extent, expand on relevant provisions in existing legislations and regulations such as the Associated Gas Re-Injection Act, Petroleum Act, Petroleum Refining Regulations and the recently issued, Flare Gas Regulations. Indeed, the Department of Petroleum Resources (“DPR”), pursuant to its powers under the Flare Gas Regulations has now, by these Guidelines, specified the fees for data prying, data leasing and award of Permit to Access Flare Gas. Thus, it could be surmised that some significant addition has been introduced by the Guidelines to existing regulatory framework covering flare gas.

The recently issued Guidelines have now collectively and more clearly set out the framework for the commercialization of flare gas in Nigeria. Additionally, these Guidelines reflect the commitment of the FGN to reduce the environmental and social impact of gas flaring, as well as develop the gas market in Nigeria by facilitating access to new economic opportunities that may be derived from gas flare capture.

Indeed, the Guidelines, if well applied, will enhance the attainment of the objectives set under the Nigerian Gas Flare Commercialization Programme (NGFCP) and the subsequent National Gas Policy approved by the Federal Executive Council (FEC) in 2016 and 2017 respectively. To this end, the new Guidelines are expected to drive in the short, medium and long terms:

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<sup>1</sup> Petroleum Act, 1969 (as amended) – Paragraph 35(b) of the First Schedule thereto; Associated Gas Re-Injection Act, 1979; Petroleum (Drilling and Production) Regulations, 1969 (Paragraph 44 thereof); Petroleum Refining Regulations, 1974; Nigerian Gas Flare Commercialization Programme, 2016; and the National Gas Policy, 2017.

- clarification of the rules guiding investment in the gas sector;
- provision of an enabling environment for increased private sector participation in the gas sector;
- utilization of natural gas to reduce Green House Gas (GHG) emissions in line with the country's obligations as a party to the Paris Agreement on Climate Change.

Highlights of the relevant provisions of each of the Guidelines are as follows:

a) **Guidelines for Grant of Permit to Access Flare Gas**

The Guidelines for Grant of Permit to Access Flare Gas ("Guidelines for Grant of Permit") stipulate the procedure for the competitive bidding processes to be adopted by the Federal Government of Nigeria ("FGN") before a permit to take Flare Gas at *any* Flare Site on behalf of the FGN, can be issued to Nigerian-registered companies.

Whilst a permit can be granted to either:

- a producer carrying out a *Producer's Approved Flare Out Project*; or
- a preferred bidder under the FGN programme executing a *Third Party Flare Gas Commercialization Project*;

the Guidelines for Grant of Permit applies only to bidders under the FGN programme executing *Third Party Flare Gas Commercialization Project*..

From our reading of the Guidelines for Grant of Permit, it is important to note, that:

- the grant of a Permit to Access Flare Gas shall only be by an open and competitive bid and any entity or individual barred by the Economic and Financial Crimes Commission ("EFCC") as well as the Independent Corrupt Practices and Other Related Offences Commission ("ICPC"), or appears on the World Bank Debarred List and/or barred by the US Treasury Office of Foreign Assets Control *shall not be eligible* to participate in the competitive bid process conducted by the FGN.
- The bid process includes (i) Registration on the programme portal; (ii) downloading the Request for Qualification and the Programme Information Memorandum ("**RFQ Package**"); and (iii) Submission of a Statement of Qualification ("**SOQ**") to demonstrate capability to develop a Project.

