

## COMMERCIALIZING FLARED GAS IN NIGERIA – PART 2

### Introduction

Following the launch of the Nigerian Gas Flare Commercialization Programme (NGFCP) and the Flare Gas (Prevention of Waste and Pollution) Regulations 2018 (the Regulations) issued by the Minister of Petroleum (the Minister), the Department of Petroleum Resources (DPR) on 27<sup>th</sup> December, 2018, issued Guidelines for the implementation of the NGFCP. The Guidelines include:

- 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.

This article will undertake a concise review of the Regulation and Guidelines, with focus on the salient provisions and the impact of its implementation on Upstream Producers.

### Overview of The Guidelines

1. Guidelines for Grant of Permit to Access Flare Gas (Permit Guidelines)

This sets out the competitive bidding process, which the Federal Government of Nigeria is required to undertake for the issuance of a Permit to Access Flare Gas (the Permit) to successful bidders. Also, the Permit Guidelines provide the rights and obligations of a Permit Holder some of which are summarized below.

#### 1.1 Permit to Access Flare Gas (the Permit)

A Permit Holder is authorized to exclusively offtake such quantities of flare gas at one or more flare sites,



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for utilization in an approved flare gas commercialization project. It should be noted, however, that the Permit will only be issued to an entity that is not a holder of an OML or an allottee of Marginal Field as one of the key objectives of the NGFCP is to establish a new class of stakeholders for the growth of the Gas Sector (Paragraph 8 (3) of the Regulations). Notwithstanding, Upstream companies interested in participating in the NGFCP may apply for the Permit and participate in the programme through an existing or incorporated for purpose mid-stream entity.

The Permit is transferable subject to the prior written approval of the DPR provided that the transferee satisfies the minimum technical and financial requirements to become a Qualified Applicant in a Bid Process and assumes all obligations of the Permit Holder (Paragraph 10 of the Regulations).

#### 1.2 Obligations of Permit Holders

- i. It is the responsibility of the Permit Holder to design and construct at its own cost, the Producer’s Gas Connection Assets (i.e. the required facilities to transport the flare gas from

the flare gas connection point to the delivery point, including the pipeline, equipment, machinery, measuring station, all other assets and facilities). The Permit Holder is required to transfer title, care and custody of the Producer's Gas Connection Assets to the Upstream Producer upon commencement of commercial operations by the Permit Holder (Section 8.2 of the Permit Guidelines).

The rationale for this provision is unclear and more clarity on this should be provided by the DPR, as this may have an adverse impact on the ability of the successful bidders to raise financing for their project. Until such clarity is provided by the DPR, interested participants should take cognizance of this obligation and the potential commercial ramifications.

- ii. The Permit Holder is also required to manage community relations with respect to its operations in line with the Community Development Plan to be signed with local communities in the vicinity of the project facilities (Section 11 of the Permit Guidelines).
- iii. A Permit Holder is prohibited from engaging in any routine flaring or venting of natural gas, excluding any safety flaring or non-routine flaring, which nevertheless should be minimized (Section 9.2 of the Permit Guidelines). This is in line with the objectives of the NGFCP, which is aimed at eliminating gas flaring through flare gas utilization projects.

## 2. Guidelines for Flare Gas Measurement, Data Management and Reporting Obligations (Flare Gas Management Guidelines)

This sets out the criteria, general requirements, data management and reporting obligations of Upstream Producers and Permit Holders, to ensure compliance with the provisions of the Regulations. A key success factor for the flare gas commercialization is strict adherence to the measurement, management and reporting obligations with respect to flare gas (Sections 2, 4 & 5 of the Flare Gas Management Guidelines).

### 2.1 Obligations of Upstream Producers and Permit Holders

- i. Provide information with respect to flare gas data to the DPR within 30 days of such request by DPR and on an annual basis, to be submitted by March 31st each year;
- ii. Maintain daily flare gas logs within their respective facilities and daily records of associated gas produced by an Upstream Producer, on a field-by-field basis;
- iii. Quarterly and annual reconciliations of all data on gas production, utilization and flaring, with the DPR;
- iv. Installation of metering equipment to be calibrated in accordance with the Metering and Data Collection Standards in the Flare Gas Management Guidelines.

### 2.2 Transition Period

For the purpose of installation of the metering equipment, the Flare Gas Management Guidelines provides for a twenty-four (24) month transition period, commencing from the date of the guidelines, for Upstream Producers to comply with the provisions of the metering obligations (Section 3.9 of the Flare Gas Management Guidelines).

## 3. Guidelines for Flare Payments (Flare Payment Guidelines)

The Flare Payment Guidelines stipulates the accounting procedure for determining flare payments to be made by Upstream Producers for flaring and/or venting of natural gas. The guidelines also provide for detailed accounting procedures for the calculation of Flare Gas quantities, which will be used as the basis for calculating flare payments during the twenty-four (24) month transition period and post-transition Period (Section 3 of the Flare Payment Guidelines).

