



September 6, 2023

Department of the Interior, Bureau of Ocean Energy Management,
Office of Regulations
Attention: Kelley Spence
45600 Woodland Road
Sterling, VA 201666

Re: Docket No. BOEM–2023–0027

To Whom It May Concern:

We appreciate the opportunity to submit this letter regarding the proposed rule by the Department of the Interior (DOI) and the Bureau of Ocean Energy Management (BOEM) concerning risk management and financial assurances for oil and gas leases on the Outer Continental Shelf (OCS). Although BOEM has stated its objective “is to ensure that taxpayers do not bear the cost of meeting the obligations of lessees and grant holders in the OCS, particularly the costs of decommissioning” by addressing some of the major omissions and deficiencies in existing regulations and requirements, the proposed rule does not sufficiently improve financial assurance requirements to ensure lessees and operators will meet decommissioning obligations.

As a steward of the nation’s public resources in the OCS, BOEM must ensure that those who benefit from the extraction of those resources comply with leasing and decommissioning requirements intended to protect coastal communities, taxpayers, and the environment. This includes requiring supplemental financial assurances for all estimated decommissioning costs using estimates that have the highest likelihood of covering all liabilities. In the absence of action to remove all waivers for financial assurances (which would be our preferred alternative), the proposed rule must be strengthened as outlined below.

Estimates of Increased Supplemental Financial Assurances: BOEM estimates that the aggregate amount of supplemental financial assurance required of lessees and grant holders under this proposed rulemaking would increase to a total of \$12.5 billion which represents just over one-quarter of all decommissioning liabilities, which is currently estimated (by BSEE) at \$42.8 billion. However, BOEM’s estimates of total decommissioning liabilities and the amount of supplemental financial assurances that the proposed rule would require are not fully explained or sufficient.

The proposed rule presents three estimates of decommissioning costs for each facility on any given lease. BOEM proposes to use the second lowest cost estimate, P70, to set the amount of supplemental financial assurance it will require, resulting in only a 70% likelihood that the amount of financial assurance required will cover the full cost of decommissioning. This amount is insufficient, and we request that BOEM instead use the P90 value to set the amount of required supplemental financial assurances, increasing the likelihood of covering the full decommissioning cost of an offshore facility to 90%. This represents a 55% increase over prior coverage and is the best option to reduce offshore decommissioning risk and cost to American taxpayers.

At the same time, we strongly support the change being made in the proposed rule, stipulating that BOEM will no longer consider the financial strength of predecessor lessees when determining the amount of required supplemental financial assurances for oil and gas operators. The agency's past reliance on this practice has contributed to the nearly \$30 billion shortfall in offshore decommissioning liabilities.

New Criteria for Determining Lessees' Financial Assurance Requirements: The proposed rule eliminates the five existing criteria used to determine whether supplemental financial assurances should be required and replaces them with two new criteria: (1) credit rating and (2) the ratio of the value of proved reserves on the lease to the lease decommissioning liability.

Credit Rating: On the first criterion, if BOEM intends to rely exclusively on a credit rating to determine whether waiving supplemented financial assurances is warranted, it must provide a much higher level of certainty that those companies will definitely comply with their decommissioning obligations. While BOEM has increased the required credit rating from its 2020 proposal, it still must set a higher credit rating threshold than what is proposed in the rule. BOEM proposes to waive supplemental financial assurances if companies have an S&P credit rating of at least BBB- or a Moody's credit rating of Baa3. However, S&P and Moody's describe these credit ratings as "adequate capacity to meet financial commitments" and "subject to moderate credit risk . . . [and] may possess speculative characteristics." BOEM should not waive supplemental financial assurances for lessees that qualify for this credit rating level because these companies, by definition, do not demonstrate a strong potential to meet their debt obligations.

