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Date: 10/11/08

Mr Philip Weickhardt
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Australia Productivity Commission
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Dear Mr Weickhardt

In response to your Issues Paper, I will provide a submission on Regulatory Burden on the Upstream Petroleum Sector to the Productivity Commission. This submission reflects the position of the South Australian Government and has been the subject of much consideration.

I would like to commend the Commission in its dialogues with key Government people in its review, particularly staff within Primary Industries and Resources South Australia (PIRSA), who administer the relevant legislation in this state. The reduction of red tape is a focus of the South Australian Government so your review complements our endeavours to minimise regulatory burden.

Should you have any queries on this matter please contact Mr Barry Goldstein, Director Petroleum and Geothermal on 08 8463 3200.

Yours sincerely

Paul Holloway

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Leader of the Government in the Legislative Council
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Submission to the Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector

From:

Primary Industries & Resources – South Australia
PIRSA

15 August 2008

Introduction

- The Productivity Commission has met with personnel from South Australia's regulator for the upstream petroleum sector, PIRSA's Petroleum and Geothermal Group along with staff from South Australia's Department of Premier & Cabinet and Department of Transport, Infrastructure and Energy, which is the State's lead agency for downstream energy matters. This submission largely articulates the points made in these meetings.

General Comments

- Above all, a one-stop-shop approach to the grant of land access and activity approvals enables co-regulators to do their jobs in parallel, rather than in series. This fosters efficiency without reducing stringent standards for ecologic, social, heritage and economic outcomes. (Goldstein, et al, 2007)
- Transparent, objective-based criteria ought to be the foundation for land access and activity approvals, and wheresoever feasible, co-regulatory approval processes (which may, for example, involve local, State and Federal requirements) ought to be aligned to preclude redundant requirements.
- Guidelines for, and adherence to best practice consultation processes can foster efficiency without reducing stringent standards.
- Agencies with a role in land access and activity approval processes ought to be sufficiently resourced to have capacity to administer its roles effectively within reasonable timeframes.
- Harmonising legislation between States, the NT and the Commonwealth remains a high priority – with the proviso that harmonisation does not result in retrograde legislation / regulations.
- To have a realistic chance to implement reforms to improve efficiency in the co-regulation of the upstream petroleum sector, agreement will need be reached between key Ministerial Councils, including but not limited to: Minerals and Petroleum Resources; Energy; and Environmental Protection, Heritage and Conservation.
- A framework for 'rethinking regulation' to reduce regulatory burdens may be focussed on one or all of the following areas:
    - Removing co-regulatory inefficiency and administrative burdens (i.e. higher than necessary costs in achieving regulatory objectives),
    - Reconsidering and potentially narrowing regulatory scope (the regulatory objective is not appropriate or it is not an appropriate area for government regulation),
    - Reducing regulatory complexity (where regulations attempt to address all possible circumstances, or the body of regulation includes references to multiple separate standards – leading to increased compliance costs and reducing people's tendency to comply voluntarily), and
    - Revising the degree of regulatory stringency (the cost/benefit of regulatory standards versus social welfare).

    (Deighton-Smith, 2008).

- Any review on efficiency or red tape overburden of Regulation needs to address the following questions:

  Removing regulatory inefficiency and administrative burdens:
  - Can existing regulations be improved to be more efficient in delivering required outcomes?
  - Is their scope to enhance 'one window into government' for stakeholders?

  Reconsidering and potentially narrowing regulatory scope:
  - Which 'market failure(s)' are we addressing with these regulations?
  - Are there alternatives to regulation to address these 'market failure(s)'?
  - To avoid overlapping or creation of unnecessary new regulations, are there existing regulations that can address 'market failure(s)'?

  Reducing regulatory complexity:
  - Where there are existing regulations, can they be improved to be made more efficient to deliver the required outcome?

  Revising the degree of regulatory stringency:
  - Are penalties for non-compliance appropriate?

  Finally, through this process, superfluous regulation and regulatory requirements can be identified and removed. The legislation governing onshore petroleum exploration and production in South Australia was reviewed through an extensive process of industry and public stakeholder consultation from 1996 - 2000.

- Many of the above questions were posed and answered during this rigorous review process, which led to the proclamation of the *Petroleum Act 2000* and the promulgation of the *Petroleum Regulations 2000* on the 25 September 2000. The main drivers behind the need for the new Act were:

  - changing attitudes and expectations of the community at large, in particular to environmental issues - these changing expectations called for legislation which can address environmental and heritage issues more openly and transparently than the previous Act
  - competition policy reform facing the industry required exposing the industry to greater competition, e.g. smaller blocks, shorter license terms and access to prospective areas to more licensees
  - the need for regulations to be more receptive to changing and improving technology by focusing on the achievement of objectives rather than prescribing what needs to be done.

