Department of the Interior
Bureau of Ocean Energy Management, Office of Regulations
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Referference:**RIN 1010–AE14**, NPRM dated 6/29/2023, "Risk Management and Financial Assurance for OCS Lease and Grant Obligations"

Comments, discussion, and a recommended financial assurance approach for lease assignments follow.

Comment 1: **Given that safety and environmental protection are the OCS program's highest priorities, a company's record of compliance and safety performance should be a primary consideration in determining the need for supplemental financial assurance.**

- **BOEM should be more attentive, not less, to safety performance and compliance data**. Had this been the case in the past, taxpayers would have been better protected from the safety and financial risks associated with the lease acquisitions by Fieldwood, Cox, Black Elk, Signal Hill, Matagorda Island Gas Operations, and others.
- **Safe operations, as reflected in compliance and performance data, are critical to a company's financial success.** Operators with poor safety/compliance records are at a high risk of financial failure.
- **Does BOEM expect companies with poor safety compliance records to be concerned about decommissioning obligations?**
- **Accidents are not mere matters of chance; management and culture matter.** BOEM should be encouraging safety leadership and robust safety and environmental management programs. Instead, BOEM seems to be discounting their importance.
- **BOEM wrongly infers that Incidents of Noncompliance (INCs) are solely dependent on the number and complexity of facilities**. Decades of normalized compliance data demonstrate that there are marked differences among operators in terms of compliance and safety performance. Companies with poor performance records are likely to fail.
- **The top performing companies**, large and small, have superior compliance records. In 2022 these companies had 50-90% fewer INCs/facility-inspection than the Gulf of Mexico average.
- Cox's 2023 bankruptcy was predictable given their past safety performance. In 2022, Cox was a violations leader, and was responsible

for 9 of the 30 safety incidents that were significant enough to require investigation by BSEE.

- Fieldwood's poor 2021 safety performance is a matter of record, but there was ample evidence of performance problems prior to their bankruptcy declaration in 2018. In 2016 and 2017 Fieldwood was, by far, the GoM violations leader with 818 INCs, 401 of which required a facility or component shut-in.
- The other noncompliance leader in 2016 and 2017 was future Cox affiliate Energy XXI GOM. Energy XXI earned 465 INCs (240 shut-ins) during that 2 year period. **Did BOEM object to or otherwise comment on the 2018 Cox-Energy XXI merger?**
- Black Elk Energy was new in 2007 and quickly became a violations leader. Between 2010 and 2012, BSEE cited Black Elk 415 times. 218 of these violations were serious enough to require facility or component shut-ins. On November 16, 2012, explosions at Black Elk's West Delta 32 platform killed 3 workers, and 2 others suffered severe burns. Criminal charges and a complex bankruptcy followed. BSEE records show 1107 INCs during the company's short history, 464 of which required facility or component shut-ins.
- The rapid growth of Fieldwood, Cox, and Black Elk was in part facilitated by lax lease assignment and financial assurance policies that failed to consider compliance. **Companies should have to demonstrate that they can operate safety and comply with the regulations before they are approved to acquire more properties.**
- **The Signal Hill saga in the Santa Barbara Channel** has been documented. Signal's financial failure was predictable based on violations data and inspector feedback. Nonetheless, and despite internal objections, Signal Hill was allowed to tap into its decommissioning account to cover operating expenses.
- Bankruptcy procedures have been used to avoid or transfer decommissioning obligations. In that regard, Chevron's comprehensive objection to Fieldwood's restructuring plan is compelling.
- Although BSEE has lead responsibility for compliance, safety should be the highest priority of both BOEM and BSEE. Hopefully, **regulatory fragmentation** was not a factor contributing to BOEM's proposal not to use compliance data in determining the need for supplemental financial assurance.
- BOEM/BSEE should consider a followup to the important John Shultz (Carnegie Mellon) research which found that inspection results are a very good predictor of accidents and spills.

Comment 2: **The ratio of the value of proved reserves to lease decommissioning liability should not be used to reduce supplemental financial assurance.**

- **Comparing two imprecise and highly variable estimates is neither a simple nor reliable method for determining the need for supplemental financial assurance.** The high uncertainty regarding reserve estimates and decommissioning costs can easily negate the assumed buffer in BOEM's proposed 3 to 1 reserves to decommissioning costs ratio.
- BOEM should look at the history of the Carpenteria field (Santa Barbara Channel) and the reserve estimates that were provided to discount decommissioning risks.
- Oil and gas prices can fluctuate dramatically, quickly changing the value of reserves.
- If platforms are destroyed or badly damaged by hurricanes, fires, vessel allisions, or other events, reserves may no longer be marketable. Such damage also greatly increases well plugging and other decommissioning costs, typically by at least an order of magnitude. Taylor Energy, Mississippi Canyon 20, is the most extreme example, but there are many others.
- Regulatory decisions such as the expansion of the Rice's whale area, can result in new operating restrictions that significantly reduce the value and marketability of reserves.
- Restrictions on pipeline infrastructure can complicate oil and gas marketing and decrease the value of reserves. How marketable are the 500+ million barrels that remain in the Santa Ynez Unit?
- This approach to financial assurance would require regular updates to both reserve and decommissioning data (see comment 7).

