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PETROLEUM INDUSTRY ACT, NO. 6, 2021
GAS PRICING AND DOMESTIC DEMAND REGULATIONS, 2023

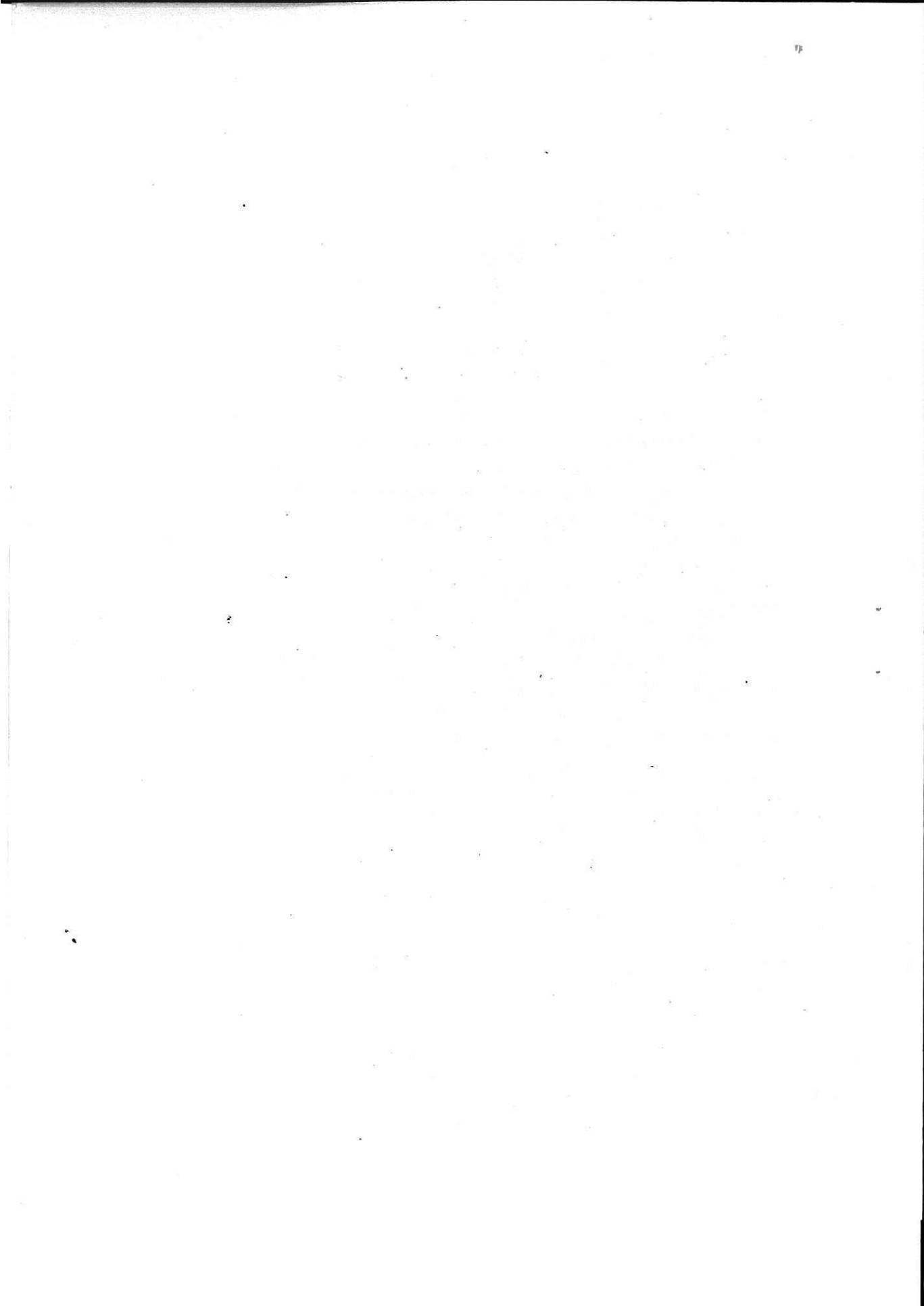


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SCHEDULES



S. I. No. 7 of 2022

PETROLEUM INDUSTRY ACT, NO. 6, 2021

GAS PRICING AND DOMESTIC DEMAND REGULATIONS, 2023

[9th Day of February, 2023]

Commence-
ment.

