

Resolving Nigeria's Electric Power Crises: Role of the Legal and Regulatory Framework for the Nigerian Domestic Gas Supply Obligations and Pricing Model

Annotated Bibliography

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INTRODUCTION

This web page contains selected sources of information, relevant to my LL.M. thesis research at the University of Calgary.

My research is on the legal and regulatory framework for the Nigerian domestic gas supply and pricing model and its role in resolving the electric power production crises in the country. I also look importantly, at the likely challenges and possible solutions to such challenges.

My research to a large extent reviews the framework because the Government has proposed a legal and regulatory framework for the model stated above. Recently, the Nigerian Government came to the realization that the electric power supply industry as a strategic domestic industry which requires urgent attention in terms of gas availability and pricing, in view of the multiplier effect the sector has on the Nigerian economy as a whole.

Thus, my paper would be largely a doctrinal piece looking at the role of this model in improving electric power supply within the confines of its regulatory and legal framework, the likely challenges and problems, particularly legal ones and possible solutions to those challenges through a chapter on recommendations.

The following Annotated Bibliography therefore relates to some of the literature for my thesis project. I must point out however, that the bibliography is a work-in-progress and therefore not by any means comprehensive or exhaustive at this stage.

This annotated bibliography is divided into 4 parts. Part 1 consists of materials on the history, general information, challenges, analyses of the interrelationship and current state of electric power production and the domestic gas sector in Nigeria.

Part 2 consists of Government documents and reports while part 3 consists of legislations and regulations. Finally, there is part 4 which consists of other materials and useful online links for general and specific information regarding my research.

ANNOTATED BIBLIOGRAPHY

PART 1: BOOKS & ARTICLES

A. BOOKS

Akinrele Adedolapo, *Nigeria Oil and Gas Law* (London: Oil, Gas & Energy Law Intelligence, 2005).

This book does a thorough analysis of the Nigerian oil and gas sector, although its emphasis is on oil and not gas, it gives an insight into issues such as investment in the gas subsector, a historical perspective on gas development and some information on fiscal issues in the gas subsector. It is also one of the most cited Nigerian books when research is done regarding issues related to Nigeria's oil and gas sector and in my view, my research would not be complete without a review of this text which is the Nigerian oil and gas law practitioners' manual. In comparison to other texts I have read that do an analysis of the Nigerian oil and gas sector; I think it is the most thorough and reliable particularly when you consider that it was endorsed by world renowned energy experts like the late Professor W. Walde of the Centre for Energy, Petroleum and Mineral Law and Policy, Dundee.

Olivia Phillip International Consulting Limited, *Nigeria: Electric Power Sector Report 2008* (Lagos: Olivia Phillip International Consulting Limited 2008).

This reference text traces the history of the power and natural gas sectors and seeks to show the interrelationship between them. It is

an indispensable source of information and point of reference. It also reasons why investors should 'take the plunge' with regard to the Nigerian electric power sector. Although it is not a law text like the text by Akinrele for example, it is however, a good reference source for information, statistics and general policy of the Nigerian government as it relates to the power sector and natural gas supply and availability.

B. ARTICLES

Adefulu Adeolu, "How Can Nigeria Develop a Domestic Market for its Gas?" (2000) I.E.L.T.R. 99.

This article gives a historical perspective on natural gas development and utilization in Nigeria and discusses the problems involved in development of a Nigerian natural gas market. It goes ahead to make suggestions for developing a domestic gas market in Nigeria. The paper is in my view a good source of general information of historical facts and details regarding the Nigerian gas sector as far as my research or any research relating to Nigerian natural gas is concerned.

Besant-Jones John, "Reforming Power Markets in Developing Countries: What Have We Learned?", online: (2007) 2 OGEL 1, <<http://www.ogel.org/article.asp?key=2486>>.

This paper compiles the lessons of experience from the reforming of power markets of developing countries and transition economies. The paper acts a sourcebook of about 240 references to this documented experience and complements the World Bank's

Operational Guidance Note for Public and Private Roles in the Supply of Electricity Services (OGN; World Bank 2004b) by compiling lessons of this experience that help in applying the Note's guidance. Interestingly it also shows that natural gas pricing and availability is most times key to electric power generation and stability. Finally, the paper states that any Government that wants to reform its electric power sector, should incorporate its strategic and tactical decisions in an explicit policy, document the policy, present to the legislature for discussion and for obtaining political support. It then further states that once this is obtained, the policy should be officially published. The author then mentions Nigeria as an example of a country that is following this process. This assertion is in my view, buttressed by the fact that recently in Nigeria, every regulation relating to the energy sector is made as a follow up to an explicit policy which has already been documented and in most times received legislative and political support. The regulations for domestic gas supply together with the Nigerian gas master plan are veritable examples of these.

