

## AFRICA RISK CONSULTING

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*The Supreme Court orders the Electoral Commission of Ghana (ECG) to extend the nomination period for disqualified presidential candidates to resubmit nomination forms. The ECG consequently reverses the disqualification of three candidates for the 7 December election. Early Power Ltd announces a \$953m deal with state-owned Electricity Co of Ghana (ECG) for a 20-year power purchase agreement (PPA) for a 400MW liquefied petroleum gas (LPG) power plant. The government seeks to renegotiate with the state-owned China Development Bank (CDB) to obtain a further \$1.5 billion from an abandoned \$3 billion loan agreement. The government revises its 2017 growth forecast down from 8% to between 7% and 7.4%.*

#### Supreme Court orders the electoral commission to extend nomination period

The **Supreme Court**, on 7 November, ordered the **Electoral Commission of Ghana (ECG)** to extend the nomination period for disqualified presidential candidates to revise and resubmit their application forms to 8 November.<sup>1</sup> The decision improved the chances of candidates securing a reversal of their disqualification. Following the extended nomination and consequent review period, the ECG confirmed seven candidates for the 7 December presidential election:

- President **John Dramani Mahama** (2012- present), **National Democratic Congress (NDC)**;
- **Nana Addo Dankwa Akufo-Addo**, **New Patriotic Party (NPP)**;
- **Ivor Kobina Greenstreet**, **Convention People's Party (CPP)**;
- **Nana Konadu Agyeman Rawlings**, **National Democratic Party (NDP)**;
- **Dr Papa Kwesi Nduom**, **Progressive People's Party (PPP)**;
- **Edward Mahama**, **People's National Convention (PNC)**;
- **Jacob Yeboah**, independent.<sup>2</sup>

The ECG disqualified 12 candidates on 10 October for failing to meet criteria stipulated in the application. However, this did not affect the favoured candidates – Mahama and Akufo-Addo (see *ARC Briefing Ghana October 2016*). Following this initial decision from the ECG, several disqualified candidates initiated litigation against the ECG. Chief justice **Georgina Theodora Wood**'s office announced that she would assign as many as 17 courts to process all of the election-related cases.<sup>3</sup> Nduom's was the highest profile case, heard at both the high court of **Accra** and the Supreme Court.<sup>4</sup> The ECG had rejected Nduom's initial nomination on the basis that the number of subscribers in his form did not meet the ECG's requirements.<sup>5</sup> The ECG stated that one of Nduom's subscribers had endorsed the form with multiple signatures throughout the form, which the ECG claimed raised significant doubts about the legitimacy of the initial signature.<sup>6</sup> Nduom argued at the high court that the ECG did not give him the chance to rectify the form before ruling against him.<sup>7</sup> Ultimately, Nduom challenged the decision at the Supreme Court, and the seven judges ordered the ECG to give Nduom

<sup>1</sup> Citi FM, 7 Nov 2016.

<sup>2</sup> VOA, 9 Nov 2016.

<sup>3</sup> My Joy, 22 Oct 2016.

<sup>4</sup> Citi FM, 7 Nov 2016.

<sup>5</sup> CitiFM, 7 Nov 2016.

<sup>6</sup> Citi FM, 7 Nov 2016.

<sup>7</sup> Citi FM, 7 Nov 2016.

the chance to correct the anomalies in his application, which then applied to all disqualified candidates,<sup>8</sup>

*“In the case of [Nduom], the [ECG] breached its own regulations... when it failed to give him and other disqualified candidates the opportunity to amend or alter whatever was found not to be proper with their forms, a conduct that [Nduom] considered to be a breach of the rules of natural justice.”<sup>9</sup>*

Nduom does present an electoral threat to Mahama and Akufo-Addo:

*“Nduom is largely seen as the third force. He presents a threat to both the ruling NDC and largest opposition NPP. He appeals to the elite who form the chunk of the NPP core voters and he is likely to do well in **Central Region**, which is likely to diminish the votes of the NDC.”<sup>10</sup>*

