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PETROLEUM INDUSTRY ACT, NO. 6, 2021
NATURAL GAS PIPELINE TARIFF REGULATIONS, 2023



ARRANGEMENT OF REGULATIONS

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S. I. No. 5 of 2022

PETROLEUM INDUSTRY ACT, NO. 6, 2021
NATURAL GAS PIPELINE TARIFF REGULATIONS, 2023

[9th Day of February, 2023] Commencement.

In exercise of the powers conferred on it by sections 32(c), 33(n), 113, 122, 123, 124(2) 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 —

PART I — OBJECTIVES AND APPLICATION

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

(a) provide a regulatory framework to determine, a sustainable gas transportation pipeline tariff regime in accordance with the Act ; and

(b) establish a tariff methodology for the transportation and transmission of natural gas through gas transportation pipelines, and gas transportation networks.

(2) The tariffs for the transportation of natural gas in gas transportation pipelines and gas transportation networks shall be based on the tariff principles pursuant to section 122 of the Act.

(3) The Authority may, pursuant to section 122(3) of the Act, and these Regulations, modify when it deems necessary, the tariff methodology.

2. These Regulations shall apply to gas transportation pipelines and gas transportation networks in the petroleum industry. Application.

PART II — TARIFF STRUCTURE AND CAPACITY CHARGE

3.—(1) Shippers shall be charged transportation tariff for capacity charge, commodity charge and any other charge as may be prescribed by relevant code. Tariff structure and capacity charge.

(2) The transportation tariffs shall be determined and charged in United States Dollars or other foreign currency, and payment shall be made in such respective foreign currency or its Naira equivalent at the open market rate published by the Central Bank of Nigeria pursuant to section 122(1)(d) of the Act.

(3) Transportation tariff shall be paid by shippers on monthly basis in arrears.

(4) Notwithstanding regulation 6(2) of these Regulations, the provisions of the Gas Network Code Framework Agreement shall apply.

(5) A gas transportation agreement existing under a gas transportation pipeline on open access or gas transportation network, shall from the commencement of these Regulations cease to be effective and is replaced by a gas network code framework agreement.

(6) For the purposes of this regulation —

(a) “*capacity charge*” means a charge determined by the amount of a shipper’s registered system entry capacity at a system entry point, or registered system exit capacity at a system exit point and payable by the shipper irrespective of whether the reserved capacity is utilised or not; and

(b) “*commodity charge*” is a charge determined by the quantity of gas flow at a system point attributed to a shipper that varies in direct proportion to actual throughput of natural gas by a shipper.

Tariff relating to capacity charge.

4.—(1) The Authority may approve different classes of capacity charge for the same gas transportation pipeline or gas transportation network.

(2) The classes of capacity charge under regulation 7(1) of these Regulations may be determined —

(a) with reference to gas transportation networks and gas transportation pipelines on open access, —

(i) types and industries of the end-users of the natural gas transported by shippers, based on the criteria approved by the Authority,

(ii) agreements with shippers facilitating the financing of new gas transportation pipeline, and

(iii) other basis as may be approved by the Authority ;

(b) with respect to gas transportation pipelines for its own account of an operator —

(i) a notional charge applicable to the operator making its own priority use of the pipeline or charge applicable to its affiliate using the pipeline, provided that such notional charge shall be determined on an arms-length basis by the operator,

(ii) charge applicable to shippers using spare capacity in the pipeline, and

(iii) such other basis as may be approved by the Authority.

(3) For gas transportation networks and gas transportation pipelines on open access, each class of capacity charge shall be charged in respect of reserved capacity under gas network code framework agreements.

(4) For gas transportation pipelines for its own account of the operator, the —

(a) notional charge applicable to the operator or actual charge to its affiliate shall be such that the allocation of charges between the operator and the shippers is acceptable ; and

(b) determination of a notional charge shall be required in view of the use of tariffs for the purpose of royalty and gas pricing calculations.

(5) The capacity charge shall be determined and charged based on a United States Dollar or other foreign currency per unit of reserved capacity, per day and payable in such foreign currency or its Naira equivalent at the open market rate published by the Central Bank of Nigeria.

(6) The capacity charge charged to a shipper shall be at the applicable rate, multiplied by the number of units of reserved capacity reserved by the shipper, multiplied by the number of days in the month, subject to downward adjustment in the event of *force majeure* or default by an operator.

(7) The capacity charge shall be determined by the reference tariffs pursuant to the tariff methodology determined by the Authority.

(8) The tariff methodology may adjust the reference tariffs into real tariffs based on the interaction of the various classes of capacity charges.

(9) The real tariffs referred to in subregulation (8) of this regulation shall be determined for each calendar year and expressed in United States Dollars of the base year of the cash flow used in the tariff methodology.

(10) The actual capacity charge to be paid by the shippers shall be the real tariffs adjusted for inflation.

(11) The operator shall calculate the actual capacity charge to apply in a calendar year and notify its shippers prior to 1st of December before the next calendar year of the actual capacity charge.

(12) The actual capacity charge shall be paid by shippers during the calendar year in question, without adjustments.

(13) The reference tariffs shall be a levelised charge, which shall be a constant charge over the term approved by the Authority.

5.—(1) The commodity charge shall be set to recover the cost of fuel gas and related expenses.

Tariff
relating to
commodity
charge.

(2) A shipper shall pay commodity charge per unit of actual natural gas transported on their behalf.

(3) A shipper may in lieu of paying for fuel gas, provide a share of the total quantity of fuel gas to the operator in proportion to the shipper throughput of natural gas through the gas transportation pipeline or gas transportation network.

(4) The operator of a gas transportation pipeline on open access or gas transportation network shall ensure that fuel gas is properly metered, accounted for and sourced at free market rate in accordance with applicable regulations.

