

**PUBLIC HEARING BEFORE THE JOINT COMMITTEE OF THE HOUSE
OF REPRESENTATIVES ON THE PETROLEUM INDUSTRY BILL 2009**
MEMORANDUM BY NIGERIA LNG LIMITED

Honourable Chairman and Committee Members,

BACKGROUND

This presentation is made by Nigeria LNG Limited (NLNG) in response to the invitation by this esteemed Joint Committee dated 13th July 2009 requesting the Company to attend and participate in the Public Hearing on the Nigerian Petroleum Industry Bill now pending before both Houses of the Federal Legislature for consideration and possible passage into law.

As an establishment whose business and activities would most certainly be impacted, directly and indirectly by the schemes and arrangements proposed under the Petroleum Industry Bill, NLNG supports the broad reform and principal objectives of the Bill, which include, among other things, the establishment of viable and discernable legal and regulatory framework for the various sectors of the Nigerian Petroleum Industry, promotion of accountability, transparency and good governance, broadening of Government's revenue base through collection of all taxes, rents and royalties accruable to Government, ensuring that Nigerians fully participate in the business of the industry through empowerment of indigenous producers, as well as overall increase in productivity and efficiency. NLNG notes however, that in order for the Bill to achieve its stated aims, any changes and modifications to the existing regime must be geared towards providing a fair return on investment for the investors and benefits for the Nation, taking into account the prevailing and foreseeable economic environment in Nigeria and the world at large.

The desire for the development of an indigenous gas market and promotion of domestic utilization of gas in Nigeria, especially in local industries and the power sector, are principles espoused and elaborated under the Bill, and these laudable objectives, which are in consonance with the seven point agenda of the present administration, are worthy of support by all patriotic elements within the polity. Nevertheless, it is incontrovertible that with the nation's abundant gas resources and reserves, the objectives of Government

on domestic gas utilisation can exist and thrive in parallel with gas export, through the maximization of all available synergies, as the country still stands to benefit optimally from a secure and increased gas export industry. This is an underlying fact to which the legislature must constantly advert its mind when deliberating on this Bill, noting that stable fiscal and legal frameworks are required for both export oriented projects and activities, as well as for the satisfaction of the domestic gas supply requirements and obligations.

No doubt, the existing legal and regulatory framework for the Petroleum Industry in Nigeria presents many aberrations, which would necessitate the intervention of the legislature. Certain principal legislations relating to the Industry are archaic, which in effect have been a clog towards the development of a virile industry, and not in consonance with current trends. Cohesion is hindered by the existence of multifarious laws and regulations, as well as myriads of policy statements and instruments, often ill-defined, but all purporting to have some form of legal force or the other, with the attendant confusion they generate in their application. The existing legal and regulatory framework is tailored more towards oil than gas resources, such that the framework pertaining to gas has at best remained hazy and extrapolatory. It is therefore welcome that the Petroleum Industry Bill seeks, as much as possible, to codify the many existing laws into an omnibus "one stop shop" legislation for the Industry, and create a definite legal and regulatory structure for gas as distinct from oil. Hopefully, this should significantly clarify the legal framework and ease/streamline the regulatory process.

NLNG is of the view that the proposed structure reform, including full commercialization of the national oil company and the establishment of incorporated joint ventures in place of the existing JV structure, such as in the NLNG model, will, if properly and appropriately implemented, certainly result in increased effectiveness and efficiency, as well as ease the process of investment and the raising of capital for project development, to the ultimate benefit of both domestic and export projects who rely on upstream production activities for their feedstock requirements. In order for success to be guaranteed in this exercise, early and adequate engagement and negotiation with the current JV partners regarding the details of the proposed structure would be ideal.

As defined in Section 526 of the Bill, the construction and operation of LNG plants and all activities pertaining or ancillary thereto (including the related LNG terminals, acquisition, operation or chartering of tankers for coastal and marine transportation as well as other construction and activities incidental thereto and related administration and overhead) constitute "midstream export gas operations", which comes under the umbrella of "midstream petroleum operations". Consistent with the recognition of a distinct sector for the midstream, the National Midstream Regulatory Agency ("the Agency") has been proposed as the sole regulatory authority for the sector, regulating both the commercial and technical aspects. The statutory recognition, which is novel, of a distinct 'midstream' sector in the Nigerian Petroleum Industry is a laudable proposal, which is very much in sync with the position which operators within the system have canvassed over the years.

COMMENTS AND OBSERVATIONS

Regulation for LNG export projects and ventures should recognize the intrinsic fundamental drivers of the LNG business:

- LNG is an integrated value chain, comprising gas supply, liquefaction, shipping, re-gasification and marketing.
- LNG projects are very large investments, often requiring project finance from international financial institutions or access to international capital markets.
- The large investments in LNG projects are underpinned with long term sales contracts (often 80-90% of all capacity is sold under 20 year plus contracts) in order to justify the size and capacity of such investments.
- LNG buyers are very large utility companies in Europe, the Americas or Asia. Buyers are often (formerly) state-owned entities.
- The combination of strong buyers, long term contracts, project financing and international investors means that the LNG business thrives best under an atmosphere of legal and fiscal stability.