Gbenga Oyebode & Dosekun Kofo, “The International Comparative Legal Guide to Gas Regulations”, online: (2008) International Comparative Legal Guide 152 <<http://www.iclg.co.uk/khadmin/Publications/pdf/1799.pdf>>.

This article written by two of Nigeria's most renowned transactional lawyers provides a concise, yet thorough outline of Nigeria's natural gas sector, including a general description of natural gas reserves; natural gas production; importation and exportation of natural gas; natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading. It also does some analysis on the role of domestic gas supply for the

electric power sector. It states facts from official and primary sources which gives one some confidence on the thorough nature of the work and also makes me comfortable citing the article for assertions, facts and figures. The analysis on the role of domestic gas supply for the electric power sector in the article is also useful for my research. The article is also attractive to me because it is recent and a follow-up to a brilliant article earlier written by the same authors.

Ifey Ikeonu, “The Nigerian Electric Power Sector Reform: Establishing an Effective Licensing Framework as a Tool for Attracting Investments”, online: (2006): IP3 <http://www.ip3.org/pub/2006_publication_001.htm >.

This article was written in 2006 by the acting head of Legal and licensing division of the newly formed Nigerian Electricity regulatory Commission. It gives a general overview of the Nigerian electric power sector, its past, present and expected future expectations. It is useful in getting a good grasp of the problems faced in the electric power sector of the country. It also contains useful facts in building the introductory part of my research. It is not only descriptive; it has also got some good analysis of issues in the sector.

Salami Lawal & Elebiju Afolabi, “Investment incentives for the Electricity Business in Nigeria” (2004) 22 Journal of Energy & Natural Resources Law 94.

This paper gives an insight into incentives for investing in electricity business in Nigeria particularly as it relates to gas utilization since almost 70% of the power plants are gas fired. The paper makes particular reference to fiscal incentives. The incentives mentioned

included tax holidays, accelerated capital allowances amongst others. It is a narrative and does not contain any analysis; neither does it state the reason for the lack of investment in the sector despite the incentives. My major attraction to this article is the fact that it was written by two tax experts of a world renowned tax and consulting firm, known to be retained by most international oil corporations for tax consultancy purposes.

Saula Olokodana & Ayodele Oni, “Understanding Power Purchase Agreements” (2006) 3 Negris News1.

This is an article which was co-authored. One of the authors is an industry practitioner who was at the time of publishing the article, the Manager (now Senior Manager), Legal Services of a foremost indigenous Nigerian Power Production company. This article is useful because it was well researched and provides background information on the electric power sector in Nigeria, from an insider's point of view.

Steven J. Malecek, “A Legal Framework for Gas Development: How Can Host Governments Strike a Balance between Investment and Competition?”, online: (2001) 8 CEMPLP Annual Review, <<http://www.dundee.ac.uk/cepmlp/car/html/car5arti8.htm>>.

This article is in my view a brilliantly written article on policy issues regarding domestic gas supply particularly as it relates to supply for power generation. The article has also got quite a bit of useful information and analysis on objectives for gas development, as it

relates to power generation. It also suggests, and I quite agree with the author, that apart from other reasons particularly commercial ones, non-convertibility of local currency for repatriation of profits when selling gas into the domestic market is a key reason for the underdevelopment of domestic gas markets in less developed countries. This key reason amongst others mentioned in the article applies to the Nigerian domestic gas sector. This article is really a useful piece in building a good argument on why the state of the Nigerian electric power is where it is and also helps in making forward looking policies in improving the sector.

