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PETROLEUM INDUSTRY ACT, NO. 6, 2021
NIGERIAN UPSTREAM PETROLEUM MEASUREMENT
REGULATIONS, 2023



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S. I. No. 48 of 2023

PETROLEUM INDUSTRY ACT, NO. 6, 2021
NIGERIAN UPSTREAM PETROLEUM MEASUREMENT
REGULATIONS, 2023

[24th Day of May, 2023] Commence-
ment

In the exercise of the powers conferred on it by sections 7(l), 7(bb) and 10(f) of the Petroleum Industry Act, No. 6, 2021 (“the Act”) and of all other powers enabling it in that behalf, the Nigerian Upstream Petroleum Regulatory Commission (“the Commission”) makes the following Regulations —

PART I — OBJECTIVES AND APPLICATION

1. The objectives of these Regulations are to —

Objectives

(a) provide a framework for —

(i) the installation of measurement equipment at measurement points as prescribed by the Commission,

(ii) accelerated meter roll-out at measurement points as determined by the Commission, and

(iii) the provision of independent and competitive metering service operations in the upstream petroleum sector ;

(b) encourage private investments in the provision of metering services in the upstream petroleum operations ; and

(c) provide the procedure for the measurement of petroleum produced from upstream petroleum operations.

2. These Regulations shall apply to licensees, lessees and persons providing services in relation to measurement in upstream petroleum operations. Application

PART II — METERING PLAN AND METERING SERVICES

3.—(1) A licensee or lessee shall have a metering plan approved by the Commission for the measurement of petroleum production from its producing licence or lease area. Metering Plan

(2) A metering plan shall contain —

(a) all measurement points related to the licence or lease ;

(b) location of all existing measurement meters related to the licence or lease ;

(c) any additional measurement meters required based on the directives of the Commission ;

(d) the timeline for installation of measurement meters, where additional meters are required ; and

(e) a plan for the provision of metering services in relation to the licence or lease.

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Measurement equipment and metering services under a metering plan

4.—(1) A lessee shall carry out the installation of metering equipment and metering services under a metering plan through a licenced metering services provider in accordance with the provisions of these Regulations.

(2) A licenced metering services provider shall be an original equipment provider or its agent, approved by the Commission.

Licence to provide metering services.

5.—(1) A person shall not provide metering services under these Regulations without obtaining a licence issued by the Commission.

(2) The Commission may grant a licence to a qualified person, to provide metering services to a licensee or lessee, provided that such authorisation is subject to such terms and conditions as may be prescribed by the Commission in the licence agreement.

(3) A licence issued pursuant to this regulation, shall be to a company incorporated in Nigeria and subject to minimum local content thresholds as prescribed under Nigerian laws.

(4) Application for a licence shall be made in the form and manner prescribed by the Commission.

(5) A licence issued under this regulation shall be for a duration of 20 years, and may be renew for a further term of 10 years, where the licensee fulfilled all obligations prescribed by these Regulations and the Commission is satisfied with the reports submitted by the licensee or lessee.

Measurement system

6.—(1) Measurement equipment and metering systems deployed by a licensee or lessee under a metering plan shall conform with the standards and specifications prescribed in a regulation, guidelines or directives issued by the Commission.

(2) The standards and specification referred to in subregulation (1) of this regulation shall relate to the design, fabrication, manufacture, installation, calibration, operation, maintenance, upgrade and inspection or any other requirement as may be determined by the Commission.

Technical requirements for deployment of metering services

7. A metering service provider shall deploy technology and back-office systems to —

(a) measure production from the licensee's or lessee's petroleum operation ;

(b) report the measured production to the Commission on an on-line real time basis ; and

(c) create an interface for data sharing on an on-line real time basis between the lessee and the Commission.

PART III — RIGHTS AND OBLIGATIONS OF PARTIES

8.—(1) A lessee shall have access to metering equipment deployed by a metering services provider for purposes of data verification.

Rights of a lessee

(2) A lessee may query the accuracy of data generated by the metering services provider.

9.—(1) Any dispute between a lessee and a metering services provider shall be resolved between the parties.

Resolution of dispute between a lessee and metering services provider.

(2) Where the dispute cannot be resolved between the parties, a party to the dispute may refer the dispute to the Commission for resolution.

(3) Where dispute cannot be resolved by the Commission, the dispute shall be resolved in accordance with the dispute resolution mechanism in the metering services agreement.

(4) Where the dispute relates to payment for services rendered, the lessee shall pay the disputed amount to the metering services provider within 30 days until the dispute is resolved by the Commission.

(5) Where the dispute is resolved in favour of the lessee, the disputed amount shall be refunded to the lessee by the metering services provider in the manner agreed by the parties in the metering services agreement.

