

From: "Hess, Beat W RDS-ECBH" <SHELL/SI/RECIPIENTS/NLBHE@shell.com>
3/23/2010 8:48:26 AM +0000
To: "Henry, Simon P RDS-ECSP" <Simon.Henry@shell.com>; "Brinded, Malcolm A RDS-ECMB" <Malcolm.Brinded@shell.com>; "Voser, Peter R RDS-CEPV" <Peter.Voser@shell.com>
CC: "Wetselaar, Maarten SIEP-EFF" <Maarten.Wetselaar@shell.com>; "Ruddock, Keith A SI-LSEP" <keith.ruddock@shell.com>
Subject: RE: Draft 245 PCN
Attachments: smime.p7m

PR_RIM_MSG_REF_ID: -779074035
PR_RIM_INTERNET_MESSAGE_ID: <52278F15B5FE204F8AD03E08D7B5C12D71D98C@amsdc1-s-02348.europe.shell.com>
PR_RIM_MESSAGE_SUBMISSION_ID: 633D57573B613D3430304E45543B703D5348454C4C3B8C3D414D534443312D532D30323334362D3130303332333038343833325A2D38323
PR_RIM_PAGER_TX_FLAG: true
PR_RIM_MSG_FOLDER_ID: -81
PR_RIM_MSG_STATUS: 1
PR_RIM_MSG_ON_DEVICE_3_6: true
PR_RIM_DELETED_BY_DEVICE: true

[-- Begin S/MIME Signed Data, Name: smime.p7m --]

Malcolm,

Support in principle.

It is probably the least bad of all options, if we can pull it through in accordance with the proposed terms.

Many legal risks remain, and I share Simon's concerns, particularly the risk of an unknown third party participant and difficulties with securing future cash contributions.

Nevertheless, speaking for Shell Legal, we will do everything within our control to bring this painful matter to a satisfactory conclusion.

With best regards,

Beat

Beat Hess

Legal Director

Royal Dutch Shell plc

Registered office: Shell Centre, London, SE1 7NA, UK

Place of registration and number: England, 4366849

Correspondence address: PO Box 162, 2501 AN The Hague,

The Netherlands

Phone: +31 70 377 2679

Fax: +31 70 377 1339

Mobile: +31 6 5252 1761

Email: Beat.Hess@shell.com

From: Henry, Simon P RDS-ECSH

Sent: 23 March 2010 02:34

To: Brinded, Malcolm A RDS-ECMB; Voser, Peter R RDS-CEPV; Hess, Beat W RDS-ECBH

Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP

Subject: RE: Draft 245 PCN

Malcolm, thanks for sharing. Rather complex, my instinct is to support as better than alternatives but several risks to aim mitigate e.g.

Will we actually receive cash agreed

Will Govt try to back in once they realise no revenues for them at all

Who is the unknown 3rd party, we would have no veto and no influence in a block where partner alignment is likely to be key given what will likely be marginal economics

Future cash calls to M and unknown party; we would be carrying the baby?

Who approves cost as recoverable?

How to document any of this in a way which is robust, without prejudicing any rights under parallel arbitration if we progress both at the same time

PIB etc.

When do you need a decision – given current travels difficult to get a quick call on this for a few days, but 30 mins on the phone may be more efficient than multiple emails?

Simon

Simon Henry

Chief Financial Officer

Royal Dutch Shell plc

Registered office: Shell Centre, London SE1 7NA United Kingdom

Place of registration and number: England 4366849

Correspondence address: Carel van Bylandtlaan 16 2501 AN, The Hague, The Netherlands

Tel: +31 70 377 4151 Fax: +31 70 377 1840

Email: simon.henry@shell.com

Internet: <http://www.shell.com>

From: Brinded, Malcolm A RDS-ECMB

Sent: 22 March 2010 15:50

To: Voser, Peter R RDS-CEPV; Henry, Simon P RDS-ECSH; Hess, Beat W RDS-ECBH

Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP

Subject: FW: Draft 245 PCN

Peter, Simon, Beat

I flagged that we might be close to a solution re 245 – but that was before the dissolution of the Cabinet and the current limbo.

