



**IN THE SECOND SESSION ON THE SIXTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**

REPORT OF THE COMMITTEE ON MINES & ENERGY

ON THE

**POWER PURCHASE AGREEMENT BETWEEN THE
ELECTRICITY COMPANY OF GHANA AND JACOBSEN
JELCO GHANA LIMITED RELATING TO A 360MW
COMBINED CYCLE DUAL FUEL POWER PLANT
FACILITY AT ABOADZE**

AND THE

**ENERGY CONVERSION AGREEMENT BETWEEN THE
ELECTRICITY COMPANY OF GHANA, JEL OIL AND
GAS GHANA LIMITED AND JACOBSEN JELCO
GHANA LIMITED RELATING TO A 360MW COMBINED
CYCLE DUAL FUEL POWER PLANT FACILITY AT
ABOADZE**

DECEMBER, 2014

POWER PURCHASE AGREEMENT BETWEEN THE ELECTRICITY COMPANY OF GHANA AND JACOBSEN JELCO GHANA LIMITED RELATING TO A 360MW COMBINED CYCLE DUAL FUEL POWER PLANT FACILITY AT ABOADZE AND THE ENERGY CONVERSION AGREEMENT BETWEEN THE ELECTRICITY COMPANY OF GHANA, JEL OIL AND GAS GHANA LIMITED AND JACOBSEN JELCO GHANA LIMITED RELATING TO A 360MW COMBINED CYCLE DUAL FUEL POWER PLANT FACILITY AT ABOADZE

1.0 INTRODUCTION

On Thursday, 27th November, 2014, the Hon. Minister for Energy and Petroleum, Mr. Emmanuel Kofi Armah-Buah laid before Parliament for consideration and approval, Power Purchase Agreement between the Electricity Company of Ghana and Jacobsen Jelco Ghana Limited relating to a 360MW Combined Cycle Dual Fuel Power Plant Facility at Aboadze and the Energy Conversion Agreement between the Electricity Company of Ghana, JEL Oil and Gas Ghana Limited and Jacobsen Jelco Ghana Limited relating to a 360MW Combined Cycle Dual Fuel Power plant Facility at Aboadze.

Following this, the Agreements were referred to the Select Committee on Mines and Energy for consideration and report pursuant to Order 188 of the Standing Orders of Parliament.

2.0 DELIBERATIONS

The Committee met with the Minister for Energy and Petroleum, Hon. Emmanuel Kofi Armah-Buah and Officials of the Ministry of Energy and Petroleum to consider the Power Agreements.

The Committee expresses its appreciation to the Officials for their attendance and for offering clarifications on issues raised at the meeting.

3.0 REFERENCE DOCUMENTS

The Committee referred to the under-listed documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;

- iii. The Public Utilities Regulatory Commission Act, 1997 (Act 538);
- iv. The Energy Commission Act, 1997 (Act 541);
- v. The Environmental Protection Agency Act, 1994 (Act 490);
- vi. The Environmental Impact Assessment Regulations, 1999 (L.I. 1652);
and
- vii. Other Connected Documents relating to the Power Purchase Agreement including the Government Consent and Support Agreement, the Engineering, Procurement and Construction Contract and the Joint Services Agreement.

4.0 BACKGROUND INFORMATION

Ghana's electricity consumption has seen sharp increase over the past decade. In 2013, Ghana's total peak demand was about 1,943MW. According to Ghana's Generation Master Plan, forecast peak demand for 2014 is around 2,200MW. The implication is that by 2015, electricity demand will outstrip the available power from the current installed generation capacity of about 2,850MW.

To improve the Country's generation capacity to meet the increasing demand for electricity, the Government continues to adopt various measures to address the power deficit. Currently the government has set a target to achieve a generation capacity of 5,000MW by 2016 to meet the projected energy demand and a Reserve Margin of about 20%. The Government intends to achieve this principally through partnership with the Independent Power Producers (IPPs).

In line with this policy, the Electricity Company of Ghana executed a Power Purchase Agreement (PPA) with Jacobsen Jelco Ghana Limited (Jacobsen) in December, 2012 under which Jacobsen has agreed to supply ECG with 360MW of electrical power and energy over a period of twenty-five (25) years.

In addition to the PPA, the ECG executed the fuel supply component of the PPA under a Conversion Agreement with a sister company of Jacobsen, Jelco Oil and Gas Ghana Limited. Under the Agreement, Jelco will manage, administer and supply fuel to the plant on behalf of Jacobsen.

