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Offshore Petroleum Resource Management Review
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Offshore Petroleum Resources Management Review

Please find attached comments from the Australian Petroleum Production & Exploration Association (APPEA) in relation to the November 2014 Consultation Paper released by the Department of Industry (DoI). As APPEA is currently engaged in discussions with DoI in relation to aspects of the offshore exploration framework, the comments in the attached are largely confined to selected aspects of the Consultation Paper.

We would be pleased to provide further details with respect to the attached. Contact in APPEA is Noel Mullen (email: nmullen@appea.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "David Byers".

David Byers
CHIEF EXECUTIVE

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Offshore Petroleum Resource Management Review – Consultation Paper (November 2014): APPEA Comments

General Comments

Outlined below are comments from the Australian Petroleum Production & Exploration Association (APPEA) in relation to the consultation paper released by the Department of Industry in November 2014 in relation to the Offshore Petroleum Resource Management Review.

Overall, Australia's offshore acreage and resource management system has provided the critical framework for the timely exploration of the nation's petroleum resources, and the subsequent development decisions that have seen Australia become a leader in the global gas market. Since the commencement of production from the Gippsland Basin in the mid-1960's, it is estimated that the industry has made direct taxation payments to the Federal Government of nearly \$200 billion. This is in addition to the reliable and secure supply of competitively priced energy over many decades. It is critical that this not be threatened through unintended consequences arising from changes to the resource management framework that will undermine the operation of the current system.

The resource management regime must continue to be viewed as an integrated regime that seeks to provide a legislative framework that encourages ongoing exploration, development and production activity. APPEA notes that separate discussions have commenced with the Department of Industry (DoI) in terms of possible modifications to aspects of the exploration acreage management system to reflect the risks associated with activities and the modern day commercial framework that influences operations in the industry.

Specific Comments

Precompetitive Data and Acreage Release Strategies (Questions 8-12)

The potential for greater utilization of data to build/acquire regional data sets has already begun to be embraced by Geoscience Australia (GA). This practice could be more strongly supported and guided by industry through increased input to the GA work program.

Consideration to longer term planning for GA's activities, including through guaranteed government funding for longer periods, could be considered and factored into an overall exploration strategy.

Precompetitive partnership programs have been identified previously and close attention should be given to the reasons they did not move to fruition before embarking on a similar path. Observation suggests that the parameters should be very clear, identified benefits set out, and a tender or buy in system to give equal opportunity for industry proponents developed. Any competition and behavioral effects of participation would have to be mitigated up front. The benefits of such a program may very well serve to bring forward key areas of data acquisition and have other parallel benefits (i.e. offsetting the mobilisation and demobilisation of vessels to and from Australian waters).

The current precompetitive program is seen as world class and the flow on effects to acreage release have been clear with grant of permits in recent years in the Great Australian Bight. The Big New Oil program and Enhanced Energy Security program administered by GA produced not only the acreage that was permitted in the Bight, but also other areas such as the Perth Basin and the Otway. As indicated previously, links to precompetitive work could be strengthened via the development of a longer term program of GA work to allow greater information to industry as to areas being targeted and timing of data availability.

There are a range of views held in relation to the appropriateness of acreage release both in terms of the size of parcels and timing of release and closing.

Typical acreage release cycle

Nomination of area (by) July year 1

Selected/proposed (Government) December year 1

Released for bidding April/May year 2

Close for bidding October year 2/ April year 3

Grant of permit March year 3/ October year 3

*note: the above timeframes are given as being broadly indicative. A study of average time taken for areas to reach permit (undertaken by the National Offshore Petroleum Titles Administrator (NOPTA)) would be useful for both the regulator and industry to comment on improvements to the process.

Various suggestions for improvement based on existing information could be:

- if area is an industry nomination, it could be released in the first closing round;
- if the area is under six graticular blocks, it is in the first closing round;

- inclusion of a “frontier” category of acreage release (large number of graticular blocks with no expectation of a well commitment in areas where there has been limited exploration) either under the current legislation, or a modification of same;
- introduction of statutory timelines/guidelines for bid assessment (ie an offer must be made within 30 days of the bid round closing).

