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HAND DELIVERED & EMAIL

National Energy Board
444 Seventh Avenue SW
Calgary, AB
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Attention: Marie-Anick Elie, Northern Co-ordinator

Dear Madam:

RE: Draft Financial Viability and Financial Responsibility Guidelines (the "Draft Guidelines")

Pursuant to the National Energy Board's (the "Board") letter dated 13 May 3013 seeking comments on the Draft Guidelines, Chevron Canada Limited ("CCL") is pleased to provide the Board with its comments.

CCL understands the objectives that the Board is attempting to accomplish through these Draft Guidelines and CCL is supportive of ensuring industry players maintain sufficient financial capacity to meet all of their financial obligations related to applied-for-activities. Our main concerns with the Draft Guidelines relate to required amounts for unfettered access to funds, flexibility of instruments for industry to meet the Boards financial responsibility requirements ("FRR"), processes for assessing value and establishing validity of claims and the protection of the confidentiality of Applicants' information. These and other concerns are further detailed on the attached Appendix 1.

In addition, CCL would like to request a meeting with the Board to discuss our comments and answer any questions the Board may have.

Yours truly,

Tim Winter

Attachment (1)

Appendix 1

CCL Comments on the Draft Guidelines

1. **Unfettered Access:** The Draft Guidelines require the Applicant to provide the Board with unfettered access to funds equal to or greater than the estimated cost of stopping and containing the incident. However, unfettered access to such an amount could be financially prohibitive and inhibit even the most financially sound industry players from conducting operations. CCL requests that a reasonable defined amount be specified for funds to which the Board will have unfettered access, such as the unfettered amount specified for offshore drilling in the Backgrounder attached to the joint announcement issued on June 18, 2013 by the Minister of Natural Resources for the Government of Canada, the Premier of Nova Scotia and the Minister of Natural Resources for the Government of Newfoundland and Labrador. It is recognized that additional security may be warranted to cover the full cost of a worst case scenario and we submit it is reasonable that such additional security above the unfettered access amount be in the form which demonstrates an enforceable commitment or a mechanism which demonstrates funds would be available to the Board (e.g. promissory note, insurance, corporate or an affiliate guarantee).

2. **Flexibility of Instruments:**

    a. **Demonstration of coverage for Financial Viability:** The Draft Guidelines specify that the ability to pay for costs of safely conducting the applied-for-activity must be supported by the Applicant's audited financial statements and the Applicant's most recent credit rating reports. Due to CCL's corporate structure as a wholly owned subsidiary of Chevron Corporation, CCL does not have a credit rating or audited financial statements, and would not be able to comply with these requirements. This will be an issue for other industry players as well. Flexibility needs to be provided to use financial statements and credit rating reports of either a parent or an affiliate. The Draft Guidelines need to explicitly state this additional evidence will be satisfactory for this purpose.

    b. **Demonstration of coverage for Financial Responsibility:** The Draft Guidelines require the Applicant to demonstrate it has sufficient financial strength to cover the costs of the worst case scenario and the audited financial statements of the Applicant's parent will only be considered acceptable if the parent corporation has signed a parental guarantee. In addition to the financial statements and guarantees of a parent corporation, this allowance should be expanded to apply to those of affiliates. The words "or an affiliate" should be included when referring to the Applicant's parent corporation and parental guarantee in Section 6(iii) - Audited Financial Statements.

    c. **Ability of Joint Venture participants to be able to put up security:** Many applied-for-activities will be conducted as joint venture projects. The Draft Guidelines do not contemplate joint venture situations. Operators need the flexibility to provide the Board with security for establishing financial viability and responsibility sourced in part from

joint venture participants. The Draft Guidelines need to explicitly state that any portion of the required security may come from joint venture participants. It is reasonable that the Board look only to the Operator for coordination and submission of the full security package.

3. **Payment of Claims from Security:**

    a. **Operator as first approach:** The Draft Guidelines allow the Board to hold security from an Operator and pay out claims as determined appropriate by the Board. The Draft Guidelines mention that the Board expects the Operator to clean up the spill and debris and pay out all claims as appropriate, but the concept of Operator being the first approach to payment of claims needs to be evident throughout the Draft Guidelines. CCL recommends at a minimum the following: 1) in the third paragraph on page 3 it be made clear that those seeking to recover compensation for damage and loss from an Operator are only able to avail themselves of the two possibilities identified in this paragraph if they have first sought recovery from the Operator without success; and 2) in Section 6, that the Board's access to unfettered funds, insurance or security under the other financial instruments is triggered only if the Operator has failed to appropriately address the incident or third party claims.

    b. **Validity of Claims:** The Draft Guidelines allow the Board to directly pay out claims without waiting for a court to determine fault or negligence. While it is understood this applies to an absolute liability scenario, procedures still need to be in place to address frivolous or unsubstantiated claims, to quantify damages and deal with appeals. An independent tribunal should be established for the purpose of assessing third party claims and dealing with appeals on disagreements as to validity or amount of payment on claims.

