

27th July 2012

The Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.

File: Gov't/CER

Attn: Ms. Róisín Cullinan

Re: Consultation Paper on the Annual Petroleum Safety Levy Order (ref CER/12/091)

Dear Ms. Cullinan,

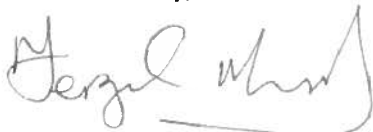
We have reviewed the above referenced Consultation Paper and our comments are included in the completed questionnaire, attached. These reflect the views of PSE Kinsale Energy Limited and PSE Seven Heads Limited.

We would also like to emphasise the following points:

1. We do not agree with the proposal to recover the entire set-up costs incurred by the Commission as a levy on petroleum authorisation holders. We are not aware that this has been the case for any other State regulatory agencies (e.g. HSA, EPA), although such agencies do recover ongoing licencing costs.
2. The proposal (ref 1.1.3.2) to recover the initial set-up costs by 2016 appears to place a disproportionate burden on existing authorisation holders (or those who may become liable by 2016). If such costs are to be recovered, the basis should be changed to reflect a resource based methodology or a longer recovery period or both.
3. The level of costs indicated in the Paper (ref 1.1.3.2) appear to be very high and it is not clear on what basis these estimates have been prepared. More detailed cost analysis and projections should be provided.

We will be happy to elaborate on these points at our meeting in the week of August 13th.

Yours sincerely,



F.G. Murphy
Chief Executive Officer

Appendix A – Consultation Questions

The aim of this Appendix is to allow for a “short-cut” option for respondents to submit their comments to the CER.

Please note respondents are in no way obliged to respond to the questionnaire provided and are welcome to submit comments in their preferred format. However when preparing responses respondents should indicate which section or proposal their text refers to.

**Responses from PSE Kinsale Energy Limited and PSE Seven Heads
 Limited to CER Consultation Paper CER /12/091
 Submitted: Aug. 1st 2012**

	Comments
<p>1. Respondents are requested to comment on the proposed evaluation criteria and to propose additional criteria (with associated rationale) if necessary.</p>	<p>Additional Criteria should include: A. Transparency: all costs should be clearly identified and broken down by category e.g.: -assessment costs -inspection costs -overhead costs (including corporate functions, IT etc. etc.) B. Cost effectiveness: cost performance metrics should be established and benchmarked against other Irish and international agencies.</p>
<p>2. The CER requests respondent's views on applying the levy to all petroleum undertakings, as defined under the Act.</p>	<p>The application of ongoing costs should in general be proportionate to the regulatory burden associated with each authorisation. The intention to charge "non-burdensome" authorisation holders (e.g. prospecting licencees or lease option holders) on a minimal flat-fee basis (ref section 4.2) may not be appropriate (they have no interaction with PSF) and may not be cost effective.</p>
<p>3. Are there any other cost recovery arrangements that the CER should consider?</p>	<p>A mechanism combining the following elements should be considered: A. flat fee for all (non-exempted) authorisation holders (may be scaled by type)</p>

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	Comments
	<p>B. “remaining resource” charge which would reflect the size/scale of the resource being regulated and spread costs over the expected life of the operation (would not apply to well authorisations)</p> <p>C. a “fee for service” charge to reflect actual work done (e.g. SC assessment, audits, inspections)</p>
<p>4. The CER requests respondent's views on aligning the levy development with the Australian levy system.</p>	<p>We understand that in Australia NOPSEMA was regulating c.31 Operators and 208 facilities in 2010-11 (ref: NOPSEMA website) and the system of charging reflects the relative complexity and scale of the Australian offshore Industry.</p> <p>However, the basic levy mechanism applied by NOPSEMA (ref. Safety Case Levies, Doc N-11000-GL0238, Rev 17), could not be applied in Ireland due to the lack of existing facilities, therefore a different levy mechanism would have to be developed.</p> <p>It would be helpful if CER could publish examples of how the NOPSEMA charges would be applied in an Irish context</p>
<p>5. The CER requests respondent's views on a minimum annual levy charge.</p>	<p>As proposed in Q3 above we believe a minimum annual levy charge (flat-fee) should form part of the overall levy structure (see also Q6 below)</p>