In the light of the foregoing as considered above, and the far-reaching implications of the regime proposed under the Bill, it is our view that certain clarifications/elucidations ought to be made regarding the general framework and some particular stipulations of the Bill, in order to ensure

that the objectives thereof are achieved, with regards to the LNG export sector, without major distortions.

It is perhaps apposite to commence with a general statement on the issue of Upstream Gas Economics proposed under the Bill as it affects the LNG export industry. Apparently to satisfy the objectives of increased Government take, which in itself is not an unreasonable aspiration, the Bill proposes some fiscal changes, among which is the elimination of tax deduction of gas investments against oil profits, as previously guaranteed under the Associated Gas Framework Agreement (AGFA) as well as the enhancing of the royalties and taxation regime applicable to upstream gas. The implication of this development could be the stultifying of further gas developments, as such investments may be considered more uneconomic by investors, more so since the development of oil projects with associated gas will be significantly impacted due to the loss of fiscal advantages applying to gas. When the climate for investment in upstream gas gathering projects are unduly hampered, it would invariably mean that no more LNG export projects would be developed, a scenario which would be disastrous considering the expected developments in the sector, in the nature of the expansion of the existing project and development of new ones, in respect of which the Government and international investors have committed millions of dollars. Ultimately, this would significantly and negatively impact Government revenue. This Honourable Committee is therefore urged to take this fact into account in its deliberations and ensure that whatever fiscal terms are eventually approved for the upstream would be such as will not unduly stultify the growth and development of the gas sector, as this would in itself be contrary to one of the stated objectives of the Bill.

With specific reference to the provisions of the Bill relating to midstream export gas operations, we wish to make the following observations and comments:

1. Functions and Powers of the Agency

Among the functions of the National Midstream Regulatory Agency as contained in Section 115(2), is the stipulation that the Agency shall monitor the financial viability of all operators in midstream petroleum operations, though the end or objective of such monitoring requirement is not stated in the Bill. It is doubtful if this function would be a necessary corollary to the

exercise of the other functions of the Agency under Section 115(1) as the provision appears to suggest. There is no indication, at the present time, regarding what would constitute the parameters, yardsticks and standards upon which the Agency may conclude that one operator is viable while another is not.

The red-tape burden of having to service the Agency's requests for information, as set out in Sections 116, 311 (1)(e) and 345(1)(f) calls for concern, more so that there is no condition of reasonableness, confidentiality or moderating constraint attached to the Agency's ability to request and even publish information provided by licensees, notwithstanding that they may contain business secrets.

Under Section 346(3), no licensee shall without the prior written consent of the Agency, directly or indirectly acquire an interest in, purchase or otherwise affiliate with another licensee or an affiliate of a licensee. This has the potential to impinge on the ability and freedom of the entities concerned to enter into beneficial business associations and would not appeal to a potential investor.

Overall, it is apparent that there is too much centralization of powers in the Agency. [This is true also of the proposed regulators for the upstream and downstream sectors, as the provisions regarding the three Regulatory Institutions in this respect are similar in extent]. The Agency may at different times and in respect of the same matter, function as administrator, legislator, dispute settler, final arbiter, enforcer or claimant/complainant/prosecutor. See Sections 135-145, 315 of the Bill. This is fraught with the possibility of a compromise to the transparency and integrity of the regulatory system and may lead to loss of focus. There may be need for a simplification of the licensing process and the streamlining of the role of the Agency which at present appears to be 'biting more than it can chew' by the repertoire of administrative, legislative and arbitral responsibilities with which it has been saddled. It is suggested that the responsibilities of the Agency (and by implication, those of the other Regulatory Institutions) be restricted to issues of administration and enforcement, while any disputes requiring judicial determination should be referred to the courts and tribunals established for that purpose under the Constitution.

2. Project Approval

The requirements for project approval for the midstream are contained in Section 305 of the Bill. It makes mandatory the procurement of a Project Approval Certificate as a condition precedent for the construction or operation of any project, including modifications or expansions of any existing project. The use of the words "construction or operation" may create some ambiguity, as it tends to suggest that such certificate may be obtained either prior to construction or prior to operation of a project or both. It needs to be clarified the stage at which the procurement of such certificate is required, and if separate approvals are envisaged for construction and operation respectively (as in the existing scheme), it ought to be expressly so stated, in order to clear all doubts.

From the wordings of Section 305(?), the Project Approval Certificate consists of a whole gamut of licenses and approvals. For export gas projects, the license to export gas is listed amongst these myriad of documents. The issue then is: At what stage will the Certificate be issued? Furthermore, from the tone of the provision, it is not clear whether the Certificate will encompass all the licenses and approvals listed, or which comes before the other.