Industry is generally supportive of the range of blocks and sizes offered in each release as this enables the full range of industry participants to be involved in the bidding process.

A point that has been identified for improvement is the quality assurance checking of data prior to release by GA. Gaps in the packages of information released that accompany the acreage release diminish the products value.

The development of an exploration strategy to guide longer term activities in Australia has been on the agenda of the Government since the last election. That it has not yet materialised could indicate that the regulatory settings and information flows are considered sufficient to allow informed decision making. However, APPEA sees merit in a thought-through outline of activities of GA, alongside key focus areas of regulatory activity of NOPTA and any significant policy drivers for DoI (specifically Resources Division, Offshore Resources Branch).

Data and Informed decision making (Questions 13-16)

The teething issues associated with the establishment of NOPTA are still washing through the data management arrangements. Industry currently still needs to consult two systems to get a range of data earlier than 2012 (WAPIMS) and post-2013 (NEATS/NOPIMS). Anecdotal advice from members suggests that some data which has become open file since the establishment of NOPTA is still not publicly or readily available.

The current process being worked through by the DoI Offshore Resources Branch relating to changes to work program tenure provisions (The Guidelines) may assist regarding the submission of data associated with changes in technology. For example, some data sets now being acquired (large 3D seismic data) take significant time to be processed once acquired, hence submission of the data to the regulator (within 12 months of acquisition) requires flexibility - either in compliance or in exemption for certain technologies. The changes to the Guidelines will provide some assistance, however the data management sections of the legislation and the regulations could also be reviewed. The decision for any change should be discussed by industry, NOPTA and GA.

There are a range of factors that need to be considered in relation to the setting of confidentiality periods with respect to data. In relation to multi-client seismic (MCS), there

are a range of views held that are largely dependent on the business operations of the relevant entity. MCS can be a cost effective option in a global environment of rising costs, however the perennial issue of 'locking up data' may benefit from a formal review across industry based on recent experiences and international comparisons.

Exploration Permitting Regime (Questions 17-19)

APPEA strongly supports the work being undertaken on the operation of the offshore exploration permitting regime by DoI. The questions raised in this section reflect the issues being considered and by APPEA members working with the DoI on the changes to the Permit Management Guidelines.

The current modifications to the work program bidding and administration of (granted) permits will offer greater flexibility to industry in managing both technological, geological (deeper, more difficult) and economic (global investment etc) environments. Industry and government have worked jointly on these proposed changes to enable operational pressures to be minimised, in addition to streamlining and reducing red tape.

More effective frontier exploration is the goal of all parties. Acquisition and reprocessing of seismic data, whether this be on shorter or more exclusive basis (i.e. under a Special Prospecting Authority), in conjunction with the previously mentioned precompetitive partnership program or as a revamp of the work program bidding and administration of permits with respect to frontier acreage, there are a number of mechanisms the Government could choose to incentivise explorers in the current regime.

APPEA considers that relatively minor adjustments, such as larger frontier permit size, permit length and flexibility in work program commitments should all be considered. Government could also consider whether the current fiscal framework for activity undertaken in frontier areas is appropriate in terms of addressing the risk/reward balance.

Retention Leases (Questions 20-22)

Retention leases were introduced into Australian offshore waters by 1985 amendments to the *Petroleum (Submerged Lands) Act 1967*. The purpose was described as to:

... provide for the granting of retention leases over currently non-commercial discoveries. Retention leases will allow explorers to retain tenure over discoveries until they become commercial and should provide an additional measure of encouragement for companies exploring in deep water or gas prone areas

While the explanatory memorandum did not provide full details for the specific lease design, the intent of the amendments was to provide encouragement for companies exploring in deep water or in gas prone areas. It is clear that the economic difficulties of bringing deeper water or remote oil and gas to market were recognised as requiring longer timeframes to realise returns on exploration and development investments.