Nevertheless, it is I think important that we are poised ready to push this through as a first priority whenever we get a new Minister of Petroleum – especially if former MOSP Ajumogobia, who has been intimately involved in this, becomes the new Minister (he is one of several candidates but maybe not politically heavy or well connected enough).

Hence please find attached the proposed PCN which sets out in detail the summary I gave recently. This is one where your formal endorsement is appropriate given the history and the political/ business principles issues involved.

My view is that if we can get the deal as proposed (essentially we give up 50% of our Contractor rights for 50% of the Equity rights - plus we get payment of past costs) this would be a good outcome. In terms of cash sink and risk its better than the previous plans - where you recall we were intending to pay for a small (eg 20%) share of equity essentially to get our Contractor rights unfettered with all legal claims dropped.

This way we get \$300 mln of cash back (assuming payment for past costs, without interest – which I have set the team as an expectation for them, but which are omitted from the mandate for your support). Plus a potential forward value of \$0.8 bln (RV) to \$1.6bln (HV) on old PSC2000 terms, which is however bound to be eroded in any plausible PIB outcome .

I need to highlight a few of the other risks:

- Hitherto we have stood on the principle of getting our full contractor rights - which

had in our view never been legitimately challenged from start to finish . By giving up this principle for a 'deal' now, we might potentially weaken our defence should this whole saga take another turn for the worse in future;

- The solution proposed leaves NNPC without any economic interest in the Licence – a first in deepwater and obviously carrying some longer term risks (whatever assurances we get now in the agreement regarding FGN committing not to back in etc);
- Malabu as a partner.....The only plus being that our interests should be aligned in the new structure....

Nominally we can argue that we are giving up more value at high price than we get. The reality that if we get this deal delivered , it means some cash back now and a real chance of a divestment or a dilution (with possibly a share in a profitable DW project depending on the PIB) - and would overall be a much better outcome than I have feared along the way.

Importantly, settling this and getting out of International Arbitration under the BIT seems to me essential to have any prospect of reasonable relationships and business going forward as, whatever the rights of our case, the FGN - in whatever form - views it as a direct affront that we took this action.

Grateful your support

regards

Malcolm

From: Craig, Ian SEPA-UIG

Sent: woensdag 17 maart 2010 14:17

To: Brinded, Malcolm A RDS-ECMB

Cc: Wetselaar, Maarten SIEP-EPF; Powell, Ceri M SI-UIX; Robinson, Peter L SEPA-UIB/G; Bos, Bernard B SEPA-FUI/F; Gerges, Amir NAM SIEP-EPB-Z

Subject: RE: Draft 245 PCN

Resend hopefully with attachment this time

From: Craig, Ian SEPA-UIG
Sent: Wednesday, March 17, 2010 2:14 PM
To: Brinded, Malcolm A RDS-ECMB
Cc: Wetselaar, Maarten SIEP-EPF; Powell, Ceri M SI-UIX; Robinson, Peter L SEPA-UIB/G; Bos, Bernard B SEPA-FUI/F; Gerges, Amir NAM SIEP-EPB-Z
Subject: Draft 245 PCN

Malcolm,

Further to our discussion during your recent visit, the attached updated PCN requests a mandate to negotiate a Settlement Agreement on the OPL 245 Dispute between FGN, Malabu and SNUD.

Following initial engagements with the parties there appears to be willingness to settle this prior to the arbitration award. This can be expected up to 90 days (end of June) after the final case hearing takes place which is planned to commence on March 29th and last a week.

The appearance of a third party to buy a share of Malabu's purported participation in the block and FGN willingness to avoid a potential embarrassing arbitration outcome have increased the probability of a settlement. Settlement would be a 50/50 license split between SNUD and Malabu with Malabu reimbursing Shell their 50% share of past costs incurred to date including their share of the signature bonus. In this settlement Shell swaps 50% of its Contractor rights for a 50% licence holder rights (value neutral at RV) and receives some US\$300 mln.

