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REPORT

OF THE INVESTIGATIVE HEARING

ON THE NEED TO INVESTIGATE THE CONTRACT FOR

THE UPGRADE OF OML 58 UPGRADE 1,

THE EXECUTION OF OBITE-UBETA-RUMUJI (OUR) PIPELINE AND THE NORTHERN OPTION PIPELINE PROJECT

(HR. 178/05/2018)

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1.0 PREAMBLE

About this Report

In accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Sections 88 and 89 confers the power on the National Assembly to cause investigation into any matter on which it has power to make law. The House at its plenary session on Wednesday 9th May, 2018 considered a motion on the need to investigate the contract for upgrade of OML 58, the execution of Obite/Ubeta/Rumuji (OUR) and the Northern Option pipeline projects and resolved that the Committee investigate the matter, make recommendations and report to the House within a reasonable time.

This report presents the findings of the House of Representatives Committee on Gas Resources ("the Committee") with respect to the investigative hearing on the OML 58 Upgrade 1, the Northern Option and Obite/Ubeta/Rumuji (OUR) pipeline projects between the Nigerian National Petroleum Corporation (NNPC) represented by National Petroleum Investment Management Services (NAPIMS) and Total Exploration and Production Nigeria Limited (TEPNG). These projects draw its powers from the Joint Venture Agreement (JoA) and Modified Carry Agreement (MCA).

This report sets out the interactions with and responses from invited stakeholders and their actions and inactions with respect to the mandates given by the JoA & MCA, compliance with standing orders and regulations of the Federal Republic of Nigeria, conformance with common business ethics and practices and international value for money standards.

The report also aims to provide the leadership of the House of Representatives of the Federal Republic of Nigeria, a summary of the Committee's modus operandi, findings, conclusions and recommendations for consideration and adoption and the Nigerian public the status of the use of national resources by agencies of government saddled with such fiduciary responsibilities.

1.1 PROJECT INVESTIGATION OVERVIEW

i. Following the JoA signed on 25th July 1991, between the Nigerian National Petroleum Corporation (NNPC) and Total Exploration and Production Nigeria Limited (TEPNG), the venture agreed to upgrade the OML 58 Production Facility and construct OUR pipeline in a modified carry agreement (MCA) dated 14th October 2008. While the OML 58 Upgrade was reported to have commenced in 2008, OUR commenced in 2010. In addition, the NOPL project was agreed (in 2011), also drawing its powers from the JoA and MCA.

ii. While OML 58 Upgrade was designed to meet domestic gas demand by increasing production capacity from 10.6 million cubic feet meters/ day to 15.6 million cubic feet meters/day, OUR was designed to transport gas from OBITE Gas plant of Bonny NLNG to the NAOC 36" GTS4 at RUMUJI and NOPL designed to deliver 100 million cubic feet of gas per day, and run from km 38 at Obigbo to km 50 at Imo-River, where it connects to the NGC facilities.

iii. In the course of project execution, there were various variation claims and change orders (COs) which attracted costs over and above the approved project ceiling. This brought a lot of suspicions and complaints from major stakeholders and necessitated the investigation of affairs before, during and after the award, execution and monitoring of these projects.

iv. In view of the foregoing, the House of Representative ("The House") under the leadership of its Speaker mandated its Committee on Gas Resources ("the Committee") chaired by Honorable Frederick Agbedi to conduct an investigative hearing into the aforementioned projects and present its findings to the House.

v. The Committee commenced the investigative hearing on 27th- 29th August 2018, adjourned to 17th October 2018, to 24th October 2018 and concluded on the 10th / 11th December 2018.

1.2 POWERS AND FUNCTIONS

The power of the Committee to carry out the investigation on the contract of OML 58 upgrade 1, the execution of OUR and NOPL projects was derived from the provisions of sections 88 and 89 of the 1999 Constitution of the Federal Republic of Nigeria, order 17, rule 93) Ci-iii) of the House Standing Order and House Resolution.

1.3 APPROACH AND METHODOLOGY

The Committee adopted a combination of documentations review, investigative researches, professional consultations, interviewing and dialogue in eliciting responses and information from the stakeholders including taking of oath.