10. A lessee shall —

Obligations of the lessee

(a) execute a Metering Services Agreement with a metering services provider for the deployment of metering services under these Regulations ;

(b) provide a payment structure and security acceptable to the metering services provider in line with the terms of the Metering Services Agreement and such payment security shall include a bank guarantee, performance bond or letter of credit issued by a reputable financial institution ;

(c) treat cases of unauthorised access and meter tampering in accordance with existing laws and regulations ;

(d) provide relevant information to the metering services provider in a timely manner to enable it carry out its obligations under the Metering Services Agreement ;

(e) provide a safe and secure location within its facilities for the metering services provider to carry out its services under a Metering Services Agreement ;

(f) grant access to metering services provider within its facilities or lease area for the installation, operation and maintenance of metering equipment at all time ;

(g) ensure the safety of the meter and be held responsible for tampering with metering equipment and damage, or permit access thereto by any

third party except to duly authorised staff or agents of the metering services provider, the Commission, or to persons authorised by the Commission ;

(h) not remove or cause any metering equipment to be removed from its facilities or lease area without the approval of the Commission ; and

(i) pay the capital charge and metering service charge to the metering services provider as and when due in line with the provisions of the Metering Service Agreement.

Rights of a metering services provider

11. A metering services provider shall —

(a) include a capital charge and a metering service charge as clear items on the billing of a lessee under a Metering Service Agreement ;

(b) be entitled to the full payment in advance of the capital charge and metering service charge as and when due ;

(c) retain ownership of the metering equipment until the full cost recovery ;

(d) operate and maintain the metering equipment after the full cost recovery of its investment and the transfer of title to the Commission ; and

(e) be given unlimited unrestricted access to the lessee's facilities or lease area for purposes of installation, operations, maintenance and removal of the metering equipment.

Obligations of a metering services provider

12.—(1) A metering services provider shall —

(a) ensure that the metering equipment is designed, manufactured, installed, operated and maintained in conformity with all specifications and standards prescribed in guidelines issued by the Commission ;

(b) obtain all necessary certifications and approvals for the metering equipment as required by these Regulations or guidelines ;

(c) undertake periodic inspections of the metering equipment to ensure integrity and reading accuracy ;

(d) ensure that the metering equipment is tested, proved, calibrated and re-certified as required by regulation or guidelines ; and

(e) notify the lessee and the Commission of any operational fault on a metering equipment within 24 hours and rectify the fault within five days or any other period prescribed in a regulation or guideline issued by the Commission.

(2) Where a metering services provider fails to notify the Commission and the lessee of an operational fault or fails to repair or replace a metering equipment within five working days or any other period as may be specified by the Commission, the lessee shall not be liable for the payment of metering service charge for the billing period, unless such damage to the equipment is beyond immediate repair or restoration.

(3) Where the full cost is recovered with the OEM profit margin, a metering services provider shall transfer the title of the metering equipment to the Commission.

(4) The metering services provider shall perform its obligation to the lessee in accordance with the service standards set out in a —

- (a) Service Level Agreement with the lessee ; and
- (b) regulation or guidelines issued by the Commission.

(5) A metering services provider shall bear the cost of repair or replacement of a faulty metering equipment unless the fault was caused by the lessee, its agents or representatives.

(6) Where it is unclear as to who caused the damage to the metering equipment, the metering services provider shall repair or replace the metering equipment pending the determination of who caused the damage.

(7) Where it is established that the lessee damaged or contributed to the damage of a metering equipment, the metering services provider shall replace the metering equipment subject to an upfront payment by the lessee or other mutually agreed terms of payment.

(8) The method for calculating production for the period of failure or damage of the metering equipment shall be determined by the Commission as prescribed in a regulation or guidelines issued by the Commission.

PART IV — AGREEMENTS BETWEEN PARTIES AND COST STRUCTURE FOR A METERING SERVICE

13. The metering services agreement shall be in accordance with the metering services model agreement issued by the Commission and shall provide, where required —

Metering
Service
Agreement

- (a) the number of metering equipment to be installed by the metering services provider under the metering plan ;
- (b) a capital charge and a metering service charge in respect of the metering service provided by the metering services provider ;
- (c) an acceptable form of performance security for the payment of the capital charge and metering service charge to the metering services provider in respect of the provision of the metering equipment and the metering service, unless otherwise waived by the metering services provider ;
- (d) indexation provision over the tenure of the Metering Service Agreement to address variability in applicable macro-economic indices ;
- (e) meter and measurement specifications in accordance with applicable regulation, guidelines and standards ;

- (f) timeframe for the performance of the service ;
- (g) any other requirements as may be agreed upon by a lessee and a metering service provider.

Cost structure of a metering service

14.—(1) The metering service shall cover the cost of providing the metering equipment and the ongoing costs of operating, repairing and maintenance of the metering equipment.