In exercise of the powers conferred on it by section 33 of the Petroleum Industry Act, No. 6, 2021 ("the Act") and all other powers enabling it in that behalf, the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("the Authority") make the following Regulations —

1.—(1) The objectives of these Regulations are to —

Objectives.

(a) regulate the prices of marketable natural gas of the strategic sectors under the Act ; and

(b) identify the unregulated markets and make provisions for such market.

2. These Regulations apply to regulated and unregulated gas prices of the strategic sectors.

Application.

3.—(1) The Authority shall by notice publish on its website or any other means, the quality specifications of marketable natural gas.

Quality
specifications
of
marketable
natural gas

(2) Where the Authority intends to change the quality specifications, it shall publish the change not later than six months prior to the implementation of the change.

(3) Where the quality specifications of natural gas are changed by the Authority, existing gas purchase and sales contracts or other firm delivery commitments of marketable natural gas, shall be adjusted to the new specifications within a timeframe specified by the Authority.

(4) Where a gas transportation pipeline is for own use, but subjected to third party access, the agreed parameters of the gas specification shall be reported to the Authority for approval.

4.—(1) For the purpose of implementing the provisions of section 167 of the Act, the Authority shall, by notice in the Federal Government Gazette, publish the list of industries constituting the strategic sectors, provided that —

Determination
of the
strategic
sectors.

(a) the power sector shall not include mini-grids that are self-contained and disconnected from the National grid and serve rural or other communities based primarily on renewable power, but in some cases, may have fossil fuels as backup power ;

(b) the power sector shall not include captive and embedded power plants used exclusively for electricity generation for a single user, unless such user qualify under subregulation 4(d) of this regulation as commercial sector ;

(c) the gas based industries included in the strategic sectors shall be the industries listed in the Fourth Schedule to the Act and such other gas based industries as the Authority may from time to time include in the Fourth Schedule pursuant to the provisions of section 168 (5) of the Act ;

(d) the commercial sector included in the strategic sector shall consist of industrial and commercial activities which utilise gas as energy source and are energy intensive ; and

(e) a customer company listed in the strategic sector for which export marketed volume exceed the domestic marketed volume, shall not be subject to domestic regulated price.

(2) A wholesale customer who is not included in the list of industries comprising the strategic sectors, but who in accordance with these Regulations is of the view that it qualifies to be included in the list, may apply to the Authority for such inclusion.

(3) The Authority shall consider an application under subregulation (2) of this regulation and convey its decision to the applicant within 90 days of such application, and the Authority's decision shall be final.

Annual
publication
of the
domestic gas
demand
requirements.

5.—(1) The Authority shall on or before 1st March of each calendar year determine and publish the domestic gas demand requirements, in accordance with the First Schedule to these Regulations.

(2) A producer may sell raw gas at the measurement point on a free market basis, provided the producer notifies the Commission and the Authority of the respective volumes and prices upon the completion of such sales.

(3) The volumes to be sold in the strategic sector shall be classified as regulated and unregulated.

(4) The regulated domestic market applies to the wholesale customers of the strategic sectors, who elect to be customers of the domestic gas aggregator and use the escrow mechanism subject to the provisions of section 167(7) of the Act.

(5) The unregulated volumes shall be in accordance with sections 102(2) and (4), and 173(3) of the Act.

(6) The size of the regulated and unregulated domestic market related to the strategic sectors shall be equal to the domestic gas demand requirement pursuant to section 173(2) of the Act, and the Authority shall accordingly inform the Commission of such demand pursuant to section 173(1) of the Act.