The BIT timeline is tight for Settlement execution. Although the strategy is to negotiate the Settlement agreement in parallel to the arbitration, the possibility of suspending the proceedings may be considered if there are clear indications from FGN that a settlement as per proposed mandate terms is achievable. This suspension should be for a limited period of time in order to execute the settlement. Otherwise BIT should continue its course.

I have copied Ceri on this note to keep her in the loop on this issue which may impact the timeline and options for our plans for OPL 322 (Bobo).

Regards

Ian

<<...>>

[-- End S/MIME Signed Data --]

Content-Type: application/x-pkcs7-mime; name=smime.p7m; smime-type=signed-data
Content-Transfer-Encoding: base64
Content-Disposition: attachment; filename=smime.p7m

From: "Henry, Simon P RDS-ECSH" <SHELL/OPE/RECIPIENTS/WYSHET>
Sent: 3/29/2010 12:53:54 PM +0000
To: "Brinded, Malcolm A RDS-ECMB" <Malcolm.Brinded@shell.com>
CC: "Wetselaar, Maarten SIEP-EPF" <Maarten.Wetselaar@shell.com>; "Ruddock, Keith A SIEP" <keith.ruddock@shell.com>
Subject: RE: 245 PCN
Attachments: smime.p7m

[-- Begin S/MIME Signed Data, Name: smime.p7m --]

Malcolm, as discussed no need for a follow up call. Will be a challenge however I expect to get the effective exemption from a PSC regime as this in effect turns the block into tax royalty which has certain implications such as ownership of the reserves. Definitely a better outcome than the status quo or possible recompense from arbitration, but a challenge for Keith's team to paper this in a way which protects the agreement for posterity.

Simon

Simon Henry

Chief Financial Officer

Royal Dutch Shell plc

Registered office: Shell Centre, London SE1 7NA United Kingdom

Place of registration and number: England 4366849

Correspondence address: Carel van Bylandtlaan. 16 2501 AN, The Hague, The Netherlands

Tel: +31 70 377 4151 Fax: +31 70 377 1840

Email: simon.henry@shell.com

Internet: <http://www.shell.com>

From: Brinded, Malcolm A RDS-ECMB

Sent: 25 March 2010 16:08

To: Henry, Simon P RDS-ECSH; Vosér, Peter R RDS-CEPV; Hess, Beat W RDS-ECBH

Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP

Subject: 245 PCN

Peter, Simon, Beat

Thanks for replies and support.

I had provisionally reserved time to meet next Monday at 12.00 in case needed. Below are answers from Peter Robinson to some of the main issues raised in questions, which we reviewed today. Maarten will also discuss further with Simon in margins of FLT. On this basis I

propose to cancel the meeting unless you say otherwise.

One key point to note is that the settlement essentially scraps the PSC concept as it leaves just the two 50% equity partners (Shell and Malabu - neither being state entities) who share a Mining Licence, with discoveries to be developed, and normal taxes and royalties to pay. And no NNPC involvement other than as regulator.

Malcolm

1 Responses to Peter's Question

I would appreciate to get a quick briefing on how a divestment of a prospect/licence works today in Nigeria (i.e. approvals by FGN/NNPC). Would that be different in a case where they are not part of the development anymore (in theory)? And can we do anything in this negotiation which would 'make it easier' to dilute/divest in the future?

As background, an increasing amount of "emotion" has entered into the process associated with a transaction in Nigeria. Some examples:

Shell Abo transaction where Senate hearings followed ENI pre-emption and resulted in different outcome than expected purely contractually;

Lukman writing to Addax saying that they as PSC contractor to NNPC, had "nothing to sell" to Sinopec;

MOSP insisted on a loss of identity provision in the draft Shallow Water License Renewal agreement (as for XOM also).

UN appears to be moving towards a "use it or lose it" approach with less opportunity for IOCs to monetise unused acreage. Same principle is reflected in PIB.