## 4. Guidelines for Producer's Associated Gas Utilization Projects (Producer's Utilization Guidelines)

The Producer's Utilization Guidelines set the framework for utilization of flare gas for consumption purposes or commercialization by

Upstream Producers. An Upstream Producer may utilize flare gas under the following categories:

i. Associated Gas Utilization Projects for Own Consumption:

An Upstream Producer may continue to utilize associated gas required for its operations such as upstream fuel or re-injection free of charge, provided that such utilization does not affect any flare gas volumes being offered in the bid process or assigned to a Permit Holder (Paragraph 3 (3) of the Regulations & Section 4 of the Producer’s Utilization Guidelines).

ii. Associated Gas Utilization Projects for Commercialization:

An Upstream Producer may continue to utilize associated gas for gas utilization projects with existing offtake commitments prior to the effective date of the Regulations. Such projects are exempted from the bid process subject to pre-conditions provided in the Producer’s Utilization Guidelines, including that these projects shall be part of a field development plan approved by the DPR and shall have achieved commercial operations prior to year 2020 (Section 5.3 (b) of the Producer’s Utilization Guidelines).

iii. Third Party Gas Commercialization Project:

An application to utilize flare gas may be made to the Minister by an Upstream Producer on behalf of a midstream subsidiary or related entity. Such application for flare gas will be subject to a bid process and shall exclude any flare gas volumes already offered in a bid process or assigned to a Permit Holder (Paragraph 3 (2) of the Regulations).

iv. Producers’ Approved Flare Out Project (PAFOP):

A PAFOP is a flare gas commercialization project intended to be developed by an Upstream Producer, which is not operating commercially but satisfies the criteria as validated and approved by the DPR in the Regulations (Paragraph 14 (a) & 24 of the Regulations). For such projects, the Upstream Producer is required to obtain a Permit from the Minister through a midstream subsidiary entity. However, it will be exempted from the bid process (Section 3 & 4.2 of the Producer’s Utilization Guidelines).

**Impact of Guidelines on The Operations of Upstream Producers**

The implementation of the Regulations and Guidelines present new obligations and opportunities for Upstream Producers:

**Figure 1: Summary of Impact on the Operations of Upstream Producers**

 <p>Prohibition of Gas Flaring in Greenfield Project</p>	 <p>Increased Gas Flaring Fees based on level of production within an OML/Marginal Field</p>	 <p>Penalties for Non-Compliance</p>	 <p>Incentives in form of fees payable by Permit Holders</p>
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i. Prohibition of Gas Flaring

An Upstream Producer is prohibited from flaring gas from any of its facility except it obtains a Certificate for Continued Flaring issued by the Minister in accordance with the provisions of the Associated Gas Reinjection Act (AGRA) 1997. An absolute restriction is imposed on routine flaring (excluding any safety flaring) from any Greenfield Project. (Paragraph 12 (3) of the Regulations & Section 6 of the Producer’s Utilization Guidelines). The prohibition of gas flaring in greenfield projects, creates a clear distinction between greenfield and brown-field projects, unlike the AGRA, which makes no such distinction in the eligibility for a Certificate for Continued Flaring.

ii. Increase in Gas Flaring Penalties

The Regulations provide gas flaring penalty rates based on the level of production within an OML or Marginal Field, irrespective of whether there is routine or non-routine flaring unless such flaring is as a result of an incident (such as acts of war, community disturbance or natural phenomenon) beyond the reasonable control of the Upstream Producer (Paragraph 13 of the Regulations).

iii. Other Penalties

Failure to maintain and provide accurate records of flare gas, comply with reporting obligations or install metering equipment, or provide a Qualified Applicant or Permit Holder with access to a flare site or flare gas, will attract an additional penalty payment of \$2.50 per 28.317 standard cubic metre for gas flared/vented, for each day of non-compliance.; and in the event of a continued non-compliance, the Minister may suspend the Upstream Producer’s operations or revoke its OML or Marginal Field award (Paragraph 21 of the Regulations; Section 5.1 of the Flare Payments Guidelines & Section 6.1 of the Guidelines for the Flare Gas Management Guidelines).

iv. Incentives for Upstream Producers

An Upstream Producer whose OML/Marginal Field is subject to Permit to Access Flare Gas shall be entitled to certain payments from a Permit Holder such as Handling Fee for connection facilities and a Guarantee fee to guarantee offtake of its allocated flare gas volumes (Paragraph 11 of the Regulations). This creates an additional revenue stream for Upstream Producers.

**Figure 2: Gas Flaring Penalties**

Level of Production (per day)	Fees (per 28.317 standard cubic metre) (\$)
10,000 barrels or more	\$2.00
Less than 10,000 barrels	\$0.50

**Key Considerations for New Market Entrants**

In participating in the NGFCP, potential bidders should take into account the factors below in assessing the commercial viability of their proposed flare gas utilization project:

i. Project Implementation Costs

In addition to other financial and security arrangements to be provided during the bid process, there are other additional fees payable by the Permit

Holder in the course of implementing a gas utilization project. These include:

- a. Handling Fee, a fixed monthly fee calculated based on the contracted flare gas quantity under the Gas Sale Agreement;
- b. Guarantee Fee, payable to the Upstream Producer under the Deliver or Pay Agreement (where applicable), for the guaranteed volumes of flare gas to be provided by the Upstream Producer; and

c. Community Development Fund Payment, payable to the Community Development Fund to fund local initiatives.

ii. End-User Gas Price

Given the costs associated with the flare gas utilization projects, it is imperative that the Permit Holders are able to competitively sell their preferred end-products to their chosen markets. Given the local pricing regime and the involvement of the Minister in setting price caps for gas supplied to certain industries, it is important for potential participants to conduct thorough market research for their proposed projects to ensure that there is guaranteed offtake and there are no end-user pricing restrictions on supply to their proposed off-takers.

**Conclusion**

The creation of an effective regulatory framework for the Gas Sector is a key component of Nigeria’s efforts to boost economic growth in the non-oil sectors of the economy. Effective administration and enforcement of the Regulations and Guidelines will stimulate economic growth and drive investments in the gas sector, while significantly reducing gas flaring. However, further



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clarity is required with respect to the rationale for the transfer of title to gas connection assets, designed and constructed by the Permit Holder to the Upstream Producer as this will certainly affect the commercial viability of any flare gas utilisation project. Notwithstanding, the new regulatory framework is a right step towards the attainment of sustainable progress within the Gas Sector.

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