(7) In addition to any reporting obligations under the Act and these Regulations, producers, wholesale suppliers, gas distributors, gas retailers and wholesale customers of marketable natural gas shall, prior to 1st February of the following year, notify the Authority of the volumes sold and prices applied to the preceding year based on guidelines established by the Authority.

6.—(1) The Authority shall, prior to 1st February of each calendar year, collate information on available spare capacity of all gas conditioning plants, gas processing plants, gas transportation pipelines and gas transportation networks as of 31st December of the preceding year, and inform the Commission accordingly.

Spare capacity of supporting infrastructure.

(2) The Authority shall inform the Commission of anticipated spare capacity on or before 31st December of the current year and make a rolling forecast of anticipated spare capacity for the subsequent five calendar years based on anticipated investments, in order to expand or create new capacity related to gas conditioning plants, gas processing plants, gas transportation pipelines and gas transportation networks under expansion or construction, or approved for expansion or construction by the Authority.

7.—(1) The pricing classification for natural gas markets in Nigeria shall be in accordance with the Second Schedule to these Regulations.

Gas pricing classification.

(2) Regulated prices shall only relate to marketable natural gas sold in the regulated domestic market as provided for under regulation 5(3) of these Regulations.

(3) Sales of raw gas by a producer or licensee of a gas conditioning plant, shall be at unregulated prices and shall be either free market prices or transfer prices.

(4) Unregulated prices for marketable natural gas shall include free market prices and transfer prices.

(5) Unregulated free market prices for marketable natural gas shall apply to —

- (a) sales to wholesale customers of the strategic sectors who are not customers of the domestic gas aggregator ;
- (b) wholesale customers of sectors, other than the strategic sectors ;
- (c) independent gas retailers ;
- (d) gas distributors ;
- (e) exporters ;
- (f) lessees ; and
- (g) wholesale gas suppliers.

8.—(1) The domestic base price shall be based on export parity price, and any adjustment to the price shall be based on energy content in the gas, provided that producers may supply the domestic market at lower prices.

Domestic base price.

(2) The domestic base price shall be determined by the Authority on 1st April of each year and shall be the lower of the —

- (a) export parity price ; or
- (b) domestic gas supply price.

(3) On or before 1st March of each year, all producers selling natural gas to the export market shall report to the Authority —

- (a) their average export parity price for the previous year ; and
- (b) information on the export parity price, which shall be the applicable export parity price where marketable natural gas is exported by such producers rather than raw gas, including the quality specifications published by the Authority.

(4) On or before 1st March of each calendar year, the Authority shall determine the gas transport and processing allowance.

(5) Transport and processing allowance shall consist of —

- (a) transport tariff for the distance over which raw gas is typically transported to a gas processing plant ; and
- (b) the processing tariff for a median capacity sized gas processing plant processing natural gas aimed solely at the domestic market.

(6) Pending the determination of specific allowance by the Authority, USD\$0.15 per MMBtu shall be the applicable transport tariff.

(7) On or before 15th March of each calendar year, the Commission shall inform the Authority of the domestic gas supply price.

(8) Pursuant to regulation 8(2) of these Regulations, the Authority shall determine the domestic base price, which shall apply from 1st April of each year until 31st March of the following year to all marketable gas delivery points.

(9) The wholesale price for the strategic sectors based on domestic base price shall not be higher than the average international gas price in accordance with this regulation and the Second Schedule to these Regulations, unless the related conditions under Paragraph (1) of the Third Schedule to the Act apply.

Average
international
gas price.

9.—(1) The Authority shall determine and publish the average international gas price annually, which shall not be higher than the domestic base price.

(2) The average international gas price shall be based on the arithmetic average of similar natural gas prices in major emerging countries that are significant producers of natural gas.

(3) The Authority may by notice publish the list of countries used in the determination of average international gas price.