2.0 SUBMISSIONS

2.1 NNPC/NAPIMS Submission

2.1.1 NNNPC/NAPIMS informed the Committee that OML 58 Upgrade 1, OUR and NOPL progressed via open competitive tendering process of prequalification, technical and commercial stages, lowest bidders and was awarded after securing NNPC board approval of the joint commercial evaluation outcome as contained in the RTA issued by the operators, hence do not require for the issuance of Bureau of Public Procurement (BPP) Certificate of No Objection

2.1.2 That OML 58 Upgrade 1 had an initial cost of US$1,665,070,108.98 and the later revised to US$2,268,809,994.02; both were approved by NNPC board

2.1.3 That OUR had an initial and revised costs of US$287,462,974.05 and US$648,461,518.93 respectively. The revised cost was further reviewed downward by the joint venture to US$205,852,832.00.

2.1.4 That the NOPL Pipeline was initially cost at US$ 248,265,610.95 and was revised upward to US$ 483,677,475.27. This was also approved by NNPC Tenders Board.

2.1.5 That a Value for Money (VfM) Audit conducted under the directives of NNPC/NAPIMS management classified US$135 million as avoidable cost and recommended that same amount be considered for deductions in the final payment to TEPNG. This is being reviewed by and awaiting approval by NNPC Tenders Board Consideration).

2.1.6 That the project cost was bench marked against similar projects using global best practices and industry standard prior to issuance of the tender packages. Variations request were negotiated in line with revised projects economies to ensure value for money.

2.1.7 That all projects have been completed and fully commissioned; OML 58 upgrade project increased gas supply from 376 mmscf/d to 547 mmscf/d making gas available for both the domestic and export market.

2.2 TOTAL E&P Nigeria (TEPNG) Submission

2.2.1 TEPNG informed the Committee that the overall scope of work within the OML 58 Upgrade and OUR Pipeline tenders cover Engineering, Procurement, Supply Construction and Commissioning (EPSCC) and were subjected to NAPIMS procedures applicable to contracts exceeding the USD 500,000 limit.

2.2.2 That the strategy used for these contracts was competitive call for tenders based on a pre-qualification process which allowed the selection of the following tenders:

i. *DAEWOO*

ii. *SAIPEM*

iii. *Zakhem/Baywood Venture*

2.2.3 That TEPNG received NAPIMS and Nigerian Content Development Management Board (NCDMB) letters of approval to proceed to commercial stage.

2.2.4 That the call for Commercial Tenders was issued to the three technically approved Tenderers on 16th May 2008.

2.2.5 That the three priced Commercial Tenders were evaluated on the basis of the evaluation procedure with prior incorporation of all NNPC/NAPIMS required modifications, which was certified by all parties before commencement of the tendering process.

2.2.6 That ZB Joint venture, was the commercially acceptable tenderer for the contract.

2.2.7 That there are excess materials, whose value are yet to be determined, currently stored in warehouses of TEPNG and INTEL.

2.3 INTELS NIGERIA LIMITED SUBMISSION

2.3.1 That prior to the OML 58 upgrade Contract, there had been existing contractual relationship with TEPNG & INTEL Cargo Handling Services.

2.3.2 That pursuant to the OML 58 Upgrade 1 contract, TEPNG executed three Contract with Intel's for services covering materials storage facilities and handling services.

2.3.3 That the scope of work rendered by Intel's under this Contracts with TEPNG are.

i. Provision of warehouse and stacking area storage for various materials.

ii. Cargo handling services (Load in & Load out of various materials).

iii. Provision of equipment and personnel to Obagi (TEPNG Facility) for the blow-out intervention Operations.

2.4 ZAKHEM-BAYWOOD JOINT (ZBJ) VENTURE SUBMISSION

2.4.1 That the OUR Pipeline is a 42" X 45 km pipeline project designed to transport gas from TEPNG's Obite gas plant to NLNG Rumuji node through 20 different communities with final connection to Northern Option Pipeline (NOPL) and NLNG and be completed in 2012.

2.4.2 That the project, was contracted in 2010 at a Cost of US$269,293,469, and was expected to acquire 120 hectares of land for the layout of Right of Way (RoW).

2.4.3 That in the course of project execution, there were series of community challenges that eventually extended project timeline.

2.4.4 That midway through the project execution, TEPNG retracted the contract from ZBJ and re-awarded to SAIPEM claiming inexperience of ZBJ on project of such magnitude.

2.4.5 That the project was awarded at a value four times higher than ZBJ despite SAPIEM's use of thinner and shorter pipeline on the same project.