Some of the envisaged contents of the Project Approval Certificate include approvals of the Nigerian Content Plan as well as the environmental management plan by the Agency. It is noted that Part VII of the Bill gives pre-eminence to regulations and determinations by the Federal Ministry of Environment in respect of issues relating to environmental management in the event of conflict between guidelines issued to licensees and prospective licensees by both regulatory institutions. However, no protection or guarantee is afforded to an applicant, the approval of whose project is subject to the discretion of the Agency as distinct from the Ministry. Such applicant would likely be caught in the 'cross-fire' and may have no choice but to comply with the standards of both institutions, thereby leading to duplication of compliance requirements and double jeopardy. Besides, is this requirement not already captured in the Environmental Impact Assessment and consequent approvals which the Federal Ministry of Environment would have to grant in respect of the project? With respect to the Nigerian Content Plan, the legislature is respectfully invited to keep in view the Nigerian Oil and Gas Industry Content Development Bill which is similarly

pending before it and ensure that any possible conflict in roles of the respective proposed regulatory institutions or in the provisions of both legislations are adequately resolved.

3. The Licensing Regime

Whereas there is some value in placing the responsibility for licensing, whether technical or commercial on a single regulatory authority, there is still a potential for overlap of both licences, possibly on different terms and conditions e.g. on the issue of duration. The separation of the licensing structure between the technical and the commercial has the tendency to complicate issues, increase costs and slow down project development. A single, all encompassing licence ought to suffice in any event.

Ideally the Technical License in the case export gas business will be the License to construct, and possibly after completion, it will include the License to operate. The Commercial License requirement for export gas business does not make any sense going by what commercial license entails as elaborated in Section 305(2)(b)(i)(ii), because no investor will go ahead to commit without undertaking an analysis on project economics to ascertain the viability or otherwise of the project. It should not be the business of Government to regulate the commercial viability of private business.

The lumping of the downstream and midstream sectors together in almost every respect for the elaboration of applicable regulatory, licensing and operational requirements, as in Parts IV and V of the Bill, is unhelpful, and appears to be an easy escape route taken by the authors. The dynamics of both sectors are not necessarily the same or coterminous; hence they should appropriately be differently treated, just like the Regulatory Institutions for the respective institutions, as well as provisions pertaining to upstream regulation and licensing, have each been separately considered and provided for in the Bill.

3. Technical Licensing

Section 307 of the Bill gives the Agency the authority to grant Technical Licenses related to midstream petroleum operations. Among other things, a licence is envisaged for the establishment, construction and maintenance of a process plant, whilst another licence is required for the utilization of all chemicals used for midstream petroleum operations. This appears an

unnecessarily duplication. A licence to operate a process plant should necessarily encompass the utilization of any chemicals and other inputs in such a plant. It should be noted that under the NAFDAC Act, approval must be obtained prior to utilization of any chemicals and other similar inputs in a plant, hence the unnecessary duplication of such requirement as provided in the Bill.

Under Section 307(5), the Agency, "subject to a formal consultation process", may by regulations prescribe additional activities to be undertaken only on the basis of a Technical Licence. This gives the Agency very wide latitude, especially as there is no indication as to the persons or institutions to be consulted prior to the making of any such regulation. It also runs inconsistent with the generality of the provisions of the Bill conferring the power to make regulations on the Minister responsible for Petroleum Resources, albeit upon the recommendations of the relevant Regulatory Institution. Our view however is that the stipulation of additional activities to be undertaken only on the basis of a licence should be within the exclusive province of the legislature, as it would amount in effect to an amendment of the principal legislation. Bringing additional activities within the ambit of the regulations, without the application of proper legislative process may be considered by investors as a threat to the Government's ability to maintain a reasonably consistent investment climate. This view is also relevant with respect to the provision of Section 325(3) with respect to Commercial Licence.

In providing under Section 310(1) and 344(1) respectively for the regulations which may be made by the Minister to include, among other things, the duration of Technical and Commercial Licences and the procedure, form, criteria and timescale for their renewal, the Bill appears to have glossed over the stipulation in Sections 312(1) and 348(1) that a licence issued by a Regulatory Institution shall be for a period of 25 years in the first instance. Accordingly, there is no utility in the Minister including such stipulation in the regulations which are to be made, when it is already provided for in the principal enactment. Regarding the provisions for renewal as contained in Sub-section (2) of section 312 and 348(1), it is suggested that all subsequent renewals should equally be set at a 25 years, rather than granting the Agency discretion to determine the renewal period, as this may be subject to abuse and double standard.

4. Commercial Licensing

One of the requirements for project approval as contained in Section 305 is that the Commercial Licence to be issued by the Agency certifies that the project does not involve excessive capital or operating expenditures based on the benchmarking analysis of the Agency, which would result in a reduction in anticipated petroleum revenues or increased consumer prices. This may constitute a massive infringement of a company's ability to do business, more so as there is no defined yardstick upon which the Agency is to determine what constitutes "excessive capital or operating expenditures".

