



Irish Offshore
Operators'
Association

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Ms. Róisín Cullinan
Petroleum Safety Technical Analyst
Commission for Energy Regulation,
The Exchange □
Belgard Square North □
Tallaght,
Dublin 24

CER DECISION PAPER CER/12/176: Petroleum Safety Levy Methodology

Dear Róisín,

IOOA has reviewed the recently published Decision Paper and has a number of detailed responses as given below.

At the outset, we wish to state that we are disappointed and concerned that the key points raised in our letter of Aug 8th 2012 in response to the initial consultation do not appear to have been either recognised or addressed. As stated in our previous letter, IOOA supports the intent of the PSF, but we are becoming increasingly alarmed that the associated costs appear to be disproportionate to the outcome and that the charging mechanisms proposed will be grossly unfair to the industry as presently constituted.

Our comments in relation to your latest paper are given below.

Recovery of Establishment Costs:

As stated in our letter of Aug. 8th 2012, the industry requires a full, transparent breakdown of the Establishment Costs prior to paying the levy.

We further note that a methodology for recovery of Establishment Costs (estimated at €5.7m) based on an apportionment of Infrastructure and Recoverable Reserves is proposed. However, while it is recognised that petroleum undertakings carrying out activities over a period of 10 years between 2013 and 2023 will be liable for these costs, it is nevertheless proposed to recover all of the costs “between 2013 and Jan 2016” – a period of 3 years. This is grossly inequitable and imposes the entire burden for these costs on a very small number of undertakings in a compressed time period. The Petroleum Safety Framework may be expected to have a useful life of many years or decades and we believe the recovery of costs should be on a commensurate basis, but as a minimum over the same 10 year “liability for costs” period identified in the Decision Paper.



2.

It is IOOA's view that the CER should adjust its financing arrangement so that the repayment period for the loan to cover Establishment Costs is extended to a 10 year period.

We also note that there is a "claw-back" mechanism whereby new entrants may be charged a share of Establishment Costs on a "day one" basis. However, the surplus costs previously paid by original incumbents, are only to be paid back by CER against "levies imposed in future years" – this could mean for example that an undertaking which had paid a substantial levy contribution, but subsequently had a low level of activity within the 10 year period, would not be able to benefit from the repayment of funds. This scenario actually provides the CER with an opportunity for generating a "windfall surplus" of funds at the expense of petroleum undertakings – this cannot have been the intent of the legislation. IOOA does not agree with the proposal to deduct claw back monies from petroleum undertakings' levies in subsequent years. It should be possible for the CER to directly reimburse original payees any time there is a new entrant.

Some IOOA members oppose the use of 'Recoverable Reserves Remaining' as this is not straightforward due to the different types of reserve classifications and the complexity involved in its accurate estimation. The CER would need to precisely define the basis for the reserve calculations and subsequently ensure that the reserves quoted by all companies are equivalent in terms of method of calculation to ensure consistency and fairness.

The CER should also be aware that such information is generally considered highly confidential for competition purposes within the global oil Industry, raising concerns that the current CER approach could breach confidentiality as well as Industry competition guidelines. There may also be issues regarding financial disclosure.

Operational Cost Recovery:

It is stated that "*Operational Costs are estimated to range from €1 to €1.5m annually in the initial years*" and that these costs will be recovered through the Levy and Safety Case Fees. Although there are worked examples of how the Levy portion of these costs may be recovered based on an infrastructure weighting basis, there is no estimate given of the likely charging structure for Safety Case Assessments, for either production undertakings or exploration activities. Without this information it will be difficult for any undertaking to calculate exactly what its costs will be and how these might be affected for different levels of exploration activity. We therefore request the CER to publish their proposed full range of charges and fees prior to finalising this Decision Paper. IOOA requests further definition regarding the various different types of infrastructure and weightings listed (ref. Tables 1 and 2); in particular, the rationale for the differences between similar types of infrastructure, e.g. subsea and onshore pipeline, onshore and offshore wells, etc.



3.

Overall Level of CER Costs:

Based on the figures quoted in the Decision Paper (Establishment costs of €5.7m over 3 years and Operational Costs of €1- €1.5m per year), an average annual recovery in the order of €3.15m is envisaged (based on mid-point of Operating Cost range). This may be compared with the situation in Australia where the average annual recovery in the period 2008-11 by NOPSEMA from Fees and Levies was AUD \$12.5 or approx. €10m. (*NOPSEMA: Review of Cost Recovery Arrangements 1 Jan 2008 to 30 June 2012*). However, in 2011 there were 31 operators and 208 facilities being regulated by NOPSEMA – as of writing there are only 2 facilities to be regulated by CER in the immediate future. Furthermore, NOPSEMA'S regulatory remit includes environmental regulation which the CER's does not. In comparison to the Australian regime, the CER figures are disproportionately high.

The above example reinforces the point that the recovery period for Establishment Costs should be increased to at least 10 years, which would have the effect of reducing estimated annual costs on the industry to c. €1.82m/annum or less, if the Operational Costs can be reduced to a more reasonable figure.

Timing:

It is stated that recovery of Establishment Costs is due to start Feb 2013, but that the CER will not be in a position to accept Safety Cases until Nov 2013 (and this date may of course slip). It seems highly unusual that petroleum undertakings should be asked to pay costs in advance for a service which will not commence until Nov 2013 and for which the consultation process will not be completed. We request CER to review the basis for commencement of charging to bring it in line with the anticipated start of SC Assessments.

Regulatory Overlap:

It does not seem reasonable that the industry is required to pay for the costs associated with regulation of the same infrastructure by multiple regulators with similar remits, e.g. onshore facilities fall under the HSA's and the CER's remit, due to the overlap between the COMAH regulations and the PEES Act.

IOOA confirm that they wish to meet with CER during the week of December 3rd to discuss these points further, and request a proposed appointment,

Yours sincerely,

Fergus Cahill,
Chairman, IOOA