



FEDERAL GOVERNMENT'S ATTEMPTS AT ENDING GAS FLARING IN NIGERIA

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ABSTRACT

Nigeria has had a chequered history of series of failed attempts at setting deadline for ending gas flaring. This work examined this wobbling several unsuccessful attempts by the government of Nigeria towards ending of gas flaring in the Nigeria oil and gas industry, the causes of such failure; likely impediments to attainment of that objective in the near future, drew conclusion thereupon; but proffered workable radical measures that can lead to the immediate realization of that long expected objective.

KEYWORD: Gas, Flaring, Nigeria, Oil, Industry, Oil Majors, Companies, Attempts.

INTRODUCTION

Gas flaring is as old as petroleum production in Nigeria. Gas flaring is widely known for its capacity to pollute the atmospheric environment, precipitate global warming and climate change as well as cause some other harms to human life, wildlife, vegetation and to both land and water bodies.

COMMENCEMENT OF GAS FLARING IN NIGERIA

As earlier stated, gas flaring in Nigeria is as old as crude oil exploitation and production; and indeed, pre-dated Nigeria's political independence on 1st October, 1960.

Gas flaring is the unconventional burning of natural occurring gas associated or mixed with crude oil as a disposal method in absence of infrastructure for utilization. The natural or associated gas is naturally trapped together with crude oil underground and usually accompanies the crude oil during drilling and the eventual brining out of the crude oil to the surface. After separation, the associated gas is usually flared in Nigeria.

Gas flaring was in practice in Nigeria even during the colonial period, and has continued to date. It can safely be said that the colonial powers laid the foundation for gas flaring in Nigeria's oil and gas industry; and the major stakeholders, the multinational oil companies operated by the expatriate owners took advantage of that, albeit aided by some unhelpful local circumstances to persevere in the act of gas flaring.

OFFICIAL ATTEMPTS AND MEASURES AT ENDING FLARING

Certainly Nigeria has experienced wobbling and ineffectual attempts at setting deadline towards ending flaring. Some of these failed and ill-fated attempts will be highlighted, to bring to the fore, either the complacency of the Government of Nigeria or connivance with the international oil companies in undermining that objective.

FIRST ATTEMPT

A cursory examination of all legislation connected with and regulating the oil and gas industry reveals that prior to 1969, there was no single legislation or regulation controlling the practice of gas flaring nor was there any official policy in respect to that. Thus, the initial attempt at ending gas flaring commenced as from 1969. As has been observed: “The country’s unsuccessful attempts to end the menace, despite numerous legislation and deadlines, dates back to 1969 when the military junta led by General Yakubu Gowon ordered oil companies operating in the oil rich Niger Delta to work towards ending gas flaring by 1974”.

The above official directive was given legal flavour by the promulgation of the Petroleum Act in 1969 by the General Gowon regime. Pursuant to Regulation 43 of this Act (Drilling and Production) Regulations, all oil producing companies were obligated to deliver gas utilization feasibility study programs or proposal to the Minister of Petroleum resources of the associated gas discovered in the field of their operations within 5 years of production activities in such fields.

It is noteworthy that by virtue of this regulation, its requirements did not impose upon the international oil companies the mandate to end gas flaring by making provisions for the utilization of the associated gas produced but merely directed them (the IOCs) to submit utilization feasibility studies programmes or proposals already undertaken.

In other words, the tenor of the regulation implies that once the oil companies had submitted such proposals, it amounted to compliance with what was required under the law. Invariably, gas flaring remained a legitimate option that has continued to thrive.

SECOND ATTEMPT

Meanwhile, series of negotiations for ending gas flaring continued between the government and the oil companies, especially in 1976 during the regime of Lieutenant-General Olusegun Obasanjo (as the then Head of State) targeting 1979 as deadline. However, that 1979 target yet proved abortive as gas flaring continued unabated. Just as rightly pointed out:

Indications that the country’s dream of effective utilization of its gas resources may ensure long gestation period emerged when the multinational oil firms also failed to meet the 1979 dateline, thus forcing the civilian administration led by Alhaji Shehu Shagari to defer the zero gas flaring deadline to 1984.

