

CONFIDENTIAL

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My Ref. No. OPCA.2/2/180518

Your Ref. No.



REPUBLIC OF GHANA

OFFICE OF THE PRESIDENT
P.O. BOX 4627
ACCRA
TEL: 0302-231000/2

16th June, 2018

CONCESSION BETWEEN THE GOVERNMENT OF GHANA AND THE CONSORTIUM OF INVESTORS LED BY THE MANILA ELECTRIC COMPANY (MERALCO) FOR PRIVATE SECTOR PARTICIPATION IN THE ELECTRICITY COMPANY OF GHANA (ECG) WITHIN THE TERMS OF THE SECOND MILLENNIUM CHALLENGE COMPACT

Cabinet at its Thirty-fifth meeting held on Thursday, 14th June, 2018 considered the above Memorandum jointly submitted by the Ministers for Energy and Finance.

2. The Memorandum requested Cabinet to consider and approve the Lease and Assignment Agreement, Bulk Supply Agreement and the Government Support Agreement (collectively referred to as the "Transaction Agreements"), in the form indicated in the Concession documents as presented with such modifications as may be approved, ratified, or otherwise confirmed by the Board of Directors of the Millennium Development Authority (MiDA), which Ghana and the Electricity Company of Ghana (ECG) will enter into in order to secure the proposed private sector participation in ECG.

3. Cabinet approved the Memorandum and recommended same to Parliament for consideration.

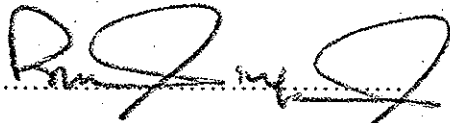
4. I should be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

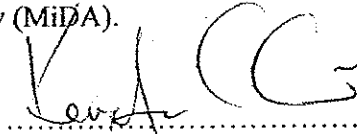
MINISTER FOR ENERGY
THE HON. MINISTER FOR FINANCE

Cc. Chief of Staff
Secretary to the President
Secretary to the Vice President
Minister for Parliamentary Affairs

regulatory environment and operation of the energy sector, Parliament is respectfully requested to approve the negotiated Transaction Agreements in the form attached hereto with such modifications as may be approved, ratified, or otherwise confirmed by the Board of Directors of the Millennium Development Authority (MiDA).



HON. BOAKYE AGYARKO
MINISTER FOR ENERGY



HON. KEN OFORI-ATTA
MINISTER FOR FINANCE

Date: 3rd July, 2018

Date: July 4, 2018

7.0 LEGISLATION/REGULATORY PLAN

In the event that the Cabinet approves the Transaction Agreements, the Transaction Agreements should be referred to Parliament for approval prior to their execution in accordance with the implementation Plan provided in Section 6.0 above.

As discussed in detail in Section 2.5 above, the regulatory framework that will apply to the ECG PSP Activity has been carefully designed by the EC and the PURC. Following the execution of the Transaction Agreements, the Company will apply to EC for the issuance of a Distribution Licence and Retail Sale Licence consistent with the EC-approved form that will be attached to the Lease and Assignment Agreement. The Company will also submit the first of its Major Tariff Review Filings to PURC in accordance with the Rate Setting Guidelines that will be adopted by PURC, the form of which is attached to the Lease and Assignment Agreement.

8.0 COMMUNICATIONS PLAN

As part of its Proposal, the Meralco Consortium provided a detailed Communications and Public Relations Plan aimed at addressing the concerns of ECG's management and staff, the general public, businesses, suppliers in the energy sector, , civil society groups in the energy sector, media, and others. The Meralco Consortium identified the following messages that it would communicate in order to develop a general understanding and acceptance of why the PSP Activity was the right decision for Ghanaians:

- The PSP Activity was the only viable solution to the power supply problem;
- Power supply will continue to improve;
- Prices will be controlled by Ghana and kept affordable;
- Ghana decided to undertake the PSP Activity, which was approved by Parliament;
- The selection process was fair and transparent;
- The Company selected to manage ECG's assets has a proven, successful track record internationally; and
- Jobs will not be lost.

It is recommended that Government communicates the same messages to stakeholders.

9.0 CABINET APPROVAL

By a letter-referenced OPCA.3/3/180618 and dated 18th June, 2018 (copy attached), from the Office of the President, Cabinet approved the Lease & Assignment Agreement (the "LAA"), Bulk Supply Agreement (the "BSA"), and the Government Support Agreement (the "GSA") (collectively, the "Transaction Agreements") which Ghana and the Electricity Company of Ghana ("ECG") have entered into in order to secure the proposed Private Sector Participation ("PSP") in ECG.

