

August 30, 2016

Cheryl McNeil
FORRI Project Manager
Natural Resources Canada
580 Booth Street
Ottawa, ON K1A 0E4

Dear Ms. McNeil:

Re: CAPP Comments on the Frontier and Offshore Regulatory Renewal Initiative's (FORRI) Proposed Policy Intentions for Phase 2 of the Framework Regulations

The members of the Canadian Association of Petroleum Producers are committed to the safe and responsible exploration, development and production of Canada's petroleum resources and we wish to thank the FORRI Steering Committee for the opportunity to provide comment on the Proposed Policy Intentions for Phase 2 of the Framework Regulations (the Document) dated June 14, 2016.

Similar to our Phase 1 approach, CAPP assembled a committee of members to review the Phase 2 Policy Intent Document and have compiled a collective industry review for consideration by the FORRI Steering Committee. The results of our collaborative review are outlined in this letter and in the attached table containing comments on specific sections of the Document.

Achievement of FORRI objectives for Framework Regulations will only be possible through the positive collaboration of industry and FORRI as well as the inclusion of other relevant stakeholders. As we indicated during Phase 1, CAPP is supportive of the regulatory review and renewal objective of the FORRI.

As the FORRI Steering Committee and Project Team work through the various phases of the Framework Regulation development we would like to reiterate that it may be helpful to be guided by these principles below which aided our review and comment development during both Phases 1 and 2:

- **Fair and transparent**, creating competitive parity across competing jurisdictions;
- **Science-based, and consistent with other reputable international jurisdictions**, with a strong understanding of implications in practice;
- **Clear, predictable and simple (practical) to administer**, with clear and established process for review and withdrawal;
- **ALARP (as low as reasonably practicable)**, reflecting the balance of risks and benefits;
- **Balanced and efficient**, recognizing the totality of policies and regulations on industry;
- **Viable**, with readily available and predictable compliance pathways;
- **Consistent**, with the overall objective of responsible development of Canada's frontier and offshore resources; and,
- **Fostering an internationally competitive oil and gas industry** that attracts capital investment.

With these principles in mind our general comments on both the consultation process and the Document follow.

Economics and Resource Recovery

The Atlantic Accord Implementation Act(s), the principal statutory instruments for offshore development approval in Atlantic Canada, incorporates consideration of economic principles in association with minimization of “waste” in the context of resource management. The definition of recovery within existing Drilling and Production Regulations states: *"recovery" means the recovery of petroleum under reasonably foreseeable economic and operational conditions*". Thus it is clear that economics is explicitly contemplated in the overarching legislation and is also intrinsic in the concept of good oilfield practices.

Industry acknowledges the role of the Regulator in maintaining diligent oversight of production activities for consistency with maximum recovery, good oilfield practice, production accounting and approved plans. It is also recognized that Operators retain explicit responsibility to manage reservoirs or production in accordance with the resource management plan under the overarching commitments described in the Operator's approved Development Plan.

With these considerations in mind, the fundamental policy intent for resource management must ensure the application of "good oilfield practices" which includes contemplation for sound economic principles. Decisions and/or regulatory direction to progress maximum recovery efforts must be based on demonstrated economic feasibility while permitting the best use of available technology and recovery methods. Thus, the policy intent and subsequent regulatory language must contain explicit provision to allow resource management decisions to be based on demonstrated economic benefit. This principle is fundamental to viable and sustained development of natural resources.

CAPP's attached detailed comments identify those sections of the Document in which explicit consideration of economic recovery should be incorporated into regulation.

Well Costs, Production Operation Costs and Forecasts

This discussion highlights CAPP's concern with the cost and financial reporting requirements outlined in Sections 14.16 and 14.17 of the Document.

Industry recognize that the Regulator, under the provisions of the Atlantic Accord Acts, requires knowledge of the relative cost of construction and operations activities to carry out its mandate and fulfill its role to oversee Operator compliance with statutory provisions.

At present there is inclusion of cost information at multiple stages of project development and operations specifically through Development Plans, Benefits Plans, Well Approval Processes, End of Well Reports and Annual Production Reports. The means for the Regulator to fulfill their mandate are adequately addressed through these existing reporting mechanisms. The Operator's Resource Management Plan includes estimates of development and operating costs in sufficient detail to permit comprehensive financial and economic analysis of the project in support of reservoir development and depletion throughout the life of the field. Industry recognizes that this information supports Regulator monitoring to ensure waste does not occur and to provide for maximum

economic recovery of reserves. Additionally, the Annual Production Report contains updated information pertaining to Resource Management.

Industry acknowledges that there are circumstances where the provision of additional cost detail is necessary to allow the Regulator to make informed decisions. These circumstances are typically singular in nature such as specific amendments to Development Plans, special projects or a deviation or demonstration of equivalency from an approved practice or regulatory requirement. For these exceptional circumstances, the cost detail required for the Regulator to render a decision should be determined and agreed by the Regulator and the Operator, on a case by case basis.

