



**UNDERSTANDING  
THE 0.5% LEVY FOR THE  
FUNDING OF THE MIDSTREAM  
AND DOWNSTREAM GAS  
INFRASTRUCTURE FUND UNDER  
SECTION 52(7) OF THE PETROLEUM  
INDUSTRY ACT**



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## WHAT IS THE MIDSTREAM AND DOWNSTREAM GAS INFRASTRUCTURE FUND (MDGIF)?



The Midstream and Downstream Gas Infrastructure Fund (MDGIF) is a government-established fund under Section 52 of the Petroleum Industry Act (PIA), aimed at promoting, developing, and improving gas infrastructure in Nigeria. The fund, which was set up as a statutory function of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)<sup>1</sup>, is to be administered by a Council.

## WHICH ENTITIES QUALIFY TO PAY THE 0.5% MDGIF LEVY?

Section 52(7)(a) of the PIA provides that the MDGIF is to be funded through a 0.5% levy on the wholesale price of petroleum products and natural gas sold in Nigeria with the levy collected from wholesale customers and remitted to the MDGIF<sup>2</sup>.

The definition of a **wholesale consumer** is important as it determines those stakeholders liable to pay the 0.5% levy as prescribed under Section 52(7) of the PIA. Only those entities that qualify as wholesale consumers are to be subject to this levy.

An entity qualifies as a **wholesale customer** under Section 318 of the Petroleum Industry Act

(PIA), 2021, if it meets the following criteria: *[i] it has the legal right to contract for and purchase **wholesale gas**, [ii] it possesses the capability to directly and economically connect to a **transportation pipeline** or **transportation network**, and [iii] it is a **gas distributor**, which is defined as the holder of a gas distribution license.*

These highlighted and underlined terms are explicitly defined under **Section 318** of the PIA and are not open to broad interpretation. **Wholesale gas** refers to natural gas sold by a supplier to wholesale customers, while a **Supplier** is the holder of a wholesale gas supply license, a wholesale petroleum liquids supply license, or a **retail gas supply license**. **Gas distributor** is referred to as the holder of a gas distribution license.

Simpliciter, if an entity does not satisfy any of the outlined requirements under Section 318, it does not qualify as a **wholesale customer** and, therefore, cannot be held liable for the payment of the 0.5% levy.

An entity must, therefore, carefully limit its arguments/appeals to the three parameters outlined in **Para 2 above** in justifying that it does not qualify as a **wholesale customer** under 52(7) and Section 318 of the PIA.

## WHEN IS PAYMENT OF THE 0.5% LEVY TO BE MADE?

The 0.5% levy is due and payable within 21 days of the sale of natural gas, with administrative procedures and penalties for non-compliance as outlined in the Midstream & Downstream Petroleum Operations Regulations, 2023 (Operations Regulations).<sup>3</sup> In the event of failure to pay the levy within 21 days of the issuance of debit note<sup>4</sup> by NMDPRA, a sum equal to 10% of the amount unpaid shall be added for each or part of the month after the date on which payment ought to have been made. In addition to the 10% penalty, NMDPRA may suspend<sup>5</sup> the

<sup>1</sup> Section 52 - Petroleum Industry Act 2021

<sup>2</sup> The sources of the Midstream and Downstream Gas Infrastructure Fund shall be (a) 0.5% of the wholesale price of the petroleum products and natural gas sold in Nigeria, which shall be collected from wholesale customers and such levy shall be in addition to the levy provided for under 47(2c)

<sup>3</sup> Section 13(2) a and b and 46 – The Midstream & Downstream Petroleum Operations Regulations, 2023

<sup>4</sup> Section 13 (5), Ibid

<sup>5</sup> Section 13(6), Ibid

operations of the facility where the product was processed, discharged, or stored until the payment is made. The commencement date of the Operations Regulations was February 9, 2023.