However, in informal conversations with MOSP, he indicated clearly that *post settlement* he would not be adverse to a dilution or exit from OPL245 by Shell, understanding we would find it difficult to live alongside Malibu as our long term partner.

And importantly please note :

OPL245 is owned by SNUD as a single asset company. It is therefore possible to do dilution or exit via share sale which requires (formally) no government approvals (under current legislation)

2 Responses to Simon's Questions

2.1 Will we actually receive cash agreed?

Cash to Shell under the settlement agreement is \$US298 mln (target in PCN, not requested MASP). Of this, \$US235 mln comes to Shell via return on monies in escrow. The balance will come direct from Malabu. Settlement is only effective with financial close and thus failure to pay by Malabu precludes settlement.

That said, there is a risk we will not get agreement to the \$65 mln cash payment from M to us, nor our request for added interest. We may still feel it worth settling but I'll come back if I need to on that.

2.2 Will Govt try to back in once they realize no revenues for them at all?

FGN will collect money through taxes and signature bonus – likely some 70-80% of the value they would have got overall if you include NNPC's 100% equity share, but more back end loaded. Revenue being lost would be NNPC's profit oil share (initially 30% of profit oil). Settlement agreement as drafted requires waiver of any FGN/NNPC back-in rights.

Of course there is a straight Govt NPV loss of the \$800mln by giving up their equity value to Malabu, but that's effectively what their 2006 settlement with Malabu already did.

2.3 Who is the unknown 3rd party, we would have no veto and no influence in a block where partner alignment is likely to be key given what will likely be marginal economics?

We do not know with surety who the 3rd parties are. However, there is rumour that a Russian company, now working with ENI, will form a consortium to purchase the (post settlement) Malabu position in 245. **NB this is believed to be a Gunvor-linked company, so Timchenko....**

Litigation comes from JOA provisions that will apply after entry of 3rd party. The JOA will be part of the settlement agreement and so will be assignment of agreed JOA.

2.4 Future cash calls to M and unknown party; we would be carrying the baby?

No. As this is not a PSC, each party would bear its own costs. This is captured in JOA. The settlement agreement requires Malabu to pay circa \$US300 mln (to FGN and Shell combined) so it is almost certain that they will need to sell down to do this, hence introducing at least 1 additional partner, which reduces Malabu risk. However, risk remains of inability to fund.

2.5 Who approves cost as recoverable?

Under the proposed settlement structure, **this is no longer a PSC** and thus no cost recovery takes place (although in settlement agreement we confirm fiscal treatment under relevant PSC law (precedents for this). We thus only rely on tax law to determine tax deductibility.

As an aside the key issue (and key value issues) in the PSC dispute on costs is that "non recoverable" costs as deemed by NNPC is mostly likely interpreted by FIRS as non deductible. If FIRS simply applied tax law ("wholly, necessarily and exclusively incurred"), then financial exposure to cost recovery as per PSC dispute materially reduced.

2.6 How to document any of this in a way which is robust, without prejudicing any rights under parallel arbitration if we progress both at the same time?

Thus far we have only provided unbranded drafts of settlement agreement to MoSP as a mediator. Furthermore, whatever we have offered in our draft is, value wise, comparable to 100% contractor rights. For that same reason we only talk end game rather than any reference to history of the dispute (s), to avoid having to compromise in writing on our position leading up to a final settlement.

It is very common to pursue an amicable resolution. In parallel with litigation but key will be to control data flow and communication generally outside litigation.

2.7 PIB etc?

Without any ambiguity, on basis of any current version of the PIB, this block will not be economic unless material increase in oil price assumption and reduction in UTC.

3 Other Questions

3.1 Is there a risk that under the new structure we would be forced to go ahead with the development.....how would it rank against other deepwater options (pre PIB)?

In the new structure we cannot be forced to move forward on development. However, we have OPL to OML conversion in 2013 (possible that Govt/Malabu may try and accelerate this at settlement - although thus far not mentioned since 2008 negotiation). At this point we have a 20 year lease having relinquished 70% of the OPL area.

However - with the entry of Malabu and likely another partner coming in with or possibly completely displacing them, I think there will surely be great pressure for us to develop the block .

