

**PRESS STATEMENT:**

**CAUTIONARY NOTE TO THE MINISTRY OF ENERGY ON THE AMERI POWER PLANT**

**AUGUST 2, 2022**

*Background*

The \$510 million Build, Own, Operate, and Transfer (BOOT) agreement between AMERI Energy and the Government of Ghana (GoG) for installing 10 new GE TM 2500+ aero-derivative gas turbines and all related equipment ended in December 2021. The contract was scheduled to terminate in 2020 after five years, post the recovery of investments by AMERI. However, following a 2018 renegotiation, the fiscal tenor of the contract was extended for an additional year. This meant that the operation of the plant (technical transfer) should have been handed to VRA in 2020, while the outstanding payments were completed within the extension period before the transfer of title to the plant. However, due to the persistent payment defaults, the technical transfer could not happen until the end of 2021.

*Contractual requirements for handing over the plant*

The BOOT Agreement requires GoG to meet its financial obligations in exchange for a well-maintained plant per the Original Equipment Manufacturer (OEM) standards, certified by independent assessment. Section 26 of the BOOT Agreement required the appointment of an independent assessor three months to the agreement's expiration at a cost to GoG. The contract further specifies that if the plant is in poor working condition per the assessment, AMERI is required to put it in good working condition at its own cost.

In respect of 26 of the BOOT Agreement, the following events happened:

- i) In November 2021, WSP, a condition assessment company, was appointed to undertake an independent assessment of the AMERI equipment. The assessment recommended rectification works for the Hot Section Exchanges on four of the plant's 10 units (units 1, 2, 9 and 10). These rectification works were to be done by AMERI per section 26 of the BOOT Agreement before the agreement's expiration and transfer of the plant to the government.
- ii) Interestingly, prior to the appointment of WSP to do the condition assessment, ACEP has sighted a 14th October 2021 letter from the Ministry of Energy, on behalf of GoG, relieving AMERI of its obligations to undertake any rectification works as required by

Section 26 and 27 of the BOOT Agreement. The letter also stated that Metka/PPR/Mytilineos had agreed to undertake the rectification works without stating the nature of the agreement between GoG and Metka/PPR/Mytilineos, particularly when the BOOT Agreement is between GoG and AMERI as approved by Parliament. Metka/PPR/Mytilineos was AMERI's Engineering, Procurement and Construction (EPC) and Operations, Maintenance, and Management (OM&M) contractor within the period of the BOOT Agreement.

- iii) Subsequently, a Transfer of Title Agreement was signed among GoG, AMERI and PPR to novate the existing contract terms (section 26 of the BOOT Agreement) from AMERI to PPR and transfer the AMERI plant to GoG on 21st December 2021.
- iv) We note that the Hot Section Exchanges maintenance for units 9 and 10 has been completed, with units 1 and 2 outstanding.
- v) Additionally, the ancillary equipment used to transport the plant was poorly maintained and deteriorated. These include:
  - a. the Jeep and Stingers that were used to transport units of the plant
  - b. the pneumatic suspension bellows
  - c. mounting trailers on which units of the plant sit

It is unclear in all the documents available so far who bears the responsibility for replacing this equipment, as they would be essential for relocating the plant per government plans.

**These events raise significant questions about the protection of the interest of Ghana:**

- a. What was the basis for the Ministry of Energy relieving AMERI of its obligations under Section 26 of the BOOT Agreement approved by Parliament, even before an independent condition assessment of the plant was conducted?
- b. Given that Metka/PPR/Mytilineos was not a party to the BOOT Agreement, how was the company going to be held responsible for the transfer of commitments under Section 26 of the BOOT Agreement?
- c. What was the benefit to Metka/PPR/Mytilineos for assuming the risks of the commitments under Section 26 of the BOOT Agreement? We note, particularly, that the Transfer of Title Agreement did not contain any liabilities for delivering on the commitments.

The decision to absolve AMERI of its responsibility to put the plant at its OEM recommended state before the transfer is erroneous and sins against the terms of the agreement and, by extension, the interest of Ghana. By absolving AMERI of its responsibilities, it subsequently drew down the Stand-By Letters of Credit (SBLC) to the tune of \$14 million as its final payment in March 2022. Without the binding requirement on Metka/PPR/Mytilineos as was required of AMERI in the BOOT Agreement, Ghana bears the sole responsibility if Metka/PPR/Mytilineos fails to

deliver. Again, the decision to novate the terms of Section 26 of the BOOT Agreement passed by Parliament constitutes an international agreement which requires Parliamentary approval.