PART III — TARIFF METHODOLOGY 1 BY THE AUTHORITY

Tariff methodology.

6.—(1) The Authority shall determine pursuant to section 123(3) of the Act, the tariff methodology applicable to —

- (a) new gas transportation pipelines operating on open access basis ;
- (b) new gas transportation pipelines being operated for its own account of the operator ;
- (c) the review of tariffs for existing gas transportation pipelines ; and
- (d) the review of tariffs for the existing gas transportation network.

(2) In determining the tariff methodology, the Authority shall take into consideration —

- (a) whether the tariff shall be charged on —
 - (i) a “postage stamp” basis, whereby the tariff shall be non-distance-sensitive, having only one single tariff rate for the class of tariff, regardless of the distance that natural gas is transported along the pipeline,
 - (ii) on “distance-sensitive” basis, or
 - (iii) combination of both “postage stamp” and “distance-sensitive” basis ;
- (b) the classes of capacity charges that may apply ;
- (c) the methodology for determining the reference tariffs, including —
 - (i) the determination of the capital costs or remaining capital costs that may be considered,
 - (ii) how the rate of return may be determined, in terms of a blended rate for equity and debt, or a rate for equity only, as well as the level of profitability that may be considered,
 - (iii) the duration of the cashflow for which the capital recovery and profitability shall be determined, and the term during which the reference tariff shall apply, which may consist of different phases,
 - (iv) the type of charge that may be applicable after the capital cost is recovered,
 - (v) the taxes and levies that may be included in the reference tariff determination and the methodology for including such taxes and levies ;
- (d) the methodology for adjusting the reference tariff to the real tariffs to be determined for each calendar year from which the capacity charges for each year is derived ; and
- (e) the inflation index to be used for determining the actual capacity charges for each year.

Tariffs calculation.

7.—(1) Within one month after the Authority has published the various tariff methodologies, an operator of existing gas transportation pipelines or gas transportation network shall calculate the —

- (a) commodity charge ; and

(b) reference tariffs and real tariffs with respect to the capacity charges ; and propose the same to the Authority pursuant to section 124 of the Act.

(2) The operator of a gas transportation network or gas transportation pipeline shall submit audited annual financial statement and any other relevant information as may be required by the Authority within one month of publishing the tariff methodology.

(3) The Authority shall within one month of providing reference tariff, real tariff and audited annual financial statement, notify the operators of its decision.

(4) The actual capacity charge shall subsequently be calculated prior to the start of each calendar year pursuant to the tariff methodology.

(5) With respect to new gas transportation pipeline, the tariff methodology shall be applied by the operator and the operator shall report the respective tariffs to the Authority.

(6) At the end of each calendar year, an operator shall recalculate the transportation tariff charged for that year, taking into account the actual performance of shippers in duly paying invoices and the commencement of additional transportation of natural gas for new or existing shippers.

(7) The recalculation under subregulation (6) of this regulation shall be approved by the Authority.

8. An operator shall publish the respective transportation tariffs for each calendar year as applicable to its operations pursuant to section 124(1)(c) of the Act.

Publication of tariffs.

PART IV — OFFENCES AND PENALTIES

9. Pursuant to section 229 of the Act, a person who commits an offence under sections 228 or 230 of the Act in relation to the provisions of these Regulations shall, in addition to the penalties associated with the network code framework agreement and gas transportation agreement, be liable to an administrative penalty of not less than USD1,000,000 or its Naira equivalent at the prevailing Central Bank of Nigeria exchange rate.

Offences and penalties.

PART V — MISCELLANEOUS

10. The Authority may issue guidelines, directives, and notices for the effective implementation of the provisions of these Regulations.

Powers to give directives.

11. In these Regulations —

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

“*Fuel Gas*” means all natural gas used for or consumed in the operation and maintenance of the pipeline, including compressor station fuel and fuel used for other utility purposes incurred in such operations which are within tolerances permitted under the gas transportation agreements ;

Interpretation.

“*Good Engineering Practice*” means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced operator in accordance with internationally acceptable industry standards and recognised good practice applicable to high pressure natural gas pipelines ;

“*New Gas Transportation Pipeline*” means a pipeline for which an applicable licence was issued under section 135 of the Act on or after the effective date of the Act ;

“*Operator*” means a company that has received a licence from the Authority to operate a gas transportation pipeline or gas transportation network ;

“*Real Tariff*” means an adjusted tariff from aggregate of all reference tariffs for specified natural gas transportation service for a network or pipeline provided by operator for the approval of the Authority ;

“*Reference Tariff*” means a class of capacity charge to a specified natural gas transportation service for a network or pipeline provided by operator for the approval of the Authority ;

“*Related Expenses*” means field based operational cost for transportation of natural gas ;

“*Reserved Capacity*” means transportation capacity in the pipeline which is reserved by a shipper under a gas transportation agreement for transportation of natural gas from a particular receipt point to a particular delivery point, on the basis of a firm commitment by the operator to transport such quantities of natural gas and a firm commitment by the shipper to pay the reservation charge for that transportation capacity whether or not it is used ;

“*Shipper*” means a person other than an operator licenced by the Authority to ship gas through a system ;

“*system*” means a gas transportation pipeline or gas transportation network used to convey gas ; and

“*system point*” means a point in a system designated to permit gas to flow into or out of the system.

Citation. **12.** These Regulations may be cited as the Natural Gas Pipeline Tariff Regulations, 2023.

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 the above Act
but is intended to explain its purport)*

These Regulations seeks to provide a regulatory framework to determine a sustainable gas transportation pipeline tariff regime in accordance with the Act and establish a tariff methodology for the transportation and transmission of natural gas through gas transportation pipelines and gas transportation networks.