A total of 10 of the 13 disqualified candidates subsequently resubmitted their forms, the majority of which failed to convince the ECG to reverse the decision – only Nana Rawlings, Nduom and Edward Mahama were successful in reversing their initial disqualification.<sup>11</sup> As ECG spokesperson **Eric Dzakpasu** stated,

*“Out of the 10 candidates who resubmitted their nomination papers for reconsideration, three have successfully gone through the process... I think the door is now shut... [for] other candidates.”<sup>12</sup>*

Local commentators believe that public pressure influenced the ECG’s decision:

*“The ECG’s decision to even allow three more on the ballot is borne out of public pressure. This was a reluctant addition. Even after the Supreme Court order, the ECG identified more errors on the forms, making it hard for the candidates to complete them. My sources say faith leaders and well-respected Ghanaians prevailed upon the commission to allow at least the major and more recognised parties to join the race.”<sup>13</sup>*

Despite the ECG’s apparent inflexibility about further reconsideration of other disqualified candidates’ nominations, **Hassan Ayariga** of the **All People’s Congress (APC)** party consequently threatened to sue the ECG again, on 14 November.<sup>14</sup> Ayariga claims that the ECG disqualified the APC on the basis of personal issues rather than technical issues, implying that the ECG’s chairperson, **Charlotte Osei**, personally sought to discredit Ayariga and the APC.<sup>15</sup> The press reported that Osei is on record at a lecture in the **United Kingdom (UK)** saying that *“there will be one winner and certainly several losers, including Ayariga, I am sure.”*<sup>16</sup> Osei denies that she made this comment.<sup>17</sup> Regardless of the outcome of this potential court case, commentators believe that the number of candidates is unlikely to change the election result,

*“Elections in Ghana will continue to be a two-horse race for a bit longer... Some [disqualified candidates] have even thrown their weight behind the two big parties, others have promised to use the media to shame Osei.”<sup>18</sup>*

Despite fears that the delays from the extension of the nomination period would lead to a postponement of the election date, the ECG claims that preparations for the elections were carried out

<sup>8</sup> Citi Fm, 7 Nov 2016.

<sup>9</sup> GhanaWeb, 7 Nov 2016.

<sup>10</sup> Source, journalist, Accra

<sup>11</sup> VOA, 9 Nov 2016.

<sup>12</sup> VOA, 9 Nov 2016.

<sup>13</sup> Source, journalist, Accra

<sup>14</sup> Citi FM, 14 Nov 2016.

<sup>15</sup> Citi FM, 14 Nov 2016.

<sup>16</sup> My Joy Online, 11 Nov 2016.

<sup>17</sup> My Joy Online, 11 Nov 2016.

<sup>18</sup> Source, journalist, Accra

during the period that disqualified candidates undertook court cases.<sup>19</sup> Dzakpasu claims that the only remaining logistical obstacles are the printing of the notice of poll and ballot papers, adamant that “[the ECG is] ready to deliver an election”.<sup>20</sup>

### Early Power announces PPA for LPG power plant

**Early Power Ltd** on 25 October announced a \$953m deal with state-owned **Electricity Co of Ghana (ECG)** for a 20-year power purchase agreement (PPA) for its 400MW **Bridge Power** liquefied petroleum gas (LPG) power plant.<sup>21</sup> The deal is expected to help ease Ghana’s power supply challenges. The consortium expects the financial close of the project by December, while the deal also includes a five-year extension option of the PPA.<sup>22</sup> The Bridge Power project will comprise two phases – **Phase 1**, producing 194MW; and **Phase 2**, which will increase production by 206MW.<sup>23</sup> The plant will be built at the port city of **Tema**, in the **Tema Heavy Industrial Area**.<sup>24</sup> Early Power claims that it will complete Phase 1 within the first six months of the project, though it did not specify when the project would officially launch.<sup>25</sup>