Thus, the second attempt championed by the ex-military Head of State, Lt-General Olusegun Obasanjo failed to end gas flaring in Nigeria; even though after series of negotiations between the Government and the E & P companies, particularly that of 1976 under Lieutenant-General Olusegun Obasanjo ... two of the companies commenced re-injection exercises (SPDC at Oguta, and Mobil Producing Nigeria [MPN] in the year 1978).

THIRD ATTEMPT

The combined effect of the ineffectiveness of Regulation 43 (Drilling and Production) Regulations, pursuant to the Petroleum Act of 1969 to end gas flaring as well as the failed attempt at the 1979 target, perhaps, set the tone for the third attempt. To strengthen previous attempts and ensure the realization of the target, The

associated Gas Re-injection Act, No. 99 of 1979 was enacted during the civilian government headed by Alhaji Aliyu Usman Shehu Shagari. The purport of the Act was to compel every company producing oil and gas in Nigeria to submit preliminary programmes for gas re-injection and detailed plans for implementation of gas re-injection.

The Act applies to both land and the Exclusive Economic Zone (EEZ), and imposing duty on every company producing oil and gas in Nigeria, not later than 1st April, 1980 to submit to the Minister of Petroleum Resources preliminary programmes, vide section 1,

- (a) Schemes for the viable utilization of all associated gas produced from a field or group of fields;
- (b) Project or projects to re-inject all gas produced in association with oil but not utilized in an industrial project.

On duty to submit detailed plans for implementation of gas re-injection, Section 2 is quite clear on that. Accordingly, it provides:

2. (1) Not later than 1st October, 1980 every company producing oil and gas in Nigeria shall submit to the Minister, detailed programmes and plans for either –

- (a) The implementation of programmes relating to the re-injection of all produced associated gas; or
- (b) Schemes for the viable utilization of all produced associated gas.
- (c) The fact that some of the gas produced in association with oil has been earmarked for some alternative utilization shall not exempt compliance with section 1 of this Act and subsection 1 of this section.

The Act clearly imposed cessation of gas flaring in our oil industry as follows:

3.(1) Subject to subsection (2) of this section, no company engaged in the production of oil and gas shall after 1st January, 1984 flare gas produced in association with oil without the permission in writing of the Minister.

Thus, 1st January, 1984 became the 3rd failed attempt at ending gas flaring in Nigeria as flare continued despite the penalty of forfeiture of concessions and the Minister's discretion to order the withholding of all or part of any entitlement of any offending company as provided in Section 4 (1) and (2) of the Act. While the preceding provisions demonstrated the Government's desire and determination at ending gas flaring, the following provision watered it down seriously. The relevant Section 3 (2) provided that: "Where the Minister is satisfied after 1st January, 1984 that utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect to a company engaged in the production of oil and gas –

- (a) Specifying such terms and conditions, as he may at his discretion choose to impose, for the continued flaring of gas in the particular field or fields; or
- (b) Permitting the company to continue to flare gas in the particular field or fields if the company pays such sum as the Minister may from time to time prescribe for every 28.317 standard cubic meter (SCM) of gas flared.

Consequently, the immediate preceding provision provided the leeway and basis upon which the multinational corporations exploited as some number of issues were thrown up as constituting serious impediments to the realization of the January 1, 1984 target date. The implication was that the wobbling continued in the face of such issues, pertaining to the implementation of the provisions of the Act, as:

- (i) There was the problem of who should bear the cost of re-injection, particularly during those hard times, NNPC and the producing companies, or the companies alone? That question arose because of the joint venture arrangement between NNPC and the E & P Companies;
- (ii) The cost of re-injection, particularly when it costs less to flare than to re-inject;
- (iii) NNPC could not meet up with its own share of the cost of re-injection; and
- (iv) The absence of necessary infrastructure.

FOURTH ATTEMPT

The natural consequence of the immediate preceding problems was the un-realization of zero flaring target; thus compelling a further shift of target date to the 1st day of January, 1985.

There is no gainsaying the fact that even the latest 1st January, 1985 target deadline for zero gas flare vis-à-vis the oil majors was a white elephant project given the litany of excuses often given by the multinational corporations as impediment to that objective.