(4) The Authority shall, prior to 1st February of each calendar year, determine the latest applicable gas prices in the respective countries.

Feed gas
prices.

10.—(1) The Authority shall determine the applicable natural gas prices for gas based industry on a monthly basis, based on the average month end product prices for the current month in order to determine the price levels applicable for payments during subsequent month, as provided for in the Fourth Schedule to the Act.

(2) A licensee of a gas based industry shall provide the Authority with information as the Authority may require from time to time in order to determine the feed gas prices.

11.—(1) Prior to 15th March of every year, a gas aggregator shall obtain from the Commission the domestic gas delivery obligation volumes allocated to gas producers.

Domestic
gas
aggregation.

(2) The Authority shall notify a domestic gas aggregator of the domestic gas demand requirement for the strategic sectors pursuant to regulation 5(3) of these Regulations.

(3) The volumes reported by the Authority pursuant to the Third Schedule to the Act and under sub-regulation (2) of this regulation shall correspond, subject to any adjustments arising from failure to —

- (a) supply under section 110(10) of the Act ; and
- (b) engage in wholesale purchase of marketable gas reported pursuant to subregulation (2) of this regulation.

(4) Where the volumes reported by the Commission and Authority do not correspond, the domestic gas aggregator shall report back to the Commission and the Authority, the possible discrepancies, and where necessary, the Commission or the Authority or both, shall adjust the volumes in order to finalise the domestic gas delivery obligation to be managed by the domestic gas aggregator.

(5) Where the volume of the allocated domestic gas delivery obligation is less than the domestic gas demand requirement due to insufficient voluntary supplies, the domestic gas aggregator shall develop and apply the curtailment scheme as approved by the Authority pursuant to section 154 (c) of the Act, to the requirements of wholesale customers in order for the volumes to correspond and advise the respective wholesale customers to enter into agreements with producers on a free market basis.

(6) The Authority shall upon approval of an application and payment of prescribed fees, grant and issue a qualified person a domestic gas aggregation licence, which shall be valid for a period of two years, effective from the date of the grant of the licence.

(7) A wholesale customer who wishes to be a client of a domestic gas aggregator and who has reported the required volumes under the domestic gas demand requirement to the Authority, shall propose such volumes with the domestic gas aggregator and apply for the corresponding gas purchase order.

(8) Upon receipt of an application, a domestic gas aggregator shall conduct due diligence on a wholesale customer, to determine its ability to engage in the wholesale purchase of marketable natural gas.

(9) Upon satisfactory due diligence, a domestic gas aggregator shall issue the gas purchase order to a wholesale customer.

(10) A gas purchase order shall specify —

(a) the lessee expected to supply the required natural gas ;

(b) the quantity and quality of marketable natural gas to be supplied to a wholesale customer ;

(c) the price payable by the wholesale customer based on sections 167 and 168 of the Act at the marketable gas delivery point ;

(d) the location for the delivery of the natural gas pursuant to section 110(7) of the Act,

(e) the delivery schedule ; and

(f) such other details as may be determined by the domestic gas aggregator.

(11) Where the location referred to in subregulation 10(d) of this regulation is different from the marketable gas delivery point, the wholesale customer shall be responsible for the applicable transport tariff from the marketable gas delivery point to such location.

(12) The issuance of a gas purchase order by a domestic gas aggregator shall be sufficient evidence that quantity of gas has been allocated to the wholesale customer pursuant to the domestic market demand requirement.

(13) A domestic gas aggregator shall allocate gas purchase orders in the same sequence as indicated by the Authority under regulation 10(1) of these Regulations, provided that the domestic gas aggregator may make such modifications as required in order to ensure that each producer provides all the required volumes of one or more wholesale customers.