Apparently, the Bill seeks to break up the value chain of gas supply, distribution and consumption by ensuring (presently and/or futuristic) that neither gas suppliers nor consumers can own transmission infrastructure. See Section 328(1)(a), 328(2) and 346(1). With respect to midstream LNG export projects, this would be disruptive of existing and firmed-up arrangements. As already highlighted, the nature of LNG export business is such that there must be reliability of supply of feed gas in order to guarantee the satisfaction of obligations which the LNG export projects have entered into with international buyers under various sales and purchase agreements, there being dire consequences for failure to meet up with agreed schedules. The obligations in this respect are usually "back to back", which means maintaining the sanctity of the supply chain. The foregoing makes it imperative that gas supply from the upstream producers to the liquefaction points are under the operational control of the parties themselves and not under an intermediary or extraneous third party who may neither appreciate nor facilitate compliance with these onerous contractual obligations. This clarifies the nomination process and ensures easy co-ordination of activities by a project serviced by multiple gas suppliers. Ideally, the transmission of such 'gas for export' would be via a dedicated transmission infrastructure, which will also ensure that the possibility of mixing of different gas streams, which may affect quality, is significantly curtailed.

Closely connected with the requirement of security of gas supply is the issue of security of revenue streams. The point was made earlier that LNG export projects are capital intensive, risk-prone and usually of long-lasting duration. These are peculiarities demanding of reasonable stability, especially where, as is usually the case, there is reliance on loan financing from international

financing institutions with strict repayment schedules, as well as a securitization of all the assets of the company (including its cash flows) in order to guarantee compliance with agreed repayment terms. For this reason, it is of utmost importance that gas supply to LNG export projects must be assured at all times, in order to ensure that the covenants and conditions attached to these loans are not breached. Such assurance of uninterrupted supply of feedstock gas is also a *sine qua non* for the sourcing of additional credit facilities.

Having obtained Technical and Commercial Licenses from the Agency, there is a further requirement for a company engaged in activities which are required to be licensed by the Regulatory Institution to register its activities with the Regulatory Institution and provide such information concerning the undertaking as may be prescribed by regulations issued pursuant to the Act. These pieces of information would be available to any member of the public upon the payment of a fee. See Sections 318, 323, 355 and 360. The utility of further registration with a Regulatory Institution which had already and previously issued operating licences to a company is unclear. However, with specific regards to LNG export projects, this stipulation as relates to provision of information which may be disseminated to the general public has the potential to fundamentally affect the sanctity of concluded contracts of international flavour, mostly with stringent provisions on confidentiality and non-availability of commercial information to the general public. It must be understood that exposing the business secrets of private business organizations (e.g. pricing formula or product composition) to the general public is a sure way of distorting a market economy such as ours, as well as international business.

5. Midstream Operations - Third Party Access

Sections 372, 384, 387-389 of the Bill provides for Interconnections and Third Party Access to transmission infrastructure. It is not entirely clear whether or not these provisions are mandatory prescriptions applicable to all companies engaged in midstream petroleum operations. Investors who currently have infrastructure from previous investment will naturally be concerned with any stipulation importing mandatory third party access, which would give the Agency and third parties access to networks that were funded by investors prior to the introduction of the Bill. This would not only be unfair, but would be suggestive of an unhealthy economic and political

climate for investment. The reasons why such a scheme would be antithetical to the business interests of LNG export projects have previously been highlighted above. It is therefore suggested that a provision similar to Section 374, to the effect that nothing in the Act shall preclude any licensed marketing company or bulk consumers of petroleum products from constructing and operating independent petroleum product pipelines and depots for its exclusive usage be included with respect to gas export projects, leaving it at the discretion of such operators to enter into open access agreements with third parties, which, if so entered, shall be subject to the commercial regulation and supervision of the Agency.

6. Gas Pricing and Pricing Principles

Among the functions of the Agency as stipulated under Section 115(1) of the Bill are the establishment of appropriate pricing framework for sale of gas by operators in midstream petroleum operations, and setting the cost benchmark for midstream petroleum operators. Sections 390, 391 and 393 of the Bill make additional provisions with respect to gas pricing and gas pricing principles, not in the least with respect to wholesale gas supply volumes. It must be recognized that these stipulations are essentially applicable in the domestic scene and should not apply to the pricing arrangements that govern the relationship of midstream export gas projects and particularly LNG export projects with their overseas customers, as any imputation otherwise may produce an untoward result. As currently expressed, the provisions are capable of giving the Agency access to review the commercial and pricing arrangements of international investors in upstream gas projects, which, though apparently consistent with the general scheme of the Bill, could dampen investor confidence. Ideally such stipulations relating to price regulation, in addition to other provisions dealing with customer protection, competition and market regulation and the prevention of abuse of market power, are concepts which are or ought to be of greater relevance and applicability to the downstream domestic sector, in order to guarantee product availability and protect the interest of final consumers.

