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TEMPLARS ThoughtLab

Flaring, Venting and Monetisation: A Focus on Nigeria’s Midstream Gas Sector



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This Thought Leadership piece evaluates the Midstream Gas Flare Regulations¹ (issued by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “**Authority**”) pursuant to section 33 of the Petroleum Industry Act 2021 (the “**PIA**”). Targeted at the protection of the environment and the prevention of waste of natural resources, the Midstream Gas Flare Regulations (the (“**Flare Regulations**”) categorise flaring in midstream petroleum operations into 3 (three) classes and prescribe (i) the criteria for permissible flaring in each of these classes; and the (ii) penalties for non-compliance.

Categories Of Flaring

The categories of flaring outlined in the Flare Regulations are²:

- Safety flaring (expectedly for commissioning and start-up phases, pilot gas operations and relief devices).
- Continuous flaring when the plant or process unit is in operation.
- Non-continuous operational flaring on a planned or unplanned basis for scheduled maintenance, equipment shutdowns, and mechanical equipment failures.

Permission To Flare

In spite of the categorisation, permission must be sought from the Authority before the holder of a midstream licence or the holder of a Permit to Access Flare Gas may flare gas. To qualify for such permission, the applicant must provide valid justification. The permission will be for a specific period with prescribed flaring limits and the payment of prescribed fees³.

¹ 2023.

² Regulation 3 (a –c) of the Flare Regulations.

³ The prescribed fee for a permit to flare gas is N100,000 under Regulation 15 of the Flare Regulations and the Eighth Schedule of the proposed Petroleum Fees Regulations 2024.

Monetisation of Midstream Flare Gas

Instructively, the Authority is entitled to take gas at the flare in midstream petroleum operations free of charge or at a cost. The Authority may also license the re-purposing of such flare gas volumes.

An applicant who intends to re-purpose flare gas volumes will apply to the Authority for a Permit to Access Flare Gas which shall be valid for 1 (one) calendar year and renewable for a further term of 1 (one) year. A Permit to Access Flare Gas may be revoked in the following circumstances⁴:

- non-compliance with the terms and conditions of the permits;
- provision of false information during the permit application process;
- dissolution or bankruptcy of the permit holder; and
- any adverse impact on health, safety, the environment, or public interest related to the intended use of the permit.

As the monetisation of midstream flare gas becomes more attractive, we would expect the Authority to re-evaluate the duration of the Permit to Access Flare Gas, as a 1 (one) year period is too short a term to sustain the appetite of investors particularly if the applicant for the Permit to Access Flare Gas is a third party and not the producer of the midstream flare gas.

Statutory Limits for Midstream Flare Gas

The Authority determines the maximum number of major flaring events and the quantity of gas that can be flared by a person engaged in midstream operations. Accordingly, and prior to the issuance of a licence to operate ("LTO"), an applicant for an LTO is expected to engage the Authority to confirm what is allowable, in the context of flaring and venting, throughout the start-up and operational phases of the relevant facility.

Except during a declared national emergency, flaring or venting beyond the limits prescribed by the Authority shall be penalised by the Authority⁵.

Reporting Obligations: Daily, Quarterly and Annually

- **Flared and Vented Gas Logs:** The licensee of a midstream facility or the holder of a Permit to Access Flare Gas must keep a daily log of the occurrences of flaring and venting and submit it to the Authority within 21 (twenty-one) days following the end of each month⁶. Metering equipment should be installed to provide data on vented and flared gas logs, including the relevant date, time, duration, and quantities. The logs must be kept for at least 36 (thirty-six) months and must comply with the metering and data collection standards set by the Authority⁷.
- **Quarterly and Annual Reporting⁸:** The licensee of a midstream facility is required to submit, in respect of each midstream facility, a quarterly report within 21 (twenty-one) days following the end of each quarter, and an annual report to

⁴ Regulation 5 of the Flare Regulations.

⁵ Regulation 8 (4) of the Flare Regulations.