(14) Upon the issuance of the gas purchase order to a producer, the producer and wholesale customer may enter into a gas purchase and sale agreement pursuant to section 156 of the Act, provided that where the parties intend to continue to make use of the escrow account mechanism under section 154(g) of the Act, the parties shall continue to adhere to the —

(a) aggregated prices determined by the domestic gas aggregator based on Domestic Based Price ; and

(b) wholesale prices determined by the Authority on a yearly basis for the power and commercial sector, and on monthly basis for the gas based industries.

(15) Where a producer and wholesale customer enter into a gas purchase and sale agreement, or other agreement prior to the effective date of the Act, and such agreement continues, the domestic gas aggregator shall send an adjustment to the earlier gas purchase order, in order to adjust the order to the provisions of the Act.

(16) Where a producer and wholesale customer, after having been allocated the gas purchase order by the domestic gas aggregator, decide to discontinue the use of the escrow account mechanism under section 154(g) of the Act and enter into an agreement pursuant to section 110(2) of the Act, the producer and wholesale customer shall inform the domestic gas aggregator, the Commission and the Authority, and the related gas volumes shall no longer be part of the regulated domestic market and the parties shall no longer be client of the domestic gas aggregator.

12. A domestic gas aggregator shall inform a producer of the aggregate gas price determined by the domestic gas aggregator pursuant to the aggregate of the volumes delivered to the power and commercial sectors, and gas based industries.

Aggregate
gas price.

13.—(1) A person shall not supply natural gas to retail gas customers without a gas retail licence or a gas distribution licence.

Gas pricing
for retail gas
customers.

(2) Prior to the commencement of these Regulations, a person supplying natural gas to one or more retail gas customers without a licence shall, within 90 days of the commencement of these Regulations, apply to the Authority for the applicable licence.

(3) The Authority shall ensure customer protection, and prevent anti-competitive behaviour and discriminatory conduct with respect to prices charged, services provided, and tariffs applied to retail gas customers by gas distributors.

(4) A gas distributor shall within 90 days from the commencement of these Regulations submit to the Authority information necessary for the review of the prices charged, services provided, and tariffs applied by such gas distributor.

(5) The Authority shall within one year from the effective date of these Regulations, determine with respect to each gas distributor, whether the prices charged, services provided, and tariffs applied comply with the provisions of subregulation (3) of this regulation and where such prices, services or tariffs do not comply, the Authority shall order the gas distributor to make such adjustments as required by the Authority.

14.—(1) The Authority shall, in determining whether a free market has been achieved for the power sector, commercial sector or gas based industries, make a decision based on the following —

Adoption of
free market
conditions.

(a) whether the respective sector is largely unregulated pursuant to the information contained in the information supplied pursuant to regulation 4(1) of these Regulations ;

(b) whether gas delivery by pipelines or trucks are adequate to ensure liquidity and that no monopoly or cartels are significant in the market ;

- (c) the existence of trading platform approved by the Authority to publish prices from time to time ;
- (d) the availability of key delivery infrastructure and observance of third-party access rules ; and
- (e) the existence of bilateral and over-the-counter trading, balancing rules and standardised trading contracts.

(2) Where the Authority determines that a free market status has been achieved for a particular sector, the Authority shall in consultation with the Commission, notify the key stakeholders that the regulated pricing regime shall no longer be applicable for such sector and give not less than one year notice to the market.

(3) Where the Authority determines that free market status has been achieved for the three sectors, the regulated gas pricing system and the related requirements under the domestic gas delivery obligations shall terminate and domestic gas aggregation shall no longer be required upon the termination date of the last one year notice.

Requirement to provide information.

15. A producer, licensee or permit holder shall on the directive of the Authority provide information or data on gas volumes, gas pricing information and any other relevant information or data, in the manner prescribed by the Authority within 10 working days from the date of the directive.

Offences and penalties.