The Drilling and Production Regulations presently include a requirement to report certain financial data as part of the Annual Production Report. The Phase 2 Policy Intent Document appears to be expanding the requirements by including fixed operating costs for each well and field in the project, variable costs, commodity prices and pipeline and transportation commitments. The later items (commodity prices and pipeline and transportation commitments) are of particular concern to industry since these are speculative, confidential and in the case of a joint venture, not available to the Operator. It is suggested that the feasibility of including such a reporting requirement in the Framework Regulation be tested against data privacy and competition law.

Provision of detailed cost breakdowns may impact an Operator's future ability to implement effective competitive bidding processes, cost control measures and their ability to manage commercially and contractually sensitive information if this information becomes public. With these valid concerns in mind CAPP opposes the inclusion of these policy statements and encourage the retention of current financial reporting mechanisms and reporting requirements.

Performance Based Regulation

CAPP supports and encourages the FORRI committees to continue to develop the Framework Regulations utilizing a performance based approach, consistent with other international jurisdictions, with a focus on identifying goals or outcomes. This approach provides industry with the flexibility to determine the most appropriate manner to meet or exceed the desired goals or outcomes. It encourages innovation and can lead to safer, more efficient systems and a more proactive approach by industry in identifying issues and assuming responsibility for effective resolution. Thus, it is imperative that what is anticipated to be a longstanding regulation, such as the Framework Regulations, be written to permit regulatory bodies and industry to readily adapt to change over time.

Other reputable oil and gas jurisdictions have adopted a performance based approach to regulation and their experience shows that there are sound safety, technical and commercial reasons that this is preferable to prescriptive regulation. The use of prescriptive language in the Framework Regulation inhibits industry's ability to progress and adapt in a competitive manner with other oil and gas

regions. Prescriptive language also limits industry's capacity to adopt best practices, advance technology and be innovative when it comes to ensuring the safety and wellbeing of personnel, environmental protection and responsible resource development.

Based on past experience, CAPP members believe that prescriptive language can create major barriers to the timely development and operation of projects. Industry continues to experience challenges in demonstrating compliance with dated and prescriptive regulatory requirements that do not reflect the international nature of the offshore oil and gas industry. To overcome this, industry makes use of the 'Regulatory Query' approach when demonstrating equivalency in the process of requesting a deviation or exemption from a typically prescriptive regulatory requirement. The current regulatory query approach involves significant resources, time and effort on behalf of industry and Regulators to execute. Thus, a performance based international perspective is required during development of the Framework Regulation to permit industry to acquire the internationally based resources and infrastructure which are unique and technically complex in their function to conduct business in the Canadian offshore industry in a more efficient and competitive manner, not just for now, but for the duration that the new regulation is in force.

In addition, the regulatory query process typically uses internationally recognized standards and guidelines to demonstrate equivalency to prescribed regulations and standards, further emphasizing the fact that these standards should be accepted through the goal based approach.

Guideline Development

As presented in our Phase 1 letter CAPP recommends that for improved efficiency the FORRI Steering Committee work with the Boards to implement a plan for concurrent / parallel development of the guidelines along with the Framework Regulation development process.

It is imperative that guidance be developed in close consultation with industry and other stakeholders to reduce the potential for differing interpretations and to improve the efficiency of implementation for both Operators and the Regulator.

Other international jurisdictions maintain guidelines for their core oil and gas regulations and these guidelines frequently reference industry developed standards. Thus, by allowing flexibility, industry can take a more responsive approach to choosing the best methods or equipment available at the time, i.e. incorporating new technologies, techniques or work practices more rapidly. Subsequently, it is necessary that regulation and supporting guidelines contain minimal prescriptive technical requirements. As stated previously, it is imperative that longstanding regulation such as the Framework Regulation and its supporting guidance be written to permit regulatory bodies and industry to readily adapt to change.

CAPP encourages that industry and the Boards work together to jointly develop, publish and regularly update guidelines or standard practices for the provisions of the Framework Regulations. This collaborative approach has been applied in Atlantic Canada with success by CAPP and the

offshore Boards in the development of guidelines and standard practice documents. Industry engagement during the guideline development process is essential to ensure that the entire regulatory renewal initiative will result in the most advanced and effective regime for stewarding Canada's offshore oil and gas industry.

Hydrocarbon Pools and Zones

As per the comments to the Phase 1 Policy Intent Document, CAPP reiterates the concern of the use of the term "zone" in the Phase 2 Document.

The term "zone" is defined in the current Drilling and Production Regulations as "*....any stratum or any sequence of strata....*" and the use of this very broad definition implies that a zone could be any interval within a well and applied indiscriminately. Production allocation to a zone is very challenging from a measurement and reporting perspective and introduces far reaching implications to development strategies.

While it is generally a term used to subdivide a larger interval into reservoir quality, spatial location (i.e. upper, lower), the frequent usage of the term in policy intent and pending regulations (often as "pools or zones") will place significant obligation on an operator to report and measure relevant to each zone which will be very difficult with this broad definition. Particularly, with respect to commingled production restrictions, production measurement and allocation to zones will be very challenging and requirements to do so may render zonal development uneconomical.