10.0 CONCLUSION

Considering the potential of the ECG Financial and Operational Turnaround Project, and the ECG PSP Activity in particular, towards addressing a number of Ghana's policy objectives for the energy sector, including more specifically, reducing technical and commercial losses in power supply, supporting the modernization and expansion of energy infrastructure to meet growing demand and ensure reliability, and improving the overall management,

remaining fifteen Agreement Years in the amounts that are required to meet standards set by EC and PURC.

5.0 CONSULTATIONS UNDERTAKEN

Throughout the development of this Compact, and in particular the Private Sector Participation in the ECG Activity, MiDA engaged in an inclusive process, including conducting consultations across Ghana with the United States Ghana and Donor Partners. Formats employed included round tables, workshops, public forums, interactive websites, and media interaction with a wide range of parties – utilities, representatives of Government (PURC, ECG, the EC, the then Ministry of Power, the Volta River Authority, the Ministry of Finance, the Office of the Minister for Justice and Attorney General, and the then Ministry of Petroleum), legislators (Members of Parliament), power industry, financial institutions, trade associations and unions, policy institutions and think tanks. The rest included academics, representatives of civil society, non-governmental organizations and private citizens across the geographic regions of Ghana. The Consultations also included study tours by Government representatives (MDAs), utilities, legislators (Members of Parliament), industry institutions, trade associations and unions, policy institutions and think tanks, to India and Uganda where similar PSP Activities were initiated about 9 years ago.

6.0 IMPLEMENTATION PLAN

Now that the Negotiations with the Preferred Bidder have been concluded, a few milestones remain to be performed before the Concessionaire can take over the operations of ECG on the projected date of 1st February, 2019. The milestones until the Transfer Date are as shown in Table 1 below.

Table 1: Key Milestones to Transfer Date

ITEM	DESCRIPTION	START	FINISH	STATUS
1	Negotiation of Draft Concession Agreement	May 3 '18	May 28 '18	Completed
2	Approval of the outcome of the Negotiation by Special MiDA Board	May 29 '18	Jun 1 '18	Completed
3	Cabinet Reviews and Recommends Concession Agreement to Parliament	Jun 7 '18	Jun 22 '18	Completed
4	Signing of Concession Agreement (Signature Date)	Jun 25 '18	Jun 26 '18	Pending
5	Parliament Debates & Approves Concession Agreement	Jul 6 '18	Jul 26 '18	Pending
6	Transaction Agreements Become Effective	Jul 27 '18	Aug 2 '18	Pending
7	COMPACT TRANCHE II FUNDING RELEASED	Aug 3 '18	Aug 9 '18	Pending
8	Parties fulfil Conditions Precedent to transfer of Operations	Aug 3 '18	Jan 25 '19	Pending
9	Transfer Date	Jan 28 '19	Feb 1 '19	Pending

4.1 Economic Impact

The primary beneficiaries of the ECG Financial and Operational Turnaround Project are consumers of electricity engaged in productive activity in the ECG Target Regions. According to a Study conducted by the MCC, these Regions generate over 22 percent of the gross domestic product (“GDP”) of Ghana. The proposed interventions are expected to reduce lost income to the owners of businesses (or owner/operators as the case may be for informal activities) and lost wages because of service disruptions.

In particular, the following elements of the PSP Activity will positively impact Ghanaian economy:

- (i) majority Ghanaian ownership;
- (ii) employment protections for transferred employees;
- (iii) investment of at least US\$580 million in the Distribution System during the first five Agreement Years, with continued investment over the remaining fifteen Agreement Years at levels that are required to meet the service standards set by EC and PURC; and
- (iv) reductions in system losses (technical, non-technical and collection).

4.2 Environmental Impact

The most likely environmental impacts arising from the ECG Financial and Operational Turnaround Project are (i) risks to worker health and safety in the construction and operation of distribution infrastructure, and (ii) risks to community health and safety from construction and operation of distribution infrastructure.

Social impacts that may be the most important are (i) involuntary resettlement (including economic or physical displacement, temporary or permanent) along rights of way for distribution lines or in the acquisition of new or expanded sites for bulk supply points or substations, and (ii) removal of unauthorized connections causing loss of access to electricity by paying customers with illegal connections.

A Framework Environmental and Social Impact Assessment (“FESIA”) and an Environmental and Social Management Framework (“ESMF”) were developed with a portion of the grant provided by the MCC as part of the Compact development process. The Transaction Agreements build on this earlier work to address the overall environmental and social issues associated with the rehabilitation of the distribution system; identify, screen and assess key risks; and propose appropriate measures to manage such risks and impacts.

