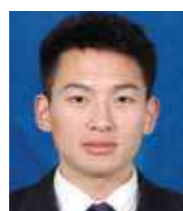


外资为何退出煤层气开发？

Why are foreign investors pulling out of coalbed methane development?



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煤层气(煤矿瓦斯)是优质清洁能源。从1997年到2011年《外商投资产业指导目录》的四次修订中,煤层气的勘查、开发一直在鼓励类。尽管如此,外商投资煤层气所遭遇的困扰却从未间断过。据报道,截至目前已经有菲利普斯、格瑞克、壳牌、BP、力拓、必和必拓、康菲等能源巨头部分或全部退出了国内煤层气领域的合作,而正在实施的项目也进退维谷。究其原因,有以下几个方面:

矿业权重叠

自1995年起,随着对煤炭资源的需求不断增长,国内原有煤炭企业占有的资源区块总量不断增加。加之新增煤炭矿业权区块的设置速度上远远超过煤层气探矿权的设置,煤层气合作企业不得不在原有煤炭矿业权区块上另行设置煤层气矿业权。据报道,仅根据2007年的统计,全国98个煤层气探矿权中有86个涉及矿业权重叠,这86个煤层气探矿权与1406个煤炭矿业权重叠。

煤层气的勘查与开发非但不能给煤炭企业带来利益,反而妨碍了他们对煤炭的开采。煤炭企业为了自身的效率,非但不愿意与煤层气企业配合,反而会以各种方式阻挠煤层气企业开展工作。

逼煤争气

2006年《国务院办公厅关于加快煤层气(煤矿瓦斯)抽采利用的若干意见》确定“必须坚持先抽后采”的方针,要求:“煤层中吨煤瓦斯含量高于规定标准且具备地面开发条件的,必须统一编制煤层气和煤炭开发利

用方案,并优先选择地面煤层气抽采”;同时还“限制企业直接向大气中排放煤层气”。

这些合理规定,迫使原煤炭采矿权人不得不重新审视其区块中的煤层气利益,并力争获得话语权。毕竟,如果煤层气矿业权人消极开展工作,也必然妨碍煤炭企业采煤。

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中联煤层气有限责任公司(中联煤)曾是中国唯一一家享有煤层气对外合作专营权的煤层气企业。2007年9月,修订后的《对外合作开采陆上石油资源条例》将专营权赋予中联煤和“国务院指定的其他公司”。同年10月,《商务部、国家发展和改革委员会、国土资源部关于进一步扩大煤层气开采对外合作有关事项的通知》(商资函[2007]第94号)指出,商务部、发改委同相关部门在中联煤之外“再选择若干家企业……与外国企业开展煤层气合作开采的试点工作”。2010年12月,商务部、发改委、国土资源部等发出通知,同意中石油、中石化、河南省煤层气开发利用有限公司与外国企业合作开采煤层气。

商资函[2007]第94号还规定:“……在煤炭开采过程中伴随的煤层气地面抽采和井下回收,煤炭采矿权人可开展对外合作,不列入煤层气对外合作专营的管理范围……”。自此,煤炭企业也获得了与外资直接合作开发煤矿瓦斯的权力。这项规定,使已经在其煤炭采矿权上重叠设置煤层气矿业权的煤炭采矿权人有了吃亏的感觉,并成为其自行开发煤层气和驱赶原有煤层气合作方的依据。

依法设定的煤层气矿业权应当受到保护,然而实践中却并非如此。地方企业的侵占和

村民的干扰,往往受到地方政府和某些司法部门的庇护。由于勘查作业的复杂性,如果没有中央政府、地方政府、土地所有权人、相关矿业权人的支持与合作,没有公正的司法部门提供强有力的保护,外商投资者的工作根本无法开展。

另外,政策方面的支持也不足。配套输气管道的建设和使用缺乏强制性规定,税费的优惠和补贴不足,这些都削弱了煤层气领域外商投资者的积极性。

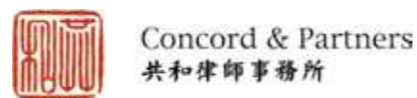
建议

由于以上不利因素,外商投资者正退出中国煤层气勘查和开发领域。过去10多年中,外商投资者为国内煤层气的勘查和开发贡献了宝贵技术和巨额资金。如果因为矿业权设置不合理、非法侵占、政府和司法保护不力而使外商退出,将严重损害中国政府和企业的信用,打击外商投资的积极性,阻碍相关勘查与开采技术的进口,最终损害煤层气行业的长远发展。因此我们建议:

对于重点盆地,煤炭采矿权与煤层气开采权的审批应当统一到国土资源部,鼓励煤炭企业与煤层气企业采取联合经营的模式。另外,在煤层气储量较低的区域,给予煤炭企业优先开采煤层气的权利,缓解某些区块开采搁置问题。

输送煤层气的大型骨干管道可以由国家统一规划、建设,避免管网垄断现象。短距离输送管道积极鼓励民企参与,增强竞争意识。

煤层气勘探开发投资大,成本回收周期长。为促进该产业的发展,国家应出台更多的优惠政策来鼓励煤层气的开发利用,尤其在前期投入方面。■



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Coalbed methane is a high-quality, clean energy source. Throughout the four revisions of the *Catalogue for Guiding Foreign Investment in Industry*, between 1997 and 2011, coalbed methane exploration and development have consistently been in the “encouraged” category. Nevertheless, according to reports, to date energy giants such as Greka, Shell, BP, Rio Tinto, BHP Billiton and ConocoPhillips have partially or entirely pulled out of their co-operation ventures in the coalbed methane sector in China, or are hesitating in projects currently being implemented, for reasons explained below.

