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Client Alert

Proposed Midstream and Downstream Petroleum Fees Regulations, 2024

Further to its powers under sections 32(a) and 33(b) of the Petroleum Industry Act (**PIA**), the Nigerian Midstream and Downstream Petroleum Regulatory Authority (**NMDPRA**) recently published an exposure draft of the proposed Midstream and Downstream Petroleum Fees Regulations, 2024 (the **Proposed Regulations**).

The objective of the Proposed Regulations is to establish the fees payable to the NMDPRA for the grant, issuance, or renewal of licenses, permits, authorizations, and approvals. Once issued, these regulations will apply to the activities of entities engaged in midstream and downstream operations within the Nigerian oil and gas industry.

Based on the above, we have outlined the major highlights of the Proposed Regulations and their potential impact on midstream and downstream operators and their operations.

a. Revision of Application Fees (Can the NMDPRA Unilaterally Amend Fees?)

The Proposed Regulations authorise NMDPRA to revise and amend the fees prescribed in the schedules of the Proposed Regulations through a notice published in the Official Gazette of the Federal Republic of Nigeria.

However, a review of this authority against the provisions of the PIA regarding the revision and amendment of application fees indicate basis for a potential conflict between the Proposed Regulations and the PIA.

The PIA empowers NMDPRA to establish fees payable to the NMDPRA (essentially, for services rendered by NMDPRA)¹ subject to the approval of the Minister of Petroleum Resources (**MPR**).²

¹ See section 33(v) of the PIA.

² See section 3(1)(j) of the PIA.

The law is settled that, when used in a statute, the phrase "subject to" signifies that the provision in question is conditional upon or subordinate to another provision.³

Consequently, section 33(v) of the PIA which confers powers on NMDPRA to establish fees is subordinate to section 3(1)(j) of the PIA which confers powers on the MPR to approve fees for services rendered by NMDPRA, upon recommendation of NMDPRA.

Therefore, the exercise of the powers conferred on NMDPRA, and the effectiveness of any fees so established, revised and/or altered by NMDPRA is conditional upon the approval of the MPR.

b. Revocation of Application Fees

Upon issuance of the Proposed Regulations, the fees prescribed by NMDPRA for the grant, reissue or renewal of licences, permits, authorisations, and approvals under the following regulations will be revoked.

- a. Petroleum Measurement Regulations 2023;
- b. Assignment or Transfer of Licence and Permit Regulations 2023;
- c. Midstream and Downstream Petroleum Operations Regulations 2023;
- d. Gas Distribution Systems Regulations 2023;
- e. Midstream Gas Flare Regulations 2023;
- f. Gas Trading and Settlement Regulations 2023;
- g. Midstream and Downstream Environmental Regulations 2023; and
- h. Petroleum (Drilling and Production) Amendment Regulations 2019 (in respect of midstream and downstream petroleum operations).

The fees in the foregoing regulations will be replaced by the fees provided in the relevant schedule to the Proposed Regulations.

c. Fees

The schedules to the Proposed Regulations outline the proposed fees for the issuance, and renewal of licences, permits, authorisations and approvals in relation to the following activities:

- i. wholesale gas supply licence;
- ii. the operation of hydrocarbon processing facilities;
- iii. hydrocarbon liquids blending/lubricant refilling/bitumen processing/waste treatment/petroleum-based additives production operations;
- iv. terminals;
- v. petroleum liquids network code;
- vi. gas network code;
- vii. export and import;
- viii. the operation of bulk storage facility (Liquid Petroleum Products);
- ix. the operation of bulk storage facility (Gas);
- x. the operation of bulk petroleum liquid storage (excluding petroleum products);
- xi. industrial petroleum products storage and utilization;
- xii. industrial gas storage and utilization;
- xiii. gas to telecom/small scale industrial storage and utilization;
- xiv. petroleum product retailing operations and infrastructure;
- xv. gas products reticulation;

³ See the case of Mobil Producing Nigeria Unlimited v. Federal Inland Revenue Service. 2021 11 NWLR (Pt. 1788) Pg. 524

- xvi. LPG propane handling unit (PHU);
- xvii. petroleum products (Gas) retailing operations and infrastructure (LPG refilling plant, Autogas plant, LPG add-on);
- xviii. retail gas supply (CNG compression facilities);
- xix. retail gas supply (small scale LNG facilities);
- xx. midstream and downstream oil and gas industry service permits;
- xxi. gas aggregation;
- xxii. petroleum products distribution (liquid and gas);
- xxiii. measurement systems;
- xxiv. environmental activities for –
 - a. hydrocarbon processing plants, installations, and transportation;
 - b. engineered landfill;
 - c. waste management facility;
 - d. depot;
 - e. petroleum products retail facilities;
 - f. laboratory; and
 - g. health, safety, environment and community (HSEC) general.
- xxv. gas trading;
- xxvi. clearing house authorization;
- xxvii. assignment or transfer of licences and permits in midstream and downstream petroleum operations in Nigeria;
- xxviii. activities connected with pipelines/transportation infrastructure;
- xxix. permit to access flare gas;
- xxx. permit to flare; and
- xxxi. gas distribution.

Conclusion

The NMDPRA will, upon the issuance of the Proposed Regulations, increase the applicable fees, however, stakeholders may wish to engage with the NMDPRA on these proposed amendments.