MR. MOULD'S INTERVENTION IN THE AKER ENERGY'S PETROLEUM AGREEMENT CONTROVERSY IS SHOCKING

Press release, Accra, 1st May, 2019.

The Africa Centre for Energy Policy (ACEP) has been following the recent discussions on the Aker Energy and the interest of Ghana in the discoveries of the Deep Water Tano Cape Three Points (DWT / CTP) block. The position of ACEP in that conversation has been that although ACEP does not share the concerns of IMANI, IMANI, who started it, did nothing wrong by asking questions of government to seek clarification on what they consider potential loss to the State in the Aker deal. This is consistent with ACEP's long held position not to discourage other civil society organisations and think tanks from asking questions of government.

However, if someone with the clout of Mr. Alex Mould, who for the better part of the Hess exploration campaign was the head of GNPC, misrepresents the facts, such misrepresentations cannot go unnoticed because of the potential to deepen misconceptions and miseducation. As an industry watcher, ACEP struggles to believe that Mr. Mould is not seized with the facts, either in law or technical realities, that has shaped the interpretation of the Petroleum Agreement (PA). ACEP therefore, wants to state its positions in relation to comments made by Mr. Mould on News File, a current affairs programme on Joy FM and the fundamental actualities that have shaped the DWT/CTP PA to date.

Relinquishment

The PA between Hess and the Republic of Ghana was signed in 2006 with effective date of 17th July of the same year. The work programme had three phases consistent with all PAs in Ghana. However, Hess, in their PA, was granted access to 100% of their block at first extension with a requirement to relinquish 30% at second extension. The evidence as shown in Figures 1 and 2 below indicate that Hess indeed relinquished part of the block after second extension.

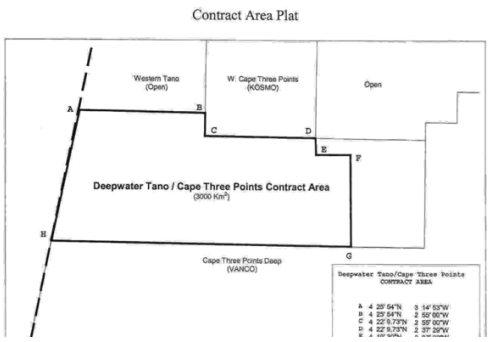

Figure 1: Original Map of Hess' contract area

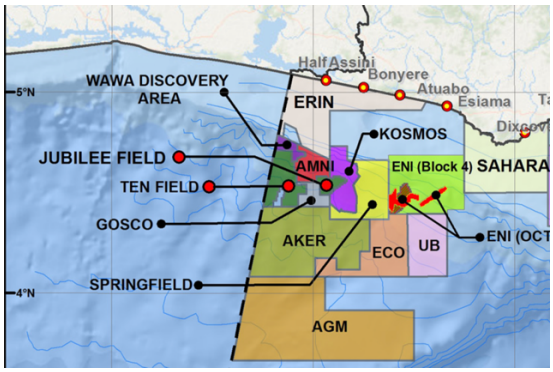

Figure 2: Current map of the area now controlled by Aker Energy

The relinquished area was subsequently awarded to Eco Atlantic in a new PA as shown in figure 2. This means that the area relinquished was not available to Hess or the new operator, Aker. Therefore, the impression that Aker has made discoveries in a relinquished area cannot be true. Since the relinquishment of the 30%, there has been no further relinquishment on that block. After appraisal and determination of the production area, Aker is required to relinquish all other parts of the block that do not fall within the production area in keeping with section 25 of the Petroleum Act. However, Aker is proposing to hold on to the block for an integrated approach for further development of the contract area. This is subject to government's approval or disapproval. ACEP's position is that the entire area not needed for development of the discovered fields has to be relinquished post appraisal drilling, for a new PA that conforms to the new Petroleum Act, 2016 (Act 919). The POD is not the appropriate forum for extending hold over the area post submission of PoD.

Exploration Period

Based on the PA signed in 2006, the total exploration period was 7 years, subject to extension. Which means following the letter of the agreement, the PA would have expired in July 2013, in the absence of an extension. It therefore points to a fact that the exploration period was extended beyond 7 years during the period Mr. Mould was at GNPC as the Chief Executive. Mr. Mould should therefore be in the best position to educate the public on these timelines. But that is not the most important point. The most important point is that exploration period can be extended without necessarily demanding a new PA as was done in 2013 pursuant to article 3.2 (d) of the PA which states;

Where pursuant to Article 8 Contractor has before the end of the Second Extension Period, including extensions under (a), (b) and (c) above, given to the Minister a notice of Commercial Discovery, Contractor shall, if the Exploration Period would otherwise have been terminated, be entitled to a further ***extension of the Exploration*** *Period in which to prepare the Development Plan in respect of the Discovery Area Development Plan relates until either:*

i) the Minister has approved the Development Plan as set out in Article 8, or

ii) in the event that the Development Plan is not approved by the Minister as set out in Article 8 and the matter or matters in issue between the Minister and Contractor have been referred for resolution under Article 24, one (1) Month after the date on which the final decision thereunder has been given.