4.3 Financial Impact

The ECG Financial and Operational Turnaround Project pursues a two-pronged approach – strengthening the governance and management of ECG by bringing in an Acceptable ECG PSP Provider through a form of PSP and infrastructure and foundational investments designed to reduce technical, commercial and collection losses and improve service quality. If Ghana proceeds with the transaction, a total of US\$ 351 million would be availed to Ghana by the Millennium Challenge Corporation towards the implementation of the ECG Financial and Operational Turnaround Project. In addition, as discussed above, the ECG PSP Activity will result in a PSP investment of at least US\$580.960 million in ECG’s Distribution System during the first five Agreement Years, with continued investment by the Company over the

3. Reducing system losses, from the current Aggregate Technical, Commercial & Collection (ATC&C) level of approximately 32% to 16% in 2023;
4. Expanding ECG's network capacity, by investing approximately USD580 million over a five year period (2019-2023). This is USD80 million in excess of the minimum investment requirements in the RfP;
5. Introducing modern information technology and operations technology applications with the objective of improving customer service and streamline the operating processes; and
6. Introducing international best practices, by leveraging Meralco's 115 years in the power delivery industry to achieve an effective turnaround of ECG.

Newco also ~~proposed~~ a strong capacity building and talent management and development plan, a robust Communications and Public Relations Plan designed to ensure early stakeholder buy-in through proactive and transparent engagement and a fit for purpose organizational structure designed to achieve greater efficiency and accuracy in management decision-making.

3.0 JUSTIFICATION FOR GOVERNMENT ACTION

Ghana is pursuing the ECG Financial and Operational Turnaround Project to ensure that ECG is financially and operationally sustainable and has the ability to self-finance its operations going forward with minimal support from Ghana. Government action is urgently required in order to ensure the sustainability of ECG by bringing on board an Acceptable ECG PSP Provider under long term agreements. Introduction of PSP to ECG is intended to support modernization and to improve management and operations. The physical investments contemplated by this Project are accompanied by changes in business processes and reinforcements through technical assistance and training by MCC and other donor partners.

The private sector Consortium that has been selected through a transparent and competitive tender consists of **Manila Electric Company (MERALCO)**, GTS Engineering Services, TG Energy Solutions Ghana Limited, AEnnergia, S.A, and Santa Baron Ventures Limited. The Consortium is majority Ghanaian-owned and has been determined to meet the legal requirements laid out in the RfQ and the RfP, to have comparable technical experience with electricity distribution companies of the same size as ECG, to have relevant experience in developing countries, and to have adequate financial capacity to make the required investments. These attributes of the investor Consortium will put the Company in a solid position to achieve, within the framework designed by PURC and the EC, all of the goals of the ECG PSP Activity, including loss reductions, investments in the Distribution System, and the equitable treatment of ECG Staff transferred to the Company.

4.0 OPTIONS AND IMPACT CONSIDERED

Over the past several years, Ghana considered a wide variety of options for improving the operations and finances of ECG. The options included lease, affermage, partial privatization, and concession. Pursuant to and in accordance with the Compact and subsequent Cabinet Decisions, Ghana carefully designed the ECG PSP Activity and Transaction Agreements on the basis of the concession option, taking into account the expected economic, environmental, and financial impact of Ghana's decisions.

management, oversight and administrative responsibilities” related to those “contracts entered into or to be entered into by Ghana for the supply, construction and/or installation of assets in the Southern Distribution Zone through the National Electrification Scheme (NES) or Self Help Electrification Programme (SHEP) that will, following commissioning, comprise part of the Distribution System.”

2.10 ECG's Role and Lines of Business

ECG will have a number of roles during the term of the Lease & Assignment Agreement.

- Under Section 5.8 of the Lease & Assignment Agreement, ECG will be entitled to undertake the following lines of business:
 - leasing the Distribution System to the Concessionaire pursuant to this Agreement;
 - acquiring capacity and energy from Portfolio Facilities pursuant to the PPAs and in accordance with the Bulk Supply Agreement;
 - selling capacity and energy to the Concessionaire pursuant to the Bulk Supply Agreement;
 - performing its obligations and exercising its rights under the Transaction Agreements;
 - owning the Retained Assets and continuing to engage in any line of business that ECG is engaged in as of the Transfer Date in connection with any of the Retained Assets; and
 - from and after the expiration of the Exclusivity Period, supplying and selling capacity and energy to third parties; and
 - engaging in cross-border sales of electricity.
- Under Section 2.23 of the Lease & Assignment Agreement, ECG will be entitled to monitor the Distribution System. It is a Condition Precedent to the Transfer Date that the Concessionaire and ECG agree to a monitoring schedule and protocol.
- In the event of a Company Default under the Lease & Assignment Agreement, ECG will have the right to terminate the Lease & Assignment Agreement.
- ECG will retake possession of the Distribution System after the expiration or termination of the Lease & Assignment Agreement.

