COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OVERSIGHT HEARING

1324 LONGWORTH HOUSE OFFICE BUILDING

JULY 27, 2023

10:00 AM

"Safeguarding American Jobs and Economic Growth: Examining the Future of the Offshore Leasing Program"

Questions from Rep. Wesley Hunt for Mr. Minarovic, CEO, Arena Energy.

1. **Mr. Minarovic, how will the *Risk Management and Financial Assurance for OCS Lease and Grant Obligations Proposed Rule* crush small and independent oil and gas companies like Arena Energy?**

Mr. Minarovic:

The Risk Management and Financial Assurance for OCS Lease and Grant Obligation Proposed Rule (the "Proposed Rule"), if implemented, would have a devastating effect on Arena Energy and many similarly situated independent oil and gas companies and small businesses operating in the Gulf of Mexico. While not household names, independents were responsible for approximately 35% of the total Outer Continental Shelf oil and natural gas production in 2022.

The Proposed Rule would:

- Result in a decrease of oil and gas production in the Gulf of Mexico
- Destroy high-paying jobs
- Decrease revenue paid to the U.S. Treasury
- Decrease the country's energy and national security at time where geopolitical events are driving up energy costs
- Increase overall emissions due to the fact that the production in the Gulf of Mexico is produced with a substantially lower emissions footprint than oil we would import to replace the drop in Gulf production
- Reduce competition in the offshore oil and gas industry, potentially leading to higher energy prices
- Weaken an already tenuous supply chain that supports the offshore oil and gas industry.

The Proposed Rule would accomplish these devastating consequences by requiring that offshore lessees post an addition $9.2 billion of bonds to cover decommissioning liability at an annual cost of $327 million. Based on our discussions with the international surety market, there is no market for an additional $9.2 billion in bonds. Without the bonds, the Department of Interior would be entitled to deny our operating permit, effectively shutting down our offshore operations. The surety market has absorbed significant losses over the last several years and it is difficult to obtain and maintain the approximately $3 billion of bonds that have been issued to the industry. The Proposed Rule itself admits nearly all these disastrous consequences. The Proposed Rule concluded that the rule would have a "significant effect on the supply, distribution and use of energy" and that the rule may "adversely affect in a material way the productivity, competition, or prices in the energy sector."[1]

While the Proposed Rule acknowledged these far-reaching consequences, the Proposed Rule did not conduct the required cost-benefit analysis of the regulation. The Proposed Rule did not attempt to quantify or weigh these consequences against the benefit of the Proposed Rule. However, a leading business advisory firm, Opportune LLP, recently published a cost-benefit analysis on the Proposed Rule.[2] According to the report, the Proposed Rule, if implemented, would, over a 10-year time frame:

- Result in a decrease in production of approximately 55 million barrels of oil equivalent from the Gulf of Mexico
- Destroy 36,000 high paying jobs from mostly disadvantage areas along the Gulf South
- Remove $573 million in royalties that would otherwise be paid to the U.S. Treasury
- Cause a decline in Gross Domestic Product (GDP), particularly in the Gulf Coast states) of as much as $9.9 billion.

In addition to these more easily quantifiable consequences, the reduced domestic production will threaten the country's energy and national security at a time when we have seen oil and gas used as a geopolitical weapon by Russia. Indeed, Daniel Yergin, the renowned oil and gas analysist, recently pointed out to the Financial Times that "Vladimir Putin is also the CEO of Russia Oil Inc and he understands the dynamics of the market very well."[3] The same article noted that market watchers are also concerned that Russia could chose to weaponize its oil exports next year to try to influence the U.S. election. The decrease in domestic production will make the country more vulnerable to extreme price spikes based on geopolitical events, especially with the Strategic Petroleum Reserve depleted.

As I noted in my oral and written testimony, oil demand will continue to rise for decades to come. The shortfall of production from the Gulf of Mexico will have to be imported from countries like Iran or Venezuela, countries who have proven to be unreliable energy partners.

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[1] 88 Fed. Reg. 42136, 42168.
[2] The Report is attached hereto as Exhibit A.
[3] *Rising Petrol Prices Spark New Concern in Washington*, The Financial Times, August 5, 2023.

In short, BOEM's rule relies entirely on the surety industry as a "solution" to a massively overstated problem—i.e., taxpayer exposure to these liabilities—and the surety market has responded that BOEM's "solution" will not work. Proposing a rule with a solution that is irrational and unworkable—and unjustifiably harms small business—is not in the best interests of the government, the industry, or taxpayers.

2. **Mr. Minarovic, I know there has been some discussion previously about offshore bankruptcies as a justification for BOEM's new financial assurance requirements. Has the taxpayer had any exposure to those recent bankruptcies?**

Mr. Minarovic:

As noted in the Proposed Rule, since 2009, there have been more than 30 bankruptcies in the offshore oil and gas industry. However, the taxpayer has borne only a small fraction of the decommissioning liability. We understand that, through response to written questions made by this Subcommittee, the Bureau of Ocean Energy Management (BOEM) has stated that a total of $58 million of liability has been absorbed by the taxpayer. While the taxpayer should not be responsible for any decommissioning liability, this is an infinitesimal amount of liability given the 75 history of offshore production and in light of the hundreds of billions of dollars paid to the U.S. Treasury in the form of royalties, bonuses and rentals.

The Proposed Rule admits that the instances when liability falls to the taxpayer are "rare".[4] And the Proposed Rule explains this apparent paradox of there being a large number of bankruptcies in the industry with little liability going to the taxpayer by pointing to the fact that all current lessee and all former lessee are jointly and severally liable to perform and pay for the decommissioning that accrued during either before or during their ownership.[5] The joint and several liability regime has been around since the enactment of the Outer Continental Shelf Lands Act in 1953. The regime has effectively shielded taxpayers from decommissioning liability for decades.

A recent bankruptcy is perhaps the best example of how the taxpayer is protected under the joint and several liability framework. In 2020, the industry experienced the largest bankruptcy in the history of the offshore oil and gas industry when Fieldwood Energy filed for bankruptcy. According to the claims filed by the government in the case, Fieldwood had over $7 billion in decommissioning liability. Relying on the joint and several liability regime, the government issued decommissioning orders to all current co-owners and predecessors and the predecessors are currently rapidly performing the decommissioning of the properties abandoned by Fieldwood in the bankruptcy. The taxpayer absorbed no liability in the case.

Despite the resounding success of the joint and several liability regime in protecting the taxpayer, the Proposed Rule ignores the fact that there may be creditworthy predecessors in the chain of title

[4] 88 Fed. Reg. at 42141.
[5] *Id.*

in determining whether the current owner will be required to post supplemental bonds. Just a few years ago, in 2020, BOEM and its sister agency, the Bureau of Safety and Enforcement, introduced a proposed rule that concluded that supplemental bonding would not be required if there was at least one creditworthy predecessor or co-owner.[6] Supplemental bonding would be required by the 2020 rule if there was not a creditworthy co-owner or predecessor. While the 2020 proposed rule was never finalized, the rule would have achieved the simultaneous goals of protecting the taxpayer from exposure to decommissioning liability while, at the same time, not cause the deleterious impacts that will ensue if this Proposed Rule is finalized without significant changes.

Instead of protecting major oil and gas companies by ignoring security already in place and re-trading private, commercial transactions between buyers and sellers, any bonding framework must recognize the joint and several liability of all current and former owners for decommissioning as a fundamental and grounding principle, which would be consistent with BOEM's actual practice and the stated intent of the Proposed Rule to protect taxpayers from exposure to these liabilities.

[6] See 85 Fed. Reg. 65904 (October 16, 2020).