

IN THE FOURTH SESSION OF THE FIFTH PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA  
**REPORT OF THE JOINT COMMITTEE ON FINANCE & MINES AND ENERGY ON THE  
 OFFTAKER AGREEMENT BETWEEN THE GHANA NATIONAL PETROLEUM  
 CORPORATION (GNPC) AND UNIPEC ASIA COMPANY LIMITED.**

**1.0 INTRODUCTION**

The Offtaker Agreement between the Ghana National Petroleum Corporation (GNPC) (as Seller) and UNIPEC Asia Company Limited (as Buyer) was presented to the House on Friday, 3<sup>rd</sup> February, 2012 and referred to a Joint Committee of Finance and Mines and Energy for consideration and report in accordance with order 171 and 188 of the House.

Pursuant to the referral, the Committee met with the Hon. Ministers for Finance & Economic Planning, Dr. Kwabena Duffour, Hon. Deputy Ministers for Finance & Economic Planning and Energy, Mr. Seth Terkper and Emmanuel Armah Kofi-Buah respectively and considered the referral.

Present at the meeting were the Chief Executives of GNPC and Ghana National Gas Company (GNGC), Nana Asafu-Adjaye and Dr. George Sipa Yankey respectively, officials of the two companies, MOFEP and that of the Ghana Airforce.

The Committee is grateful to the Minister, the Deputy Ministers, officials from the Ministry of Finance and Economic planning, GNGC, GNPC and the Ghana Airforce for attending upon the Committee.

**2.0 REFERENCES**

In considering the Offtaker Agreement, the Committee made reference to and was guided by the following documents:

1. The 1992 Constitution of the Republic of Ghana;
2. The Standing Orders of Parliament;

3. The Master Facility Agreement between the Republic of Ghana and China Development Bank Corporation (CDB); and

### 3.0 BACKGROUND

The Government of the Republic of Ghana represented by the Ministry of Finance and Economic Planning entered into a Master Facility Agreement (MFA) with the China Development Bank Corporation for an amount of US\$3,000,000,000.00 to undertake various infrastructure projects in the country.

The Agreement was approved by Parliament on 26<sup>th</sup> August, 2011 and was signed on the 16<sup>th</sup> December, 2011 and an Addendum to the MFA also approved on 21<sup>st</sup> February, 2012 by the House.

The MFA requires that the Government of Ghana enters into separate subsidiary agreements with CDB in respect of each project to be implemented under the US\$3,000,000,000.00 facility. Further, Parliament in giving approval for the MFA, directed the Ministry of Finance and Economic Planning to present each Subsidiary Agreement to the House for approval in accordance with Art 181 of the Constitution and Section 4 of the Loans Act, 1970, Act 335.

The first Subsidiary Agreement for the financing of the Western Corridor Gas Infrastructure Project in the sum of US\$850,000,000.00 was therefore presented to the House.

As part of the requirements for the draw down on the facility GNPC is to enter into an Offtaker Agreement with UNIPEC Asia Company Ltd for the sale and purchase of Jubilee Crude Oil and part of the proceeds paid into a special account at the Bank of Ghana for the purposes of servicing the facility.

Subsequently, a Five Party Agreement was entered into among the China Development Bank Corporation, the Republic of Ghana represented by the Minister for Finance and Economic Planning, the Bank of Ghana, Ghana National Petroleum Corporation, and UNIPEC Asia Company Ltd.

## **4.0 TERMS AND CONDITIONS OF THE AGREEMENT**

### **4.1 Tenure of the Agreement**

The tenure of the agreement is 15½ years but shall terminate automatically if

- a. At any time prior to the expiration of the MFA, all amounts outstanding under the MFA are irrevocably repaid in full and any outstanding commitments to provide financial accommodation are cancelled; or
- b. At any time during the term of the MFA, amounts outstanding under the facility are irrevocably repaid in full and any outstanding commitments to provide financial accommodation thereunder are cancelled; or
- c. Seller has discharged in full its obligation in respect of the agreed volumes to be delivered under the Offtaker Agreement.

### **4.2 Quantity and Quality of Crude to be Supplied**

The Agreement provides for GNPC to deliver to UNIPEC Asia and for UNIPEC Asia, to purchase and lift from the GNPC, 13,000 barrels per day of Jubilee Crude Oil (i.e. 5 cargoes per calendar year) at a standard cargo size of 950,000 net U.S. barrels.

The quality of crude to be delivered is the normal export quality grade of Jubilee Crude Oil as available at the time of lifting at the Jubilee Terminal.

### **4.3 Delivery**

The Offtaker Agreement provides for the Seller to deliver Jubilee Crude Oil to the buyer in bulk FOB at the Jubilee Terminal on to a vessel provided by the Buyer.

### **4.4 Pricing of Crude**

The pricing for crude oil purchased under the Offtaker Agreement is to be made on commercial basis and to be determined as follows:

- a. The US\$ FOB price per (net bill of lading) shall have the following components unless the parties agree otherwise;
  - i. a dated Brent component; and
  - ii. a differential

and shall be calculated in accordance with the following formula:

The U.S. Dollar FOB Price = Dated Brent + Differential.

#### **4.5 Taxes**

The Agreement provides for all taxes, duties, imposts, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the vessel incurred at the Loading Terminal shall be for the Buyer's account including a margin of 8 US cents for any pricing option chosen by the buyer.

