

The Legal Framework for Natural Gas Utilisation in Nigeria

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INTRODUCTION-

“Gas Utilisation”

“Gas – to – Power” / “Wellhead-to-Wire”

- Convergence of Natural Gas & Power

Statutory acknowledgement of the Convergence

- Definition of “Gas Utilisation”

Finance (Miscellaneous Taxation Provisions) Decree No. 18,
1998 - New S.28G (3) CITA

“The marketing and distribution of Natural Gas for commercial purpose and includes Power Generation and Liquefied Natural Gas”

OWNERSHIP

Ownership of Natural Gas is vested in the State

- S.44(3) Constitution of the Federal Republic of Nigeria 1999

- S.1 Petroleum Act Cap 350, LFN 1990

- Exclusive Legislative powers in respect of matters listed in Part 1, Second Schedule of the 1999 Constitution vested in the National Assembly

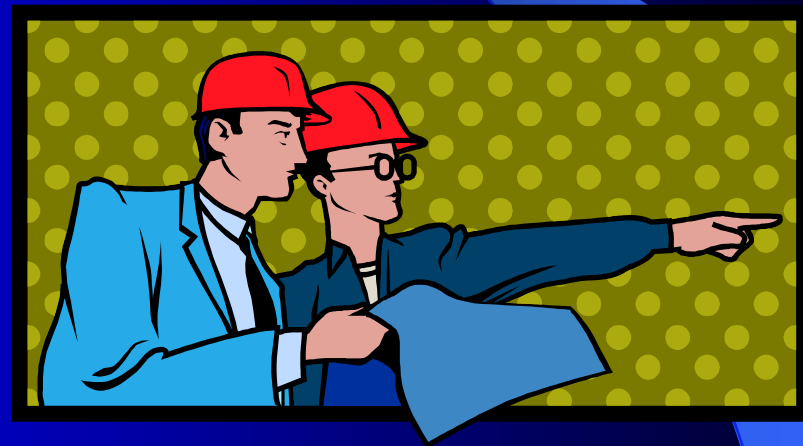
- Natural Gas expressly listed at item 39

NATURAL GAS PRODUCTION

No gas-specific concessions granted for gas production.

Natural Gas Production carried out under:

- Production Sharing Contracts
- Oil Mining Leases



FACILITY INSTALLATION & OPERATION

Construction and Operation of Gas Plants including LNG, NGL, Gas Processing, Gas Treatment and Fertiliser Plants

- DPR “Guidelines for the Establishment of Petroleum Refinery, Petrochemicals and Gas Processing Plants in Nigeria”
- Regulations 2 and 3, Petroleum Refining Regulations

GAS FLARING

Mandatory Utilisation
of Associated Gas

- Regulation 42
Petroleum (Drilling &
Production) Regulations
- Associated Gas Re-
Injection Act, Cap 26
LFN 1990

Flare Penalty

- S.3(2) Associated Gas Re-
Injection Act
- Flare-out Policy:
S.3(1) Associated Gas
Re-Injection Act
- 1st January 1984
- End 2008
- End 2004

PRICE REGULATION

Minister of Petroleum Resources granted Power to regulate price of Natural Gas Produced

Paragraph 34 (b)(ii) Schedule 1, Petroleum Act

Effect: Pricing inefficiencies

Illustration:

- i) Pricing battles between Producers, NGC & NEPA:
- ii) Project developers with no natural gas assets at mercy of Producers e.g. ALSCON

PRICE REGULATION (2)

Regulation more apparent in respect of Gas Sale to the Power Sector

- Power Tariffs: Political “Hot Potato”

- Energy Commission of Nigeria & National Council of Ministers

● Deregulation

Feedstock for industrial projects e.g. Fertiliser

As fuel to industry

LPG to Households

Export sales for GTLs, NGLs, LNG, Condensates, e.t.c.

GAS TRANSMISSION

(a) Oil Pipelines Act Cap 338 LFN 1990

-Provisions relating to oil also apply to gas in respect of Pipelines

-Licensing Regime for the Construction and Operation of Gas Pipelines

-Permit to Survey Pipeline Route

-Oil Pipeline Licence

(b) Oil & Gas Pipelines Regulations 1995

-detailed regulations for the design, construction & maintenance of Gas Pipelines.

GAS TRANSMISSION (2)

II Network Access

- No detailed access routes.

See S. 18 Oil Pipelines Act

- Access often negotiated direct with Pipeline owner

- Transmission Agreement (NGC, Producers, Enduser)

- Gas Supply Agreement (NGC & Producer)

THE FISCAL REGIME

Principal Legislation: Petroleum Profits
Tax Act (PPTA) Cap 338 LFN 1990

-65.75% during first 5 years of Production

-85% after 5 years upon amortisation of
pre-production expenses

THE FISCAL REGIME (2)

PPTA Rates a disincentive to gas utilisation, therefore introduction of the “Incentives Regime”.

- Associated Gas Fiscal Utilisation Incentives 1992 (AGUFI)

- Associated Gas Framework Agreement 1994 (AGFA)

- Project-Specific Legislation: LNG (FIGA) Decree, MOBIL OSO Condensate Project Decree

- Budget Speeches 1996-1999

THE FISCAL REGIME (3)

Current Regime for Gas Utilisation

- ~ Finance (Miscellaneous Taxations Provisions) Decree No. 18 1998
- ~ Finance (Miscellaneous Taxations Provisions) (No.2) Decree No.19 of 1998
- ~ Finance (Miscellaneous Taxation Provisions) Decree No. 30 of 1999

THE FISCAL REGIME (4)

Finance (Miscellaneous Taxation Provisions) Decree
No. 18 of 1998

- 3 year tax holiday renewable for further 2 years period
- Tax-free dividends during tax holiday
- Accelerated Capital Allowances for investment in Plant & Machinery
- VAT exemptions for Plant and equipment purchased for gas utilisation in downstream Petroleum operations

THE FISCAL REGIME (5)

- Investment for the separation of crude oil and gas into useable products shall be part of the oil field development
- CAPEX or transmission equipment shall be treated as part of oil CAPEX
- CAPEX and OPEX shall be treated under the PPPA & MOU incentives

THE FISCAL REGIME (6)

Finance (Misc Tax Prov.) (No.2) Decree No. 19 of 1998

-interest payable on any loan obtained for a gas project shall be a tax deductible if prior approval of the Minister of Finance is granted

Finance (Misc. Tax Prov.) Decree No. 30 of 1999

-Royalty and tax exemptions for gas transfer from NGL to GTL facilities

-CAPEX for GTL projects now allowable against crude oil income

-All incentives for Associated Gas Production now applicable to non-associated Gas

NATURAL GAS UTILISATION REGULATORY OVERSIGHT

Minister for Petroleum Resources granted powers to control and regulate activities in the Petroleum Sector

- Powers exercised largely by the DPR
- A regime of consents & approvals

The Federal Agencies involved in “Gas-to-Electricity” Projects:

- Ministry of Power and Steel
- Ministry of the Environment
- Ministry of Finance
- Nigerian Communications Commission
- Nigerian Investment Promotions Commission

CONCLUSION

“Wellhead-to-wire” concept recognised by Nigerian Law

QUAERE: Is the Legal Framework sound enough for the development of bankable “gas-to-electricity” Projects?

- No Energy and Natural Gas Policy
- Credit Risk/Default prevalent in Power sales
- Credit Risk/Default prevalent in Gas sale
- Both Sectors controlled by State-owned monopolies
- Pipeline Vandalisations

CONCLUSION (2)