

Shell formal comments to the NEB on the Financial Viability and Financial Responsibility Guidelines

Shell has reviewed the *Draft Financial Viability and Financial Responsibility Guidelines* (“Draft Guidelines”) and welcomes the efforts of the National Energy Board to bring clarity to Financial Responsibility requirements for authorized activities in all regions covered by the Canada Oil and Gas Operations Act.

In general, Shell strongly feels that the primary focus of regulators must be on loss prevention through appropriate safety standards for the oil and gas industry. Prevention is paramount to protect the public and the environment. We however fully recognize concerns related to liabilities in case of a major accident in the exploration and production sector, and the interest of the government to obtain certain financial assurance.

Shell supports the principles behind the draft regulations: the “polluter pays” and that operators working in high risk environments must have the technical expertise and financial capacity to manage risks. However, Shell is of the view that the approach taken by Draft Guidelines to obtain this assurance is unnecessarily onerous and complex, does not reflect a number of important practical aspects of how companies manage and finance their risks, may result in significant delays to projects, may raise public concern instead of satisfy it and may ultimately deter companies from proceeding with projects.

As has been seen in other jurisdictions such as the UK, it is possible to craft regulation that delivers the enhanced security that society demands, whilst maintaining the investment attractiveness of the energy sector and competitiveness of industry. A strong regulatory framework must avoid a “one size fits all” approach. Instead it should be exposure based stipulating different requirements for different activities e.g. the exposures arising from onshore activities are significantly lower than those arising from offshore activities. With this in mind, Shell provides the following comments on the Draft Guidelines.

1. The Guidelines should create certainty for potential investors by including an upper limit on the level of Financial Responsibility to be demonstrated. To ensure robust security, in exceptional cases, the regulator can maintain the right to require higher Financial Responsibility.
2. The level of Financial Responsibility to be demonstrated should be adequate to cover a credible worst case scenario for a particular activity i.e a scenario within the realm of reasonable probability. The regulation should make a clear distinction between onshore and offshore activities and consider a standard limit for onshore activities in recognition of the lower exposure and the interest of simplification.
3. Improve consistency amongst applicants, proponent efficiency in preparing information, and NEB efficiency in reviewing information by changing the requirement to estimate detailed compensation costs to third parties. This can be done by using a series of pre-

determined bands, with per occurrence limits, which should be sufficient to cover the vast majority of spill scenarios instead of requiring detailed compensation estimates for each well. An example of this approach is provided in the UK *Guidelines to Assist Licensees in Demonstrating Financial Responsibility to DECC for the consent of Exploration & Appraisal Wells in the UKCS* (the UK Guidelines”).

4. Issue more detailed guidance on how to determine estimated costs to control an incident (e.g. an uncontrolled flow of hydrocarbons from a well) and introduce a simplified banding approach to estimate the costs of reasonable worst case scenarios for different types of activities including different types of wells. A banding approach would provide consistency in the way companies estimate the costs and there would be clarity as to what the NEB may consider a realistic / acceptable cost estimate. The UK Guidelines provide an example of this approach and may be co-created with industry. Shell is initiating dialogue on this topic within CAPP with a view to generating an appropriate banding system relative to these guidelines. We hope that the NEB would formally express interest in such an approach.
5. Remove the consultation requirements regarding the development of the (credible) worst-case scenario and the cost estimates for third party compensation. It would be virtually impossible to ensure any consistency in the way companies estimate such exposure or for the regulator to verify such estimates. This could lead to lengthy debates and significant delays of activities. Furthermore, public consultation regarding such matters may lead to unnecessary public alarm regarding the worst case scenario, may result in unrealistic expectations regarding compensation, and may also create concerns/debates over the appropriateness of what has been developed or estimated. Further, no guidance is provided regarding the consultation requirement (who, what, when), which may result in a misalignment between proponent, NEB and public expectations in this regard. The banding approach to third party compensation as per #3 is recommended.
6. Require each Joint Venture partner to demonstrate sufficient Financial Responsibility (FR) to cover its share of the estimated costs or alternatively allow the Operator to demonstrate FR for 100% of the estimated costs by collating evidence of FR from each joint venture partner for their share of the risk adding up to 100%. Requiring the Operator alone to be solely responsible for demonstrating Financial Responsibility for 100% of the estimated cost without being able to do this by collating demonstration of FR from each venture partner may create a disincentive and would completely ignore established practices in how oil & gas companies manage and finance their risks. This would lead to additional unnecessary costs making investments in the area less attractive.
7. Recognise that pre-funding potential liabilities for low probability events locks up significant amounts of capital that could be otherwise usefully employed, for example for investment or other projects. As worded, the guidelines could be interpreted as

requiring unfettered access to funds potentially in excess of several hundred million dollars. For some operators this would be prohibitive, and may cause companies to invest their capital elsewhere in jurisdictions where such a requirement does not exist. Moreover it may be even more onerous than the proposed requirement in the Atlantic Accord Acts which stipulates unfettered access to USD 100mln.

8. The guidelines should provide greater flexibility in respect of the mechanism acceptable to demonstrate adequate FR. In addition to insurance companies must be allowed to use other financial instruments and have the flexibility to rely on its balance sheet or provide a parent company undertaking . The security of these instruments can be ensured by reference to financial strength rating similar to what is being proposed for insurance. Such flexibility is important to maintaining the efficient use of capital and enabling greater investment from companies with strong balance sheets.
9. The Accountable Officer should not be required to “sign off on the credible worst case scenario cost estimates and verify the accuracy of the information filed with the Board in accordance with these Guidelines” as this is information requires technical expertise to verify. The Accountable Officer may only confirm that the company is aware of the Guidelines and has followed the Guidelines in preparing its submission.
10. Timing when adequate FR has to be submitted: There must be flexibility to provide evidence of adequate FR closer to the time a particular activity is undertaken. For exploration wells in particular insurance may not be arranged until a few weeks before the activity is scheduled to start.
11. Finally, uniformity of regulations across all jurisdictions in Canada is important so that companies operating in multiple jurisdictions are not subject to duplicate Financial Responsibility requirements. Multiple requirements decreases efficiency for business, increases uncertainty for investors and reduces investment attractiveness.

Taken together, Shell believes that these suggestions would enhance the guidelines, drive positive safety behaviors, lead to greater clarity for Operators, more security for investors, and greater assurance to the public that financial security is in place to deal with the consequences of an incident. Shell also supports the CAPP comments on the proposed guidelines.

Shell remains committed to dedicating significant time and resources to accident prevention, intervention and oil spill response and will continue to work both international and national levels to further improving already robust processes and procedures to lessen the risk of any accidents occurring.