7. Gas Exports

Section 409(3) of the Bill provides for the issuance of export licences relating to the export of gas and gives the Agency power to refuse the grant of such licences "where the Agency has determined that the exports

of gas from Nigeria are not in the national interest due to insufficiency of available proved gas reserves to supply to the long term domestic market." For LNG export projects, in respect of which long term contracts have been concluded with international parties as product buyers, the exercise of any such power by the Agency could be obstructive to the security of supply which is a *sine qua non* for the ability of the projects to satisfy their commitments, failure of which could lead to several dire consequences, including under delivery penalties ranging in the hundreds of millions of dollars, loss of reputation not only for the projects but also for the country, and ultimately a distortion of the overall investment climate within the local business environment. With the realization that the Federal Government, through the national oil company, is and would continue to be a partner in LNG export projects in Nigeria, a stipulation such as this, which could facilitate the failure of these entities, cannot, upon proper consideration, be asserted, by any stretch of the imagination, as being in the interest of the national economy.

In a related matter, Section 407 imposes penalties on gas suppliers who fail to comply with their Domestic Gas Supply Obligations as specified by the Agency. Apart from paying the amount prescribed under the take or pay provisions in the executed gas supply agreement, and a penalty of US\$3.50 per Mcf, for gas not supplied, less any amount payable under the take or pay provision, in addition to other penalties that the Minister may deem fit, such gas supplier shall not supply gas to any export project for the period the supplier is not complying with the Domestic Gas Supply Obligations. It must be noted however, as explained above, that the consequences of failure by a supplier to supply gas to an export project is of critical concern, as the effect of such a failure transcends the relationship between the gas supplier and such export project and would amount, in effect, to an extension of penalty to the export project when it is not in any default. Therefore, it is our considered opinion that the other penalties already specified in the Bill for failure to comply with the Domestic Gas Supply Obligation are clearly adequate, more so when it is conceived that the Minister may impose other penalties (which stipulation is nevertheless advocated for deletion, as it may lead to arbitrariness and uncertainty, which are not ideal for the operation of business organisations). It is doubted whether any gas supplier would knowingly and intentionally fail to comply with its Domestic Gas Supply Obligations in the face of these

extensive penalties, even without resort to the additional penalty of non-supply to export projects.

8. Nigerian Content

Without prejudice to the erstwhile observation advertent to the pending Nigerian Content Bill and the need to avoid a clash of functions or conflict in statutory provisions, it is necessary to draw attention to the provisions of Sections 416 and 420 of the Petroleum Industry Bill dealing with Employment and Personnel requirements. The provision prescribes the percentages of Nigerians which a lessee or licensee must employ in respective cadres, including its Board of Directors, managerial, professional and supervisory grades as well as skilled, semi-skilled and unskilled or any other corresponding grades. This provision appears not to take into account the fact that ownership structure of companies within the industry may not be entirely indigenous, and that where foreign interests are involved, instruments of co-operation may have been executed, often making stipulations for issues such as management and staffing, including staff secondment and exchange programmes. While the objective of empowering Nigerians is without doubt laudable, care must be taken to ensure that the sanctity of concluded contracts is not thereby jeopardized.

9. Incentives for Gas Utilisation

The provisions of Section 432 of the Bill, is an amendment to the applicability of the incentives under Section 39 of the Companies Income Tax Act to midstream export gas operations with respect to LNG. Ordinarily, LNG projects are within the definition of 'gas utilization projects' under the said Section 39, but with this proposed amendment, no new LNG project in respect of which "firm guaranteed commitments for investments" (interpreted as Final Investment Decision) is not made before December 31, 2011 shall be entitled to benefit from such incentives. It is not clear on what criteria this date was picked, judging especially from the fact of the inability to conclude on a number of such envisaged Final Investment Decisions, not in the least in consequence of the gas supply, security and funding issues, which as at date, are yet unresolved.

10. Public Service Obligations

With respect to the provisions conferring power on the Minister to make regulations imposing public service obligations - Section 396(2), it is

recommended that the funds to be expended by private business establishments in compliance with such obligations should be recognized as a tax deductible expense under the Bill, such that the profitability of these companies are not eroded by their adherence to these mandatory requirements.

11. Definition of 'Midstream'

Regarding LNG export projects, Section 526 of the Bill defines "midstream export gas projects" to include "construction and operation of liquefied natural gas ("LNG") plants, and related LNG terminals; acquisition, operation or chartering of LNG tankers for coastal and marine transportation; other construction and activities incidental thereto and related administration and overhead and where more than 40% of the BTU content of the gas being transported, stored, processed, extracted, converted or liquefied is dedicated to exports from Nigeria as determined from time to time by the Agency, subject to the domestic gas supply obligations that may be imposed by the Minister." There are two issues of concern as borne out in this definition:

- The bit about LNG terminals and the acquisition, operation and chartering of LNG tankers for coastal and marine transportation and related activities ought not to form part of the definition, as the shipping activities of export companies, to the extent applicable, are governed by the various maritime institutions, as well as applicable maritime conventions. Bringing these activities within the purview of the Agency will lead to unnecessary distortions in the regulatory framework. The activities of the Agency should be limited to the plant and pipelines.
- It is not entirely clear why the definition of what constitutes the midstream export gas sector should be "subject to the domestic gas supply obligations as may be imposed by the Minister." Compliance with the Domestic Gas Supply Obligation ought rightly to be a matter restricted to the upstream, who are the owners of the licences to explore and source for natural gas. It does not stand to reason to subject an LNG export project for example, which purchases its feedstock gas from the upstream, to such obligation, when it is not a natural gas producer.

