



December 2, 2016

Abigail Hopper
Director, Bureau of Ocean Energy Management (BOEM)
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Joint Trade Financial Assurance Forum – Summary of Critical Industry Concerns

Dear Director Hopper:

The National Ocean Industries Association (NOIA), Louisiana Mid-Continent Oil and Gas Association (LMOGA), and the Offshore Operators Committee (OOC) recently held a Joint Trade Financial Assurance Forum (Forum) on November 17, 2016 in order to discuss industry's concerns around BOEM's new Financial Assurance Program as issued through Notice to Lessees 2016-N01 (NTL). While we greatly appreciate the participation of BOEM staff at Forum it is evident that there are numerous unresolved issues and unanswered questions around BOEM'S new risk management policy. As such, we are providing herein the issues of significant concern that were discussed at the Forum which further validates the gaps in BOEM's program and **the need to suspend implementation immediately** until a new risk management program goes through a comprehensive rulemaking process.

The Associations recognize that BOEM has taken a number of the recommendations that industry made in previous comments and discussions on the complex issues surrounding financial assurance, however, the Joint Trade Financial Assurance Forum proceedings reemphasized many critical issues with the program that must be addressed prior to the issuance of any order letters by BOEM.

1. BOEM's Financial Assurance Program is significantly flawed and is incomplete. In its current form, BOEM's new Financial Assurance Program is simply not feasible, and BOEM is clearly not prepared to implement this new policy. There are many unresolved questions from stakeholders and internally by those charged with implementation of BOEM's Financial Assurance Program. The Financial Assurance Program should be suspended prior to any order letters being issued and until a more workable program can be developed with robust stakeholder engagement to ensure the program achieves its intended purpose.

2. BOEM must undertake a full rulemaking process, given the substantive changes to the financial assurance requirements. The recent BOEM Financial Assurance NTL No. 2016-N01 represents significant changes in policy that must be implemented through the formal rulemaking process giving stakeholders adequate opportunity to provide feedback and supported by the required cost benefit analysis. The Associations believe that the program may produce unintended consequences that are inconsistent to the mission of the agency and that would hinder OCS development. These consequences include, but are not limited to reduced investment on the OCS, inability to buy and sell properties on the OCS, premature abandonment of producing assets, catastrophic financial impact to some operators, and reduced royalty revenue. While we understand this program is intended to reduce financial risk, we believe it may actually increase financial risk on the OCS by driving companies into bankruptcy and thus increasing the exposure to taxpayer liability. If implemented as is, the program could potentially cause a significant number of operators/owners to exit the OCS, diminishing the robustness of the GOM OCS as a productive oil and gas basin attractive to continued investment. This would also mean fewer companies available to meet future decommissioning responsibilities. Close collaboration with stakeholders in developing a Financial Assurance policy will result in a more workable program while still achieving the intent of the program.

3. BOEM is not prepared to execute the program. As currently proposed, BOEM does not appear fully prepared or able to execute the program consistently, equitably and transparently. The NTL affords BOEM much subjectivity, which has resulted in inconsistencies and uncertainties to the operators/owners. Regulatory changes are required to effectively implement this program. The program does not consider complex ownership scenarios adequately, and in some cases, not at all. Current Joint Operating Agreements (JOAs) do not address the new requirements established in the NTL and BOEM has not allowed adequate time for JOAs to be updated to reflect the new program components. In addition, third party guarantee guidance has not been provided to the Industry by the Agency including exactly how the Agency will make such a determination of a company's capacity to leverage a 3rd party guarantee, which will be a critical component of any tailored plan. Tailored plans appear to be becoming more of a defacto requirement by most in order to comply with this new program. Tailored plans will likely change frequently, and because many tailored plans are linked, BOEM's ability to provide rolling approvals will be challenged. Overall, BOEM has failed to communicate a consistent message as it relates to the expectations for content and further the evaluation and approval process for tailored plans.

4. BSEE's decommissioning liability estimates are incorrect. BOEM's Financial Assurance Program depends upon BSEE's decommissioning liability estimates; however, those estimates are grossly incorrect. BOEM/BSEE should work with industry to standardize decommissioning cost reporting and develop an effective tool to accomplish this. Utilizing accurate decommissioning liability estimates is integral to the financial assurance program. However, a vast majority of leaseholders surveyed state the liability estimates are incorrect. For example, a decommissioning valuation company states that the 64% increase in shelf liability estimates are opposite of market trends, thus incorrect. And a decommissioning expert company states that the BSEE model is not supported by actual project-based decommissioning costs. Finally, bankruptcy courts do not recognize or use the BSEE liability

estimates; rather they use normal ARO cost estimates prepared in accordance with standards set out by the Financial Accounting Standards Board requirements (FASB ASC 410-20).

5. BOEM's financial strength assessment is flawed and their methodology lacks transparency. BOEM's methodology using industry averages does not make sense. The data appears to be incorrect and BOEM should disclose the data so that it can be validated and corrected. The BOEM analysis should be redeveloped to address significant gaps before the program proceeds. Cash flow metrics must be significantly considered in the analysis. A "one-size fits all" analysis cannot be applied across the industry. Several processes must be developed to fit the various organization types represented throughout the OCS. The BOEM model is generating results inconsistent with the fiscal strength of companies as recognized by established financial institutions. While BOEM recognizes that some results of their analyses point to issues with their model, the agency currently lacks sufficient time to address these issues prior to implementation.

Industry is willing to sit down with BOEM to discuss the appropriate criteria needed to assess the financial capability of a lessee and to discuss BOEM's financial analysis model. There are various ideas being debated within industry to help BOEM and BSEE address the real problem of unsecured decommissioning liabilities that could go unfunded as a result of an operator losing its financial capability to meet its accrued liabilities. We would like to share some of these ideas with BOEM and BSEE and determine if there is one of more options acceptable to both the government and industry that could significantly minimize the likelihood of the Department of Interior having to submit an appropriations request to Congress to cover certain unsecured liabilities. If BOEM and BSEE are interested in having this discussion, please let us know.

Finally, as a side note, there does not appear to be any guidance on how the reefing platforms in place or as part of the Rigs to Reef program can be used to reduce decommissioning cost estimates.

In summary, given the sweeping changes to the program and the numerous gaps that must be addressed, the implementation deadline for BOEM'S Financial Assurance Program is unreasonable and should be suspended prior to any order letters being issued and until full rulemaking process is completed with robust stakeholder engagement to ensure the program achieves its intended purpose. The NTL language and BOEM's comments in presentations indicate a desire for flexibility in the implementation of BOEM's plan; however, BOEM has been reluctant to utilize such flexibility citing restrictions in the regulations. BOEM should go through a comprehensive rulemaking process to ensure the regulations provide the appropriate governance for Financial Assurance.

We thank you for the opportunity to share our concerns and we look forward to your response.

Sincerely,



Randall Luthi
National Ocean Industries Association



Chris John
Louisiana Mid-Continent Oil and Gas Association



Evan Zimmerman
Offshore Operators Committee

cc:

Sally Jewell, Secretary, DOI
Janice Schneider, ASLM, DOI
Tommy Beaudreau, Chief of Staff, DOI
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