C. PRESENTATIONS, PAPERS & NEWS RELEASES

PRESENTATIONS AND PAPERS

Dayo Okusami, “Striking the Balance between LNG Exports and Domestic Demand: The Nigerian Model” (paper presented by a senior associate in Nigeria’s top energy law firm; Templars, at the 5th Law of LNG Conference in Houston, Texas, 5th September, 2008) [unpublished]

This paper presented at the 5th Law of LNG conference was co-authored by the writer of this compilation and a senior associate at one of Nigeria’s renowned energy law firms; Templars. The paper was written a few weeks after the Nigerian government expressed its intention of balancing the desire of increasing its ranking among LNG exporters in the world and meeting domestic demand for gas through a National Domestic Gas Supply and Pricing Policy and

proposed follow-up regulations. The paper highlights the legal challenges that the regulations may bring up, it also gives a comprehensive overview of the policy and regulations forming the Nigerian gas supply and pricing model.

Engr. (Dr.) J.O. Makoju, “Developments in the Nigerian Electric Power Sector” (paper presented by Special Adviser to the President on Electric Power to *the Professionals* at the Federal Palace Hotel Lagos, 1st March, 2007) [unpublished].

This presentation outlines the past and present conditions of electric power production in Nigeria and then goes on to state the problems and challenges and efforts being made to tackle those problems. This presentation was one the author attended and was quite insightful. Reasonable reliance in my view can be placed on most of the information in the paper because it was coming from the special adviser to the president on electric power, with over twenty years experience in the electric power sector, prior to the presentation.

Olatunde Odusina, “The Gas Master plan: Ensuring Maximum Benefit from Gas Resources by Striking the Balance between Export and Domestic Use” (paper presented by the Honourable Minister of State for Energy [Gas] at the Nigerian Oil & Gas 2008 Conference 18th-21st February 2008) [unpublished].

This paper presented by the Honourable Minister in charge of gas in Nigeria, highlights the efforts of the current administration at

improving domestic gas supply through policy and regulations. It makes mention of issues relating to gas-to-power and use of natural gas for power generation. It is also a veritable source of information regarding Nigeria's short to long term energy supply security policy and other related facts and information. It also alludes to the fact that natural gas is increasingly becoming more and more important in power generation especially with the construction of twenty-two greenfield gas-fired power plants.

MEDIA RELEASE

The Presidency, Media release, "FG Inaugurates National Gas Master Plan" (29 April 2008), online: The Presidency <http://www.nigeriafirst.org/article_8178.shtml>.

This report which is from the media representatives of the presidency, explains the efforts of the current Nigerian administration at improving domestic gas supply which would stimulate an improvement in electric power production, being the major fuel for power generation in Nigeria. The report states that due to the lack of domestic gas supply, there are power plants lying idle. It also states that the Government has approved a total overhaul of the gas subsector in order for the enjoyment of the multiplier effect of a functional and efficient domestic gas market, particularly as it relates to electric power supply. One interesting thing about this report is that it states the problems being encountered in the domestic gas sector, efforts being made to tackle those problems and the mechanisms to be adopted. I am also comfortable using the report because it is from the presidency

and therefore carries with it reasonable presumption in its favor that it contains authentic official information.

PART 2: GOVERNMENT DOCUMENTS

Nigeria, National Council on Privatization, *National Electric Power Policy* (Presidency: Abuja, 2001).

This official document outlines the Nigerian electric power policy, describes the current structure of the Nigerian electricity industry and the problems it faces as well as states the proposal to reform it in some detail. It is a basic source of information on the restructuring initiatives of the Nigerian government and places more emphasis on the benefits of restructuring without a corresponding attention to the attendant costs. It also analysis the need to improve domestic gas supply but goes short of stating that lack of domestic gas supply is a major reason for the lack of adequate investment in the sector.

Nigeria, *National Domestic Gas Supply and Pricing Policy* (2008).

This policy seeks to define the policy of the Federal Government of Nigeria in respect of pricing of gas to be supplied to consumers in the downstream sector. It also seeks to create a Domestic Gas Supply Obligation regime for all gas producers. There are attendant problems and challenges with this proposed policy which include not taking into consideration the fact that “booked reserves” of gas producers would be affected and the fact there is no nationally integrated transmission network for gas. There is also the contentious issue of price setting.

Nigeria, the Federal Executive Council, *the Gas Master Plan (2008)*.

