
Gas Flaring in Nigeria: An overview of the Associated Gas Re-Injection (Amendment) Bill 2010 (the "Bill")



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INTRODUCTION

There are estimations that about 40% of Nigeria's gas is flared as it is produced; thus accounting for 12.5% of the world's flared gas second only to Russia.¹ Between 1970 and 2006, Nigeria lost about USD \$72 Billion (an average of USD\$2.5 Billion per annum) to Gas Flaring.²

Gas Flaring has been defined as the complex and un-scientific burning and emitting of excess hydrocarbons consisting of substantial amount of soot, carbon monoxide and green house gases associated with crude oil and gas production processes.³ It is the final phase of the production process where unwanted and unutilized quantities of oil and gas are flared directly into the atmosphere.⁴

The unutilized gas from this practice could be applied towards other productive purposes such as power generation and liquefied natural gas projects like the Nigeria Liquefied Natural Gas Project (NLNG). Other uses include gas re-injection processes to boost oil production, domestic cooking gas, gas to liquid projects, other production processes such as the manufacture of fertilizers and plastic products.

Over the years, the Federal Government of Nigeria has been in talks with the International Oil Companies ("IOCs")⁵ on ending this practice and exploiting same for industrialization purposes. In the same vein, Norway, a country whose oil and gas industry has been described

¹ World Bank, Partners Kick off New Phase, Renew Commitment to Gas Flaring Reduction available at <http://web.worldbank.org>. last assessed 6/05/2011

² Gas Flaring: Nigeria lost \$72billion by the Nigerian Gas Association at www.enownow.com/news/story.php?sno=412 last assessed 29/04/2011

³ Nwokezi John Ikoro: "The Socio Economic Implications of Gas Flaring in Nigeria"

⁴ Ibid

⁵ The IOCs engaged in oil and gas exploration.



as a saga of wise political decisions⁶ has effectively reduced gas flaring through effective regulatory measures.

This Newsletter presents an overview of the gas flaring regulatory regime in Nigeria with the focal point on the provisions of the Associated Gas Re-injection (Amendment) Bill, 2010 (the "Bill"). In addition, the Newsletter highlights the recent efforts by the IOCs to end gas flaring by 2012 and examines the Norwegian policies on gas flaring.

Gas Flaring in Nigeria

The gas flaring regime in Nigeria spans back to 1979, when pursuant to section 3 of the Associated Reinjection Act of 1979 (the "Act"),⁷ the Government of Nigeria made it illegal for any person or organization to engage in gas flaring practices. This illegality may be waived by a certificate of issuance from the Minister of Petroleum within the powers granted under the Act. The number of gas flaring sites in Nigeria has increased considerably as a result of this waiver of illegality.⁸

The Act has been amended several times with the common feature in the various amendments being the date to put an end to gas flaring in Nigeria. The Act set January 1, 1984 as the deadline to put an end to gas flaring. However the January 1, 1984 date has been reviewed a couple of times by subsequent amendments.

⁶ Norway's Petroleum history: <http://www.olf.no/en/Facts/Petroleum-history/> last assessed on 28/04/2011

⁷ Cap.A25 laws of the Federation of Nigeria, 2004 (the "Act")

⁸ Tunde Obadina: "Nigeria: Harnessing Abundant Gas Reserves"

The January 1, 1984 deadline was amended by the Associated Gas Re-Injection (Continued Flaring of Gas Regulations) 1984 and the Associated Gas Re-Injection (Amendment) Decree No. 7 of 1985 (the "Decree"). The Decree introduced permits by the Minister for continuation of gas flaring to Exploration & Production (E&P) companies with a proviso for the payment of paltry fines as penalty which to all effects was simply nominal. Further amendments were introduced up until the Associated Gas Re-Injection (Amendment) Bill, 2008 which fixed the deadline for December 31, 2008. Subsequently, the Gas Flaring (Prohibition and Punishment) Bill 2009 further pegged December 31, 2010 as the date to end the practice.

However, in January 2010, the Nigerian House of Representatives considered the report of its committees on Gas Resources and Justice on a Bill for an Act to amend the Associated Gas Re-injection Act, and accepted a new deadline pitched for December 31, 2012.

Highlights of the Bill

The Bill amongst other provisions sets December 2012 as the new deadline for gas flaring in Nigeria. It also provides for the grant of temporary gas flaring permits to operators⁹ and also imposes penalties for gas flaring. The major highlights of the Bill are discussed below.

December 2012 Deadline

The Bill prohibits companies engaged in the production of oil and gas from flaring gas after December 31, 2012 beyond the permitted

⁹ Companies involved in oil and gas production activities.



minimum.¹⁰ By this provision, oil producing companies in Nigeria have been granted yet another extension on the period within which to end the flaring of the excess hydro-carbons gathered in the course of oil and gas production flow.