(2) The capital charge shall be an annual index-linked lump-sum to cover the capital cost of the metering equipment with a reasonable return and shall be payable by the lessee until the full cost recovery of the metering equipment.

(3) The metering service charge shall be a quarterly fee charged by the metering services provider to cover the cost of on-going metering services and take into account of criteria established by the Commission such as location and size of operations.

(4) The capital charge and metering service charge shall be subject to the approval of the Commission.

PART V — PETROLEUM PRODUCTION AND CUSTODY TRANSFER LOGS

Maintenance of daily logs

15.—(1) A lessee shall —

- (a) maintain a daily log of petroleum produced from their facilities ; and
- (b) submit the logs to the Commission within seven days following the end of each month.

(2) Logs shall be based on the data retrieved from a metering equipment installed by the metering services provider, indicating the date, time, duration, rates, quantity, quality and source or type of petroleum produced.

(3) The format of all logs shall be in conformity with the form prescribed by the Commission.

(4) A lessee shall keep copies of logs in safe custody for not less than 36 months.

(5) At an agreed cost, logs and data may be collated, formatted and loaded on an ERP system selected by the Commission.

Annual production report

16. A lessee shall prepare and submit to the Commission an annual production report in the format and timeline prescribed by the Commission.

PART VI — OFFENCES AND PENALTIES

Offences and Penalties

17.—(1) A person who —

- (a) fails to accept the metering plan given by the Commission and submit a metering plan to the Commission in accordance with these Regulations ;

(b) fails, neglects or refuses to install metering equipment within the timeframe provided in the metering plan ;

(c) fails, neglects or refuses to prepare, maintain or submit the logs or records or reports required under these Regulations, in the manner and within the time prescribed by the Commission ;

(d) fails to provide a safe and secure location within its facilities or lease area for the installation and safe operation of a metering equipment ;

(e) fails to pay in advance the capital charge and the metering service charge to the metering services provider as and when due in line with the provisions of the Metering Service Agreement ;

(f) refuses, fails or neglects to make payment for the replacement or repair of damaged metering equipment caused by the lessee, its employee or agent ;

(g) fails to allow access to its facilities or lease area to duly authorised staff or agents of the metering services provider for the installation, repair, maintenance and replacement of metering equipment ;

(h) obstructs the Commission or any person acting as its agent in the performance of a function under these Regulations ;

(i) removes or causes any metering equipment to be removed from its facilities or lease area without the permission of the Commission ;

(j) provides metering equipment and metering services without a Licence issued pursuant to these Regulations ;

contravenes the provisions of these Regulations and is liable to pay administrative penalty of USD\$100,000 in addition to the penalty prescribed under the Act and pay USD\$1,000 for each day during which the breach persists.

(2) A person who —

(a) wilfully or maliciously breaks, damages, destroys, disconnects, tampers or interferes with the operation of a meter or metering equipment ; or

(b) supplies to the Commission, false, inaccurate or incomplete data, logs or records, relating to petroleum production or custody transfer to the Commission ;

contravenes the provisions of these Regulations and is liable to pay administrative penalty of USD\$100,000 in addition to the penalty prescribed under the Act and pay USD\$1,000 for each day during which the breach persists.

(3) A lessee who damages or contributed to the damage of a metering equipment, shall be liable for the cost of repairs of the metering equipment and the payment of an administrative penalty of USD\$100,000 per day until the metering equipment is repaired or replaced and certified by the Commission to be okay.

PART VII — MISCELLANEOUS

Application
of these
Regulations
to existing
metering
equipment

18.—(1) Upon the commencement of these Regulations, the Commission may appoint a competent independent assessor to conduct a technical audit of all metering equipment operated by a lessee.

(2) The technical audit carried out under subregulation (1) of this regulation shall be to establish any of the following, whether —

(a) the existing metering equipment operated by a lessee conforms with the technical requirements or standards prescribed by the Commission ;

(b) the existing metering equipment needs to be upgraded, retrofitted or replaced ; and

(c) there is no existing metering equipment at a measurement point as determined by the Commission.

(3) Where the provisions of subregulation (2)(a), (b) and (c) apply, the lessee shall enter into a Metering Services Agreement with a metering services provider in accordance with these Regulations, who shall —

(a) ensure conformity of the metering equipment to the standards prescribed by the Commission ;

(b) upgrade, retrofit or replace the metering equipment; or

(c) install a new metering equipment ;

provided that the ownership of such existing metering equipment shall be transferred to the metering services provider.

(4) Where the provisions of subregulation (2)(a) apply, and the metering equipment is found to be in conformity with the standards prescribed by the Commission, the lessee shall only be required to pay maintenance charge, until the value of the metering equipment is fully amortised by the lessee in their books and ownership automatically reverts to the Commission.