2.11 NewCo's Technical Proposal

The vision articulated by NewCo in its technical proposal is to be the best power utility in Africa backed by the strongest distribution network and powered by a world-class customer-focused workforce. Its mission was to contribute to Ghana's economic progress and to satisfy the needs of the stakeholders by adopting the best power utility practice and improving all aspects of distribution utility operations. To accomplish this, Newco proposed a number of initiatives and plans designed to address a number of turnaround priorities, including:

1. Connecting and serving new customers, to achieve faster service application processing times, provide timely information in applications, increase the number of customers, and increase sales;
2. Maintaining and enhancing the quality of technical and commercial service, to provide customer value and increased customer satisfaction;

Concessionaire will make during the following Regulatory Control Period, the Operating Expenses it will incur and estimates of other costs it will incur. The proposal will be based on a range of assumptions. Some assumptions, such as the debt to equity ratio for the Concessionaire, are set by PURC (at 70% debt to 30% equity). Others, such as the cost of debt and equity for the Concessionaire, are proposed by the Concessionaire, and others, such as future demand, are forecast by the Concessionaire, all of which must be approved by PURC. Certain major components of the rates, such as the cost of generation and transmission, are forecast for the purpose of setting end user tariffs but are straight pass throughs for the Concessionaire and are set separately by PURC. PURC reviews the Concessionaire's proposed tariffs and either approves them or requires changes. Once PURC concludes the five-year review and approves end user tariffs and the DSC, that becomes the basis for setting quarterly tariffs for the next five years.

Section 5.10 of the Lease & Assignment Agreement provides that the Parties shall conduct performance reviews every five years (with a major performance review on the 15th anniversary) in order to:

- assess and report upon the performance by the Parties of their obligations under this Agreement;
- identify any changes in the operating environments of the Parties that have or could reasonably be expected to affect the performance by the Parties of their obligations under this Agreement so that such changes can be monitored and proactively overcome; and
- discuss steps the Parties could take to improve their performance under this Agreement.

Finally, the Distribution Licence and Retail Sale Licence each provide for a review of the Licences every 5 years in accordance with the Lease & Assignment Agreement.

2.9 Rural Electrification and SHEP

The current rural electrification program will continue, with NewCo fulfilling the obligations of ECG in the Southern Distribution Zone.

Section 17.2 of the Distribution Licence issued by the EC will provide: "Where Government through the National Electrification Scheme (NES) or Self Help Electrification Programme (SHEP) extends the network to communities with a minimum of 500 residents beyond 10km radius but within 20km radius of an existing network of the licensee, the Licensee shall at all times connect the new communities to the distribution network."

Section 17.3 of the Distribution Licence will provide: "The Licensee shall be obliged to operate and maintain the government funded rural electrification networks."

Furthermore, under Article 5 of the Government Support Agreement, the Concessionaire will be appointed as Ghana's agent and "when requested by Ghana, have principal day-to-day

- ECG will sell all capacity and energy made available under the Portfolio PPAs to the Company in exchange for the payment by the Company of all capacity and energy payments on a back-to-back basis;
- The Company will pay for Capacity and energy from PPAs designated as Portfolio PPAs.
- The Company will post and maintain the BSA Payment Security;
- ECG will appoint the Company as its Agent in order to administer the Portfolio PPAs;
- The Company may enter into other PPAs with third-parties, provided that the Company obtains the prior approval of Ghana and that the Company will not be relieved of its obligations under the Portfolio PPAs; and
- The Company and ECG may agree for ECG to enter into PPAs that will be added to the list of Portfolio PPAs.

2.7 Government Support Agreement

The Government Support Agreement is the document that lays out the relationship between Ghana and the Company. It includes certain guarantees by Ghana and undertakings by the Company. The Government Support Agreement includes the following key provisions:

- The Company shall ensure that 51% or more of the issued and outstanding Shares in the Company are held, directly or indirectly, by individuals who are citizens of Ghana;
- The Company shall implement an Employee Stock Ownership Plan approved by Ghana prior to the Transfer Date;
- The Company shall implement the Local Content Plan included in the preferred bidder's Technical Proposal;
- Ghana guarantees to the Company:
 - ECG's payment of the Buy-Out Price; and
 - electricity payments for identified facilities in specified Ministries, Departments, and Agencies designated as Strategic Facilities; and
- Ghana provides protection for Changes in Law (defined to include changes to the Licences and PURC Rate Setting Guidelines) and Changes in Tax that cause a Material Adverse Company Effect, but only if the Company does not recover increased costs by adjusting the rates that are paid by consumers in the Southern Distribution Zone, in accordance with the PURC Rate Setting Guidelines.