#### *The Decision to Relocate the AMERI Plant from Takoradi to Kumasi*

To address the persistent power fluctuations and low voltages in the middle belt of the power corridor, the government is committed to building a power hub in Kumasi, negligent of the challenges of the power sector on existing power plants. The government intends to relocate the AMERI plant and locate new plants (240MW Karpower, 300MW AKSA and 80MW VRA plants) in the face of the constant rhetoric of excess capacity, to Kumasi with the expectation of stabilizing the power supply. ACEP has raised concerns<sup>1</sup> over the propriety of this decision, especially against the option of retooling the transmission infrastructure to achieve the same objective. These concerns are raised particularly within the context of the power sector's current debt and payment challenges, which require that the most optimal decisions be made to reduce the sector's debt burden. The cost of relocation and the gas infrastructure needed to power the plant injects further cost burden into the financially constrained sector. Prioritizing the National Interconnected Transmission System to loop the Bui, Western and Eastern power enclaves is a cheaper and quicker fix to the instability in the middle belt. This poor planning of generation addition will only exacerbate difficult financial challenges of the sector.

#### *The EPC Contract on the Relocation of the AMERI Plant from Takoradi to Kumasi*

The Ministry of Energy has advanced negotiations with Mytilineos SA to relocate and install the AMERI plant from Aboadze to Kumasi with a firm contract price of \$35.6 million. The contract also grants the Operation and Maintenance (O&M) to Mytilineos SA for three years at the cost of \$36 million, bringing the total cost of the relocation and maintenance of the plant to \$71.6 million barring any unforeseen upward adjustments. ACEP is emphatic on the contract costs even though the Ministry denies it is conclusive. The following events affirm ACEP's conviction on the contract cost:

- i) The Ministry has received PPA approval to sole source the EPC contract to Mytilineos AS.
- ii) The Ministry confirmed to Parliament on 15th June 2022 that it had received a legal opinion from the Attorney General's Office on the EPC contract to Mytilineos AS.
- iii) Again, in a 17th December 2021 letter, the Ministry requested support to establish payment security in the form of an irrevocable Standby Letter of Credit (SBLC) of \$30 million from VRA to secure the commitment of Mytilineos SA for both the EPC and O&M.

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<sup>1</sup> ACEP (April 2022) The State of The Energy and Extractive Sectors of Ghana: Critical Reforms Required for Sustainable Economic Recovery. Access here: <https://bit.ly/3yYGVVF>

### *Contract Negotiations*

The Ministry has been in charge of the contract negotiations since March 2021. The proposal for the EPC Contract by Mytilineos SA sighted by ACEP was addressed to the Ministry of Energy, which engaged in negotiations with the company. The Minister confirms the leadership of the Ministry on the negotiations in his 17th December 2021 letter to VRA when he states:

*"Reference is made to ongoing negotiations between the Ministry of Energy and Mytilineos SA for the relocation for the 250MW Ameri power plant from Aboadze to Anwomaso."*

The above contrasts with the position of the Minister when he appeared before Parliament on 1st July 2022 and stated that VRA has been leading the contract negotiations. It is also important to note that these negotiations predate the transfer of title to the plant, which, perhaps, explains why the Ministry was in a hurry to novate the terms of Section 26 of the BOOT Agreement to Mytilineos SA. **This raises the important question about why the Ministry of Energy is leading the negotiations on the contract when the Deed of Assignment dated 17th August 2016 transfers and assigns GoG's rights under the BOOT Agreement to VRA, essentially making VRA the post-agreement owner of the plant.** Interestingly, in his 17th December 2021 letter to VRA, the Minister unilaterally postpones the period of ownership and control of the plant by VRA to the end of the new deal with Mytilineos SA.