- After evaluation of the SOQ, successful applicants will receive Requests for Proposal with supporting materials and Flare Site Data; and thereafter apply for a Data Access permit as well as pay Data Prying Fee and the Data Leasing Fee.
- Qualified applicants may submit Technical, Commercial and Financial Proposals to take and commercialize Flare Gas on behalf of the FGN and these proposals are required to be accompanied by a Bid Bond (1% of the estimated Project capital expenditures subject to a maximum of \$1,000,000), and such Bid Bond shall remain valid for a period not less than six (6) months after the bid submission due date.
- The Bid Bond shall be returned to a Bidder not selected as the Preferred Bidder or Reserve Bidder.
- Any Permit can be revoked by the Minister of Petroleum Resources (“**Minister**”) in circumstances outlined in the Flare Gas Regulations.
- a Permit Holder has exclusive right to take such quantities of Flare Gas from a Flare Site or from one or more Flare Sites and for such duration as may be specified in the Permit; and the title to such Flare Gas shall be transferred from the FGN to the Permit holder.
- Pipelines, machinery and other facilities used to transport Flare Gas from the Flare Gas Connection Point to the Delivery Point, must meet engineering best practice, standards approved by the DPR, as well as standards agreed upon between the Permit holder and a Producer as it relates to health, safety and environment protocols.
- A Permit Holder shall not engage in routine flaring or venting of natural gas from any self-operated facility.

The Guidelines for Grant of Permit specifies that within sixty (60) days from the date of being declared the preferred bidder, the Preferred Bidder must execute a Milestone Development Agreement (MDA) and Gas Sales Agreement (GSA) with the FGN; whilst a Connection Agreement and Deliver or Pay Agreement (where applicable) shall be executed between the Preferred Bidder and the relevant Producer.

A Preferred Bidder who is unable to fulfill the stated conditions for the grant of a Permit shall be issued a revocation notice by the Minister. Where the conditions remain unfulfilled within thirty (30) days of issuance of the revocation notice, the affected Preferred Bidder shall be deemed to have forfeited its Preferred Bidder status and the Bid Bond will be drawn on by the FGN.

However, where, all the relevant conditions are fulfilled, a Permit to Access Flare Gas is granted to a Preferred Bidder within fourteen (14) days from the date all conditions are satisfied.

**b) Guidelines for Flare Gas Measurement, Data Management & Reporting Obligations**

The Guidelines for Flare Gas Measurement, Data Management & Reporting Obligations (the “**Guidelines on Flare Gas Monitoring**”) seek to ensure compliance with the Flare Gas Regulations and lays out the criteria, general requirements and obligations as it relates to measurement, data management and reporting of Flare Gas at all processing facilities.

In order to effectively identify and quantify environmental impact of, or the opportunities in commercializing Flare Gas, it is necessary to obtain, monitor and audit data of all natural gas that is produced, utilized, flared and/or vented.

Accordingly;

- Producers and Permit Holders are required to maintain a daily log of each occurrence of flaring and venting of natural gas within its facilities, and submit same to the DPR within twenty-one (21) days from the end of each month; and such logs must be retained in safe custody for no less than thirty-six (36) months.
- Producers and Permit Holders must prepare and submit to the DPR an annual report, which must be submitted each year by March 31 for the previous year.
- All data on gas production, utilization and flaring shall be subject to quarterly and annual reconciliation with the DPR.
- Producers are required to calculate and report *per Oil Field and per Flare Site*: (i) Gas to Oil (GOR); (2) Associated Gas Utilization Factor (AGUF); and (iii) Routine and Non-Routine Flaring quantities.
- Gas production, gas consumption, liquids such as condensate and Liquefied Petroleum Gas (LPG) and flare gas, must be monitored and measured.
- Several reports, (such as Producer Historic & Associated Gas (“AG”) Accounting Report; Own (Energy) Consumption Report; Vented Gas Report; Project Flare Gas Accounting Report), must now be prepared and submitted by Permit Holders.
- Producers and Processing Facilities must have complied with the provisions of the Guidelines and have installed all necessary metering equipment within the transition period of twenty-four (24) months from the date of the Guidelines. However, greenfield projects must comply immediately.

Any Producer or Permit Holder that provides inaccurate or incomplete Flare Gas Data to the DPR or fails to comply with any of the provisions of the Guidelines on Flare Gas Monitoring

shall be liable to one or combination of the penalties which include monetary fines, suspension of operations, revocation of OML or Marginal Field awarded, and/or imprisonment for a term not exceeding six (6) months.

c) **Guidelines for Flare Payments**

The Guidelines for Flare Payments detail payments to be made for flaring and/or venting natural gas in Nigeria.