2.4.6 That as at the time of relieving ZBJ of the contract, TEPNG was indebted to ZBJ in excess of USD 250m.

3.0 GENERAL FINDINGS

3.1 Projects Existence; These projects were executed with Total E&P Nigeria (TEPNG).

3.2 Project Governance

i. In the course of project execution, there were various variation claims, change orders (COs) approval (above initial ceilings) requested from NNPC/NAPIMS. It was observed from provided documentations that some of the COs were either not approved or approved very late. In both instances (no and late approval), TEPNG still went ahead with incurring and charging the expenses.

ii. There is excess material estimated at over several millions USD including Long Lead Items (LLIs), Above Ground Installations etc., and are currently stored in various warehouses under the control of TEPNG. From the interrogation, NNPC/NAPIMS have no knowledge of the quantity, value and status of these materials.

iii. According to the JoA section 5.4.3 on Excess Materials and Procurement which provides for listing and treatment of excess materials, there is no evidence to support that both parties were prudent in determining the actual materials required for this project nor considered the treatment of excess materials therefrom.

iv. That NOPL project was not taken through a tender process as required by law of the Federal Republic of Nigeria and provisions of the JoA. The project was latched on an existing OUR contract with SAIPEM.

3.3 Specific Findings - OML 58 UPGRADE 1

a. Compliance with The Procurement Act

i. Section V, subsection 17, 18 19 and 20 of the Public Procurement Act 2007 provides that in the case of a government agency / parastatal, or corporation, a Parastatals Tenders, the procuring entity shall (a) prepare the needs assessment and evaluation; (b) identify the goods, works or services required; (c) carrying appropriate market and statistical surveys and on that basis prepare analysis of the cost implications of the proposed procurement to obtain economy of scale and reduce procurement cost. It shall also invite two credible persons as observers in every procurement process one person each representing a recognized private sector professional organization whose expertise is relevant to the particular goods or service being procured, and non-governmental organisation working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations.

ii. In line with the above provisions, the procurement process adopted by the NNPC/NAPIMS and TEPNG was non-compliant and inadequate with respect to procurement planning and implementation, needs assessment, market survey, invitation of two credible observers amongst others.

b. Compliance with Initial Project Timeline

i. OML 58 Upgrade 1 was contracted in October 2008 and scheduled to complete in December 2012

ii. The Upgrade exercise was said to have been completed in July 2017 (about five (5) years after the proposed date). The Committee could not verify this completion and operational claims to ascertain if the project objectives have been met.

c. Compliance with Project Cost

i. OML 58 Upgrade was awarded at an initial cost of USD 1, 665, 070, 108.76 but overran its ceiling and rose to over USD $3.9billion at completion date of July 2017.

ii. According to the Audit exercise conducted in 2016 by Tabor Energy Solution, some part of this amount was classified as avoidable costs due to inefficiencies of contractors, approval delays by NNPC/NAPIMS, rig interferences, community induced stoppages etc. The report also recommended a back- out of USD 238 million from the final payment to TEPNG.

iii. Although TEPNG confirmed that it has no outstanding receivables from NNPC/NAPIMS, NNPC/NAPIMS in his submission to the Committee stated it is yet to obtain approval for the deduction of USD 238m from the payment due to TEPNG- contrasting positions by both parties

3.4 Specific Findings - OUR PIPELINE

a. Compliance with The Procurement Act

i. In line with section V, subsection 17, 18 19 and 20 of the Public Procurement Act 2007, the Committee could not ascertain from the hearing sessions the nature, type and approach adopted nor could it establish the conduct of any needs assessment and evaluation, appropriate market and statistical surveys, observation by two credible persons in the procurement of ZBJ Venture).

ii. Midway into project execution, TEPNG relieved ZBJ of this contract claiming inexperience of the contractor and re-awarded it through single-sourcing to SAIPEM for completion. ZBJ is making a claim of USD 250m against TEPNG.

b. Compliance with Initial Project Timeline

i. OUR pipeline project was contracted in 2010 and expected to be commissioned in 2012 with the objective of lifting gas for export and domestic consumptions.

ii. Although TEPNG confirmed it adopted an accelerated project completion approach, the project was not completed until July 2017; after 200 weeks of the agreed timeline. We could not verify this completion and operational claims to ascertain project status.

iii. Poor management of the projects led to lack of achieving accelerated project completion and increased costs and wastages.

c. Compliance with Initial Project Cost

i. OUR pipeline project was contracted in 2010 at a Carry Cost of US$269,293,469 but was completed at a value in excess of $830m in 2017 which represents over 300% increase on initial cost.

ii. There was no evidence to support that any comprehensive assessment (including environmental impact assessment, risk profiling, communal linkages, geographical and landscape seismic representation etc.) was conducted at pre-contracting stage.

iii. The project experienced unplanned difficulties, extensive delays and huge cost overrun. The VfM exercise conducted by Tabor Energy Solution recommended a back-out of USD 135 million from the final payment to the contractor.