In fact, other blocks were negotiated in 2013 with far better terms than the Hess block but that did not require an adjustment to the fiscal terms of Hess agreement because the agreement could not be deemed expired on the basis of the article cited above. ACEP can state that if government had the opportunity, either in law or the PA, the PA would have been cancelled or renegotiated just as was done to the Aker one for the ultra-deep block to the south of the Hess block. Government in 2010 paid Aker $30 million to take over the block it deemed illegally acquired and handed it over to AGM Ghana who could not drill a well since it took over the block. Now Aker has acquired controlling interest in the same block.

Therefore, on paper those making the argument that the initial 7-year exploration period has expired are right. But ACEP can state authoritatively that Hess, and later Aker, have not been operating illegally for the past 6 years in the contract. This also establishes the fact that Hess did not start enjoying extensions on the back of the International Tribunal of the Law of the

Sea (ITLOS) preliminary injunction on further drilling issued in 2015. If anyone deems the appraisal wells drilled to be illegal, then there is apparent lack of understanding of the agreement.

Exploratory Well versus Appraisal Well

In the current debate about the legality of Aker's operations, appraisal seems surgically delimited from exploratory activities. This is not accurate in interpreting a PA. Appraisal is part of exploration. When there is a discovery, appraisal drilling is done to establish the extent of the discovery; the depth or thickness of the field and the lateral extent of the discovery. In establishing the extent of the discovery, the contractor does not unilaterally go about drilling the wells in secrecy. The contractor works with the Petroleum Commission (PC) to identify the particular spots for drilling appraisal wells which requires a permit from the PC. Other agencies of State such as the Navy and the Environmental Protection Agency (EPA) must be involved to allow a drill ship into the territorial waters of the country. The PC cannot grant a permit to an area for appraisal drilling if the area is not covered by a PA, which is the foundation for granting permits.

To understand that appraisal is part of exploration, one may not find it written black and white in the PA or in the Law. But the petroleum cost accounting/classification establishes this fact. For emphasis, section 2.1 of the general provisions of the PA classifies petroleum costs as follows;

1. Exploration Expenditure
2. Development Expenditure;
3. Production Expenditure;
4. Service Costs; and
5. General and Administrative expenses

Section 2.2 (c) further states;

> *"Exploration expenditure shall consist of all direct, indirect and allotted costs incurred in the search for Petroleum in the Contract Area, including but not limited to expenditure on:*
> *"(c) labour, materials and services used in drilling wells with the objective of finding new Petroleum reservoirs or for the purpose of* ***appraising of Petroleum reservoirs*** *already discovered****, provided such wells are not completed as producing wells****"*

Section 2.2 (c) clearly shows that appraisal drilling is part of exploration. Therefore, if a contractor is granted extension to drill appraisal wells, that automatically extends the exploration period- again in reference to section 3.2 (d), except for the fact that the focus of the drilling is to establish the extent of the discovery. This is where it gets even more technical than just reading the letter of the PA or the law. In determining the spots to drill appraisal wells there are scientific predictions, through seismic data interpretation, that guides the process. The fact that drilling is required to confirm what the data shows, is an admission that the outcome could be different from what the data shows. Industry experience shows that appraisal drilling could result in;

a. Confirmation of the extent of accumulation of a find;

b. a dry well; a situation where there is no oil;
c. a different discovery within the geological system not found to be in the same reservoir as the earlier discovery.

In the case of a new discovery, the fundamental question to ask is, "What PA allowed the drilling to occur?" As established above, there cannot be any drilling without a PA. This is important because the cost of the drilling will have to be accounted for in the petroleum cost of pre-existing agreement. No contractor will spend $50 million or more with the knowledge that if the well encounters a new discovery, the State will appear with a new fiscal term.

Therefore, without proof that Aker went out drilling without permit, there is no argument about what PA governed the drilling operation and for that matter the applicable fiscal terms. The appraisal programme submitted by Hess anticipated the drilling of the Pecan south and the Pecan south East wells but Hess could not progress with it because of the ITLOS injunction.

Dynamic Pressure Communication

Dynamic pressure communication has been cited to be the magic to require a new PA for the Pecan East and Pecan South East appraisal drilling. As far as interpreting the laws of the sector and the PA are concerned, dynamic pressure communication is foreign to the determination of fiscal terms in a contract area. Petroleum blocks in Ghana are not delimited by dynamic pressure communication, but rather by acreages. Otherwise, from basic geological understanding of how oil traps are formed, the entire Tano Basin could have dynamic pressure communication and thereby limiting the State's ability to create oil blocks.