While the PIA took effect on August 16, 2021, and under Section 52(9) therein, the 0.5% levy became due within 21 days of the sale of petroleum products and natural gas in Nigeria, the NMDPRA was however required to issue regulations covering the administrative procedures for the levy, and (b) penalties for (i) late payment of the levy, (ii) non-payment of the levy, or (iii) providing false information regarding the levy.

This administrative regulation was only issued on February 9, 2023, in the form of the Operations Regulations which clarified that payment of the 0.5% levy shall be made within 21 days of the issuance of a debit note by the NMDPRA, and that collection shall be at the wholesale point<sup>6</sup>. The Operations Regulations has clarified the definition of the "Wholesale Point" and also outlined the penalties for (i) late payment and, (ii) non-payment of the 0.5% levy.<sup>7</sup> "Wholesale Points" means the points, such as coastal depots, hinter land depots, jetties, refineries, petrochemicals and processing plants including Liquefied Natural Gas processing plants, crude oil and natural gas export terminals, free-on-board products measurement points and other points of aggregation that may be determined by the Authority, where petroleum products or gas products exist or sold in bulk.<sup>8</sup>

### **CAN PAYMENT OF THE 0.5% LEVY BE BACKDATED?**

Statutorily, payment of the 0.5% levy under the PIA cannot be applied retrospectively. While the effective date of the PIA was August 16, 2021, the administrative framework required for implementing the levy, including collection procedures and penalties for default, only came into effect with the commencement of the Operations Regulations on February 9, 2023.

These Operations Regulations clarified that payment of the levy is triggered by the issuance of a debit note and must be collected at the wholesale point. Thus, any attempt to demand payments for periods before February 9, 2023, when these administrative procedures were non-existent, will be contentious.

Moreover, the retroactive application of the levy would disrupt existing gas sales transactions, as agreements executed before the Operations Regulations' commencement could not have accounted for the 0.5% levy. During the period from August 16, 2021, to February 9, 2023, upstream gas producers or suppliers could not have included the 0.5 levy in their invoices to customers because there was no legal obligation to do so. Attempting to enforce retrospective payments could result in significant financial exposure for parties, lead to disputes, and potentially cause termination of existing contracts, undermining market stability and creating operational challenges.

### **WHO COLLECTS AND REMITS THE 0.5 % UNDER SECTION 52 OF THE PIA?**

Recently, a disagreement arose over the responsibility for collecting and remitting the **0.5% levy** deducted from the wholesale price of processed natural gas. The **NMDPRA** maintained that the levy should be collected and remitted by wholesale gas suppliers. Conversely, wholesale gas suppliers on their part have argued that the coercion to act as collection agents is not supported by statutory provisions. They maintain that imposing this responsibility on them would create operational difficulties, erode business value, and lead to undue burdens without any legal mandate in the PIA. While Section 52 of the PIA authorizes the NMDPRA to collect the levy as part of its revenue, the PIA does not specify which entity is responsible for its collection and remittance.

The NMDPRA has explained that the levy is imposed on the wholesale customer, not the supplier. However, as the levy is integrated into

<sup>6</sup> Section 13(4) Ibid.

<sup>7</sup> Sections 13(5) Ibid.

<sup>8</sup> Section 48 Ibid.

the wholesale price, the supplier becomes the logical point for collection and remittance. This reasoning stems from operational convenience, as the supplier receives the wholesale price directly from customers. Wholesale natural gas suppliers

## CONCLUSION

Gas industry players, particularly upstream producers and wholesale suppliers, must proactively review their contracts and pricing structures in light of the existing regulatory requirements. Additionally, they must engage with legal advisors with specialize oil and gas industry knowledge to address potential disputes and safeguard their operations from disruptions that could arise from retrospective levies or other regulatory ambiguities. This proactive approach will help ensure legal compliance while minimizing financial exposure and preserving market stability.

## CONTACTS



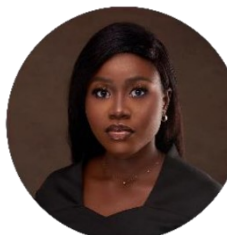
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