  To address these issues the *Petroleum Act 2000* was developed through embracing six key principles of certainty, openness, transparency, flexibility, practicality and efficiency.

- This process ensured that the *Petroleum Act 2000* was appropriately designed and currently provides objective based legislation to drive efficient and effective co-regulation for the upstream petroleum sector in South Australia.
- An addition to the Act and Regulations, clear cut guidelines and policies are provided to assist industry decision makers ensure compliance. P&GG also utilises a publically

available 'Compliance Pyramid' to manage the appropriateness and degree of stringency of penalties for non-compliances.

- P&GG contends that the South Australian *Petroleum Act 2000* is best practice and is the best Australian legislative regime for the upstream Petroleum sector. This has been backed up by consistently high results compared to other jurisdictions in surveys of the Australian 'oil patch' seeking feedback on regulatory and promotional performance (Morton, 1996; 2000; 2001; Alexander and Cotton, 2005) and more recent anecdotal evidence from individual explorers and APPEA. In particular, positive feedback has been received for acreage management (efficiency, transparency, successful outcomes, free market operating etc.) and Statement of Environmental Objectives process for environmental management (good business practice, risk assessment, transparency, consultation etc.).
- South Australia has also been consistently commended for its handling of Native Title and Indigenous Lands negotiations as a precursor to granting of petroleum titles. The negotiation of conjunctive agreements in the Cooper Basin in 2000 and the public release of these agreements provided a basic template for all future agreements in the State. P&GG contends that the South Australian approach to these matters is best in class.
- This principle of taking a common approach to indigenous in land access negotiations is extended to all stakeholders in South Australia. Guidelines have been prepared under the *Petroleum Act 2000* and the *Mining Act 1971* which focus on identifying stakeholder objectives through a consultative, transparent and open fashion, in line with the MCMPR Principles for Engagement with Communities and Stakeholders. Enshrining these principles in a statutory, or at least semi-regulatory (i.e. guidelines), way provides consistency of approach which is of benefit to industry, community and regulators and should cover all types of land tenure.
- That said, P&GG is open to suggestions as to learn how this legislative regime can be improved. Continuous improvement of this legislation will be sought to ensure it remains evergreen and recognized as best practice for petroleum and geothermal regulation in Australia. Amendments to the *Petroleum Act 2000,* are well advanced in this context and are expected to be considered in Parliament later in 2008. P&GG remains open to proposals offering further improvements to efficiency and effectiveness.

- The SA Government has, and plans to continue to provide tangible support to encourage upstream exploration investment with:
  - World-class, efficient and effective investment and regulatory frameworks, including a 'one-stop-shop' approach to project facilitation and approvals;
  - Nation-leading processes for expeditious land access;
  - Pre-competitive research to reduce critical uncertainties that otherwise impede investment,
  - Enabling data consolidation, formatting and delivery;
  - Marketing of exploration opportunities;
  - Funding upstream minerals and petroleum focused Chairs at the University of Adelaide, including the State Chair in Petroleum Geology;

- Support for University research to reduce critical uncertainties that can act as impediments to exploration and development investment;
- Initiatives to facilitate exploration such as our Targeted Exploration Initiative – South Australia (TEISA) and our Plan to Accelerate Exploration (PACE) programs; and
- Efficient and effective stewardship and provision of critical industry data remains a very high priority of the SA government.

- Red Tape reduction in South Australia is expected to flow from:
  - Amendments to the *Petroleum Act 2000;*
  - Memoranda of Understandings and Administrative Agreements with State Government agencies (such as Environment Protection Agency, Safe Work SA, Department for Environment and Heritage, Department of Water Land and Biodiversity Conservation) provide for efficient and effective for co-regulation for assessments and approvals – i.e. 'one window into government' for stakeholders;
  - Published guidelines to improve the rate of acceptable lodgement of data by companies;
  - Provision of critical data to potential explorers and new licensees in digital format which is fit for purpose; and
  - Minimising of unnecessary duplication of licensing for major hazardous facilities (MHF) administered under the *Petroleum Act 2000* will be ensured by management through either Statement of Environmental Objectives process for non-MHF facilities, e.g. satellite stations, well testing equipment etc, and through an Memorandum Of Understanding for MHF facilities (e.g. the Moomba Plant), where the *Dangerous Substances and Major Hazardous Facilities Bill* would apply.

Petroleum Regulation and the Environmental Protection and Biodiversity Conservation Act 1999

The South Australian Government conducts a very rigorous assessment of the social, environmental, cultural and economic impacts of all mining proposals in South Australia. Proponents are required to satisfy the relevant South Australian authorities that all State legislative requirements will be met and that they are able to address and minimise any environmental risks that are associated with the proposal.