Temporary Gas Flaring Permit

Section 3(2) (b) of the Bill permits the Minister to grant a temporary gas flaring permit to any company which seeks to continue to flare gas in particular field or fields on payment of the sum of \$5.00 per 1,000 standard cubic feet of gas flared with a processing fee of \$1,000. However, a temporary gas penalty is payable for any gas flared in excess of approved gas volumes during pre-commissioning and commissioning operations, equipment maintenance and operation upset.

This amendment is a welcome development and perhaps may be described as a step in the right direction when compared to the 1979 Act which allowed the Minister to permit gas flaring for a period of 30 days in the cases of start-up, equipment failure or shut down without having to pay for such gas flared. Furthermore, this is a departure from the Associated Gas Re-Injection (Amendment) Decree of 1985 which fixed a paltry fine of 2 Kobo (equivalent to US\$0.0009 in 1985) against the oil companies for each 1000 standard cubic feet (scf) of gas flared.

Gas Utilization Plan

While the 1979 Act required all Operators¹¹ to prepare programs for gas utilization or

¹⁰ S.3(1) of the Bill provides that *"No company engaged in the production of oil and gas shall after December 31, 2012 flare gas produced in association with Oil, other than such minimum allowed by the Minister by regulation"*.

¹¹ All companies involved in oil and gas production activities.

re-injection and strictly limited the grounds upon which flaring could be permitted, the Bill provides that no company without facilities for associated gas utilization shall be permitted to engage in oil production.

Thus the Bill seems to reaffirm the commitment of the Federal Government of Nigeria to ensure that the hitherto flared gas is put to productive use. This is a giant step towards ensuring the utilization of gas by IOCs which had previously cited the high cost of implementing gas utilization facilities as the reason for not complying with the set deadlines. Thus, enforcing the availability of gas utilization facilities by IOCs despite its huge cost, would further assure the government of its utilization.

Penalty for Gas Flaring

Similar to the provisions of the 1979 Act, the Bill prohibits all companies from engaging in gas flaring whether routine or continuous. Any company so involved shall be liable to a fine to be determined at the prevailing international gas market price and the applicable fine shall not be regarded as part of Production Sharing Contracts ("PSCs") or Joint Ventures ("JVs") obligations.¹²

The penalty provision of the Bill does nothing to resolve the ambiguity raised by previous legislations. The question of how to quantify the cost of gas in the international market still remains. However the provision to the effect that such fine shall not be counted as a part of the PSCs or JVs obligation is a landmark achievement for Nigeria. These results from the fact that the Nigerian government is extricated from liability for fines for gas flaring with respect

¹² S.4 of the Bill



to PSCs as well as JV Agreements entered into with the IOCs.

This issue of joint liability has accounted for the relatively low penalty which has been imposed over the years and has also influenced the adjustments in deadlines. However, with this provision, it is expected that the IOCs will comply with the 2012 deadline.

Reporting Gas Flaring

Companies are required to report all emergency gas flaring within 24 hours of occurrence, failure of which will attract a fine of US\$500,000.¹³ The Bill further provides that any company that declares an incorrect volume of flared gas shall be liable to a fine of US\$100,000 and must pay the difference of such wrongly declared volumes at the prevailing international gas market rate. This provision shall to a reasonable extent ensure honesty in the dealings of the companies with the regulatory agencies.

The December 2012 Deadline and Compliance Strategies by IOCs

The new 2012 deadline seems tenable in the light of the new provisions of the Bill. The IOCs are currently pursuing projects to end gas flaring in Nigeria.

In April 2011, Shell Petroleum Development Company of Nigeria Limited and Saipem Contracting Nigeria Limited signed an Agreement to construct a gas pipeline system worth US\$101 Million for the gathering of otherwise flared associated gas.¹⁴ On

completion, the project is expected to extend Associated Gas Gathering (AGG) coverage to more than 90% of the associated gas produced in the Joint Venture operations, while the remaining 10% is expected to be covered by Nigerian investors that would collect associated gas from flare sites for small-scale local projects.¹⁵

Also, Total Exploration and Production Nigeria Limited, a subsidiary of Total Group signed a Memorandum of Understanding (MOU) with stakeholder communities for the right of way of the strategic Obite, Ubeta and Rumuji (OUR) gas pipeline. It is expected that the MOU would comply with the Federal Government's gas flare out regulations, thereby helping to meet the growing demand for gas in Nigeria as well as supply gas feedstock to the NLNG. Other collaborations include that between Nigerian Agip Oil Company (NAOC) and Oando Nigeria Plc for the construction of a \$3 Billion Central Gas Processing Facility (CGPF) in Nigeria.