2.8 Periodic Reviews

Under the Transaction Documents, Licences, and Rate Setting Guidelines, the Company will undergo a number of important periodic reviews.

PURC will conduct a major tariff review every five years. As part of each major review, the Concessionaire will submit a revised business plan that sets out the investments the

- that PURC shall issue rate setting guidelines in the form of the PURC Rate Setting Guidelines attached to the Lease & Assignment Agreement. The attached forms of the Rate Setting Guidelines:
 - provide for incentive-based regulation with a five-year Regulatory Control Period;
 - provide for separate Annual Revenue Requirements for Supply and Distribution;
 - incorporate the bidding parameters (including proposed improvements to system losses), with prudence review, to provide for capital recovery and **return** on capital through the Annual Revenue Requirement (Distribution);
 - provide a pass-through of amounts paid under Portfolio PPAs to generators; and
 - provide for historic valuation of the Company's Rate Base, for Major Tariff Reviews, as well as annual and quarterly adjustments;
- for retransfer of all assets upon expiration or termination of the LAA and payment of a Buy-Out Price;
- for extensive conditions precedent to the Transfer Date that must be met within 180 days, including:
 - an agreement between Ghana and ECG about the PPAs to be included as Portfolio PPAs;
 - the approval by PURC of the PURC Rate Setting Guidelines and the initial rates that the Company shall be authorized to charge, which will necessarily include a decision on the amount of the Lease Payments that will be due to ECG;
 - the approval by Ghana of an Employee Stock Ownership Plan (ESOP) that must be fully implemented by the Company by an agreed ESOP Implementation Date;
 - the delivery by the Company of any Shareholders' Agreement and related documents, and the review of the Shareholders' Agreement and related documents by Ghana, and certification by Ghana that such documents are not inconsistent with or could not reasonably be expected to frustrate (i) the requirement for Ghanaian 51% ownership or (ii) in any other material respect any other term of the Transaction Agreements; and
 - the preparation by ECG and the Company of an ECG Monitoring Schedule and Protocol, consistent with the broad monitoring rights in the LAA.

2.6 Bulk Supply Agreement

The Bulk Supply Agreement between ECG and the Company deals with the back-to-back purchase by the Company of the capacity and energy made available to ECG under the PPAs to which ECG is a party. It includes the following key provisions.

- (ii) reduces system losses (technical, non-technical, and collection) by the percentages proposed in the consortium's Financial Proposal;
- (iii) ensures that 51% or more of the issued and outstanding Shares in the Company are held, directly or indirectly, by individuals who are citizens of Ghana;
- (iv) ensures that any employees that are transferred to the Company are employed on terms and conditions that are equal to or better than the terms and conditions on which such employees were employed by ECG; and
- (v) ensures that such transferred employees are not subject to any involuntary redundancy during the entire 20 year term of the concession.

Capitalized terms that are not defined herein are intended to have the definition provided in the Transaction Agreements.

2.5 Lease and Assignment Agreement

The Lease and Assignment Agreement between ECG and the Company is the primary document governing the 20-year relationship between ECG and the Company with regards to ECG's Distribution System. The Lease and Assignment Agreement provides:

- for the lease of Leased Assets for 20 years, the assignment of Assigned Contracts, and the sale and transfer of Transfer Date Moveable Property;
- for payment of Lease Payments to ECG;
- for posting and maintenance of Lease Payment Security by the Company;
- that the Company shall ensure that any employees that are transferred to the Company are employed on terms and conditions that are equal to or better than the terms and conditions on which such employees were employed by ECG;
- that the Company may not undertake, during the entire twenty-year term of the Concession, any involuntary reduction in respect of the employees that will be transferred from ECG to the Company;
- that the Energy Commission (EC) shall issue licenses in the form of the Distribution Licence and the Electricity Supply Licence attached to the Lease and Assignment Agreement. The attached forms of the Licences:
 - provide for exclusive right to distribute electricity in the Southern Distribution Zone for the Term, but permit Mini Grids and SHEP Program in the Southern Distribution Zone;
 - provide for the exclusive right to supply electricity to customers other than Bulk Customers in the Southern Distribution Zone for 5 years;
 - provide for the suspension and cancelation of the Licences in the event that the Company does not meet its distribution or supply obligations;
 - refer to the penalties specified in the relevant Legislative Instruments for any failure of the Company to meet its key performance indicators; and
 - require prior EC approval of investments by the Company;