The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Jubilee Crude Oil supplied here under, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage prior to title and risk in such Jubilee Crude Oil passing to the Buyer shall be for the Seller's account.

The Buyer shall be the importer of record and shall be responsible for complying with customs and excise entry procedures at the discharge port and duties and taxes that arise in respect of such customs and excise entry shall be for the Buyer's account.

#### **4.6 Payment for Crude**

Payment for all crude oil sales under the Agreement shall be made into the Petroleum Holding Fund in U.S Dollars, in full without discount, withholding setoff or counterclaim (but subject always to and pursuant to the terms of the Master Facility Agreement and the Five Party Agreement), within thirty (30) calendar days after the Bill of Lading date.

### **5.0 OBSERVATIONS AND RECOMMENDATION**

#### **5.1 Termination of the Offtaker Agreement and the Supply of Crude Oil.**

The Committee observed that the obligation on GNPC to supply Jubilee Crude Oil to UNIPEC Asia terminates whenever the Offtaker Agreement between Ghana National Petroleum Corporation (GNPC) and UNIPEC Asia

Company Limited is terminated. Also, GNPC is under no further obligation to sell Jubilee Crude Oil to UNIPEC Asia in excess of the agreed 13,000 barrels a day. Any Crude produced in Ghana outside the Jubilee field is also precluded from the terms of this Agreement. These limitations give GNPC the option to sell to other buyers.

## **5.2 Dispute Resolution under the Offtaker Agreement**

The Committee again observed that there are detailed provisions for the resolution of disputes arising out of this Agreement. It provides that, any dispute, controversy or claim arising out of, relating to, or in connection with the Offtaker Agreement that is not resolved by the parties shall be referred and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce to be held in London, England. The arbitration Panel Members shall be three; one nominated by the claimant, one nominated by the respondent and the last one jointly nominated by the two arbitrators so appointed and in default, to be appointed by the International Criminal Court (ICC). The resulting arbitral award shall be final and binding without right of appeal and judgment may be entered in any Court having jurisdiction in respect of the Agreement.

## **5.3 Use of Jubilee Crude for Loan Repayment**

The Committee observed that per the Offtaker Agreement, 13,000 barrels of oil a day or five cargoes per calendar year (950,000 net US barrels per standard cargo) is to be supplied by GNPC to UNIPEC Asia. The Committee was also informed that the average Government share of crude oil from the current production at the Jubilee Field is about 13,000 barrels per day.

Based on the above, some Members of the Committee expressed concern that the Agreement implies that Government was using the State's entire share of oil from the Jubilee field to support the loan facility under the MFA.

Officials of MOFEP and GNPC in response to the concern indicated that the proceeds from the sale of the crude were to be paid into the Petroleum

Holding Fund in accordance with section 3(1) of the Petroleum Revenue Management Act, 2011, Act 815. The Officials indicated that it is only the debt servicing amount from the Annual Budget Funding Amount (ABFA), as approved by Parliament that would be paid into a Collection Account for the repayment of the loan.

The Committee was informed that in developing the cashflow statement the Ministry and GNPC assumed a price of US\$85 per barrel of Jubilee Crude for years 1 to 5; US\$90 per barrel of Jubilee Crude for years 6 to 10; and US\$95 per barrel of Jubilee Crude for years 11 to 15. The Officials stated that based on the above price assumptions and the 13,000 barrels per day as contained in the Agreement, the total amount payable to the Government by UNIPEC Asia over the 10 years period of the Subsidiary Agreement is US\$4,157,875,000. This figure is in excess of the loan amount of US\$3.0bn. GNPC further stated that the average price achieved for the Jubilee Crude over the past six months is in excess of US\$100 per barrel.

Officials of GNPC further indicated that the Agreement between the GNPC and UNIPEC Asia is a pure commercial transaction and therefore the crude will be sold to UNIPEC at the prevailing market price. The officials further indicated that the Agreement makes provision for a number of pricing options for UNIPEC Asia to choose from. In return for the right to exercise any of the options, UNIPEC would pay GNPC eight (8) US Cents per barrel of crude.

#### **5.4 Tenure of the Agreement**

The Committee observed that whereas the term of the Subsidiary Agreement was 10years, that of the offtaker Agreement was 15½ years. Officials from MOFEP and GNPC explained that the MFA is for 15 years and that whereas the tranche B of the subsidiary Agreement is for ten years that of tranche A is for 15 year.

## 6.0 CONCLUSION

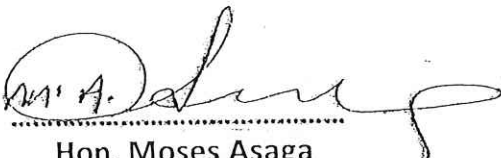
The Committee having carefully scrutinized the Offtaker Agreement recommends to the House to approve the Agreement between the Ghana National Petroleum Corporation (GNPC) and UNIPEC Asia Company Limited for the lifting of Jubilee Crude Oil in accordance with Article 181 of the 1992 Constitution.



Hon. James Klutse Avedzi  
Chairman, Finance Committee



Miss Peace A. Fiawoyife  
Clerk, Finance Committee



Hon. Moses Asaga  
Chairman, Committee on Mines and Energy



Camillo Pwamang (Mr.)  
Clerk, Committee on Mines and Energy

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