On today's understanding of economics pre PIB, its development ranks lower than our other opportunities (Bonga N, NW,SW and Erha N). But that's largely because they are 93 PSC and this is 2000 PSC. We have to assume all that will change whatever the nature of the new PIB.

So - if we do get a PIB in which the devt of 245 looks moderately attractive and we have partner and Govt aligned pressure to go ahead, we will have to decide whether to completely exit (which may not be possible) or else whether we dilute but stay as operator on say a 25-30% basis. Very much will depend on PIB, Govt , and partner at the time.

Note we are exploring if the settlement would allow us to re-set the OPL start date to give an additional 10 years under OPL status. We will try hard to get from the Government to help get this closed and reduce the pressure to move fast.

From: Henry, Simon P RDS-ECSH
Sent: woensdag 24 maart 2010 15:25
To: Voser, Peter R RDS-CEPV; Brinded, Malcolm A RDS-ECMB; Hess, Beat W RDS-ECBH
Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP
Subject: RE: Draft 245 PCN

Having noted general support, I confirm my support for the proposal although I would still like a follow up call with say Maarten & Keith to understand how we mitigate some of the risks highlighted in my earlier response, and by Malcolm and Beat. This has the potential to become difficult and public! I will ask Souli if this can be done next week.

Thanks, Simon

Simon Henry

Chief Financial Officer

Royal Dutch Shell plc

Registered office: Shell Centre, London SE1 7NA United Kingdom
Place of registration and number: England 4366849
Correspondence address: Carél van Bylandtlaan, 16 2501 AN, The Hague, The Netherlands

tel: +31 70 377 4151 Fax: +31 70 377 1840
e-mail: simon.henry@shell.com
internet: <http://www.shell.com>

From: Voser, Peter R RDS-CEPV
Sent: 23 March 2010 23:03
To: Brinded, Malcolm A RDS-ECMB; Henry, Simon P RDS-ECSH; Hess, Beat W RDS-ECBH
Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP
Subject: RE: Draft 245 PCN

Malcolm,

Simon and Beat highlighted most of the uncertainties and risks. Support from my side as we need to get this one out of our way.

I would appreciate to get a quick briefing on how a divestment of a prospect/licence works today in Nigeria (i.e. approvals by FGN/NNPC). Would that be different in a case where they are not part of the development anymore (in theory)? And can we do anything in this negotiation which would 'make it easier' to dilute/divest in the future?

Peter

Regards,

Peter Voser

Chief Executive Officer Royal Dutch Shell plc

Carel van Bylandtlaan 16, 2596 HR The Hague, The Netherlands

Telephone +31 70 377 2715; Fax +31 70 377 2780

E-mail peter.voser@shell.com

Internet <<http://www.shell.com>>

Registered office: Shell Centre, London SE1 7NA, United Kingdom

Place of registration and number: England 4366849

 Please consider the environment before printing this e-mail.

From: Brinded, Malcolm A RDS-ECMB
Sent: 22 March 2010 15:50
To: Voser, Peter R RDS-CEPV; Henry, Simon P RDS-ECSH; Hess, Beat W RDS-ECBH
Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP
Subject: FW: Draft 245 PCN

Peter, Simon, Beat

I flagged that we might be close to a solution re 245 – but that was before the dissolution of the Cabinet and the current limbo.

Nevertheless, it is I think important that we are poised ready to push this through as a first priority whenever we get a new Minister of Petroleum – especially if former MOSP Ajumogobia , who has been intimately involved in this , becomes the new Minister (he is one of several candidates but maybe not politically heavy or well connected enough).

Hence please find attached the proposed PCN which sets out in detail the summary I gave recently. This is one where your formal endorsement is appropriate given the history and the political/ business principles issues involved.

My view is that if we can get the deal as proposed (essentially we give up 50% of our Contractor rights for 50% of the Equity rights - plus we get payment of past costs) this would be a good outcome. In terms of cash sink and risk its better than the previous plans - where you recall we were intending to pay for a small (eg 20%) share of equity essentially to get our Contractor rights unfettered with all legal claims dropped.