The only instances where appraisal drilling could result in the change of fiscal terms are;

1. when the well can be proven to have been drilled outside the contract area, which will be illegal, and as established above Aker had control of the contract area;
2. when the discovery being appraised, or new discovery encountered during appraisal straddles another contract area with different fiscal terms. This situation will call for unitisation of the field through a scientific study to understand the spread of the reservoir between the two blocks as happened in the case of Kosmos Energy and Tullow.
3. When the state reduces at the fiscal term, at its sole right, to allow productions from a discovery otherwise deemed uncommercial.

Commercial interest of 10% in the Hess block ceded to EXPLORCO

GNPC negotiated for the purchase of 10% commercial interest in the Hess block in 2014 for its subsidiary, EXPLORCO, when Hess decided to dispose of part of its interest in the block. The GNPC, between 2014 and 2016 when Mr Mould was the head of the Corporation, could not pay for the negotiated interest. He posits an excuse that GNPC could not pay because ITLOS had set in. That cannot be accurate because other parties - Fuel Trade and Lukoil - paid for the interest they took at the same time. An excuse not to pay did not discount the right of Hess to sell to available buyer, but rather stretched the magnanimity of the investor. The decision of GNPC to lay claim over EXPLORCO's 10% interest without paying caused significant financial loss to Hess who later had to dispose of the interest at a discounted market value of $20million instead of the original offering of $45 million they could have offered to the market

in 2014 when oil prices were high. Such attitudes by GNPC do not encourage investment in the petroleum industry.

The fact must be emphasised that during the period of the proposed acquisition of the commercial interest, the priorities of GNPC were not aligned with the acquisition efforts. GNPC had the cash reserved to have been able to acquire the share but it rather chose to honour other government commitments including providing guarantees for the Karpowership.

For good reason, ACEP has not been an advocate for acquisitions of commercial interest in petroleum blocks by agencies of State in the current state of the petroleum industry. It is easy to salivate over potential gains of commercial participation, but the risk of commercial participation can impact negatively on the fiscal position of the country, and Ghana has experience with GNPC in a similar situation under the OCTP project. Because of GNPC's inability to pay for its share of cost of development for its interest in the project, the entire receivables from the carried and participating interest in the project has been encumbered by the OCTP partner to offset GNPC's debt, denying the State of revenue to finance development in the past three years. This further leaves Ghana hoping that the market conditions will be favourable post the recovery period of GNPC's debt to the project. Even the dynamics of the market on the Hess transaction has shown that if EXPLORCO had acquired the 10% stake in the block, the company would have lost $25million before field development, with value of the share dropping from $45 million in 2014 to $20 million in 2018.

Taking commercial interest is not a simple assumption of profitability, but involves being mindful of all the risks associated with oil and gas investments. Interestingly Mr. Mould argues in one breadth that Ghana would have benefited more from the 10% commercial interest, but in another breadth that at $65 oil price, Ghana cannot make 55% fiscal take from the field as communicated by government, which indicates that the project is not the most profitable after all. This is a contradiction, as one will therefore wonder why government must take a commercial interest in an already deemed not-so-profitable venture. This is an indication that given its financial position, GNPC should be cautious about commercial commitments in petroleum blocks, especially when companies with deep pocket as Hess are exiting.

Extension of the PA

The extension of petroleum agreement is a possibility anticipated by PAs and the Act 919. In fact, there can be a circumstance that the State will itself propose the extension of PA. It is not out of place for contractor to request an extension PA. It is rather the duty of the State to ensure that the extension requested merits consideration, and so done through the appropriate forum. This is part of the reason why the PC exists to ensure that the decision of the Minister is not capricious or adverse to the interest of the country. Beyond the PC, Parliament is also required to approve of extensions proposed by the contractor or the Minister. In any case, if the country gives an operator 5 years to produce from a field and the operator has the technology to make enough revenue to compensate for the economics of the project, the contractor will do it. Therefore, it is really not a question of holding on to the trophy of no extension, but rather of understanding what production profile will optimise the

interest of the state and balance the economics of the project, bearing in mind that depending on the geological condition of an area aggressive production could be detrimental to the production wells and long term revenue to the state.

In the specific case of the Aker proposal for extension, ACEP is still assessing the geological and commercial counterfactuals to the proposals in the PoD submitted that could allow for a judgement to be made. This will be part of general comments on the PoD by ACEP. But even before that the PoD did not provide the needed justification for the extension which must not elude the judgement of the PC.

Conclusion

Ghana is the owner of petroleum resource in her jurisdiction and must at all times decide what the country wants to do with the resource. However, as long as private capital, be it foreign or local, is required to make meaning of the stranded resource in the ground or in the deep of the ocean, there is a duty on government and citizens to be responsible, fair and firm in the interpretation of laws and agreement. The country can sometimes give itself credit for how far it has come with the petroleum industry regardless of political positions. ACEP struggles to believe that after three successful PoDs anybody will be apprehensive that the first draft of a PoD will pass without objections. The debate on the Aker PoD has just begun.

Signed
Benjamin Boakye