### *The capacity of VRA to Operate and Maintain the Plant*

ACEP notes that VRA has the capacity to operate the single cycle Ameri plant, having operated combined cycle plants since the 1990s. Additionally, Section 8(h) of the BOOT Agreement mandated Ameri to provide onsite practical training to designated officers six months to the expiration of the agreement. The BOOT Agreement also envisages the capacity to monitor the plant's operations throughout the agreement's life through a biannual inspection of maintenance records kept by AMERI. Beyond these contractual arrangements, ACEP is aware that VRA staff were attached to the operations team to manage the plant.

The capacity of VRA is captured much more graphically in a 1st February 2022 letter from the Senior Staff Association (SSA) of VRA appealing to the Minister of Energy to allow VRA to operate the plant in the national interest. We reproduce a section of the SSA's appeal in the textbox below:

**Textbox 1: A Section of the Appeal from the Senior Staff Association (SSA) of VRA to the Minister of Energy**

**MYTILINEOS SA TO UNDERTAKE OPERATIONS & MAINTENANCE ACTIVITIES INSTEAD OF VRA**

*As concerned citizens of Ghana and workers of VRA, we think that the decision to entrust the O & M activities to Mytilineos SA instead of VRA is not in the best interest of VRA and the Nation at large in view of the following:*

- i) VRA has the requisite capacity and technical-know-how (knowledge, skill mix, experience, etc.) in hydro, thermal (heavy duty and aero derivative) and solar power generation and can effectively and efficiently undertake the O&M activities of the plant without any challenges. It is only expedient that VRA is allowed to undertake the O&M activities.*
- ii) VRA undertaking the O&M activities would lead to lower cost of power (lower tariff) to consumers since VRA's cost of generation is generally lower than that of the IPPs.*
- iii) VRA undertaking the O&M activities will lead to creation of employment opportunities for Ghanaians instead of the opportunity being given to foreigners (Mytilineos SA)*
- iv) If VRA undertakes the O&M activities, any value from it would be for the benefit of Ghanaians and not foreigners (Mytilineos SA). Mytilineos SA is likely to repatriate the money received to their home country and this would have a negative impact on the Ghana's exchange rate performance.*
- v) VRA undertaking the O&M activities would lead to the Authority recovering some of the losses (US\$11.28 million per month) incurred under the five-year Ameri deal.*
- vi) VRA undertaking the O&M activities would result in GOG/VRA not paying penalties for O&M delayed payment, reduction in SBLC and any associated fees and charges as well as the avoidance of the exchange losses associated with the O&M payments.*

**Relocation Cost**

The Minister quotes \$35.6 million as the cost of the relocation in his 17th December 2021 letter to VRA. However, **ACEP has sighted the original proposal from Mytilineos SA dated 22nd March 2021 to the Ministry, quoting \$25.48 million for the same. Instead of negotiating the proposal of the sole-sourced offer downwards, the contract cost has instead increased by 40 percent.** It is unclear what accounts for such a quantum leap from the proposal amount by Mytilineos SA. This does not even question the \$25.48 million proposed by Mytilineos SA as the true cost of the

relocation of the plant, analysis of which will be concluded after receipt of all documents requested under the Right To Information (RTI) from the Minister, the Attorney General's Office and the Public Procurement Authority (PPA). The Attorney General's Office and the PPA are yet to respond to the requests even though the timeframe stipulated by the RTI has elapsed. Additionally, the Information Officer of the Ministry of Energy did not provide the necessary information in ACEP's initial request for a breakdown of the total cost of the relocation of the plant, which interestingly was missing from the proposal from Mytilineos SA. This has necessitated an appeal to the Minister as Head of Entity to provide the required information. A section of ACEP's initial request is reproduced in the textbox below:

***Textbox 2: Information Required from the Ministry***

**List of Information Requested from the Ministry of Energy Under RTI**

- i) A copy of the EPC Contract on the Relocation of the Ameri Power Plant.
- ii) A copy of the Public Procurement Authority (PPA) approval for the contract and all correspondences with the PPA on the relocation of the Ameri Power Plant.
- iii) A breakdown of the total cost of the relocation of the Ameri Power Plant.
- iv) A copy of the request for proposals and notice of request for proposals (if any) for the relocation of the Ameri Power Plant.
- v) A copy of the tender evaluation report on the selection of the contractor, showing names and details of all the companies which bid for the EPC Contract on the relocation of the Ameri Power Plant.
- vi) Confirmation of whether or not it is the same Mytilineos SA company that was engaged in the attempted novation of the Ameri Power Plant in 2018.
- vii) Copies of all other documents related to EPC Contract on the relocation of the Ameri Power Plant.