In terms of obtaining a retention lease over a discovered resource under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGSA)*, an applicant effectively needs to satisfy NOPTA of the following two conditions:

1. the discovery is not commercially viable at the time of application, and
2. it is likely to be commercially viable within 15 years from when the application is submitted.

The term of retention leases is five (5) years and there is no limit on the number of renewals that can be applied for, as long as these two criteria continue to be met. There remains no clear definition of the term “commercially viable”, although the Retention Lease Guidelines do give some guidance on how the term should be interpreted. The legislation allows for NOPTA to grant a petroleum retention lease subject to whatever conditions that are considered appropriate.

If an application for the renewal of a retention lease is refused because the recovery of the petroleum is found to be commercially viable, the titleholder has 12 months to apply for a production licence. A production licence is issued for the life of the field but the Joint Authority may terminate the licence if no petroleum recovery operations have been carried out (or commenced) for a continuous period of at least five years (but is not obliged to do so). The titleholder can apply for a retention lease within five years of the grant of a production licence or within five years of the cessation of petroleum recovery operations.

Operation of the System

APPEA broadly supports the continuation of the principles that underpin the existing retention lease regime and the framework under which the system is administered. It has positioned Australia to be a leading investment destination for petroleum exploration and global supplier of gas. Importantly, it has allowed Australian gas projects be developed prior to those in many competitor jurisdictions. Without the security of tenure provide under the retention lease system, an inevitable consequence would have been a lower level of exploration. In an environment of lower global oil prices, there is a possibility that already dampened exploration levels in offshore areas could fall even further.

The framework recognises the need for security of title, reflecting the significant risks and costs incurred by the explorer through its initial exploration investment in making a

discovery. On discovery of a field, there are inevitably a range of commercial and geological uncertainties. The retention lease provisions ensure that the lessee actively seeks to address those uncertainties which inhibit the commercialisation of the discovery at that time. It provides a balance with the need to develop resources in a timely manner with the risks, technological and market factors that can make the immediate recovery of resources impractical.

The *OPGGSA* does not allow for uncontrolled retention – it ensures that exploration acreage which may contain potentially commercial exploration targets (and is not retained under a lease) is periodically available for competitive exploration through the normal permit partial relinquishment provisions and the work program bidding system. The *OPGGSA* provides a framework for the assessment of potentially commercial discoveries through the retention lease system, and ultimately the development of such commercial discoveries through production licence mechanisms.

Commerciality Test and Transparency

The discoverer of a resource has the right to apply for and be granted and/or renew a retention lease if the criteria and conditions are met. While there is nothing to preclude the regulatory authority to take into consideration all views and information available in assessing applications to grant or renew retention leases, the rights held by the discoverer are paramount in any decision or assessment and should not be diluted from those that currently exist.

Enhanced transparency and access to certain data and information may remove some of the perceived concerns surrounding the grant and renewal of retention leases. However, it is not appropriate to release to the public or third parties commercially sensitive material and particularly information pertaining to commercial viability. This is particularly important as a number of the parties opposed to the current regime are potential customers and would therefore potentially gain commercial advantage through the provision of confidential information. Grant or renewal information that could be released would be akin to the title work program material available for exploration permits and should be in a standardised form across all jurisdictions for uniformity.

'Cluster' concept

APPEA broadly supports further consideration being given to treating discoveries in different permits as a single project for the purposes of the application of the retention lease provisions. In appropriate circumstances, this approach could allow for the assessment of eligible discoveries on a coordinated basis, reflecting either the interconnected nature of the resources or the need for satellite discoveries to be jointly to improve the overall level

commercial viability of the resources (or to make sub-economic resources commercial). It could alleviate some issues of complexities that currently exist. APPEA recommends further discussions on this aspect of the regime, including the question of possible variations in the length of time for individual retention leases.

Overall, APPEA submits that the retention lease system in Australia continues to serve a critically important role in the exploration for and development of Australia's oil and particularly gas resources. The system currently provides for the appropriate management of Australia's discovered oil and gas resources, giving regulators sufficient powers to ensure that these resources are developed in a timely manner and to the economic benefit of Australians.