For the purpose of securing legal backing to these Agreements, the approval of Parliament, the Power Agreements were laid in Parliament by the Hon. Minister for Energy and Petroleum on Thursday, 27th November, 2014 for their consideration.

5.0 PARTIES TO THE POWER PURCHASE AGREEMENT

The parties to the Power Purchase Agreement are the Electricity Company of Ghana Limited (ECG) and Jacobsen Jelco Ghana Limited.

5.2 The Electricity Company of Ghana Limited

The ECG is a wholly owned electricity distribution company incorporated under the Companies Act, 1963 (Act 179).

The ECG is permitted under applicable laws and Regulations in Ghana to purchase electrical energy.

5.3 Jacobsen Jelco Ghana Limited

Jacobsen Jelco Ghana Limited (Jacobsen) is a Special Project Company incorporated in Ghana on November 23, 2011, to develop the 360MW Combined Cycle Dual Fuel Power Plant Facility at Aboadze. The Company was awarded a Power Generation License in 2012 by the Energy Commission after it had completed the requisite activities. Jacobsen is a fully owned subsidiary of Jacobsen Electro AS, a company duly incorporated under the laws of Norway.

Jacobsen is permitted under applicable laws and Regulations in Ghana to sell independently produced electrical energy.

6.0 DESCRIPTION OF THE PROJECT

The project involves the development, ownership, operation and management of a 360MW Combined Cycle Dual Fuel power plant to be located at Aboadze in the Western Region of Ghana. The plant would be situated strategically near the West African Gas Pipeline Landing Point at Aboadze.

7.0 ESTIMATED COST OF THE PROJECT

The total cost of the 360MW Combined Cycle Power plant is estimated at Six Hundred and Thirty-Seven Million, Four Hundred Thousand United States Dollars (US\$637,400,000.00). The details of the total cost are as shown in Table 1 below:

**Table 1: Details of the Estimated Cost of the Project 360MW
Combined Cycle Power Plant**

Description	Cost (US\$)
EPC Contract	501,800,000.00
Land Purchase	4,000,000.00
Insurance Costs	5,400,000.00
Development Costs	20,000,000.00
Development Fees	18,000,000.00
Financing Fees	66,500,000.00
Commitment Fees & Interest during Construction	19,700,000.00
Legal fees	1,100,000.00
Independent Engineers	800,000.00
Total Capital Costs	637,400,000.00

8.0 PROJECT FINANCING

It is planned that the project will be financed through a mixture of equity and shareholder loan of 15% and debt of 85% respectively. This structure was possible with the separation of the fuel supply component from the signed PPA and on arrangement of a Convention Agreement with a sister company of Jacobsen Jelco Oil & Gas Ghana Limited. Under this arrangement, Jelco will manage, administer and supply fuel to the plant on behalf of Jacobsen.

The project is being financed through an export finance facility from Eksports Finance AS secured by the Norwegian Guarantee Institute for Export Credit (GEIK) to cover 100% of the loan, interest and other costs as agreed under the PPA.

9.0 KEY OBLIGATIONS UNDER THE PPA

The key obligations for parties under the power agreement are as follows:

9.1 Term of Agreement

As provided under Section 3.1 of the PPA, the Agreement shall be in force for a period of twenty-five (25) years under certain terms. Two years prior to the expiry of the term, the parties to the Agreement shall discuss an extension to the term of a further 5 years which shall not be unreasonably refused by ECG.

9.2 Sale and Purchase of Energy and Capacity

From and after the Commercial Operation Date and until the expiry or earlier termination of this Agreement, Jacobsen shall make available to ECG a contracted capacity of 360MW.

9.3 Performance Bond

Jacobsen has undertaken under the PPA to provide a performance bond to the ECG to serve as performance bond. The amount of the bond is One Million, Eight Hundred Thousand United States Dollars (US\$1,800,000.00) to be drawn on an internationally recognized bank operating a branch in Ghana acceptable to ECG (see Section 9.5 of the Agreement).

In the event that the commercial operation does not occur prior to the scheduled commercial operation date, liquidated damages shall be paid to ECG at the rate of Ten Thousand United States Dollars (\$10,000) per day for each day that the commercial operation date is delayed beyond that date.

9.4 Pricing of Total Electricity Charge

The ECG has undertaken under the PPA to pay the total electricity charge comprising the capacity charge, the energy charge and excess starts charges to Jacobsen at the end of every month. In addition, it will also pay the energy charge for all useful energy supplied by the Jacobsen during commissioning of the facility and prior to the commercial operation date. ECG shall also pay any increases in total electricity charge subject to approval by PURC.