While some of such reasons might be genuine, as earlier highlighted, the Government even shot itself on the foot by virtue of the Associated Gas Re-injection (continued flaring of Gas) Regulations which became effective by the 1st of January, 1985 and plainly empowered the Minister of Petroleum resources to authorize, by issuance of certificate, continued gas flaring in certain oil field or fields on certain conditions. Such conditions include where more than 75 percent of the produced gas is effectively utilized or conserved; where the produced gas contains more than fifteen percent impurities which render the gas unsuitable for industrial purposes; where an on-going utilization programme is interrupted by equipment failure, provided such failures are not considered too frequent by the minister, and where the Minister, in appropriate cases as he may deem fit, orders the production of oil from a field that does not satisfy any of the conditions specified in these regulations. This last condition is the most laughable of all, because it is subjective and as such subject to abuse.

By and large, since this statute law is still an extant law because not yet repealed, the implication is that gas flaring is legalized in Nigeria. This is evidenced from what is really in practice as stated below:

Although, routine gas flaring was outlawed since 1984, according to Section 3 of Nigeria's Associated Gas Re-injection Act, 1979, the practice continued unabated during the succeeding military regimes. Instead of the much anticipated reduction, statistics from the Department of the Petroleum Resources (DPR) show that rate of gas flaring grew [sic] leaps and bounds, owing to the failure of the government to enforce the gas flaring law.

With this, the fourth attempt of achieving zero gas flaring in 1985 failed even from birth, and Nigeria wobbles on in feeble attempts to that objective.

FIFTH ATTEMPT

Apart from setting deadlines through the instrumentality of statute laws, there were some other ambitious practical measures taken by the government that would have significantly led to zero gas flaring even at the present time but which nevertheless failed to bear fruits. That was the 1995 production sharing agreement between the government of General Sani Abacha and the oil majors which required the latter to embark on gas utilization programme with the necessary incentives.

However, that was never to be, and even at present in Nigeria, there is no substantial gas utilization activity in the oil and gas industry to the end that Nigeria had unenviably maintained, for long, until recently her second position among the highest gas flaring countries in the world after Russia. Nigeria is now the seventh. The non-realization of zero flaring by the 1995 attempt has been equally noted somewhere else thus:

Besides the zero gas flaring deadline, the Federal Government also had a number of other regulatory commitments that ought to have helped it realize the objective. For instance, the National Gas Policy (NGP) first reviewed in 1995 by the late General Sani Abacha, required subsequent production sharing contracts (PSCs) signed with oil companies to include gas utilization clauses. Incentives were also offered under the Associated Gas Utilization Fiscal incentives as an effort to put in place investment required to transport gas to interested third parties, yet those measures failed to lead to actualization of the zero gas flaring target.

It is not in doubt to say that this 1995 target of achieving zero gas flaring in Nigeria failed, as it indeed failed; ensuring the gas flaring continued unabated.

Practically, every concerned individual or group, especially among the Nigerian populace, became helpless and perhaps hopeless – the ordinary citizens, especially of the host communities, who bear the brunt of the effect of gas flaring and the government state officials in their weak and ineffectual attempts at ending gas flare. Thus, the wobbling efforts in attaining the objective trudged on.

SIXTH ATTEMPT (2000 – 2003, 2006, 2008)

Another attempt at ending gas flaring in Nigeria took off in 2000 under the civilian government of President Olusegun Obasanjo, setting December 2003 as the new deadline since the 1995 attempt collapsed. To enhance the realization of the target, President Olusegun Obasanjo vigorously pursued its recommitment in investing in the Nigeria Liquefied Natural gas (NLNG) project aimed at harnessing the otherwise flared gas. But was this achieved? Did the oil majors positively commit themselves to that timeline in this all important mission? Did economic considerations, as usual, override human interest and life? Would the excitement of many Nigerians towards president's Obasanjo's strong drive towards zero flaring be drowned? It would not be prophetic to say that the expectation of many Nigerians was drowned.

