



Imperial Oil

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National Energy Board
444 7th Ave SW
Calgary, AB T2P 0X8

Attention: Katie Johnson, Technical Specialist, Economics/Financial Regulations
Manager, Northern Canada

MAIL ROOM
SALLE DE COURIER
2013 OCT 29 A 9:22
NEB/ONE

Re: Draft Financial Viability and Financial Responsibility Guidelines

Imperial Oil Resources (Imperial) appreciates the opportunity to provide comments on the National Energy Board's (NEB or Board) guidelines issued on May 15, 2013.

The attached comments are Imperial's formal submission on the guidelines and a follow-up to Imperial's meeting with Board that was held on October 1st, 2013.

To discuss this matter further please contact Jaimee Evans, Beaufort Exploration Regulatory Lead at (403) 232-5256, or the undersigned, at (403) 237-2615. Thank you for your consideration of our comments.

Yours truly,

Sherry Becker
Beaufort/East Coast Opportunity Manager, Exploration
Imperial Oil Resources Ventures Limited

Imperial's Comments on the NEB FV&FR Guidelines

General Comments and Questions

1. **Financial Viability:** Demonstrating financial viability is a concept that was not included in the NEB's Arctic Offshore Drilling Review (AODR) or the resulting Filing Guidelines. Imperial recommends that the requirement to demonstrate financial viability be removed and focus the guidelines on financial responsibility. The key concerns driving this request include:
 - a. The estimated cost would be very difficult to determine at the Operations Authorization (OA) stage. In many cases, the OA process can be years ahead of initiating drilling and there would be few, if any, contracts awarded at that time.
 - b. If financial viability requirements must remain in the guidelines, then Imperial recommends the following changes:
 - i. The amount required as evidence of financial viability should be capped.
 - ii. An applicant will not necessarily have audited financial statements or carry an investment-grade credit rating. Imperial suggests the following alternatives for demonstrating financial viability:
 1. Use of the parent corporation's audited financials and credit rating.
 2. A guarantee from an affiliate of an entity that meets acceptable financial standards (e.g., AA rating), provided that such affiliate has a net worth of at least five times the amount required as evidence of financial viability (i.e., guarantors with audited financial statements showing substantial tangible assets and net worth but do not carry a standalone credit rating).
2. **Letters of Credit:** The Board should consider waiving the requirements for unfettered funds where the applicant, either directly or indirectly, is able to provide evidence of financial responsibility well above the Board's minimum threshold (e.g., AA or better versus BBB-)
3. **Financial Security Amounts:** The simplicity of the defined amounts approach applied on the East Coast is preferred to the extensive estimating that would be required in the proposed guidelines. Imperial would prefer that the NEB take a similar approach to financial responsibility and create a defined security. The defined security amounts would provide the same level of protection to the public and would be simpler to communicate externally. Imperial suggests that the NEB engage CAPP to determine an appropriate value of security for drilling in an arctic environment. Furthermore, Imperial requests the Board consider a situation where an applicant has multiple authorizations and the requirement for security

amounts. Imperial suggests that a letter of credit only be required for the activity with the highest exposure and not for each individual activity.

4. **Confidentiality:** It is not clear whether the NEB can guarantee that all information related to an applicant's financial viability would remain confidential and not be released externally, even if requested through the courts. The need for the NEB to keep an applicant's financial viability information confidential would be a requirement for Imperial to disclose any such information to the NEB. If the Board's intent concerning the proposed Financial Viability Guidelines is to increase stakeholder confidence in the regulatory approval process, then would that goal be achieved if all submitted financial information be kept confidential? Imperial believes that the defined deposit amount approach would be more transparent and simpler concept to communicate to the public.
5. **Timing of Application:** The requirement to carry a letter of credit and insurance before spudding the well will add cost to a program and would not provide any benefit to local communities. These instruments would tie up the applicant's debt capacity. Imperial requests that the NEB implement a later trigger for providing financial instruments, such as a condition of the OA or well approval (WA). Imperial recommends that the NEB keep the financial responsibility guidelines separate from the OA filing requirements, to allow the submission and review of financial matters to be reviewed separately. Imperial also requests an annual assessment of the letter of credit to allow the value to be appropriate for the nature of activities occurring in that year (ie staging activities would require a fraction of the security required for drilling operations).
6. **Compensation:** Imperial requests that the guideline requirements for calculating the cost of compensation be replaced with a requirement to develop an approved compensation process with potentially affected parties. Such an agreement would outline the agreed to process for determining compensation and not include specific dollar amounts, as it would be difficult to determine amounts in advance of an actual impact. Establishing an agreed to process between the operator and the communities before the start of drilling would allow for timely reconciliation with affected parties and should meet the needs of the NEB. Also, Imperial proposes that the compensation process focus on actual economic loss and not try to put a value on changes to a traditional lifestyle. It would be difficult to determine a monetary value of traditional lifestyle and cultural aspects.
7. **Acknowledgment of Joint Ventures:** The guidelines do not address joint ventures. The operator should not assume liability for joint venture partners. Absolute liability should be allocated amongst the partners based on working interest. Each partner must provide and sign off on individual documentation. Also, the proposed guidelines use both the terms

operator and applicant interchangeably. Imperial proposes that the guidelines use the term "applicant" and create a definition for applicant that acknowledges joint venture partners.