Gas Flaring: The Norwegian Experience

Gas Flaring in Norway has decreased considerably over the years. The country is highly regarded as a prime example for the proper management of gas resources. In 2001, Norway initiated a project led by the World Bank which introduced voluntary global standards for restricting gas flaring. The Norwegian energy policy has been able to merge its role as a large energy producer alongside developing pioneering position on environmental issues.¹⁶

¹³ S.4 (4) of the Bill

¹⁴ Bangudu, Oluwaseyi: The Struggle to End Gas Flaring. (www.234next.com)

¹⁵ Shell, Saipem seal \$101 Million pact on gas flare reduction available at www.valuefronteira.com

¹⁶ Regulation of Associated Gas Flaring and Venting: A Global Overview and Lessons from International Experience", the World Bank Report, No 3; October 2004



The Norwegian Petroleum Directorate is working closely with the World Bank and has contributed its experience to different projects, by assisting several developing countries in their work to limit gas flaring.¹⁷

It is against this background that we undertake a brief overview of the Norwegian gas flaring regime.

Gas Utilization Plans

Oil companies in Norway are required to lift, process and use associated gas in their operations. Accordingly, they are to submit a development plan with a provision for gas re-injection, gas export solution or other associated gas utilization schemes. In 2004, only 0.16% of the total annual associated gas from oil production was flared in Norway.¹⁸ Similar provisions have been adopted in Nigeria by the 2010 amendment which requires the availability of gas utilization facilities. It is hoped that in the nearest future the amount of gas flared would be of a negligible quantity.

Regulatory Agencies

In Norway a regulatory body called the Norwegian Petroleum Directorate (NPD) which is a part of the Ministry of Petroleum and Energy (MPE) supervises air emissions as well as petroleum activities and is responsible for energy efficiency and safety of installations and gas flaring and venting operations in Norway.

Gas Flaring Permits

The Petroleum Activities Act, No 72, 1996 of Norway provides for a very strict permission procedure. Section 4.4 of the Act provides that “flaring of petroleum in excess of the quantities needed for normal operational safety shall not be allowed unless approved by the Ministry. Upon application from the licensee, the Ministry shall stipulate, for fixed periods of time, the quantity which may be produced, injected or vented at all times.”

Applications for obtaining gas flaring permits are evaluated directly by the NPD and permits are issued by the MPE. As a part of the approval procedure, the NPD and MPE evaluate the flaring equipment and operating procedures. The application for obtaining permit must identify the type and level of the atmospheric emissions and technology applied to avoid or reduce environmental pollution. Emission limits are established on a case-by-case basis taking into consideration applicable national and regional standards.

These procedures are commendable and ensure a system of checks and balances in the industry and may be worthy of emulation in the Nigerian oil and gas industry.

Measuring and Reporting

Norway has effective measuring and reporting procedures which are carried out by both the government and the oil producing companies.

The Government through the NPD:

- supervises the internal control systems of oil companies to ensure that petroleum

¹⁷ Ibid

¹⁸ Gas Flaring: The Norwegian Experience, Official Report introduced by Norwegian Petroleum Directorate, , presented in Johannesburg Summit in August 2002



activities are carried out in accordance with the requirements of the law.

- audits the application of the equipment that measures the quantity of gas used for flaring and venting.
- obtains and evaluates reports, submitted by the oil companies.¹⁹

The oil companies on the other hand:

- are to establish internal control systems for ensuring compliance, such as obligation to check sensor calibration every six months.
- are required to keep an emissions inventory which is to be submitted to NPD before March 1 of each year.
- have to submit a Report to the State authorities, indicating the amount of gas flared daily.
- have to report volumes of the flared gas for tax purposes every six months²⁰.

In Nigeria, while the oil companies are to report every case of emergency gas flaring as a result of equipment failure, there appears to be no obligations on regulatory bodies towards enforcing their regulatory roles.

Editorial

The Bill commendably addressed the major issues which had hitherto been relied upon as a justification by oil and gas companies for their failure to adhere to previous deadlines to end gas flaring. However, a key factor to Nigeria's goal of ending gas flaring is the enforcement of legislations on this subject.

The Norwegian experience is suitable for countries undergoing gas flaring reforms to adopt. It is therefore hoped that Nigeria would extract lessons from the Norwegian gas flare regime, particularly, with respect to the measuring and reporting mechanisms as well as ensuring the enforcement of applicable legislation by the regulatory agencies.

If properly implemented, there is no doubt that the 2010 amendment is a commendable effort in view of the economic and environmental impact of gas flaring on the Nation. While there remains several mechanisms towards ensuring a near total elimination of gas flaring in Nigeria particularly by taking lessons from the gas flaring regimes of other jurisdictions, it is anticipated that the 2012 deadline would result in a significant reduction in the amount of gas flared by IOCs in Nigeria.

¹⁹ Ibid

²⁰ Ibid



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