16.—(1) A person who —

- (a) fails to obtain a licence required under these Regulations ;
- (b) fails to provide information required under these Regulations ;
- (c) makes a false declaration to the Authority or wilfully furnishes information so required, which is false in any respect or insufficient ; or
- (d) fails to comply with any provisions of these Regulations or any directive given or condition of a permit or licence issued under these Regulations,

is liable to an administrative penalty not exceeding USD100,000, and in addition any permit, licence or authorisation granted to the person may be suspended, cancelled or terminated.

(2) From the commencement of these Regulations, a supplier who fails to comply with its Domestic Gas Delivery Obligations as specified in these Regulations, shall not be permitted to deliver gas to any export project until the domestic gas delivery obligation is met.

(3) A producer or purchaser of gas or person acting on behalf of a producer or purchaser of gas under a domestic gas delivery obligation, who fails to accept the aggregate price or refuses to pay the proceeds of gas into the escrow account for the purposes of aggregation is liable to an administrative penalty prescribed by the Authority not exceeding USD1,000,000.

17.—(1) The National Gas Supply and Pricing Regulations, 2008, is revoked.

Revocation,
savings and
transitional
provisions.

(2) The revocation of the Regulations specified in subregulation (1) of this regulation shall not affect anything done or purported to be done under or pursuant to the revoked Regulations.

(3) Gas prices under the revoked Regulations is preserved under these Regulations till 1st April, 2023.

18. In these Regulations —

Interpretation.

“*Act*” means the Petroleum Industry Act, No. 6, 2021 ;

“*Adjusted EPP*” means price of gas in the domestic market on considering raw gas price, processing price, marketable gas price and gas volumes ;

“*Capped Free Market Price*” means the price applicable to gas distributors on the basis of section 167(7) of the Act ;

“*Commission*” means the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) ;

“*Domestic Base Price*” means the price determined pursuant to section 167(1) and the Third Schedule to the Act, and shall apply to power sector pursuant to section 167(5) of the Act and the commercial sector pursuant to section 167(6) of the Act and gas based industry ;

“*Domestic Gas Supply Price*” means the price established by the Commission on the basis of gas supply curves submitted by the lessees, for the purpose of allocating the domestic gas delivery obligations pursuant to the Act and Regulations ;

“*Energy Intensive*” means any commercial or industrial activity, where the cost of energy, in terms of electricity and fossil fuels, represents a significant part of the total cost of operations ;

“*Export Parity Price (“EPP”)*” means the price received by natural gas producers from NLNG or other gas exporters for raw gas at the measurement point in the field on an arm’s length basis for the purpose of exporting natural gas as LNG or by export pipeline and for the sale of natural gas liquids at the exit of the facilities of the buyer ;

“*Feed Gas Price*” means a gas price for one of the gas based industries pursuant to the Fourth Schedule to the Act ;

“*Free Market Basis*” means sales on a voluntary seller and voluntary buyer basis, and shall be at arm’s length sales ;

“*Free Market Prices*” means prices entered into on a free-market basis ;

“*Gas Conditioning*” means the treatment of raw gas through dehydration, nitrogen removal, hydrogen-sulfide removal, carbon-dioxide removal or other similar processes, but not including NGL removal or fractionation, with the purpose of producing marketable gas or raw gas suitable for transportation to a gas processing plant or for sale or delivery to the market ;

“*Gas Conditioning Plant*” is a plant dedicated to gas conditioning ;

“*Gas Processing*” means the processing of raw gas for the purpose of producing marketable natural gas, natural gas liquids and plant condensates, including processes related to NGL removal and fractionation and includes plants for the extraction of ethane ;

“*Gas Processing Plant*” is a plant dedicated to gas processing ;

“*LNG*” means Liquefied Natural Gas ;

“*Major Emerging Countries*” means developing countries that are exporters of gas ;

“*Marketable Natural Gas*” means natural gas and its derivatives at the quality specified by the Authority ;

“*Mini-Grid*” means an electric power grid, usually self-contained and not connected to the main grid, typically not larger in size than 10 MW and using renewable energy to a significant degree, for the purpose of providing electricity to customers that so far have not been connected to electricity or wish to enhance the reliability of power supply from the main grid ;