Resource Development Decisions (Questions 23-25)

The Consultation Paper raises a number of issues associated with the commercial development of discovered petroleum resources. While the commentary in the paper discusses the potential impact of poorly coordinated infrastructure development (page 27), the issue is framed within an 'ex post' framework. Conversely, complete information is generally only available at the end of the life of a project. That is, complete information (whether geological, technical or economic in nature) will invariably not be available to an applicant or regulator at the time a production licence application is lodged.

The paper makes the following observation:

"History has shown that attempts by Government to dictate development outcomes in a commercial space are rarely, if ever, successful. However, it remains to be seen whether efficient and timely commercial solutions will emerge to bring forward integrated projects involving third-parties.

Comment is sought on whether there are opportunities within the current development frameworks to improve commercially-driven incentives for coordinated and efficient investment in, and access to, offshore infrastructure."

The process for the assessment of production licence applications must avoid introducing uncertainty and non-market based outcomes that will both erode confidence in the decision making framework and the ability of project proponents to make commercially focused decisions in the context of discovered resources.

APPEA considers that the primary role for governments in terms of facilitating efficient outcomes in terms of resource development decisions rests with addressing impediments

and constraints that impact on the project decisions of investors. For example, existing financial impediments to permit or project realignments through the imposition of licence fees/transfer duties or the crystallisation of taxation events where entities seek to realign interests for a joint or coordinated development concept represent real impediments to the efficient development of petroleum resources. APPEA does not support or see the case for government actions that seek to intervene in development decisions post-exploration activities, other than in relation to seeking the timely development of resources and assessing the technical aspects of an application.

While as an aspirational goal, seeking to obtain the 'long-term commercial resource recovery' of resources has merit, such a concept cannot be viewed simply from the perspective of both a final development decision and the existence of complete information. As such, APPEA cannot see a compelling case for change from the current provisions that have operated successfully over a number of decades. Indeed, any greater involvement of governments has the potential to generate greater uncertainty that will be to the overall detriment of the overall resource management system.

Third party access principles

Third party access to upstream facilities generally relates to the ability to gain access to spare capacity of upstream natural gas facilities, such as gathering lines, platforms, processing plants, and storage facilities.

Upstream facilities are designed for specific purposes, which may differ markedly from facility to facility, particularly with respect to the processing of liquids and the removal of contaminants. Considerable redundancy can be built into these facilities to provide for continuity of supply of gas while some processing units are shut-in for maintenance.

Commercial negotiation provides the least cost and most effective method for achieving third party access to upstream facilities and has led already to a number of access arrangements being successfully negotiated. Examination of competition pressures and outcomes in the upstream industry has not revealed evidence of a failure of market forces to operate efficiently with respect to processing of third party gas streams. APPEA has a preference for commercial negotiation to be the first priority in seeking to arrive at mutually agreed arrangements for such third party access.

APPEA has developed a set of high level principles that assist member companies assess access to upstream oil and gas facilities. Specifically, APPEA promotes the following guiding principles for commercial negotiations on third party access to upstream facilities:

- respond in a timely manner to bona fide applications for access consistent with the information and service sought

- grant access on fair and reasonable terms to capacity in excess of that committed for security of supply and reasonably anticipated future requirements
- negotiate in good faith
- honour existing contractual commitments including security and reliability of supply
- provide for continuing safety, efficiency and integrity of the facility
- maintain environmental standards and obligations
- recognise the legitimate business interests and investments of facility owners and access seekers
- recognise that parties are at liberty to inform relevant authorities that access negotiations are in progress

APPEA encourages member companies to use these principles as a guide in the commercial negotiation of third party access arrangements. Market participants may choose to build on these principles by developing more comprehensive and structured arrangements to guide and inform interested access seekers. A market based approach provides both the most efficient and transparent means for determining both third party access and resource development decisions.

APPEA
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