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<p>6</p> <p>The CER requests respondent's views the authorisation types for which the minimal charge is proposed to apply.</p>	<p>We do not agree with CER's proposal that the minimal charge should apply to all parties and suggest that consideration be given to exempting the following from any fee:</p> <ul style="list-style-type: none"> -petroleum prospecting licensees -lease option holders -exploration licence option holders
<p>7.</p> <p>Respondents are requested to comments and/or state their preference for:</p> <p><u>Option 1:</u> All costs (set up and annual operational costs) will be recovered via a single methodology (e.g. proposed alignment with Australian system); or</p> <p><u>Option 2:</u> Separate methodologies – The operational costs will be recovered via one methodology (e.g. proposed alignment with Australian system) and the Framework set up costs will be recovered via a different methodology (e.g. years remaining on a petroleum authorisation or reservoir capacity remaining)</p>	<p>Kinsale Energy do not agree with the principle of recovering PSF set-up costs and question the basis on which such costs are being proposed for recovery. This has not been done in any other jurisdiction globally nor, as far as we are aware, has it been done before in Ireland with respect to other regulatory agencies/frameworks e.g. HSA or EPA.</p> <p>Nevertheless, Kinsale Energy would make the following points regarding the CER's proposals to recover set up costs:</p> <ul style="list-style-type: none"> -the recovery period outlined in 1.1.3.2 implies that the entire set-up cost of €5.7m (which has not been verified) must be recovered by 2016, yet the operational lifetime of the PSF may be many decades. If set-up costs are to be recovered,

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this should be over a much longer time period, commensurate with the expected duration of the petroleum licensing regime

-we do not believe it is appropriate to tie the industry to a loan repayment schedule which was negotiated between CER and NTMA – this is an internal financing issue for CER and should not influence the cost recovery philosophy.

-as outlined, it would also appear that new authorisation holders (after 2016), would escape being charged for any of the PSF set-up costs, even though they would be regulated under it. This is patently inequitable.

-the level of set-up costs quoted (€5.7m) has not been verified, but it is difficult to understand how such costs could have arisen. The average hourly cost per regulatory hour in 2010-11 quoted by NOPSEMA is AUSD\$215/hr. (ref Review of Cost Recovery Arrangements Jan 2008 – June 2012) – this is equivalent to c. €180/hr; at this rate an expenditure of €5.7 m equates to c. 32,000 man-hours. No supporting information has been provided to demonstrate that this level of resource usage is appropriate.

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8. In relation to Option 2, respondents are requested to comment on their preferred approach to how the PSF set up costs should be recovered, and/or to propose additional alternative approaches if necessary.
- As stated above, Kinsale Energy do not agree with the principle or the level of costs which the CER seek to recover. However, if some level of set-up costs does fall to be recovered from the industry, this should be clearly ring-fenced and recovered on a long-term basis, commensurate with the life of the PSF. A logical transparent and equitable way to do this would be on the basis of the remaining reserves associated with current and future developments.
- DCENR have estimated the potential resource base of the Irish offshore to be 10 billion barrels (oil equivalent). On the assumption that the associated reserve base would be recovered over the lifetime of the PSF, existing and future Lease holders could make a contribution to the PSF set up costs in the proportion of their reserves (as per approved POD) to that total.
9. Respondents are requested to comment on the proposed ongoing operation of the annual levy.
- The basis for the annual levy, once established, should be closely monitored and reported in a transparent way. We note that the NOPSEMA regime provides a transparent basis for cost management and reporting, which should be followed by CER – this includes:

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- Publication of forward looking Impact Statements showing proposed levels of expenditure
- Publication of annual cost reports
- Detailed cost and manhour allocations published
- regular feedback sessions with Industry
- performance metrics established and reviewed

Kinsale Energy also reiterate that in the interests of containing costs and reflecting the small scale of the industry here, the use of other state resources e.g. HSA, should be maximised as an alternative to use of external consultants

We would also note that once the PSF has been implemented and the initial Safety Cases approved (1-2 years?), the level of activity is likely to fall and the annual operating costs should reduce accordingly.