CONCLUSION

For greater effect, a tabulation of our views and comments on the various sections and provisions of the Bill discussed above has been made in the attached schedule.

While thanking you for affording us the opportunity to proffer our comments, we hope they will be of assistance to this Esteemed Committee and indeed the National Assembly as a whole, in finalizing this Bill.

NLNG MANAGEMENT

JULY 2009

S/NO	SECTION	PROVISION	COMMENT	RECOMMENDATION
1.	-	The Bill proposes some fiscal changes, among which is the elimination of tax deduction of gas investments against oil profits, as previously guaranteed under the Associated Gas Framework Agreement (AGFA) as well as the enhancing of the royalties and taxation regime applicable to upstream gas.	This could stultify further gas development; as such investments would be more uneconomic for investors, more so since the development of oil projects with associated gas will be significantly impacted due to the loss of fiscal advantages applying to gas.	Ensure that whatever fiscal terms are eventually approved for the upstream would be such as will not unduly stultify the growth and development of the gas sector, as this would in itself be contrary to one of the stated objectives of the Bill.
2.	115(l) 390, 391, 393	The Agency shall establish appropriate pricing framework for sale of gas by operators in midstream petroleum operations, and setting the cost benchmark for midstream petroleum operators.	It must be recognized that these stipulations are essentially applicable in the domestic scene and should not apply to the pricing arrangements that govern the relationship of midstream export gas projects and particularly LNG export projects with their overseas customers, as any imputation otherwise may produce an untoward result. As currently expressed, the provisions are capable of giving the Agency access to review the commercial and pricing arrangements of international investors in upstream gas projects, which, though	Ideally such stipulations relating to price regulation, in addition to other provisions dealing with customer protection, competition and market regulation and the prevention of abuse of market power, are concepts which are or ought to be of greater relevance and applicability to the downstream domestic sector, in order to guarantee product availability and protect the interest of final consumers.

			apparently consistent with the general scheme of the Bill, could dampen investor confidence.	
3.	115(2)	The Agency (NAMIRA) shall monitor the financial viability of all operators in midstream petroleum operations.	No indication regarding what would constitute the parameters, yardsticks and standards for the Agency to make this determination. Viability of private establishments should not be the business of the Agency.	Delete
4.	116, 311(l)(e), 345(l)(f)	Agency may request licensees for information.	There is no condition of reasonableness, confidentiality or moderating constraint attached to the Agency's ability to request and even publish information provided by licensees, notwithstanding that they may contain business secrets.	Agency to request information (beyond the usual reporting requirements) only in cases of absolute necessity. Information given to the Agency by licensees, where not on a matter of public interest, should not be available to the general public.
5.	135-145, 315	There is too much centralization of powers in the Agency as it may at different times and in respect of the same matter, function as administrator, legislator, dispute settler, final arbiter, enforcer or claimant/complainant/prosecutor.	This is fraught with the possibility of a compromise to the transparency and integrity of the regulatory system and may lead to loss of focus.	Restrict the Agency to issues of administration and enforcement, while any disputes requiring judicial determination should be referred to the courts and tribunals established for that purpose under the Constitution.
6.	305(l)	The procurement of a Project	The use of the words "construction or	It needs to be clarified the stage at

		Approval Certificate as a condition precedent for the construction or operation of any project, including modifications or expansions of any existing project.	operation" may create some ambiguity, as it tends to suggest that such certificate may be obtained either prior to construction or prior to operation of a project or both.	which the procurement of such certificate is required, and if separate approvals are envisaged for construction and operation respectively (as in the existing scheme), it ought to be expressly so stated, in order to clear all doubts.
7.	305(2)	The Project Approval Certificate consists of a whole gamut of licenses and approvals. For export gas projects, the license to export gas is listed amongst these myriad of documents.	At what stage will the Certificate be issued? Furthermore, from the tone of the provision, it is not clear whether the Certificate will encompass all the licenses and approvals listed, or which comes before the other.	The sequence of the certification process should be clarified.
8.	305(2)	The Project Approval Certificate would contain an approval of the environmental management plan by the Agency.	Part VII of the Bill gives pre-eminence to regulations and determinations by the Federal Ministry of Environment in respect of issues relating to environmental management in the event of conflict between guidelines issued to licensees and prospective licensees by both regulatory institutions. However, no protection or guarantee is afforded to an applicant, the approval of whose project is subject to the discretion of	Transfer to the FME the authority to issue such approvals as part of the EIA process.