Reacting to the December 2003 phase-out, it was reported:

But the oil firms preferred 2006 as the most realistic date to end the flare. Though, both parties later reached an agreement to end gas flaring by the end of 2004, the Presidency later pushed the date further by two years (2006). However, when the 2006 zero gas flaring deadline failed to materialize, a new date of 2008 was quickly agreed. Bowing to mounting local and international pressure, Abuja again pledged to halt gas flares in Nigeria by January 1, 2008 as the new zero flare date. It also threatened punitive action for any breach.

Predictably this target also failed as usual, thus gas flaring remained an option engaged by the oil majors.

SEVENTH ATTEMPT (DECEMBER 2008 – DECEMBER 2013)

The failure of the 1st January, 2008 deadline naturally occasioned another frantic attempt at setting phase-out dateline, thus ushering what might be regarded as the seventh attempt. This was coupled with imposition of fine on any company that flared gas, even on allegation of failure of equipment without a formal report of such failure to the appropriate authority. Concerning this period under review, a report stated thus:

Again, on December 17, 2007, yet another shift was announced, this time with deadline fixed for 31 December, 2008. In 2009, the Senate passed the Gas Flaring Bill, making it illegal for operators to flare gas in Nigeria beyond December 31, 2010. Even this deadline was not met, forcing the House of Representatives to propose December, 2012 and later December 31, 2013 as the new zero gas flaring dates as well as impose a fine of \$500,000 on any company which fails to report, within 24 hours, any emergency flaring on account of equipment failure.

Did the deadline succeed as in bringing to an end, gas flaring activities in the Nigeria's oil and gas industry? Or has gas flaring intensified even after that December 31, 2013 deadline?

Investigations revealed that:

As at midnight of December 31, 2013 the latest date for gas flaring deadline, the oil majors, including their local counterparts, still flared about 85 percent gas, even as the National Assembly is yet to announce a shift in the date, thereby creating a legal loophole for flaring (Yusuf, 2014). The above review represents a factual and reasonable frantic and wobbling efforts by the Nigerian government at ending gas flaring albeit unsuccessfully. The reality is that to date, even at the time of this article going to the press, that gas flaring is still massively and unconscionably being flared in Nigeria regardless of the negative impact factors, first, on the environment and human lives; and secondly, on the economy. It is simply a wasteful venture.

WHY GAS FLARING MAY LINGER IN THE OIL AND GAS INDUSTRY

There are several factors that significantly contributed in the chain of failures in meeting zero gas flare in Nigeria. Chiefly among them are the following:

1. Insignificant Financial Penalty
2. Lack of Effective Control of Oil Majors through Sanction
3. Government fear of possible exiting of the Oil Majors
4. No Legal action by Government against oil Majors in Decades
5. Subversion of Judiciary Process: Mr. Jonah Gbemre's Case in focus

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

Looking at the series of attempts on the part of government at ending gas flaring in the oil industry, one would be tempted to conclude of a desire to achieve that by the government. However, when juxtaposed by the developments in the area and government role – passively or actively – that really nurtured and sustained the practice, the only logical conclusion is government's indisposition, and not inability, towards achieving practical ending of gas flaring in Nigeria. This has been demonstrably highlighted above.

RECOMMENDATIONS

In the light of the preceding revelations which significantly linked continued gas flaring to government's lack of real resolve and decisive action in achieving zero gas flaring in the nation's oil and gas industry, the following recommendations are made towards effectively and meaningfully achieving that target:

First, government should enforce all extant laws, rules and policies relating to gas flaring in the sector. There is no doubt that the overall purpose of such laws, rules and policies is to bring about and ensure good oil field practices towards achieving safe environment and avoid waste.

Furthermore, government should as a matter of urgency increase the monetary penalty attached to gas flare when inexcusable to be really prohibitive and deterrent. This stiff penalty would then compel the oil majors to take meaningful and practical steps towards gas utilization or re-injection rather than simply burn up the associated gas. It is reasonable to say that the very insignificant financial penalties relating to flaring has encouraged the habit to date.

Finally, government as an institution by and under the law must be prepared to give full compliance to all court rulings and judgments by enforcing same against the defaulting oil majors. This has the added advantage of enhancing Nigeria's sovereignty in relation to these international oil companies as subverting court processes or circumventing court judgments signals not only collusion with the IOCs in sustaining flaring, but also embolden them in sustaining the practice.

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