This way we get \$300 mln of cash back (assuming payment for past costs, without interest – which I have set the team as an expectation for them, but which are omitted from the mandate for your support). Plus a potential forward value of \$0.8 bln (RV) to \$1.6bln (HV) on old PSC2000 terms, which is however bound to be eroded in any plausible PIB outcome .

I need to highlight a few of the other risks:

- Hitherto we have stood on the principle of getting our full contractor rights - which had in our view never been legitimately challenged from start to finish . By giving up this principle for a 'deal' now, we might potentially weaken our defence should this whole saga take another turn for the worse in future;
- The solution proposed leaves NNPC without any economic interest in the Licence – a first in deepwater and obviously carrying some longer term risks (whatever assurances we get now in the agreement regarding FGN committing not to back in

etc);

- Malabu as a partner.....The only plus being that our interests should be aligned in the new structure....

Nominally we can argue that we are giving up more value at high price than we get. The reality is that if we get this deal delivered , it means some cash back now and a real chance of a divestment or a dilution (with possibly a share in a profitable DW project depending on the PIB) - and would overall be a much better outcome than I have feared along the way.

Importantly, settling this and getting out of International Arbitration under the BIT seems to be essential to have any prospect of reasonable relationships and business going forward as, whatever the rights of our case, the FGN - in whatever form - views it as a direct affront that we took this action.

Grateful your support

Regards

Malcolm

From: Craig, Ian SEPA-UIG
Sent: woensdag 17 maart 2010 14:17
To: Brinded, Malcolm A RDS-ECMB
Cc: Wetselaar, Maarten SIEP-EPF; Powell, Ceri M SI-UIX; Robinson, Peter L SEPA-UJB/G; Bos, Bernard B SEPA-FUI/F; Gerges, Amir NAM SIEP-EPB-Z
Subject: RE: Draft 245 PCN

Resend hopefully with attachment this time

From: Craig, Ian SEPA-UIG
Sent: Wednesday, March 17, 2010 2:14 PM
To: Brinded, Malcolm A RDS-ECMB
Cc: Wetselaar, Maarten SIEP-EPF; Powell, Ceri M SI-UIX; Robinson, Peter L SEPA-UIB/G; Bos, Bernard B SEPA-FUI/F; Gerges, Amir NAM SIEP-EPB-Z
Subject: Draft 245 PCN

Malcolm,

Further to our discussion during your recent visit, the attached updated PCN requests a mandate to negotiate a Settlement Agreement on the OPL 245 Dispute between FGN, Malabu and SNUD.

Following initial engagements with the parties there appears to be willingness to settle this prior to the arbitration award. This can be expected up to 90 days (end of June) after the final case hearing takes place which is planned to commence on March 29th and last a week.

The appearance of a third party to buy a share of Malabu's purported participation in the block and FGN willingness to avoid a potential embarrassing arbitration outcome have increased the probability of a settlement. Settlement would be a 50/50 license split between SNUD and Malabu with Malabu reimbursing Shell their 50% share of past costs incurred to date including their share of the signature bonus. In this settlement Shell swaps 50% of its Contractor rights for a 50% licence holder rights (value neutral at RV) and receives some US\$300 mln.

The BIT timeline is tight for Settlement execution. Although the strategy is to negotiate the Settlement agreement in parallel to the arbitration, the possibility of suspending the proceedings may be considered if there are clear indications from FGN that a settlement as per proposed mandate terms is achievable. This suspension should be for a limited period of time in order to execute the settlement. Otherwise BIT should continue its course.

I have copied Ceri on this note to keep her in the loop on this issue which may impact the timeline and options for our plans for OPL 322 (Bobo).

Regards

n

<<...>>

[-- End S/MIME Signed Data --]

Content-Type: application/x-pkcs7-mime; name=smime.p7m; smime-type=signed-data
Content-Transfer-Encoding: base64
Content-Disposition: attachment; filename=smime.p7m