The energy crisis, which Ghana has witnessed over the last three years, and the accompanying *dumsor* power cuts (see *ARC Briefing Ghana November 2015* and *January 2016*) harmed Mahama’s reputation. Mahama claimed in March to have increased domestic power production by 800MW in 2015 (see *ARC Briefing Ghana March 2016*). Mahama’s government introduced several projects in 2015: the **Kpone Thermal Power Plant (KTPP)** (220MW); the **Takoradi II (T2 or TICO)** combined-cycle (110MW), the temporary **Karpower** barge (220MW), and the **Africa and Middle East Resources Investment Group (AMERI)** gas powered plant (250MW).<sup>26</sup> The projects contributed to the fastest increase in power generation in Ghana in its history.<sup>27</sup> Local commentators believe that the Bridge Power project will make a difference to *dumsor* power cuts, but Ghana remains dependent on fuel imports to meet energy needs,

*“It is the kind of deal that will be helpful to combat dumsor... We now have generating capacity that can end dumsor. However, we are importing on average 100MW from Côte d’Ivoire because the cost of buying light crude oil to fire our thermal plants is more expensive compared to importing from Côte d’Ivoire. Côte d’Ivoire generates 1 kilowatt hour (kWh) of electricity from thermal power plants at a cost of \$0.09, and sells it to Ghana for \$0.11. In Ghana 1 kWh costs between \$0.13 and \$0.19. Hence, it makes sense to import.”<sup>28</sup>*

Early Power is a consortium between **United States (US)**-based **Endeavor Energy** and **General Electric (GE)**, and **Sage Petroleum**, subsidiary of **Dubai-based Sage Group**.<sup>29</sup> The Bridge Power project will be the first LPG-fired plant in **Africa**, and by its completion the largest worldwide.<sup>30</sup> LPG is a derivative obtained from refining crude oil, and is cheaper and cleaner (in environmental terms) than light crude oil when used for power production. However, both natural gas and diesel will be able to power the Bridge Power plant, which Early Power claims will ensure a steady power supply.<sup>31</sup> Sage will provide the fuel supply while GE will provide the nine gas turbines and two steam turbines in two separate combined cycle gas turbine (CCGT) configurations.<sup>32</sup> The equity and debt that Early

<sup>19</sup> VOA, 9 Nov 2016.

<sup>20</sup> VOA, 9 Nov 2016.

<sup>21</sup> Ghana Business News, 25 Oct 2016.

<sup>22</sup> www.endeavor-energy.com

<sup>23</sup> www.endeavor-energy.com

<sup>24</sup> www.endeavor-energy.com

<sup>25</sup> www.endeavor-energy.com

<sup>26</sup> www.parliament.gh

<sup>27</sup> Reuters, 25 Feb 2016.

<sup>28</sup> Source, journalist, Accra.

<sup>29</sup> Multiple Sources: Ghana Business News, 25 Oct 2016; www.endeavor-energy.com; www.sagetradinggroup.com.

<sup>30</sup> www.endeavor-energy.com

<sup>31</sup> www.endeavor-energy.com

<sup>32</sup> www.endeavor-energy.com

Power raised will provide 100% of total development and construction costs, with the backing of private equity investor US-based **Denham Capital**.<sup>33</sup>

### Government seeks further \$1.5 billion in loans from China Development Bank

Finance minister **Seth Terkper**, on 27 October, confirmed that the government is in talks with the **Chinese** state-owned **China Development Bank (CDB)** to renegotiate the remainder of a \$3 billion loan agreement, which the government abandoned due to the drop in oil prices.<sup>34</sup> The negotiations could provide the government with additional fiscal space up to and after the presidential election on 7 December. Terkper confirmed that half of the deal with the CDB, signed in 2011, had already been mobilised and that the government provided China with 13,000 barrels per day (bpd) oil as part of the loan agreement.<sup>35</sup> The government suspended the financing agreement because this amount of oil became insufficient to meet debt obligations due to the drop in international oil prices.<sup>36</sup> With the launch of the UK-based **Tullow Oil**-operated **Tweneboa, Enyenra, Ntomme (TEN)** oil fields on 18 August, Terkper says the government can now cover the loan facility,