This Government document does an overview of the Nigerian gas sector and analyzes its strength and weaknesses and emphasizes the need for strategic interventions by the Government in the gas sector. A major intervention is the pricing approach and like the National Domestic Gas Supply and Pricing regulations mentioned above, it does not appear to give too much thought to issues such as booked reserves, commercial viability of the pricing formulae and other important sundry issues. Any thorough research regarding the electric power sector and its interrelation with natural gas in Nigeria would, in my view, not be complete without an analysis of the document.

Nigeria, the Gas Infrastructure Blueprint (2008).

This is the document embodying the blueprint for gas infrastructure development in Nigeria. The intent is that investments in gas infrastructure will be guided by this blueprint. The importance of this document to my project is in highlighting the role the proposed infrastructural development of the Government of Nigeria would play in the proposed Nigerian domestic gas supply and pricing model.

Nigeria, the Seven Point Agenda: Driving Nigeria's Transformation,

online: <http://www.nigeriafirst.org/article_8489.shtml> this online resource states the seven point agenda of the present administration in Nigeria (2007-11 administration) which includes critical infrastructure. Featuring very prominently under critical infrastructure is electric power. The site states the problems with

electric power production in Nigeria and the steps the Government intends taking in solving that problem. Amongst these is Increase power generation capacity through diversification and installation of gas distribution grids.

Part 3: LEGISLATION

Companies Income Tax Act, LFN. 2004, c.C 21.

This is the key legislation regulating the taxation of Nigerian registered companies. The importance of this legislation to my research is in the fact that it provides fiscal and tax incentives for the utilization of natural gas, downstream particularly under Section 39.

Constitution of the Federal Republic of Nigeria, LFN. 2004, c.C32.

This legislation is the basic, fundamental and supreme law of Nigeria. Its importance to my research is in the fact that that it gives the Federal Government of Nigeria, powers over natural resources in the country even up to the country's territorial waters and exclusive economic zones. This is helpful in analyzing issues bordering on the right and powers or otherwise of the Federal Government to mandate a domestic gas supply obligation on holders of rights to natural gas within its territory.

Nigeria, National Domestic Gas Supply and Pricing Regulations (2008):

These Regulations provide, amongst other things, for the establishment of a department of gas which would be responsible for enforcing domestic gas supply obligations and pricing. It also

provides for the establishment of a gas aggregator responsible for nominations and balancing. The provisions of these Regulations form the core of my research and analysis.

Petroleum Act, LFN. 2004, c.P10

The Petroleum Act is the key legislation in the Nigerian oil and gas sector as there is no Gas Act or any single gas regulation. Its key provisions are on crude oil but it makes certain general provisions which relate to both crude oil and natural gas. Additionally, it has natural gas specific provisions such as the right of the Federal Government to gas free of cost at flare, the right of the Minister of Energy to impose on a licence or lease special terms and conditions including pricing terms, provided these are not inconsistent with the Petroleum Act. These provisions would be very useful in my analysis.

Petroleum Profits Tax Act, LFN.2004, c.P13.

This is the key legislation for taxation of oil producing companies distinct from other commercial entities. This legislation also provides fiscal and tax incentives for upstream utilization of gas. Its provisions are useful in my review and analysis.

Part 4 USEFUL ONLINE LINKS

The Department of Petroleum Resources, online: <http://www.dprnigeria.com/> is the website of the Nigerian Department of Petroleum Resources (DPR). The DPR is for the time being, and until a department of gas is established for gas regulation, Nigeria's oil and gas regulator and its site has got useful

information on Nigerian oil and gas and issues relating to licensing and permits. The site which used to contain obsolete information appears to be getting updated much faster and regularly nowadays.

The US Energy Information Agency, online: <http://www.eia.doe.gov/oil_gas/natural_gas/info_glance/natural_gas.html> is the website of the Energy Information Agency of the US Department of Energy which also publishes historical statistics of all forms for most countries in the world including Nigeria and is a veritable source of information in this regard.

The Presidency, online: <<http://www.nigeriafirst.org/>> is the website of the media arm of the presidency, which states its objectives, makes commentaries and issues media releases on contemporary issues. The site is particularly useful because of its search icon which makes it possible to navigate the site to any area of interest by just inserting key search criteria. The site also contains some literature on gas pricing, domestic gas supply obligations regulations and the Nigerian gas infrastructure blueprint which are the core areas of my research project.

The International Centre for Nigerian law, online: <<http://www.nigeria-law.org/LFNMainPage.htm>> for more information on Nigerian oil and gas laws.