- has not been convicted by a final and binding judgment for a crime committed in the course of performing its professional activity;
- does not have unsettled tax liabilities in respect of judgments awarded by any Court or similar proceedings in the period of three (3) years prior to the publishing of the RfQ, save in each case to the extent that it has made a suitable accounting provision for such liabilities in accordance with applicable accounting regulations;
- does not have liabilities on the grounds of sentences rendered in criminal or misdemeanour proceedings in the period of at least three (3) years prior to publishing of the RfQ;
- neither ~~it nor~~ to its knowledge any Relevant Person (including as applicable any member of the Consortium) has been convicted of fraud, bribery, corruption, collusion, or money laundering or for a criminal act involving dishonesty, physical violence, harm to human life, trafficking in persons, or trafficking in controlled substances, nor is under investigation for, such criminal activities;
- it is not subject to a conflict of interest or potential conflict of interest which arises from a relationship between it, its employees, or any Relevant Person and any GoG ministry, department, agency, or body or their officials or employees which has or have direct or indirect influence in the scope or manner of execution of the Transaction, or the conduct of the Tender, and which relationship can give rise to reasonable concerns about the impartiality (in relation to it) of the Tender or the Tender Evaluation Committee;
- is not excluded from a bid or other public procurement processes in Ghana; and
- is not:
 - debarred from financing by any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 (www.crossdebarment.org) for the activities required to carry out the obligations of the Concessionaire and to build and operate the Project;
 - listed on any financial sanctions lists promulgated by the UN Security Council or its Committees, pursuant to any Resolution under Chapter VII of the Charter of the United Nations; or
 - engaged, and it does not engage, in operations (directly or through any subsidiary) or transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees pursuant to any Resolution under Chapter VII of the Charter of the United Nations or national sanctions in Ghana.

The Transaction Agreements provide for a 20-year Concession and require, among other things, that the Company:

- (i) invests at least US\$580 million in the Distribution System during the first five Agreement Years;

- to provide Supply Service to End Users that are connected to the Distribution System in accordance with the Retail Sale Licence; in each case, for a period of 20 years.

The Company will be entitled to provide Distribution Service to End Users within the Southern Distribution Zone for the term of the Concession in accordance with the terms of the Distribution Licence, the Retail Sale Licence and the Transaction Agreements. The Company's right to sell electricity to End Users in the Southern Distribution Zone will be exclusive with respect to End Users within the Southern Distribution Zone other than End Users that are currently permitted to select the seller of their choice, for at least five years, and thereafter until Ghana establishes a competitive market for the sale of electricity to End Users.

The rates the Company will be permitted to charge to End Users will be approved by the Public Utilities Regulatory Commission (PURC) in accordance with its detailed Rate Setting Guidelines.

Ghana will guarantee, pursuant to the Government Support Agreement:

1. ECG's payment of a Buy-Out Price at the end of the Concession; and
2. Electricity payments for identified facilities in specified Ministries, Departments, and Agencies designated as Strategic Facilities.

Ghana will also provide protection under the Government Support Agreement against Changes in Law (defined to include changes to the Licenses and PURC Rate Setting Guidelines) and Changes in Tax that cause a Material Adverse Company Effect and that are not recovered under the PURC Rate Setting Guidelines.

2.4 Procurement Process and Requirements of the Concessionaire

Ghana has selected, through an international competitive tender, a consortium of investors that will establish a special purpose vehicle referred to as the Company. The Company will enter into the Transaction Agreements and undertake the transactions contemplated by them as the Concessionaire. The Tender was conducted pursuant to a Request for Qualifications (the "RfQ") and a Request for Proposals (the "RfP"). The RfQ required potential bidders to meet specified minimum standards that were designed to demonstrate that the potential bidders:

- had the relevant technical experience and a proven track record of helping electricity distribution companies of similar size and scope as ECG to become profitable;
- had relevant experience in developing countries; and
- had adequate financial capacity as evidenced by its ability to satisfy the minimum equity threshold and tangible net worth requirements set forth in the RfQ and RfP.

In addition, the RfQ and RfP required bidders to provide affidavits from each member of the bidding consortium confirming that each member:

- is not under liquidation, bankruptcy, court receivership, or similar proceedings;

While this option could incentivize the contractor to achieve efficiency improvements, the management contractor would have no obligation to fund any capital investments so this obligation would still fall to the Government. This option therefore did not meet the Government's budget objective.

Lease

Here, a private investor/operator would establish a Special Purpose Vehicle (and "SPV") to manage the operations of ECG. The SPV would pay a lease fee to the asset-owning ECG for the use of the assets. Ownership of the assets would remain with ECG and ECG would be responsible for financing new investments, although the SPV may finance minor investments. This option did not address the Government's objectives of mobilizing private capital and reducing the financial burden on Government. As a result, it was not selected as the preferred option.