9.	305(2)	The Project Approval Certificate would contain an approval of the Nigerian Content plan by the Agency.	the Agency as distinct from the Ministry. The Nigerian Content Development Bill which is similarly pending before the legislature, and creates a different regulatory framework.	Ensure that any possible conflict in roles of the respective proposed regulatory institutions or in the provisions of both legislations are adequately resolved.
10.	-	There is a potential for overlap of technical and commercial licences, possibly on different terms and conditions e.g. on the issue of duration. Ideally the Technical license in the case export gas business will be the License to construct, and possibly after completion, it will include the License to operate.	The separation of the licensing structure between the technical and the commercial has the tendency to complicate issues, increase costs and slow down project development. The Commercial License requirement for export gas business does not make any sense going by what commercial license entails because no investor will go ahead to commit without undertaking a study on project economics to ascertain the viability or otherwise of the project. It should not be the business of government to regulate the commercial viability of private business.	An all encompassing licence, first for construction and thereafter for operation, ought to suffice.
11.	307	The Agency may grant Technical Licenses related to midstream petroleum operations. Among other things, a licence is envisaged for the	This appears an unnecessarily duplication. A licence to operate a process plant should necessarily encompass the utilization of any	Delete provision on licensing for utilisation of chemicals.

		<p>establishment, construction and maintenance of a process plant, whilst another licence is required for the utilization of all chemicals used for midstream petroleum operations.</p> <p>The Agency, "subject to a formal consultation process", may by regulations prescribe additional activities to be undertaken only on the basis of a Technical or Commercial Licence.</p>	<p>chemicals and other inputs in such a plant.</p>	
12.	305(5), 325(3)		<p>This gives the Agency very wide latitude, especially as there is no indication as to the persons or institutions to be consulted prior to the making of any such regulation. It also runs inconsistent with the generality of the provisions of the Bill conferring the power to make regulations on the Minister responsible for Petroleum Resources, albeit upon the recommendations of the relevant Regulatory Institution.</p>	<p>The stipulation of additional activities to be undertaken only on the basis of a licence should be within the exclusive province of the legislature, as it would amount in effect to an amendment of the principal legislation.</p>
13.	310, 344(1)	<p>The Minister may by regulation specify the duration of Technical and Commercial Licences and the procedure, form, criteria and timescale for their renewal.</p>	<p>Sections 312(1) and 348(1) already specify that a licence issued by a Regulatory Institution shall be for a period of 25 years in the first instance.</p>	<p>Amend as appropriate. Regarding the provisions for renewal as contained in Sub-section (2) of section 312 and 348(1), it is suggested that all subsequent renewals should equally be set at a 25 years, rather than granting the Agency discretion to determine the renewal period, as this may be</p>

			subject to abuse and double standard.
14.	328(1)(a), 328(2), 346(1)	The Bill seeks to break up the value chain of gas supply, distribution and consumption by ensuring (presently and/or futuristic) that neither gas suppliers nor consumers can own transmission infrastructure.	Delete
15.	318, 323, 355, 360	A company engaged in activities which are required to be licensed by the Regulatory Institution is to register its activities with the Regulatory Institution and provide such information concerning the undertaking as may be prescribed by regulations issued pursuant to the Act. These pieces of information would be available to any member of the public upon the payment of a fee.	Delete
16.	346(3)	No licensee shall without the prior	Delete
		With respect to midstream LNG export projects, this would be disruptive of existing and firmed-up arrangements. As already highlighted, the nature of LNG export business is such that there must be reliability of supply of feed gas in order to guarantee the satisfaction of obligations which the LNG export projects have entered into with various international buyers.	Delete
		The utility of further registration with a Regulatory Institution which had already and previously issued operating licences to a company is unclear. However, with specific regards to LNG export projects, this stipulation has the potential to fundamentally affect the sanctity of concluded contracts of international flavour, mostly with stringent provisions on confidentiality and non-availability of commercial information to the general public.	Include provisions regulating the classes of information to be disclosed as well as guaranteeing their confidentiality.
		This has the potential to impinge on the	Delete

		written consent of the Agency, directly or indirectly acquire an interest in, purchase or otherwise affiliate with another licensee or an affiliate of a licensee.	ability and freedom of the entities concerned to enter into beneficial business associations and would not appeal to a potential investor.	
17.	372, 384, 387-389	Provides for Interconnections and Third Party Access to transmission infrastructure.	It is not entirely clear whether or not these provisions are mandatory prescriptions applicable to all companies engaged in midstream petroleum operations. Investors who currently have infrastructure from previous investment will naturally be concerned with any stipulation importing mandatory third party access, which would give the Agency and third parties access to networks that were funded by investors prior to the introduction of the Bill. This would not only be unfair, but would be suggestive of an unhealthy economic and political climate for investment.	Open access should be voluntary and not mandatory. Include a provision similar to Section 374, to the effect that nothing in the Act shall preclude any licensed marketing company or bulk consumers of petroleum products from constructing and operating independent petroleum product pipelines and depots for its exclusive usage be included with respect to gas export projects, leaving it at the discretion of such operators to enter into open access agreements with third parties, which, if so entered into, shall be subject to the commercial regulation and supervision of the Agency.
18.	396(2)	Confers power on the Minister to	Unless appropriately qualified, this may	The funds to be expended by