According to the stipulated procedure for Flare Payment:

- The DPR shall collate and reconcile reported monthly oil production figures in OMLs and Marginal Fields;
- Producers are required to present the data gathered in accordance with the Guidelines on Flare Gas Monitoring;
- An average monthly oil production will be used to establish the applicable Flare Payment, taking into consideration only days during which oil was produced;
- The DPR shall validate the various elements that contribute to the determination of the Chargeable Flare Gas Quantity;
- The Flare Payment Amount shall be computed monthly as a product of the Chargeable Flare Gas Quantity in thousand standard cubic feet (Mscf) multiplied by the applicable Flare Payment rate;
- Flare Payment Amounts shall be paid by the Producer in accordance with the procedures for payment of royalties to the FGN under the Associated Gas-Reinjection Act; and
- Reporting shall be done as prescribed in the Flare Gas Regulations.

No Flare Payment Amounts shall become due in respect of an agreed volume of Flare Gas that the Producer is committed to deliver to the Permit Holder under a Deliver or Pay Agreement, as *from the commencement of commercial operations of the Project.*

Where a Producer fails to meet the obligations stipulated in the Flare Gas Regulations, additional payments shall apply. Also where the Producer fails to remit the Flare Payment Amount, it shall attract applicable sanctions as prescribed in the First Schedule to the Petroleum Act.

d) **Guidelines for Producers' Associated Gas Utilization Project**

The Guidelines for Producers' Associated Gas Utilization Project ("**Guidelines for Associated Gas Utilization**") set the framework for:

- Producers' Associated Gas Utilization Projects for Own Consumption; and
- Producers' Associated Gas Utilization Projects for Commercialization.

The Guidelines for Associated Gas Utilization apply to Producers seeking to execute flare out projects but want to be exempt from the bidding process for Third Party Flare Gas Commercialization Projects. Thus the Guidelines for Associated Gas Utilization lay out the procedure for obtaining a Permit to Access Flare Gas for Producers' Approved Flare Out Projects ("PAFOP"), which can only be issued to a Nigerian registered company.

Under the Guidelines, Associated Gas projects are categorized into:

- a. Own Consumption as incorporated into a Field Development Plan approved by the DPR; and
- b. Associated Gas and Flare Gas Utilization Projects for commercialization:

Key provisions in the Guidelines include:

- PAFOPs being exempt from the bid process;
- A Producer may apply to the Minister to obtain a Permit to Access Flare Gas for a PAFOP through a midstream subsidiary corporate entity;
- Any Producer wishing to apply for a PAFOP shall apply to the Minister and such application shall be supported by (i) Project description; (ii) 10-year Associated Gas Production Forecast and Flare Gas forecast Quantities; (iii) a list of Flare Gas-to-Market Product Off-Takers; (iv) Investment cost and proof of economic viability; (v) a list of shareholders in the existing/proposed midstream company that will execute PAFOP, among others;
- Upon meeting the set conditions precedent, the applicant shall be awarded a Permit to Access Flare Gas and become a Permit Holder pursuant to the Flare Gas Regulations.

Where an applicant is unable to satisfy the conditions precedent, the approved PAFOP Status earlier granted shall be deemed forfeited.

The Guidelines for Associated Gas Utilization provide that on the date upon which the Flare Gas Buyer declares start of commercial operations or the date upon which it starts delivering its Flare Gas-to-Market Product(s) to its Off-Taker(s), whichever comes earlier (Commercial Operations Date), the Milestone Bond shall be replaced by a performance Bond, which shall be valid for the term of the Permit to Access Flare Gas.



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***For a deeper discussion on the new DPR Guidelines, please contact Ms. Stella Duru (the Energy Practice Group, Banwo & Ighodalo).***

***The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo***

**DISCLAIMER:** This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. Specialist legal advice should be sought about the readers' specific circumstances when they arise.

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