“*NGL*” means Natural Gas Liquids ;

“*NLNG*” means Nigerian Liquefied Natural Gas ;

“*Power Sector*” means power plants which supply electricity based on regulated tariffs to residential, commercial and industrial customers in a particular geographical area, directly or through distribution companies, and are connected to the main grid and are producing power primarily based on fossil fuels with individual plants typically exceeding a size of 10 MW ;

“*Producer*” means a lessee holding an oil mining lease or petroleum mining lease or a licensee holding an oil prospecting licence or a petroleum prospecting licence, where such licensee carries out temporary test production ;

“*Raw Gas*” means gas that is not marketable natural gas or gas derivative ;

“*Regulated Domestic Market*” applies to the wholesale customers of the strategic sectors who elect to be customers of the domestic gas aggregator and uses escrow mechanism to the extent of section 167 of the Act to gas distribution ;

“*Retail Gas Customers*” are customers of marketable natural gas who are not lessees, wholesale customers or exporters and do not have the commercial capability to individually and economically connect to a gas transportation pipeline or gas transportation network ;

“*Strategic Sectors*” means in relation to marketable natural gas purchases, wholesale customers of the following sectors, the —

(a) power sector;

(b) gas based industries, consisting of industries using gas as feedstock or industrial raw material ; and

(c) commercial sector, consisting of industries, as may be determined by the Authority, which use gas as an energy source in the Second Schedule to these Regulations ;

“*Transfer Prices*” shall be prices between a producer and a licensee of a gas conditioning plant, gas processing plant or gas retailer who is controlled by a company or companies who also constitute the related producer ;

“*Unregulated Domestic Market*” means sale of natural gas on a willing buyer and willing seller basis in Nigeria ; and

“*USD*” means United State Dollars.

19. These Regulations may be cited as the Gas Pricing and Domestic Demand Regulations, 2023. Citation.

FIRST SCHEDULE
GAS DEMAND CLASSIFICATION

[Regulation 5]

REGULATED DOMESTIC MARKET		
	Marketable Natural Gas	
		Sales to Strategic Sectors using a regulated price power sector gas based industries commercial sector Gas Distributors
UNREGULATED MARKET		
	Marketable Natural Gas	
		Sales to : Strategic Sectors on a free market basis power sector gas based industries commercial sector Non-Strategic Sectors Gas Retailers Exporters
	Raw Gas	
		Domestic Market Exports

SECOND SCHEDULE
GAS REGULATED PRICES CLASSIFICATION
[Regulations 8(9), 18

MARKETABLE NATURAL GAS	
	Domestic Base Price
	Power sector, Customer of Aggregator, Commercial, Customer of Aggregator
	Feed Gas Prices
	Gas Based Industries, Customer of Aggregator
	Capped Free Market Price
	Gas Distributors
UNREGULATED PRICES	
RAW GAS	
	Free Market Price
	Wholesale Customers Exporters, the weighted average being the EPP Independent Gas Conditioning and Processing Licensees Other Lessees Wholesale Gas Suppliers
	Transfer Price
	Controlled Gas Conditioning and Processing Licensees
MARKETABLE NATURAL GAS	
	Free Market Price
	Strategic Sectors, not customer of aggregator Non Strategic Sectors Independent Gas Retailers Exporters Other Lessees Wholesale Gas Suppliers
	Transfer Price
	Controlled Gas Retailer

MADE at Abuja this 9th day of February, 2023.

ENGR. FAROUK AHMED
Authority Chief Executive
Nigerian Midstream and Downstream Petroleum
Regulatory Authority

EXPLANATORY NOTE

*(This note does not form part of these Regulations
but is intended to explain its purport)*

These Regulations seeks to regulate the prices of the marketable natural gas of the strategic sectors under the Petroleum Industry Act, identify the unregulated markets and make provisions for such markets.