*"This time we will also use lean gas from the **Jubilee** oil field to pay for the remainder of the loan. We need that \$1.5 billion now."*<sup>37</sup>

Terkper confirmed that there is a task force in charge of renegotiating with the CDB, which will work with the finance ministry and the power ministry to continue the negotiations with the CDB.<sup>38</sup> Terkper believes that this will enable the government to remove the \$1.5 billion cap that was in place.<sup>39</sup> However, the proposed agreement, following a leaked cabinet memo revealed that the government plans to pay for the loan with lean gas revenue, and not with direct gas payments.<sup>40</sup> As such, local commentators believe that the agreement will be more difficult to pass in parliament and faces legal obstacles,

*"The deal hangs in the balance for two reasons. Firstly, the current parliament has one last sitting to end its tenure. But that sitting is after the elections. If the ruling NDC wins with a majority of seats in parliament, then this deal can be pushed through, since it will be a continuation of the same government. However, if they lose, then it will be hard to push it through. This is because one parliament cannot approve an agreement that will bind the subsequent parliament. Even if they approve it, the next parliament could easily overturn it. Secondly, the **Civil Society Platform on Oil and Gas (CSPOG)** has raised legal issues. It says that if the agreement goes through, it will breach Ghana's **Petroleum Management Act of 2011**, which states in part that oil revenue cannot be mortgaged. They have threatened to go to court over this."*<sup>41</sup>

### Government lowers 2017 growth forecast

The government, on 24 October, announced that it has revised its 2017 growth forecast down from 8% to between 7% and 7.4% of gross domestic product (GDP).<sup>42</sup> The announcement came despite a recent increase in optimism surrounding the country's economic activity. The launch of the UK-based Tullow Oil-operated TEN offshore oil fields in August was one reason behind the government's renewed positivity. Finance minister Terkper did not specify why the government has lowered its growth forecast for 2017.<sup>43</sup>

<sup>33</sup> [www.endeavor-energy.com](http://www.endeavor-energy.com)

<sup>34</sup> Bloomberg, 27 Oct 2016.

<sup>35</sup> Bloomberg, 27 Oct 2016.

<sup>36</sup> Bloomberg, 27 Oct 2016.

<sup>37</sup> Bloomberg, 27 Oct 2016.

<sup>38</sup> Graphic Online, 31 Nov 2016.

<sup>39</sup> Graphic Online, 31 Nov 2016.

<sup>40</sup> Source, journalist, Accra

<sup>41</sup> Source, journalist, Accra

<sup>42</sup> Reuters, 24 Oct 2016.

<sup>43</sup> Reuters, 24 Oct 2016.

## Implications

The electoral commission's credibility appears to have been damaged over the past few months, with a highly contentious disqualification of the majority of presidential candidates. Commentators criticise the institution's leadership and accuse it of being susceptible to political pressure. If it is revealed true that Osei openly stated that Ayariga will lose the election, the ECG would appear biased. Nevertheless, it seems unlikely that any of the outside candidates apart from Nduom will be able to significantly challenge Mahama and Akufo-Addo for the presidency. So far there are no indications that would indicate a postponement of the election.

The Bridge Power project will bring significant power increases to Ghana and will help Mahama convince disenchanted voters that he has made progress in overcoming the energy crisis. Moreover, dumsor power cuts have received little or no press in recent months, which would indicate that some of its severity and/or political sensitivity has subsided. The Bridge Power project's versatility in terms of fuel sources will make it less susceptible to market price changes.

The government's attempts to renew funding negotiations with the CDB could help the government to implement bolder investment programmes. However, the obstacle of securing the deal in parliament, should there be a change of government, could collapse negotiations quickly. Moreover, if non-governmental organisations (NGOs) follow through with litigation, the government may be unable to legally renegotiate the deal with oil and gas revenue payments.

The revised growth forecast will soften optimistic forecasts for Ghana, while election uncertainty could have played a role in influencing the government's decision.

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