



February 27, 2017

VIA EMAIL (BOEMFOIA@BOEM.GOV)

BOEM FOIA Officer
Bureau of Ocean Energy Management
Mail Stop: VAM-BOEM DIR
45600 Woodland Road
Sterling, VA 20166
Telephone: 703-787-1315

Re: Freedom of Information Act Request

Dear BOEM FOIA Officer:

This Freedom of Information Act ("FOIA") request is directed to the United States Department of the Interior, Bureau of Ocean Energy Management ("BOEM"). It is made pursuant to 5 U.S.C. § 552, and the Department of the Interior's implementing regulations under 43 C.F.R. Part 2. The National Ocean Industries Association ("NOIA"), the Independent Petroleum Association of America ("IPAA"), the Louisiana Mid-Continent Oil and Gas Association ("LMOGA"), and the Gulf Economic Survival Team ("GEST") (collectively, the "Parties") are interested in obtaining the below described information relating to Notice to Lessees No. 2016-N01 entitled "Requiring Additional Security" issued by the Bureau of Ocean Energy Management ("BOEM") with an effective date of September 12, 2016 (the "NTL"). The date range for this request is January 1, 2014 through the present.

The Parties previously submitted a FOIA request on November 7, 2016 (assigned to FOIA BOEM-2017-00021), which was broader in scope and was designed to encompass all key materials generated or relied upon in the development of the NTL and of the related BOEM Financial Discussion webpages. The Parties appreciate that BOEM, in recognition of the public interest in the NTL and in response to numerous requests for more information about the Agency's process in developing it, published on or around December 22, 2016 a document entitled "Evaluation of a Lessee's Ability to Carry out Present and Future Obligations." Available at <https://www.boem.gov/Evaluation-of-a-Lessee-s-Ability-to-Carry-out-Present-and-Future-Obligations/> The publication does not address all of the Parties' informational requests; accordingly, the Parties now submit this narrowed FOIA request and ask that you please provide copies of the following information:

1. Documents showing the basis for the conclusion that BOEM's "previously utilized formulas for determining financial strength and reliability are outdated and no longer provide sufficient protection for liabilities incurred during OCS operations." NTL at 1.
 - a. For purposes of responding to this Request for Information, please search for responsive information, including emails, in the files of the following personnel or

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offices: the BOEM Director, Deputy Director, Chief of Staff, Senior Advisor to the Director, Gulf of Mexico Regional Director, Chief of the Office of Strategic Resources Programs, and the Risk Management Policy Group.

2. Documents, including email, showing the basis for BOEM's determination not to pursue a formal rulemaking after the Advanced Notice of Proposed Rulemaking was announced in the Federal Register on August 19, 2014, 79 Fed. Reg. 49027, and documents supporting BOEM's determination that a rulemaking was not necessary to implement the changes contained in the NTL.
 - a. For purposes of responding to this Request for Information, please search for responsive information, including emails, in the files of the following personnel or offices: the BOEM Director, Deputy Director, Chief of Staff, Senior Advisor to the Director, Gulf of Mexico Regional Director, Chief of the Office of Strategic Resources Programs, and the Chief of the Office of Policy, Regulation and Analysis.
3. All correspondence, and other communications, including emails, between the following BOEM officials and personnel in the Bureau of Safety and Environmental Enforcement ("BSEE") or any employee or official of the Executive Office of the President concerning whether the financial criteria and financial security requirements imposed by NTL 2008-N07 are adequate or inadequate to secure decommissioning of platforms, pipelines or wells located on the Outer Continental Shelf ("OCS").
 - a. For purposes of responding to this Request for Information, please search for responsive information, including emails, in the files of the following personnel or offices: the BOEM Director, Deputy Director, Chief of Staff, Senior Advisor to the Director, Gulf of Mexico Regional Director, Chief of the Office of Strategic Resources Programs, and the Risk Management Policy Group.
4. All correspondence, emails, and other communications with i) BSEE personnel, ii) any employee or official of the Executive Office of the President of the United States, or iii) any other government agency concerning the development of the NTL, including specifically whether additional financial security is needed or advisable to secure decommissioning liability associated with wells, pipelines and other facilities located on the OCS.
 - a. For purposes of responding to this Request for Information, please search for responsive information, including emails, in the files of: the BOEM Director, Deputy Director, Chief of Staff, Senior Advisor to the Director, Gulf of Mexico Regional Director, the Chief of the Office of Policy, Regulation and Analysis, Chief of the Office of Strategic Resources Programs, and the Risk Management Policy Group.
5. All correspondence, emails and other communications with any Member of Congress or Congressional staff, including committee staff, concerning the development of the NTL, including specifically whether additional financial security is needed or advisable to secure decommissioning of platforms, pipelines or wells located on the OCS.
 - a. For the purpose of responding to this Request for Information, please search for responsive information, including emails, in the files of the Chief of the Office of Congressional Affairs.

