

SHELL, BHP BILLITON, SCOR INSURANCE AND HOLMAN FENWICK WILLAN ADDRESS THE STATUS OF FINANCIAL ASSURANCE REQUIREMENTS FOR DECOMMISSIONING IN THE GOM – ONWARD THROUGH THE FOG



BOEM's recent attempt to increase the financial assurance obligations for decommissioning created substantial burdens for operators struggling in a challenging commodity market. NTL No. 2016-N01 has had many financial impacts, including:

- Requiring all operators to provide supplemental bonding for decommissioning costs, regardless of net worth.
- Eliminating waivers previously allowed for some companies that met financial criteria (NTL No. 2008-N07) and reducing the self-insurance available for decommissioning liabilities from 50% of 'tangible' net worth to 10%.
- Requiring companies to post supplemental assurance to guarantee 100% of decommissioning costs for OCS properties in which they own a working interest.

- Employing more rigorous procedures for evaluating financial capacity, strength, and stability.

BOEM also adopted BSEE revised cost estimates for decommissioning. BSEE's cost estimate methodology assumes that all decommissioning activities are performed on a one off basis rather than as part of a campaign or multi-asset project. BSEE's methodology was at odds with the actual field wide decommissioning activities in the GOM and greatly increased the projected financial burden on operators.

The industry's reaction to the increased financial assurance requirements emphasized various inconsistencies and problems created by NTL No. 2016-N01:

- BOEM's financial strength assessment methodology is inappropriate – one size does not fit all businesses.



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GLENN LEGGE, PARTNER

- BSEE/BOEM decommissioning estimates are not realistic and are contrary to market trends.
- BOEM disregards the Asset Retirement Obligations in a company's audited financial statement by requiring significant supplemental security – double impact.
- BOEM has increased the financial burden on operators to avoid an unlikely risk to US government and taxpayers.

Despite various meetings with industry groups, in which operators and record title interest holders voiced their concern about the new financial assurance obligations, BOEM maintained its timetable for compliance with these new requirements.

For assets with multiple lessees, BOEM instituted a timeline for operators to present a tailored plan to BOEM within 120 days of receiving notification from BOEM that additional security was needed. Full enhanced security must be in place within 360 days, although the BOEM Regional Director has authority to extend these deadlines.

For assets operated by a sole owner, the lessee must provide additional financial assurance within 60 days of receiving a BOEM order to provide additional security. BOEM's Regional Director does not have the discretion to extend the 60 day deadline for sole owners.

At the 2016 Decommissioning and Abandonment Summit, Holman Fenwick Willan attorneys chaired a panel with Mike Celata, BOEM's Regional Director, Jim Christie, Head of Decommissioning

for the UK Oil and Gas Authority and a representative of Stone Energy. The panel discussed numerous issues related to BOEM's new administrative requirements, including the components of a tailored plan. The representatives from BOEM and the UK Oil and Gas Authority stated that they would consider any reasonable financial assurance for decommissioning including the use of suitable insurance. In summary, the panel members indicated the importance of communications between the regulators and industry in creating new methods to secure decommissioning costs.

Throughout 2016, the energy industry spent countless hours and millions of dollars to address the new BOEM financial assurance requirements. Tailored plans for multiple lessee assets were submitted to BOEM for consideration and comment. The surety bond market was insufficient to provide security for the majority of the estimated US\$40 billion in decommissioning liability. Third party guarantees were viewed with some degree of skepticism by BOEM, which was not completely unwarranted in light of recent insolvency proceedings. In summary, NTL No. 2016-N01 created financial burdens and regulatory uncertainty in an offshore energy market that was already faced with commodity challenges.

On 6 January 2017, BOEM announced a six month delay for deadlines on tailored plans and non-sole liability properties. This was followed by BOEM's 17 February 2017 withdrawal of its orders issued to sole liability lessees to "allow time for the new administration to review the complex financial assurance program." These recent announcements leave the offshore energy industry



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questioning the future of these new administrative requirements. Lessees are hopeful that the new administration will vanquish BOEM's enhanced financial requirements for decommissioning security, however, currently there is only a delay in their implementation. In summary, the industry is currently in a state of flux with no clear understanding of the regulatory burden going forward.

The 2017 Decommissioning and Abandonment Summit will present a workshop panel to address the current uncertainty concerning financial assurance obligations. On 14 March 2017, Glenn Legge, a partner with Holman Fenwick Willan, will chair the workshop panel consisting of:

Ruth Carrasquero

Decommissioning and Restoration
Finance Manager
Shell Exploration & Production Company

Atif Janjua

Finance Manager – GOM
BHP Billiton

Caroline Haquet

Underwriter – Offshore and Shipbuilding
SCOR Business Solutions

Ms Carrasquero and Mr Janjua offer the perspectives of major and independent operators in the GOM and their response to BOEM's new administrative measures and the current uncertainty in the market. Ms Haquet, who was formerly a petroleum geologist working with Shell's worldwide offshore assets, is currently developing insurance programs to assist in securing decommissioning obligations. The US and UK offshore regulators have acknowledged the possible use of insurance in financial assurance programs which could provide a cost effective means to lessen the financial burdens on operators in the GOM and North Sea.

The workshop panel will be an interactive session that will encourage questions and participation from the attendees. The current fog of regulatory uncertainty surrounding decommissioning assurance will be addressed, as well as the innovative means available to assist the industry in navigating through these uncertain times. Clients and colleagues of Holman Fenwick Willan can obtain a US\$200 discount to the 2017 Decommissioning and Abandonment Summit in Houston, Texas by using code 'HFW200' during registration.

Holman Fenwick Willan represents domestic and international clients with in the offshore and onshore energy matters. The firm also represents clients in regulatory investigations and compliance issues involving BSEE, BOEM, USCG, NTSB, EPA and the DOJ. The firm's energy practice includes litigation and arbitration of commercial disputes involving offshore energy and facility construction agreements, as well as insurance coverage provided to support these agreements. Our attorneys also assist clients in transactional matters ranging from MSAs to EPC/EPCM contracts. Holman Fenwick Willan is honored to represent domestic and foreign operators, contractors, service companies and vessel operators conducting operations worldwide.



Should you have any questions concerning the current state of regulatory uncertainty facing operators in the GOM or the 2017 Decommissioning and Abandonment Summit, please do not hesitate to contact:

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