9.5 Payment Security

Per Section 9.9 of the PPA, the ECG will be required to procure the issuance of a Letter of Credit for the amount of Twenty Million Dollars (US\$20,000,000.00) to be issued by a creditworthy reputable financial institution in Ghana. The Letter of Credit is to serve as a short term liquidity security for payments of all sums due to Jacobsen.

9.6 Insurance Cover for the Power Plant

During the term of the Agreement, Jacobsen is obliged to obtain and maintain at its own expense adequate insurance policies as is customary, desirable and consistent with prudent utility practice generally taken out by international independent power producers.

10.0 KEY OBLIGATIONS UNDER THE ENERGY CONVERSION AGREEMENT

Key obligations provided under the Energy Conversion Agreement are as follow:

10.1 Fuel Requirements and Availability

Under the Agreement, the Jel Oil & Gas Ghana Limited (Jelco) shall notify ECG of estimated Fuel Requirements, estimated Fuel Availability and estimated Fuel Prices for the estimated Net Energy Output on an hourly basis for the following three (3) months intervals. The notification is expected to be issued either on or before the commercial Operations Date and not later than fifteen (15) days prior to the beginning of each month.

In order to benefit from lower Fuel Prices, it is required that through JELCO, and the ECG shall jointly within five (5) Days after the last day of each three (3) months period prepare and file the tariff adjustment application to PURC as in accordance with the prevailing PURC automatic Adjustment Formula (AAF).

Though the notification shall not be binding on Jelco, it envisaged that Jelcos soon as practicable after becoming aware of any material changes to the estimations above in any such notice, notify ECG of such change. On the other hand, ECG also reserves the right to alter or cancel its acceptance of the estimated Fuel Availability and estimated Fuel Prices by twenty-four (24) hours in a written notice to Jelco.

10.2 Liability for Insufficiency in Fuel Supply

Under the Agreement, the Jelco is liable to the payment of the sum of Ten Thousand United States Dollars (US\$10,000) per day as liquidated Damages to ECG if it fails to have a total stock level of Fuel available at the facility and/or the Storage Tank Area of a minimum equal to five (5) days of electricity production at 100% load factor. The liquidated damages also apply in situations where the Jelco fails to deliver fuel required. Furthermore, in situations where ECG suffers substantial damage in amounts difficult or impossible to determine in the event that Fuel is not made available to the Facility, the Parties to the Agreement have agreed on sums that reasonable as liquidated damages.

10.3 Energy Payment Fuel Component

During the term of the Agreement, ECG commits to pay the prevailing Energy Payment Fuel Component in Ghana Cedis corresponding to the United States Dollars equivalent at the actual Day of payment. In respect of this, the Jelco has also undertaken to issue a monthly invoice reflecting amounts of Energy Payment Fuel Component owed to ECG within five (5) days after the end of each month. ECG on the other hand is required to pay the net Energy Payment Fuel Component in four (4) installments with each pegged at twenty-five percent (25%) of the Monthly Invoice value on or before the seventh (7th), fourteenth (14th), twenty-first (21st) and twenty-eighth (28th) day after the receipt of the Monthly Invoice. ECG will make all its payment by a direct bank transfer to nominated bank accounts given by Jelco.

10.4 Payment of Taxes and Other Charges

As contained in Section 6.5 of the Agreement, ECG and Jelco are required to pay Value Added Tax, royalty, taxes, import duties and any other dues, duties, fees, imposts, levies and other charges that may be applicable under the Laws of Ghana. In the event of non-recoverability of some these taxes and charges, Jelcos obliged to add them to the Energy Payment Fuel Component and the Monthly Invoice which shall be paid by ECG. In addition, any future imposition by the Government or any relevant Ghanaian authority of any new taxes and charges on purchase and sale of Fuel after the effective date of the Agreement will affect the Energy Payment Fuel Component and the Monthly Invoice.

10.5 Payment Security

Under the Section 6.7, ECG grants Jelco the right to draw any overdue Energy Payment Fuel Component from its procured Bank Guarantee of Twenty Million United States Dollars (US\$20,000,000.00), as established and regulated in Section 9.9 of the Power Purchase Agreement.

10.6 Resolution of Disputes

Under the Agreement, Section 10.1 requires that Parties to attempt to amicably settle disputes in the first instance within 30 days or within an agreed time frame by mutual discussion. The Agreement further provides for the appointment of an Expert with the requisite competencies to deal with technical disputes upon the completion of the 30days or any agreed additional period. In event they are not able to resolve their differences amicably; Parties

to the Agreement also have the right to resort to Arbitration. The Arbitration proceedings will be conducted by in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (“the UNCITRAL Arbitration Rules”) and also held in London, England. The arbitration proceedings shall be presided by three (3) Arbitrators unless the Parties agree otherwise. The Arbitrators will be appointed by the President of the London Court of International Arbitration.