Overlapping mining rights

Since 1995, the total number of resource blocks held by domestic coal enterprises has continually risen. The speed of establishing new coal mining concession blocks has also far exceeded that of coalbed methane concessions, leaving coalbed methane co-operation enterprises with little recourse other than to establish coalbed methane concessions in existing coal mining concession blocks. According to reports, based on 2007 statistics, of the 98 coalbed methane exploration concessions nationwide, 86 involve overlapping concessions, and these 86 coalbed methane exploration concessions overlap with 1,406 coal mining concessions.

Coalbed methane exploration and development does not benefit coal enterprises, but impedes their extraction of coal. For their own efficiency, coal enterprises are not willing to co-operate with coalbed methane enterprises, and will use various means to impede coalbed methane enterprises in their work.

Delaying coal to secure gas

The 2006 *Several Opinions of the General Office of the State Council on Accelerating the Extraction and Utilisation of Coalbed Methane* specifies the policy that “extraction first, mining after must be adhered to” and requires that “where the gas volume per tonne of coal in a coalbed exceeds the specified standard, and where the conditions for surface development are satisfied, a unified coalbed methane and coal development and utilisation plan must be prepared, and surface extraction of the coalbed methane shall be selected preferentially”. Additionally, they specify that “enterprises are restricted from directly discharging coalbed methane into the atmosphere”.

These reasonable provisions have compelled coal mining rights holders to take a new look at the coalbed methane benefits in their blocks and strive for the right to be heard. After all, if a coalbed methane mining rights holder unhurriedly carries out its work, it will necessarily impede the coal enterprise in its coal extraction.

Easing monopoly rights

China United Coalbed Methane Corporation (CUCBM) was formerly the only coalbed methane enterprise with monopoly rights to co-operate with foreign parties in the exploitation of coalbed methane. In September 2007, the amended *Regulations on the Exploitation of Onshore Petroleum Resources in Co-operation with Foreign Parties* granted monopoly rights to CUCBM and “other companies designated by the State Council”. In October 2007, the *Notice of the Ministry of Commerce, the National Development and Reform Commission and the Ministry of Land and Resources on Matters Relevant to Further Expanding Co-operation with Foreign Parties in the Exploitation of Coalbed Methane* (document No. 94) specified that the Ministry of Commerce (MOFCOM) and National Development and Reform Commission (NDRC), together with relevant authorities will “select several enterprises ... for pilot projects to exploit coalbed methane in co-operation with foreign enterprises” in addition to CUCBM. In December 2010, MOFCOM, the NDRC and the Ministry of Land and Resources issued a notice consenting to CNPC, Sinopec and Henan Provincial Coal Seam Gas Development and Utilisation exploiting coalbed methane in co-operation with foreign enterprises. Document No. 94 further specifies: “With respect to the surface extraction and down-hole recovery of associated coalbed methane in the course of coal exploitation, the coal mining rights holder may co-operate with foreign parties and the same shall not fall within the scope of administration of the monopolies on co-operation with foreign parties in the exploitation of coalbed methane.” This provision has caused coal mining rights holders with overlapping coalbed methane mining rights to feel that they have gotten the short end of the stick, and has become the basis for their developing coalbed methane on their own and driving out their coalbed gas development partners.

In practice, coalbed methane mining concessions established under law are

not protected. Encroachment by local enterprises and interference by villagers are frequently shielded by the local government and certain judicial authorities. If a foreign investor does not have the support and co-operation of the central government, the local government, the landowner, the relevant mining rights holders and the powerful protection of an impartial judicial authority, its work is impossible to carry out. Furthermore, there is a lack of mandatory regulations governing the construction and use of gas pipelines, and insufficient tax breaks and subsidies.

Recommendations

Due to these unfavourable factors, foreign investors are pulling out of the sector. In the past 10 or so years, foreign investors have contributed valuable technology and funds to coalbed methane exploration and development in China. If they pull out, this will seriously harm the credibility of the central government and enterprises, deflate enthusiasm from foreign investors, hamper the importation of relevant technologies, and ultimately harm the long-term development of the coalbed methane industry. We recommend:

- With respect to key basins, the examination and approval of coal mining rights and coalbed methane exploitation rights should be unified under the Ministry of Land and Resources, and coal enterprises and coalbed methane enterprises should be encouraged to adopt the joint operation model. In areas with modest coalbed methane reserves, the coal enterprises should be given the preemptive right to exploit the coalbed methane to resolve the problem of exploitation being put on hold.
- Large backbone pipelines for the transport of coalbed methane could be centrally planned and constructed by the state to avoid network monopolisation. For short-distance transport pipelines, the participation of private enterprises should be actively encouraged to bring in competition.
- In order to promote the industry, the state should issue more preferential policies to encourage the development and utilisation of coalbed methane, particularly with regard to initial outlays. ■

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