		make regulations imposing public service obligations.	be antithetical to private business interests.	private business establishments in compliance with such obligations should be recognized as a tax deductible expense under the Bill, such that the profitability of these companies are not eroded by their adherence to these mandatory requirements.
19.	407	Imposes penalties on gas suppliers who fail to comply with their Domestic Gas Supply Obligations as specified by the Agency, including restraining such gas supplier from supplying gas to any export project for the period the supplier is not complying with the Domestic Gas Supply Obligations.	The consequences of failure by a supplier to supply gas to an export project is of critical concern, as the effect of such a failure transcends the relationship between the gas supplier and such export project and would amount, in effect, to an extension of such penalty to the export project when it is not in any default.	Delete the provision to the extent that supply of gas to export projects is restrained during the period.
20.	409(3)	Provides for the issuance of export licences relating to the export of gas and gives the Agency power to refuse the grant of such licences "where the Agency has determined that the exports of gas from Nigeria are not in the national interest due to	For LNG export projects, in respect of which long term contracts have been concluded with international parties as product buyers, the exercise of any such power by the Agency could be obstructive to the security of supply which is a sine qua non for the ability of	Delete

		insufficiency of available proved gas reserves to supply to the long term domestic market."	the projects to satisfy their commitments, failure of which could lead to several dire consequences, including under delivery penalties in the millions of dollars, loss of reputation not only for the projects but also for the country, and ultimately a distortion of the investment climate.	
21.	416, 420	Prescribes the percentages of Nigerians which a lessee or licensee must employ in respective cadres, including its Board of Directors, managerial, professional and supervisory grades as well as skilled, semi-skilled and unskilled or any other corresponding grades.	This provision appears not to take into account the fact that ownership structure of companies within the industry may not be entirely indigenous, and that where foreign interests are involved, instruments of co-operation may have been executed, often making stipulations for issues such as management and staffing, including staff secondment and exchange programmes.	While the objective of empowering Nigerians is without doubt laudable, care must be taken to ensure that the sanctity of concluded contracts is not thereby jeopardized.
22.		This is an amendment to the applicability of the incentives under Section 39 of the Companies Income Tax Act to midstream export gas operations with respect to LNG. Ordinarily, LNG projects are within the definition of 'gas utilization projects'	It is not clear on what criteria this date was picked, judging especially from the fact of the inability to conclude on a number of such envisaged Final Investment Decisions, not in the least in consequence of the gas supply, security and funding issues, which as at date, are	Maintain the status quo.

		<p>under the said Section 39, but with this proposed amendment, no new LNG project in respect of which "firm guaranteed commitments for investments" (interpreted as Final Investment Decision) is not made before December 31, 2011 shall be entitled to benefit from such incentives.</p>	<p>yet unresolved.</p>	
23.	526	<p>Defines "midstream export gas projects" to include "construction and operation of liquefied natural gas ("LNG") plants, and related LNG terminals; acquisition, operation or chartering of LNG tankers for coastal and marine transportation; other construction and activities incidental thereto and related administration and overhead and where more than 40% of the BTU content of the gas being transported, stored, processed, extracted, converted or liquefied is dedicated to exports from Nigeria as determined from time to time by the Agency, subject to the domestic gas</p>	<ul style="list-style-type: none"> • The bit about LNG terminals and the acquisition, operation and chartering of LNG tankers for coastal and marine transportation and related activities ought not to form part of the definition, as the shipping activities of export companies, to the extent applicable, are governed by the various maritime institutions, as well as applicable maritime conventions. Bringing these activities within the purview of the Agency will lead to unnecessary distortions in the regulatory framework. 	<ul style="list-style-type: none"> • The activities of the Agency should be limited to the plant and pipelines. • Delete the words "subject to the domestic gas supply obligations that may be imposed by the Minister."

		<p>supply obligations that may be imposed by the Minister.”</p>	<ul style="list-style-type: none"> It is not entirely clear why the definition of what constitutes the midstream export gas sector should be “subject to the domestic gas supply obligations as may be imposed by the Minister.” Compliance with the Domestic Gas Supply Obligation ought rightly to be a matter restricted to the upstream, who are the owners of the licences to explore and source for natural gas. It does not stand to reason to subject an LNG export project for example, which purchases its feedstock gas from the upstream, to such obligation, when it is not a natural gas producer. 	