⁶ Regulation 9(1) of the Flare Regulations.

⁷ Regulation 9 (2 – 4) and Regulation 11 of the Flare Regulations.

⁸ Regulation 10 of the Flare Regulations.

the Authority each year by 31st March for the preceding year. The report is expected to include utilized and re-purposed flare gas, and the flared quantities.

The Flare Regulations are designed to foster investment in gas utilisation projects and infrastructure development. The focus on meticulous reporting and accountability underscores the commitment to environmental stewardship and operational transparency. However, it is not immediately clear if the holders of the Permit to Access Flare Gas are required to comply with the quarterly and annual reporting obligations as the definitions of '**licensee**' of a midstream facility and the '**holder**' of a Permit to Access Flare Gas are not synonymous under the Flare Regulations.

The Graduated Penalties Rule

Venting or flaring beyond the prescribed limit per facility attracts a penalty which is applied on a graduated basis.

- **The US\$0.50 per 1MSCF Penalty⁹:** If the venting and or flaring exceed the prescribed limit by not more than 1MMSCF, the licensee of the midstream facility shall be liable to pay US\$0.50 per 1MSCF of gas flared or vented beyond the prescribed limit.
- **The US\$1.00 per 1MSCF Penalty¹⁰:** If the venting and or flaring exceed the prescribed limit by more than 1MMSCF but less than 10MMSCF, the licensee of the midstream facility shall be liable to pay US\$1.00 per 1MSCF of gas flared or vented beyond the prescribed limit.
- **The US\$1.50 per 1 MSCF Penalty¹¹:** If the venting and or flaring exceed the prescribed limit by more than 10MMSCF, the licensee of the midstream facility shall be liable to pay US\$1.50 per 1MSCF of gas flared or vented beyond the prescribed limit.

By imposing a graduated scale, it is obvious that the Authority is seeking to incentivise the adoption of efficient gas management techniques. Interestingly, the graduated penalty scale is limited to licensees of midstream facilities as the Flare Regulations are silent on the penalties applicable to holders of Permits to Access Flare Gas.

Other Consequences of Non-Compliance with the Flare Regulations

In addition to the penalty, any incidence of non-compliance with the Flare Regulations may result in a penalty of up to US\$100,000 (One Hundred Thousand United States Dollars). Such violations could also lead to the suspension, cancellation, or termination of the relevant permit, licence, or authorisation¹².

All penalty demand orders issued by the Authority must be paid within 14 (fourteen) days from the date of issuance. Failure to comply within this timeframe will incur **a daily surcharge penalty of 20% (twenty percent)**¹³.

⁹ Regulation 13(1) of the Flare Regulations.

¹⁰ Regulation 13(2) of the Flare Regulations.

¹¹ Regulation 13(3) of the Flare Regulations.

¹² Regulation 14(1) of the Flare Regulations.

¹³ Regulation 14(2) of the Flare Regulations.

Funding of the Midstream and Downstream Gas Infrastructure Fund

All midstream flare gas penalties are to be remitted to the Midstream and Downstream Gas Infrastructure Fund and shall be utilised for the development of midstream and downstream gas infrastructure projects within the host community of the facility responsible for the flaring and or venting¹⁴.

Conclusion

Gas flaring and venting have plagued the domestic market and the environment for eons due to (i) the dearth of regulations that disincentivise flaring; and (ii) the absence of a robust and implementable program for the monetisation of midstream flare gas. As such, flaring and venting of gas continue to contribute to environmental degradation, exacerbate climate change, and waste valuable energy resources.

Admirably, the Flare Regulations represent a pivotal advancement by the Authority within the regulatory landscape by institutionalising permissible grounds and limits for gas flaring and venting, and a framework for enhanced monitoring, accountability, and enforcement with a view to **significantly curtailing gas flaring and venting**. The Flare Regulations, not only tighten restrictions on gas flaring and venting, but also demand behavioural re-orientation through the adoption of sustainable practices.

¹⁴ Regulation 13(4) of the Flare Regulations.