Additionally, BOEM mentions that it monitors changes to company ratings throughout the year. But making this statement in the preamble of the rule is not strong enough. BOEM must include specific requirements for monitoring credit ratings in the text of the regulations to ensure that such monitoring and enforcement occurs at regular intervals throughout the year.

Finally, the proposed rule also provides that in cases where potential lessees do not have an credit rating from a recognized credit rating agency, BOEM will use a proxy credit rating based on a company's audited financial statements. This proxy credit rating should not remain in the final rule. BOEM is not a financial agency nor does it have the capacity to institute such a system, and there is no basis for substituting the agency's judgment for that of a Nationally Recognized Statistical Rating Organization, as identified by the Securities and Exchange Commission.

Value of Proved Reserves: The second proposed criterion provides that, in any case when none of the lessees have an investment grade credit rating, BOEM would look to the value of the lease's proved oil and gas reserves relative to the lease's decommissioning obligations associated with the production of those reserves. For any such lease that has proved reserves with a value of at least three times that of the estimated decommissioning cost, no supplemental financial assurance would be required under the proposed rule. We do not support this criterion and request that BOEM eliminate it from the final rule, as it does not adequately reduce the risk that decommissioning costs would be borne by the government and taxpayers.

Normal fluctuations in the demand and price of oil and gas coupled with the imminent global shift away from fossil fuels to renewable energy make it likely that the value of proved oil reserves in all leases will decline over time. As a result, lessees may earn less over the life of the lease and in turn, have less capital to cover decommissioning costs. In light of this, the value of proved oil and gas reserves cannot be considered a reliable substitute for supplemental financial assurances, which are necessary to protect taxpayers and the environment, especially in cases where none of the lessees have investment grade credit ratings.

Elimination of the Record of Compliance Criterion: The proposed rule eliminates the “record of compliance” criterion based on the conclusion by BOEM that it is “not an accurate predictor of [a company’s] financial health.” We request that this criterion not be eliminated, and instead revised in the proposed rule. As part of that revision, BOEM should commit itself to improving coordination with BSEE to strengthen the monitoring and oversight efforts of oil and gas operators. While violations and acts of non-compliance by oil and gas operators might not, on their own, evidence a company’s financial health, these activities do demonstrate whether a company’s practices and protocols conform to the regulatory and contractual requirements of the agencies.

As such, BSEE’s Incidents of Non-Compliance (INC) records and its Increased Oversight List should be regularly updated by the agency and relied upon by BOEM to determine whether oil and gas operators should retain the privilege of operating in the OCS. Actors that are found to be in non-compliance as a result of an accident or violation should not retain the right to continue to produce from their leases or be insulated from consequences. At a minimum, compliance data, including fines and violations, should be used by BOEM as a criterion for determining a company’s ability to fulfill decommissioning obligations.

Further, with respect to compliance, BOEM should stipulate that historic or current owners of abandoned or idle wells in federal waters that need decommissioning should not be eligible for new leases. Recent studies have found that there are thousands of wells in the Gulf of Mexico that will cost billions of dollars to decommission, posing major financial and environmental risks. Companies who have not complied with decommissioning requirements in the past should not be given new leases until their prior commitments have been met.

In addition to the changes in the proposed rule outlined above, we respectfully request that the Department of Interior consider whether the respective mission and structure of both BOEM and BSEE pose inherent barriers to prioritizing effective and efficient decommissioning and

determine what additional steps are needed to properly monitor, manage, and implement decommissioning requirements to protect both taxpayers and the environment.

Sincerely,

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Alaska Wilderness League
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Climate Hawks Vote
Cook Inletkeeper
Creation Justice Ministries
Environment America
Environment California
Environment Florida
Environment Texas
Florida PIRG
Friends of the Earth
Healthy Gulf
Healthy Ocean Coalition
Inland Ocean Coalition
International Marine Mammal Project of Earth Island Institute
League of Conservation Voters
López-Wagner Strategies
Mission Blue
Mystic Aquarium
Natural Resources Defense Council
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