South Australia recognises that the Australian Government has responsibilities when proposals may involve matters of national environmental significance. South Australian Government agencies with responsibilities for mining matters have endeavoured to work collaboratively and cooperatively with Australian Government agencies, in order to provide clarity in assessment and regulation of resource industry proposals.

In order to provide this clarity, both jurisdictions have successfully endeavoured to develop a single set of guidelines for developing assessment documents that satisfy the

requirement of both jurisdictions. This has allowed proponents to develop a single set of assessment documents that satisfy the requirements of both jurisdictions.

Although each jurisdiction then conducts an assessment of the documentation, efforts have been made to ensure that assessments are conducted in parallel and that each jurisdiction follows the same schedule for assessment. This has been found to be particularly important when consulting with the community on proposals.

South Australia recognises that the Australian Government has both the right and the duty to assess and regulate certain activities and does not seek to act as an agent of the Australian Government by taking these actions. Rather, South Australia wishes to ensure that its regulatory regime is consistent with Australian Government requirements and hence eliminate the duplication of regulatory documentation.

To date, assessment of mineral related process has been conducted on a case by case basis as there have been few such assessments required to date.

In offshore petroleum exploration, the Minister for Mineral Resources Development is the Designated Authority for the *Offshore Petroleum Act 2006* (previously the *Petroleum (Submerged Lands) Act 1967*). There are stringent requirements under this act for environmental management. Referrals to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC ACT) are regularly done by exploration proponents. Substantive work has been done over many years to finalise a strategic assessment for exploratory relative to the EPBC ACT. In addition, there has been extensive work done to prepare a revised set of guidelines for interaction between seismic exploration and whales (EPBC Act Policy Statement 2.1). Both these instruments have been the subject of a very large amount of scientific input and community and industry engagement. Even so, recent proposals have been subject to additional requirements in referral decisions under the EPBC ACT which precipitates a sovereign risk to explorers, in a global market that is already very highly competitive.

It is considered important that the focus of streamlining efforts be the development of a bi-lateral agreement under Section 45 of the Commonwealth EPBC ACT between the Australian Government and the South Australian Government that accredited the assessment processes under in South Australia's *Development Act 1993*. This bi-lateral agreement was signed by the Commonwealth in March 2008 and by South Australia in July 2008. A similar bi-lateral approach should be considered for the *Offshore Petroleum Act 2006*.

National Regulatory Authority

The National Offshore Petroleum Safety Authority provides a clear and consistent approach to offshore petroleum safety regulation. However, it is noted that this authority does not have jurisdiction over geophysical activities, such as seismic surveying. In many cases, seismic programs are undertaken as a sequence of projects that can occur in waters off multiple states (e.g. the Otway Basin, adjacent SA, Vic and Tas). In these cases, the Designated Authority/local authority from each state must consider the safety arrangements to their own satisfaction with reference to safety federal bodies (not NOPSA). As seismic and other geophysical vessels routinely work throughout Australian waters, a similar national approach to these activities would

reduce regulatory complexity.

Each State Designated Authority is required to undertake assessment and approval of all offshore petroleum operations. Many of the agencies/staff involved in these processes are also involved in similar processes onshore. Each State has aligned its approach to onshore petroleum regulation to reflect its particular spectrum of petroleum resource prospectivity and stakeholders' concerns. Each State also has its own framework of legislation and interrelationship of petroleum legislation with other legislation. Therefore, it would be difficult to come up with a single national regulatory framework for onshore operations that would satisfy each State/Territory Government.

The offshore (Commonwealth waters) regime provides a basis for a consistent approach by the Designated Authorities, but industry has observed different 'flavours' in their approach to the administration of the offshore regime.

The frequency of activity administered by different Designated Authorities can affect the efficiency of administration. For some states, these is a very large amount of offshore activity, so offshore assessments and approvals are a daily or very commonly held activity for the regulator. In other states, offshore proposals may be much more infrequent (e.g. in SA seismic surveying occurs once every year or so and drilling once every 5 years or so). Hence knowledge of 'offshore' procedures may need to be refreshed by Designated Authority personnel every time a new proposal occurs.

There have been major efforts undertaken to provide a more consistent and efficient approach to these processes, such as:

- Regular audits of procedures and documentation of Designated Authorities by the Commonwealth agency;
- Regular meetings of petroleum registrars to openly discuss matters of common interest in permitting;
- Regular meetings of the Environmental Assessors Forum, to openly discuss matters of common interest in application of environmental regulation; and
- Development of national guidelines for submission of technical data.

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