(5) Where the provisions of subregulation (2)(b) apply, the independent assessor shall —

(a) determine the market value of the metering equipment, and the cost of ensuring conformity to the technical requirement prescribed by the Commission or the cost of upgrading or retrofitting ;

(b) net off the cost of any upgrade or retrofit of the metering equipment from the market value of the equipment, and any balance shall be a credit against the capital charge under the metering services agreement ; and

(c) amortise the cost of the metering equipment from the lessee books to net zero and thereafter ownership passes on to the Commission.

(6) Where the provisions of subregulation (2)(c) apply, the lessee shall be required to pay a capital charge and maintenance charge in line with the Metering Service Agreement.

19. A Lessee shall file copies of all agreements entered into with metering services providers with the Commission within 30 days of executing an agreement.

Filing of
Agreements

20. In these Regulations —

Interpretation

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

“*applicant*” means a person that has submitted a request to the Commission for the provision of Meters and metering services to lessees under these Regulations ;

“*capital cost*” means the cost of the Meter, Meter accessories, financing costs, return on investment, communication infrastructure costs, installation costs, testing and certification of the metering system and all associated costs of Meter installation plus a return on investment ;

“*Commission*” means the Nigerian Upstream Petroleum Regulatory Commission established by the Act ;

“*Guidelines*” means the Guidelines and Standards for the design, Fabrication, Manufacturing, Testing, Calibration, Operation and Maintenance of Upstream Metering Equipment issued by the Commission ;

“*Insolvent*” means where the metering services provider —

(a) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 572 of the Companies and Allied Matters Act ;

(b) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or its solvent reconstruction ;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up, other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction ;

(d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over it ;

(e) a person becomes entitled to appoint a receiver or a receiver and manager over all or any of its assets or a receiver is appointed over all or any of its assets ;

(f) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 30 days ;

(g) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (f) of this regulation ; or

(h) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business ;

“*Insolvency*” shall be construed accordingly in line with the definition of insolvent above ;

“*lessee*” means the holder of a Petroleum Mining Lease, Oil Mining Lease, Petroleum Prospecting Licence, Petroleum Mining Lease or awardee of a marginal field, which is producing, whether commercially or as a result of well tests ;

“*Licence*” means a Metering Services Provider Licence issued to a qualified applicant by the Commission authorising the holder to provide metering services to producers of hydrocarbon in accordance with the Regulations and Guidelines issued by the Commission ;

“*Meter*” means a device and associated equipment employed in Petroleum Operations for quantifying the mass or volume of hydrocarbons produced for purposes of production allocation, ownership accounting and fiscalisation ;

“*metering equipment*” means and includes meters or metering systems used for measuring petroleum production and custody transfer ;

“*metering service*” means the design, financing, supply, installation, testing, calibration, operation, repair, replacement and maintenance of metering equipment for use in upstream petroleum operations ;

“*Metering Service Agreement*” means an agreement entered into between the lessee and a metering services provider for the provision of metering services and metering equipment to the lessee ;

“*metering service charge*” means periodic payments made by lessee to cover the cost of the provision of metering services including the cost of operating the metering equipment, maintenance, replacement of parts, overhead and other related operating costs incurred by the metering services provider ;

“*metering plan*” means a time-bound plan developed by the lessee further to a metering audit and approved by the Commission for the replacement or upgrade of existing meters or for the installation of new meters in the field ;

“*metering services provider*” means a person that is issued a Licence by the Commission to provide metering services to lessees ;

“*metering system*” means all meters and metering equipment installed by the lessee and used for the measurement of hydrocarbon produced and transferred to third parties ;

“*operational fault*” means any fault or metering system failure, mechanical or otherwise that may impact on measurement accuracy ;

“*Regulations*” means these Nigerian Upstream Petroleum Measurement Regulations, 2023 or any other specific regulation made pursuant to the Act ; and

“*Service Level Agreement*” means a contract between the metering services provider and the lessee which defines the level of service that the metering services provider is required to provide to the lessee ;

“*USD*” means United States Dollars.

Citation

21. These Regulations may be cited as the Nigerian Upstream Petroleum Measurement Regulations, 2023.

MADE at Abuja this 24th day of May, 2023.

ENGR. GBENGA KOMOLAFE, FNSE
Commission Chief Executive
Nigerian Upstream Petroleum Regulatory Commission

EXPLANATORY NOTE

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

These Regulations seeks to provide a framework for the installation of measurement equipment at measurement points as prescribed by the Commission, accelerated meter roll-out at measurement points as determined by the Commission, and the provision of independent and competitive metering service operations in the upstream petroleum sector ; encourage private investments in the provision of metering services in the upstream petroleum operations ; and provide the procedure for the measurement of petroleum produced from upstream petroleum operations.