Concession

Under a concession, the private investor/operator (concessionaire) would establish an SPV to manage all the operations of the distribution business, including financing and procuring new investments. Ownership of the distribution company remains unchanged, as with the lease, but the concessionaire takes on the responsibility of funding all new investments as well as maintaining all existing assets. As the SPV retains all the revenues from the distribution business, it is incentivized to improve performance. The concession option therefore met the Government's efficiency objective. In addition, as the concessionaire is responsible for funding all major new investments, the concession option also met the Government's objective of minimizing the impacts on the national budget.

A concession would bring many potential benefits to Government, including, but not limited to:

- Budget certainty – The concessionaire, not Government, is responsible for financing capital expenses and operating expenses.
- Risk transfer – the concessionaire assumes responsibility for the delivery and operation of Government's infrastructure and services.

Against this backdrop, Government publicly announced its intention to pursue a concession in April of 2015. Government then designed the ECG PSP Activity and the Transaction Agreements in accordance with a more detailed set of decisions from Cabinet and has now selected a private sector partner through an international competitive tender. Over the past month, in accordance with the procedures set out in the Request for Proposals, Ghana has successfully negotiated the Transaction Agreements with the Preferred Bidder. Ghana and ECG are now in a position to execute the Transaction Agreements.

Under the Transaction Agreements, ECG will grant the Company the right:

- to utilise, operate, maintain, restore, reinforce, and expand the distribution system in accordance with the terms of the Lease & Assignment Agreement and the other Transaction Agreements;
- to purchase from ECG the Capacity and Net Electrical Output made available to ECG under the Portfolio PPAs, in accordance with the terms and conditions contained in the Bulk Supply Agreement and the other Transaction Agreements;
- to provide Distribution Service to End Users that are connected to the Distribution System in accordance with the Distribution Licence; and

Cents /kWh), Uganda (17 US Cents /kWh) and Kenya (22 US Cents /kWh). Few countries in Africa had lower generation costs that year, including Zambia (9 US¢/kWh) and South Africa (11 US Cents /kWh).

ECG's Current Tariffs

In 2017, Ghana's average electricity tariff was approximately 21 US Cents/kWh. This is similar to average tariffs in countries in Sub-Saharan Africa and Latin America and the Caribbean but significantly higher than the average for countries in South Asia, Europe & Central Asia, and the Middle East and North Africa.

In 2014, Government identified a number of objectives for the improvement of the distribution sector as follows:

- Improve the quality of service, efficiency and finances of ECG and NEDCo to support achievement of middle income status
- Minimize the financial burden on the Government
- Mobilize private capital
- Achieve universal coverage by 2016
- Ensure competitiveness of businesses and affordable tariffs for consumers (especially for the poor)

An overview of the options assessed in relation to the above Government objectives for the distribution sector, which formed the decision for the PSP, are outlined below:

- Business as usual – with no private sector participation
- Management contract
- Lease
- Concession
- Partial or full privatization

Business as Usual

ECG aggregate losses had remained significantly above the benchmarks for comparable utilities during the five years leading up to Government's decision. Other performance measures also indicated that ECG was not capable of implementing the changes required to achieve necessary efficiency improvements, and that it was not capable of funding its investment needs. In the business-as-usual scenario the Government would be required to fund or underwrite capital expenditures of approximately US\$ 180 million per year in real terms every year.

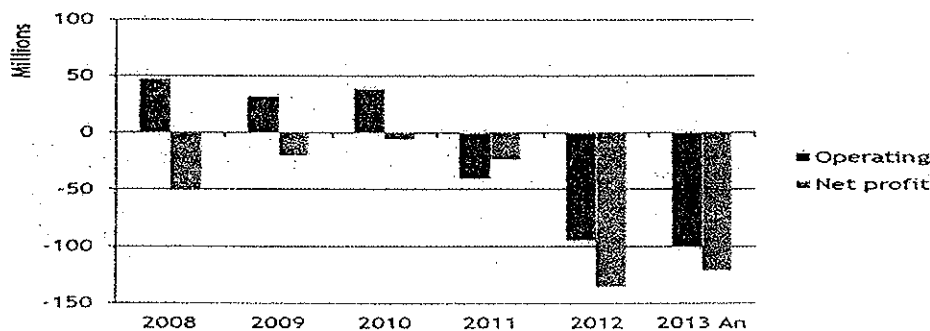
The business as usual option did not meet any of the Government's objectives for the sector.

Management Contract

Under this option, a reputable distribution operator would assume the management of ECG and be responsible for managing the operations and maintenance activities of ECG. ECG would pay a management contractor a fee, which should include a fixed fee as well as a performance based fee.