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6. All correspondence, emails, and other communications with any BSEE or Department of the Interior official or employee concerning the Government Accountability Office (“GAO”) report number GAO-16-40, published December 18, 2015 and entitled “Actions Needed to Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities.”
 - a. For purposes of responding to this Request, please conduct targeted, “key word” searches for the GAO report referenced in Request No. 7 in the files, including emails, of: the BOEM Director, Deputy Director, Chief of Staff, Senior Advisor to the Director, Gulf of Mexico Regional Director, Chief of the Office of Strategic Resources Programs, the Risk Management Policy Group and the Chief of the Office of Policy, Regulation and Analysis.
7. Documents indicating that taxpayer dollars have ever been used or expended to perform decommissioning of platforms, pipelines, wells or other facilities located on the OCS.
 - a. For purposes of responding to this Request for Information, please search for responsive information, including emails, in the files of the Chief of the Office of Budget and Program Coordination and the Chief of the Office of Policy, Regulation and Analysis.
8. Documents prepared by Deloitte related to the development of the NTL, including copies of the two Deloitte credit models (and any related reports prepared by Deloitte for BOEM) referenced on page 8, in Appendix B, and in Appendix G of the Bureau of Ocean Energy Management’s report entitled “Evaluation of a Lessee’s Ability to Carry Out Present and Future Obligations,” *available at* <https://www.boem.gov/Evaluation-of-a-Lessee-s-Ability-to-Carry-out-Present-and-Future-Obligations/>, and including any documents prepared by or correspondence with Deloitte that relate to BOEM’s decision to set the maximum self-insurance for companies at 10% of Tangible Net Worth.
9. To the extent that BOEM retained any third-parties, other than Deloitte, to assist in developing the NTL and the financial criteria contained therein, please provide the names of those third parties, an explanation of the process used to select such third parties, and any final documents or reports prepared by those third parties.
 - a. For the purpose of responding to this Request for Information, please search for responsive information, including emails, in the files of the BOEM Contracting Officer Representative, the Chief of the Office of Strategic Resources Programs, and the Head of the Risk Management Policy Group.
10. Documents, excluding emails, showing any economic impact or cost-benefit analysis of the NTL performed by or on behalf of BOEM.

For Requests for Information Nos. 11-18, please limit your search for responsive information, including emails, to the files of the Chief of the Office of Strategic Resources Programs and the Risk Management Policy Group.

11. Copies of the financial capacity model and any documents related thereto developed by BOEM’s Risk Management Policy Group in association with the development of the NTL.