3.5 Specific Findings - NOPL PIPELINE

a. Compliance with The Procurement Act

i. TEPNG adopted a fast track contract awarding and implementation approaches through single-sourcing of the EPSCC and LLI of the project to SAIPEM/DECICOM and DAMAGIX respectively. No open bid was done on the project and this violates the procurement, planning and implementation provisions of the Procurement Act 2007, section V.

b. Compliance with Initial Project Timeline

i. NOPL was contracted in 2011 with a 2-year execution period, for the purpose of supplying gas at a pressure of 95 bar to NLNG for export, to Nigerian Domestic Gas (NDG) for domestic gas consumption and with features in strategic locations. The project was not completed until July 2017, about four years after.

ii. While there are claims by TEPNG that the project is already generating income for the FGN as at the time of the hearing, the Committee could not verify these claims.

c. Compliance with Initial Project Cost

i. NOPL Pipeline project overran its initial cost of $472m and was completed at a value of USD $1.020 billion. Unplanned difficulties, extensive delays were cited as reasons for the cost overrun.

4.0 CONCLUSION

From the findings, the following conclusions can be drawn;

i. That there was abject negligence and abdication of responsibilities by NNPC/NAPIMS in the execution of its fiduciary responsibilities bestowed on it by the people of the Federal Republic of Nigeria. There was no evidence to support that any due diligence including ensuring the conduct of Environmental Impact Assessment (EIA), market survey, and diligent supervisory oversight including subcontracting, project monitoring, periodic reporting etc. on OML 58 Upgrade, OUR and NOPL pipeline projects were done, which has potentially led to avoidable delays and costs overruns and misuse of national resources

ii. That both TEPNG and NNPC/NAPIMS did not comply with the provisions of the Procurement Act 2007 and the JoA governing the joint venture especially in relations to projects of this magnitude. There was neither a contract nor any valid tendering process for NOPL. There were also inadequate monitoring and reporting on each of OML 58, OUR and NOPL projects.

iii. That there was clear abuse of powers by TEPNG in execution of projects without proper approval from NNPC/NAPIMS and also by NNPC/NAPIMS who have direct oversight on these projects from inception to decommissioning.

iv. That both parties (TEPNG and NNPC/NAPIMS) subjected Nigerians to unquantifiable hardship for an average of 4 years in delivering domestic gas that would have alleviated sufferings associated with domestic activities and export gas that could have generated revenue for the nation

v. That there were excess materials estimated at over several millions of USD (initial rough estimate of NGN7billion) from across these projects which are yet to be valued and treated in accordance with the provisions of section 5.4.3 on Excess Materials and Procurement of the JoA governing the joint venture.

vi. That there are suspected compromises between management of NNPC/NAPIMS on the one hand and TEPNG on the other hand regarding OML 58 Upgrade 1, OUR and NOPL projects selection, contracting, monitoring and reporting.

vii. That the management of NNPC/NAPIMS cause the use of national resources for the conduct of a value for money audits but there are no evidences to support the implementation of the recommendations there from. While TEPNG denied any communication of such recommendation to its management NNPC/NAPIMS claimed to have implemented some part of the recommendation by netting off from payables to TEPNG.

5.0 RECOMMENDATIONS

In view of the findings and conclusion stated above, the House hereby resolve to urge the Executive Arm of Government to carry out the following recommendations:

i. conduct a forensic investigative audit into the cost overrun emanating from all change orders including USD 2.2 billion on OML 58 Upgrade 1, USD560 million on OUR Pipeline and USD 528 million on NOPL Pipeline projects.

ii. conduct a thorough investigation of the professional and/or personal relationship between NNPC/NAPIMS management and TEPNG on the one hand and TEPNG and local contractors on the other hand in relation to this project, especially ZBJ, to establish claims by parties and ensure fairness of purpose.

iii. ascertain the actual cost of the projects as awarded by NNPC/NAPIMS and TEPNG as it is difficult to ascertain the actual cost since all the parties do not agree on cost.

iv. that the excess payment of US$592m should be recovered from TEPNG in consonance with the recommendations of Tabor VFM audit report.

v. that all contracts awarded in this sector should be subjected to value for money audit.

Hon. Frederick Agbedi

Chairman

Delupe Abiodun Suraj

Committee Clerk