When the initial analysis of ECG was undertaken in 2014, the following observations were made:

- Aggregate technical and commercial losses were significantly above the benchmarks for comparable utilities.
- ECG's customers suffered an average of 106 interruptions per customer in 2012. The benchmark for comparable utilities is in the range of 5-10 interruptions per customer per year.
- ECG requires an estimated US\$1 billion of capital investment every 5 years.
- Poor financial performance does not allow ECG to raise enough funds for adequate investment.



Revenues were growing on the back of customer growth and high demand but ECG suffered from deteriorating profit margins and decreasing marginal revenues.

Since that analysis was undertaken, the situation has not improved. Despite significant investments, technical and commercial losses have remained at levels well above the benchmarks for comparable utilities. More significantly, ECG's financial performance has continued to deteriorate.

ECG has been a loss making enterprise since 2011, and the quantum of the losses generated has increased with each passing year. Based on its management accounts, in 2017, ECG made a loss before tax of GHC 796 million and at the end of the year had current liabilities of GHC 7.6 billion. These current liabilities were offset by current assets of only GHC 5.5 billion, leaving a shortfall of over GHC 2.0 billion. Put simply, ECG does not collect sufficient revenues to meet all its costs and pay all its bills.

ECG Current Losses

At approximately 23% Aggregate Technical and Commercial Losses in 2017, Ghana's current loss levels are high compared to worldwide industry standards (at about 8-9%), slightly above average for Sub-Saharan countries (at about 22%) and average for the West Africa region. Total Aggregate Technical, Commercial, and Collection Loss Ratios were approximately 32% in 2017.

ECG's Current Generation Costs

At the end of 2016, Ghana's average generation costs at 15 US Cents/kWh were lower than in many countries in the region, including Cameroon (16 US Cents /kWh), Malawi (16 US

1.0 DECISION REQUIRED

Parliament is respectfully invited to consider and approve for adoption the negotiated and executed Lease & Assignment Agreement (the "LAA"), Bulk Supply Agreement (the "BSA"), and the Government Support Agreement (the "GSA") (collectively, the "Transaction Agreements") which Ghana and the Electricity Company of Ghana ("ECG") have entered into in order to secure the proposed Private Sector Participation ("PSP") in ECG.

2.0 BACKGROUND INFORMATION

The Republic of Ghana ("Ghana") and the United States of America, acting through the Millennium Challenge Corporation ("MCC") entered into a Millennium Challenge Compact, dated August 5, 2014 which provides for a Grant of up to US\$498,200,000.00 (Four Hundred and Ninety Eight Million, Two Hundred Thousand United States Dollars) to advance economic growth and reduce poverty in Ghana (the "Compact"). The Compact commits Ghana and MCC to a five-year economic development program (the "Program") that will fund investments in the power sector.

2.1 Goal and Objectives

The goal of the Compact is to reduce poverty through economic growth in Ghana.

The objectives of the Program are to:

- increase private sector investment and the productivity and profitability of micro, small, medium and large scale businesses;
- increase employment opportunities for men and women; and
- raise earning potential from self-employment and improved social outcomes for men and women.

2.2 The Program

The Program consists of six Projects namely:

- i. ECG Financial and Operational Turnaround Project;
- ii. NEDCO Financial and Operational Turnaround Project;
- iii. Regulatory Strengthening and Capacity Building Project;
- iv. Access Project;
- v. Power Generation Sector Improvement Project; and
- vi. Energy Efficiency and Demand Side Management Project.

2.3 Private Sector Participation in ECG Project Activity

Private Sector Participation in ECG is an activity under the ECG Financial and Operational Turnaround Project. This Activity seeks to identify and engage a private sector entity in the power distribution sector to partner with Ghana to turnaround the fortunes of ECG in its operations and finances.

In structuring this activity, the Government sought, in 2014, to review the options for improving the performance of the distribution sector in light of the challenges ECG was facing.

**JOINT PARLIAMENTARY
MEMORANDUM**

PARLIAMENT OF GHANA LIBRARY

BY

**HON. BOAKYE AGYARKO
MINISTER FOR ENERGY**

&

**HON. KEN OFORI-ATTA
MINISTER FOR FINANCE**

ON THE

CONCESSION

BETWEEN

THE GOVERNMENT OF GHANA AND THE CONSORTIUM OF
INVESTORS LED BY THE MANILA ELECTRIC COMPANY (Meralco)
FOR PRIVATE SECTOR PARTICIPATION IN THE ELECTRICITY
COMPANY OF GHANA (ECG) WITHIN THE TERMS OF THE
SECOND MILLENNIUM CHALLENGE COMPACT

3RD JULY, 2018