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12. Documents indicating that the BOEM considered any other percentage (other than 10%) of an operator's tangible net worth as a maximum credit against any required financial security.
13. Documents identifying what additional "applicable financial criteria" other than the nine categories specifically identified in the NTL, that BOEM will consider in analyzing an operator's or lessee's financial capacity. NTL at 3, § 1.
14. Documents showing the basis for and reasoning behind BOEM's determination that "[i]f a company passes at least 5 out of 9 ratios, self-insurance, expressed as a percentage of the company's tangible net worth, may be granted, up to a maximum of 10%, depending on consideration of the other four criteria," including all documents that explain why five is the number of benchmarks a company must satisfy to be eligible for self-insurance. See Bureau of Ocean Energy Management webpage, "Benchmark for Each Ratio", available at <http://www.boem.gov/Benchmark-for-Each-Ratio/>.
15. Documents showing the basis for and reasoning behind BOEM's determination that only 25% of proven reserves may be used to augment the lessee's tangible net worth. See Bureau of Ocean Energy Management webpage, "Projected Strength," available at <http://www.boem.gov/Projected-Strength/>.
16. Documents explaining how BOEM will "adjust the percentage of self-insurance allowed for any lessee based upon its credit rating," and documents explaining how "BOEM will set a minimum credit rating below which BOEM would not allow the use of self-insurance on "sole liability properties" as defined in the NTL." See Bureau of Ocean Energy Management webpage, "Reliability," available at <http://www.boem.gov/Reliability/>.
17. Documents showing the criteria by which BOEM will evaluate trade references for determining the percentage of self-insurance allowed. See Bureau of Ocean Energy Management webpage, "Reliability," available at <http://www.boem.gov/Reliability/>.
18. 30 C.F.R. § 556.901(d)(1) states that BOEM will evaluate a lessee's ability to carry out present and future financial obligations, and further that one of the factors BOEM will consider is "financial capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by audited financial statements[.]" 30 C.F.R. §556.901(d)(1)(i). Please provide documents, including internal correspondence or guidance documents, discussing how BOEM considers or intends to consider "asset retirement obligations" that are valued within audited financial statements and whether BOEM's methodologies take into account that a lessee's "Tangible Net Worth" is already reduced by the cost of asset retirement obligations, such that comparing Tangible Net Worth against BSEE-calculated decommissioning costs results in a double-counting of liability for decommissioning costs.

Except with respect to request number 7, for the purpose of responding to the above Requests for Information, the Parties are seeking documents generated between June 1, 2014 and the present. In order to streamline and expedite the processing and compilation of responsive material, the Parties agree to exclude the following types of information from the above requests: 1) information that was submitted to BOEM as confidential commercial information that would be subject to Executive Order 12,600 and the FOIA regulations requiring the Agency to notify the submitter; 2) correspondence containing information covered by the attorney client privilege and/or the attorney work product, and/or the deliberative process privilege; 3) correspondence transmitting or

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discussing news media articles or press releases; 4) meeting invitations, meeting acceptances, and correspondence that solely arranges for meetings.

For the avoidance of doubt except where expressly stated, throughout this letter, the term “documents” shall include all writings, both textual and electronic, and refers to all e-mails, letters, memoranda, notes, telephone records, maps, photographs, reports, studies, data compilations, spreadsheets, notices, meeting minutes, analyses, algorithms, formulas, methodologies, orders, decisions, transcripts, cover letters, internal correspondence, notes, and memoranda.

We would be pleased to pay all reasonable reproduction and search fees provided by regulation. We request that you notify us before proceeding, however, if you anticipate that such expenses will exceed \$2,000.

In accordance with 43 C.F.R. § 2.16, we look forward to receiving your response within 20 working days. Your response to this FOIA request should be directed to the undersigned with a copy to counsel Anne Harrington (anne.harrington@squirepb.com). We would be happy to accept the documents in electronic form (Microsoft word or Adobe pdf) or in hard copy. Thank you for your prompt attention, and please let me know if you have any questions or require further information about the above changes.

Sincerely,



Randall Luthi
President
National Ocean Industries Association (NOIA)



Dan Naatz
Senior Vice President of Government Relations & Political Affairs
Independent Petroleum Association of America (IPAA)



Chris John
President
Louisiana Mid-Continent Oil & Gas Association (LMOGA)

cc: Natasha Alcantara (natasha.alcantara@boem.gov)
Anne Harrington, Esq. (anne.harrington@squirepb.com)