11.0 OBSERVATIONS

11.1 Expected Increase in Generation Capacity

The Committee was informed that the project when completed will contribute about 13% to the country’s current capacity of 2,845MW. The Committee believed that this will be significant to help address part of the current power challenges.

11.2 Economic and Social Benefits

The Committee was informed by Officials of the Ministry of Energy and Petroleum that upon the approval of the PPA and eventual execution of the project, an estimated 900 jobs would be created at the peak of construction. Additional 200 permanent jobs would be also be created within the contract period. The Committee finds this very essential in improving the local economy and the living standard of the people of the communities hosting the project. To further enhance benefits to the State through the development of backward linkages in future power projects, the Committee urges the Ministry of Energy and Petroleum to speed up its work on the local content policy for the power sector.

11.3 Improving the Credit Rating of ECG

The Committee expresses concern about the present credit rating of ECG which requires it to resort to Government’s guarantee under this power purchase agreement. The credit rating of ECG presents an obstacle to government’s effort to attract more IPPs into the power sector. The Committee therefore urged the ECG to structure its debt, improve efficiency in its revenue collection and take appropriate measures to address technical losses. It further urges the sustenance of the in-house debt clearing exercise among the Ministry of Finance, ECG, Volta River Authority, Ghana Grid Company Limited and other players in the power sector. This, in the Committee’s view will help position the ECG to enable it enter into agreements with IPP in its own financial strength.

11.4 Provision to ensure reliable supply of Fuel to Power Plant

The Committee noted with satisfaction that provision has been made in the PPA to ensure a regular supply of fuel to the power plant. This is contained in a form of a provision for liquidated damages in the event of fuel shortfalls under the Energy Conversion Agreement. Such an arrangement would go a long way to guarantee to power plants to address current challenges of securing fuel to power the country's power plants. The Committee suggested to the ECG to maintain such provisions in all future power agreements.

11.5 Provision on Progressive Tax Regime

The Committee observed that future imposition of any new taxes and charges with respect to the purchase and sale of fuel will apply to the Energy Conversion Agreement as well. The Committee viewed this tax regime contained in the Agreement as progressive and represented a marked departure from the past where, for want of attracting investment, the State offered stable tax regimes. It averred that with the tax arrangements under the Agreement, the State is assured of raising enough revenue for national development if the State intends to change the current tax regime in the future.

11.6 No Direct Liability to the State

The Committee observed with commendation that proceedings brought against ECG under the dispute resolution provisions constitute private and commercial acts on the part of ECG rather than public or government acts. It was also pleased that such immunity extends to ECG assets protected by the diplomatic and consular privileges in any jurisdiction in relation to the Agreement or any transaction contemplated by the Agreement. The Committee noted that such immunity will strengthen ECG's position as well as avoid the situation where garnishee of government assets becomes a coercive instrument during arbitration proceedings. Again, the Committee noted in the event of garnishee orders during arbitration proceedings will not undermine government international transactions.

12.0 CONCLUSION

Having duly discharged its mandate, the Committee finds the Power Purchase and Energy Conversion Agreements as a critical step towards addressing the shortfall in power generation of the country. It also finds that the Agreements represent the interest of the State in securing adequate and reliable power for the long term economic transformation of the country.

The project is also seen as a significant step towards improving availability of power for economic and social development.

The Committee observes that Power Purchase Agreements do not ordinarily come to Parliament for ratification. However, on the basis of the fact that Government Consent and Support is being sought as part of this Agreement and in recognition of the fact that the House has already approved the Government Consent and Support Agreement connected to this PPA **upon the recommendation of the Finance Committee**, the Committee on Mines and Energy recommends to the House for approval the Power Purchase Agreement between the Electricity Company of Ghana and Jacobsen Jelco Ghana Limited relating to a 360MW Combined Cycle Dual Fuel Power Plant Facility at Aboadze and Energy Conversion Agreement between the Electricity Company of Ghana, JEL Oil and Gas Ghana Limited and Jacobsen Jelco Ghana Limited relating to a 360MW Combined Cycle Dual Fuel Power plant Facility at Aboadze.

Respectfully submitted.



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HON. KWABENA DONKOR (DR.)
CHAIRMAN, COMMITTEE ON
MINES AND ENERGY



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PEACE FIAWOYIFE (MS.)
CLERK TO THE COMMITTEE