***Operation and Maintenance (O&M) Cost Post Relocation***

In the same 17th December 2021 letter to VRA, Mytilineos SA is sole sourced to operate and maintain the plant for three years at the cost of \$1 million per month. According to the Minister in Parliament on 1st July 2022, out of the 42 staff to run the plant, VRA will have to provide 40 staff to support the operations. This is an admission that VRA has the capacity to manage the plant as it is practically impossible for the two personnel from Mytilineos SA to be available 24/7 to operate the plant. **It then raises the fundamental question of the precise role of the two personnel from Mytilineos SA to warrant the payment of \$1 million every month for three years.**

### *Sole Sourcing Justifications*

The justification for the decision to sole source the EPC and the O&M Contracts to Mytilineos SA, as communicated to Parliament by the Minister of Energy, is that Mytilineos SA has been the operator of the plant since inception and is thus best suited to deliver the contract. It is important to note that long service is not part of the exceptional cases per the PPA Act to warrant sole sourcing. Furthermore, Mytilineos SA is not the only company with the capacity to relocate trailer-loaded aero-derivative turbines. There are local companies that can deliver the EPC for Ghana.

It gets even more curious to note that the same Mytilineos SA attempted to take over the Ameri contract in the botched novation agreement in 2018. In the proposed novation, ACEP found that the contract was significantly overpriced. The President agreed to that position by indicating that he was misled to issue the executive approval for the contract. How this same company has survived the botched novation to reappear with another **cost-dynamic sole-sourced contract** is a question to which the Ministry has to provide convincing answers.

### *Conclusion*

The power sector has significant financial, technical, and managerial challenges. These challenges are worsening over time and manifesting in unsustainable debt accumulation. In 2020 and 2021, the government shouldered total under-recoveries from the sector to over GHS 14 billion (GHS 6.8 billion in 2020, and the cedi equivalent of \$1.257 billion in 2021). In addition, the sector's outstanding payments for gas and IPPs are in excess of \$1.2 billion for the first half of 2022.

The proposed relocation and O&M cost \$71.6 million for three years to be recovered from the already anaemic Cash Waterfall Mechanism (CWM). Additionally, the gas infrastructure and discounts on the commodity cost to support the relocation would require about \$50 million cumulatively per year. At the same time, the transmission infrastructure requires urgent investment, particularly upgrading the Western Corridor Transmission Lines and the 330KV Pokuase-Anwomaso Transmission Line, which are more critical infrastructures to facilitate the stable transmission of power to the middle belt of the country.

ACEP agrees that the power system will need some power generation dotted across the country in the medium to long term. However, given the current debt situation and the multiplicity of the challenges in the sector, more optimal planning should prioritize efficiency, effectiveness, and economy for power delivery. Strengthening the transmission system to coincide with a stable power supply for the middle belt from the Bui Dam is more urgent. This would require converting the Bui Dam from a peaking plant to an operationally possible baseload supply plant to support the NITS. If, for any reason, this recommendation is not an option for the Ministry, which appears

to be the case for the past two years, the worst they can do is to ensure that the relocation and contracting processes are done in the most transparent and competitive manner. The current processes have no semblance of that transparency required to generate the most optimal cost. The O&M being sole sourced to Mytilineos SA is just an unnecessary cost addition in the face of the fact that VRA has the capacity to manage the plant.

Based on the foregoing, we recommend the following:

1. The Ministry of Energy must immediately subject the EPC contracting process to competitive bidding that accommodates local contractors to achieve the most optimal contract cost.
2. Under no circumstance should the operations and maintenance of the plant be outsourced to any contractor. VRA must own and operate the plant per the Deed of Assignment dated 17th August 2016 for which they were trained by AMERI.
3. We maintain that in a cash-strapped power sector, prioritizing the retooling of the NITS is a far optimal option than the attempts to relocate plants and its attendant unnecessary cost additions.
4. Cabinet and Parliament should assume critical responsibility for the efficient planning of the sector.
5. Government should be transparent about plans to renegotiate power plants.

**Ends**