8. **Limit Guidelines to Offshore Exploratory Drilling:** Guideline requirements apply to onshore and offshore activities, as well as seismic operations. The associated risk of these other activities and potential liabilities do not warrant the arduous requirements outlined in the guidelines. In addition, there is the potential for a variety of worst-case scenarios to be provided for onshore activities that could lead to decreased stakeholder confidence and trust of industry.

9. **Alternatives for Demonstrating Financial Responsibility:** Alternative forms of security other than a letter of credit should be an option. Imperial suggests the following alternatives:
 - a. Board reliance on ultimate parent company credit rating and financial strength without a guarantee.
 - b. Proof of insurance, with coverage sufficient to meet financial responsibility requirements.
 - c. Guarantee from an affiliate entity that has sufficient financial resources to meet the obligation.
 - i. Affiliate of parent company meeting AA rating or better and having tangible net worth greater than five times the guaranteed obligation.
 - ii. Guarantor financial strength evidenced by audited financial statement.
 - d. Guarantee from an affiliate entity meeting the minimum credit requirements.
 - e. Surety Bonds in a form and from an issuer acceptable to the Board, acting reasonably.
 - f. Letter of credit issued by a financial institution meeting minimum credit requirements.
 - i. Board's access to unfettered funds should not be a requirement for a highly rated applicant.
 - ii. Issuing banks should not be limited to those domiciled in Canada, and branch access should not be limited to Calgary. Any financial institution meeting the Board's minimum credit rating threshold should be acceptable, regardless of the bank's nationality.

Specific Comments and Questions

The table below summarizes Imperial’s concerns or questions related to specific statements or requirements in the FV &FR Guidelines.

#	Section	Statement	Challenge	Request or Solution
1	1. Purpose of the Guidelines	“the worst case scenario is a severe event with extreme and significant effects and consequences”	<ul style="list-style-type: none"> Under CEAA, the term “significant adverse environmental effects” has a specific meaning with potential review process requirements and decisions. 	<ul style="list-style-type: none"> Clearly state that this is not linked to the CEAA definition of “significant adverse environmental effects”.
2	1: Background	“absolute liability is limited to the prescribed amounts found in the Oil and Gas Spills and Debris Liability Regulations or the Arctic Waters Pollution Prevention Regulations for the Canadian Arctic offshore”	<ul style="list-style-type: none"> A reference to other regulations makes interpretation of the requirements more difficult. 	<ul style="list-style-type: none"> All requirements and definitions regarding liability and limits of liability should be clearly outlined in a single document. The value of absolute liability should be included in these guidelines.
3	3(B)(a): Required Cost Information: Cost of Containing the Incident	“Containing the incident refers to stopping any flow of hydrocarbons into the environment, as well as <u>containing any spill and debris</u> ”	<ul style="list-style-type: none"> The wording “containing any spill and debris” could be construed to mean that a containment dome, booms and other containment methods are required for compliance, which may not be the most effective method of spill response. 	<ul style="list-style-type: none"> Request that all references to “containment” be removed. Replace with “stopping any flow of hydrocarbons and responding to the incident to reduce potential environmental risk”.

#	Section	Statement	Challenge	Request or Solution
4	6: Demonstration of Financial Viability and Financial Responsibility	"ii) Insurance: The Board requires the Operator to hold, at a minimum, spill and pollution insurance" And "each policy names the Board as an insured party"	<ul style="list-style-type: none"> A better description of the purpose of the insurance is required. 	<ul style="list-style-type: none"> Suggest instead, "insurance to cover cleaning up the environment and compensating third parties" and "to the extent of the boards obligations under the guidelines"
5	6: Demonstration of Financial Viability and Financial Responsibility	"If an Applicant proposes to self-insure instead of using third party insurance, the Accountable Officer is required to confirm that sufficient funds are and will be available to address the costs of a worst case scenario."	<ul style="list-style-type: none"> The same rating requirements as third-party insurers should be sufficient. 	<ul style="list-style-type: none"> Change to "meet the same rating requirements as for third-party insurers".
6	Appendix I - CERTIFICATE OF INSURANCE FORM	"Control of Spill insurance"	<ul style="list-style-type: none"> The nature of the insurance requires clarification. 	<ul style="list-style-type: none"> Replace with "Control of Well insurance"
7	Appendix II – CERTIFICATE OF VERIFICATION FORM	"The independent third party must provide verification which contains, at a minimum, the information set out in the form found at Appendix II"	<ul style="list-style-type: none"> Providing the information in Appendix I should be sufficient for the NEB's needs 	<ul style="list-style-type: none"> Delete Appendix II.