Comment 3: BOEM reiterates that transferor liability applies only to those obligations existing at the time of transfer. Per BOEM, new facilities, or additions to existing facilities, that were not in existence at the time of any lease transfer are not obligations of a predecessor company and are considered obligations of the party that built such new facilities and its co- and successor lessees. **This is a good policy, but is difficult to implement. More specificity or a different approach (proposal follows the comments) is recommended.**

- What if the transferee fails to properly maintain the existing facilities?
- What if the existing facilities are toppled or badly damaged by a hurricane subsequent to the transfer?
- Who is responsible for wells that are sidetracked following the transfer?
- What constitutes "new facilities?" Does that include updated equipment?
- How are the respective liabilities determined and managed?

Comment 4: The "reverse chronological order" provision was withdrawn in April, so there is no defined process for issuing decommissioning orders to predecessor lessees. **Is it good policy to first issue such orders to companies who may have owned the leases decades ago, in some cases prior to the establishment of transferor liability in the 1997 MMS "bonding rule?"**

Comment 5: The proposed rule would clarify that BOEM will not approve the transfer of a lease interest until the transferee complies with all applicable regulations and orders, including the financial assurance requirements. **BOEM needs to firmly enforce this policy.**

Comment 6: The proposed rule would not allow BOEM to rely upon the financial strength of predecessor lessees when determining whether, or how much, supplemental financial assurance should be provided. **This is a good provision, but the reality is that predecessors are the backstops that protect the public from decommissioning costs. (See the "recommended approach" that follows the comments.)**

Comment 7: BOEM proposes to use the P70 probabilistic value to set the amount of any required supplemental financial assurance. **These estimates, as posted at the BSEE Data Center, do not seem sufficiently conservative to protect other parties and the public in the event of default.**

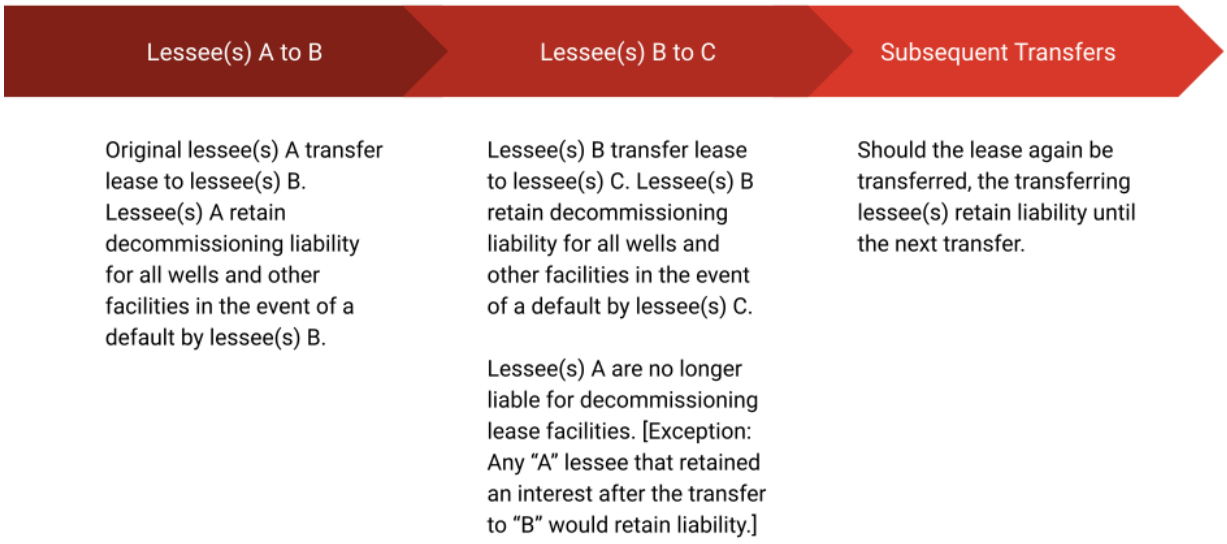
- This is particularly true after storm damage which can increase plugging costs more than tenfold.
- The probabilistic cost estimates were updated in 2020 and are based on data submitted subsequent to 2016 and 2017 NTLs. How often will these estimates be updated?

Comment 8: **The final rule should specify that funds may not be withdrawn from decommissioning accounts for other purposes**, and that BOEM approval is required for such withdrawals.

Recommended financial assurance approach for lease assignments:

1. Before BOEM approves a lease assignment, BSEE should determine whether the new leaseholder(s) are "fit to operate" based on published safety and compliance criteria.

2. New lessees must demonstrate financial assurance in accordance with BOEM requirements pursuant to this rulemaking.
3. Require that the transferor(s) also continue to demonstrate financial assurance until lease ownership is again transferred, after which the original lessees would no longer be financially liable. [Example: Lessee(s) A transfers a lease to lessee(s) B. Both A and B must demonstrate financial assurance. If/when lessee(s) B transfer majority ownership to lessees C, B and C must provide financial assurance, and company A is no longer liable for decommissioning. Exception: companies that maintained an interest in the lease following the transfer from A to B, would continue to be liable following a default by C. See diagram below.]



Discussion:

- **Companies should be fully accountable for their lease assignments, but not for subsequent transfers in which they are not a party.**
- This approach eliminates the ambiguity regarding the responsibility of the predecessor in the event of a default. The immediate predecessor would be fully responsible for decommissioning all wells and facilities including new wells or sidetracks drilled or tied back to existing platforms or subsea systems.

- The liability of the original owner(s) disappears when the lease is subsequently transferred to unrelated companies.
- This approach discourages dumping leases to avoid decommissioning costs, while relieving the original leaseholders of liability when there is a second transfer.
- The companies that made the transfer should be liable if the new lessee(s) default, not companies whose ownership preceded multiple transfers.