4. **Confidentiality:** The Draft Guidelines require an Applicant to provide the Board with the estimated cost of the applied-for-activity, including identifying the cost of all activities included in its operations. Well and operation costs are considered sensitive confidential information, disclosure of which can potentially impact an Applicant's competitive position. The Draft Guidelines do not address confidentiality obligations. We understand that Section 101 of the *Canada Petroleum and Resources Act* ("CPRA") does provide privilege protection for certain information provided to the Board by an Applicant, however to ensure full confidentiality protection, confidentiality provisions should either be specifically included in the Draft Guidelines or information provided to the Board pursuant to the Draft Guidelines should be explicitly made subject to the privilege provisions under the CPRA. In addition, well cost information should be excluded from Access to Information requests.

5. **Compensating Affected Third Parties:** To address FRR the Applicant is required to estimate the costs associated with compensating affected third parties in the event of a worst case scenario. One of the factors identified as something that should be considered is the "value of the land to the cultural aspects of the northern people and communities". Compensation for "cultural

aspects" of land is not quantifiable, and not provided for under either the *Canada Oil and Gas Operations Act* ("COGOA") or the Final Settlement Agreement and exceeds the jurisdiction of the Board to determine. This factor should be removed from the list in Section 3(B)(c).

6. **Insurance:**

    a. **Government as Named Insured:** The Draft Guidelines requires that each insurance policy names the Board as an insured party. This is not a feasible requirement as many insurance carriers will not make the Board a named insured. This factor should be removed from Section 6(ii) as a requirement for insurance policies.

    b. **Funds Available under Self-Insurance:** If an Applicant chooses to self-insure the Draft Guidelines require confirmation that sufficient funds "are and will be available" to address the worst case scenario. When self-insuring it is not practical or reasonable to have funds waiting to cover a hypothetical worst case scenario, just that the funds will be available in the event of such a situation. We suggest that the words "are and" be removed from the last paragraph of Section 6(ii).

7. **Worst Case Scenario:** The Draft Guidelines require Applicants to provide evidence of financial responsibility to cover a worst case scenario, which is defined as a severe event with extreme and significant effects and consequences. It is clear the worst case scenario would be determined on a case by case basis. Section 3 of the Draft Guidelines refers to the rate of release, volume and properties of the product that could be released in the event of a worst case scenario. CCL submits that the duration of the worst case scenario's discharge is a critical element in determining volumes and that it be clear that the volume released should be calculated based on either the length of time to drill a relief well or such equivalency as may be approved by the Board pursuant to COGOA. The key is that the flow is stopped to prevent any further discharge into the environment.

8. **Concurrent Operations:** The Draft Guidelines do not contemplate concurrent operations. Concurrent operations are common in onshore and offshore activities. The likelihood of concurrent worst case scenario events on different drilling operations is extremely remote and it is not financially feasible for Operators to post separate security to meet Financial Responsibility requirements for multiple concurrent well operations. We suggest that the Draft Guidelines be clarified such that the same security can be used for concurrent operations. This is the practice by the Regulators on the East Coast of Canada (Canada-Newfoundland Offshore Petroleum Board and Canada-Nova Scotia Offshore Petroleum Board).

9. **Containing the Incident vs. Environmental Clean-up:** In the Draft Guidelines, Section 3(B)(a) identifies certain factors to be considered when estimating costs for containing an incident, and Section 3(B)(b) identifies certain factors to be considered when estimating the costs of cleaning-up the environment. However there are several factors identified under Section 3(B)(a) that do not belong under the heading containment, but are environmental clean-up matters and should be moved under Section 3(B)(b) to avoid duplication of estimated costs. Specifically the references

to "clean-up on surface water, the subsurface, shoreline, ice and ice-infested waters" and "cleaning-up" the released products. CCL requests that these references be removed from Section 3(B)(a) and if necessary, moved to the list of factors identified under Section 3(B)(b).