CAPP recommends that the reference and use of the term "zone" within the Document be removed. If the term zone is to remain in the Document, then it is strongly recommended that clear definitions as well as practical expectations be outlined to allow industry to understand the full implications of its inclusion.

Definitions

Lack of definitions for key terminology in policy intent documents limits the effectiveness of the review process.

FORRI representatives have stated that stakeholders should apply the definitions in the current regulations in their interpretation of the policy intent. As the final definitions are unavailable during the review process there exists a risk that the policy intent is misinterpreted, therefore stakeholder efforts to present the FORRI committees with sound feedback on the Phase 2 Document may have less relevance and value due to misinterpretation of definitions. CAPP continues to encourage FORRI to ensure definitions are issued for review and interpretation prior to the issuance of the final Phase 3 Policy Intent Document; and, prior to the development of draft regulatory language and guidance that may be based on an interpretation of terminology that differs from that applied in the review and comment process.

Board Powers and Interpretation of Regulations

Fair and consistent application of the Boards' powers is essential for ensuring public and stakeholder confidence in the regulatory process. As such, it is imperative that any policy clearly and explicitly articulate the rights of both the regulator and the regulated. This should include the establishment of a timely mechanism whereby Industry can appeal Board judgements/decisions. This would be beneficial for both Government and the Boards as it will help ensure public and stakeholder confidence in the regulatory process.

The Document as written indicates no expectation of due process, no means of recourse in the event of a disagreement other than what would be divisive options available through the Acts and no expectation that Boards' interpretation of a regulation is defined and documented. In a performance based system the objective should be fewer directives, and more collaboration – i.e., the Boards must be able to both define and justify, within the requirements of the regulation, their interpretation.

In addition as there will be one set of Regulations governing operations in all offshore areas of Canada there needs to be consistency of interpretation by each Regulator to ensure Industry confidence in the Canadian regulatory system as they make decisions to conduct work in any offshore jurisdiction in Canada. Attracting contractors and installations to work in Canada is challenging due in part to the relatively small size of the industry and trying to modify equipment and / or practices to meet local regulations for relatively short duration work when the equipment / practices are accepted elsewhere as complying. The new regulations when drafted should facilitate a common approach to authorizations such that an offshore installation or other asset can experience an equal regulatory approach in any Boards' jurisdiction in Canada.

Regulatory Renewal Timeline and Consultation Process

The successful development of modern performance based legislation requires thorough consultation and review by all stakeholders as well as a reasonable timeline to ensure a successful outcome. In this context, CAPP has some apprehensions regarding the regulatory renewal timeline and consultation process.

Given that the Framework Regulation is anticipated to be in place for an extended period of time, the concurrent approach which consists of the development of policy intent documents; drafting regulatory language; and, eventual development of supporting guidance limits engagement by Industry for constructive review and input for each of these components and may not be conducive to the successful achievement of the project objectives as established by FORRI.

On July 13, 2016 the Atlantic Offshore OHS Regulations Initiative commenced with the issuance of the first policy intent document for the development of the new OHS regulations to supersede the current Transitional OHS Regulations. The timelines and consultation process for the development of the OHS regulations will place considerable demand on Stakeholder resources and that the current approach and timing could result in the finalization of fundamental regulations and guidelines that

lack harmonization, consistency and adequate consideration for implementation and enforcement mechanisms.

CAPP strongly supports these regulatory renewal initiatives. However, given that development of the Framework Regulations is now coinciding with the Atlantic Offshore OHS Regulation Initiative it is imperative that the two working groups collaborate and share information to insure harmonization and consistency between the two regulations.

Furthermore, with the understanding that additional regulatory renewal initiatives are pending (for example Canadian Environmental Assessment Act and Air Emission Initiatives) CAPP would like to highlight the need for effective planning in the engagement of stakeholders to ensure achievement of all regulatory renewal objectives.

Conclusion

CAPP encourages FORRI to embrace this opportunity to review and revise existing regulations that will help ensure:

- a) the protection of personnel and the environment;
- b) the enhancement of the competitiveness of Canada's industry to attract global investment;
- c) the creation of efficient mechanisms to enhance the industry's capacity to implement the right solution in conducting its offshore operations; and,
- d) the streamlining of work authorization / permitting process to facilitate timely and effective mobilization of compliant infrastructure, resources and personnel.

As stated in the Phase 1 submission the time frames that the FORRI Steering Committee has set for reviewing documents; meeting to discuss; and, developing and providing commentary need to be lengthened for future phases. With the expected technical complexity of the subject matter to be covered in Phase 3 in conjunction with Atlantic OHS regulatory Initiative, we request that the policy intent documents be issued at least four weeks prior to the stakeholder meetings to allow our members to engage the appropriate technical expertise within their organizations to provide a meaningful review and feedback at the stakeholder meetings.

Consideration should also be given within the Framework Regulation development process and its' technical working group for inclusion of technical experts from industry (e.g. engineering contractors) and/or certifying authorities as the inclusion of such experts would provide additional technical depth from practical industry experience.

We look forward to continued engagement with the FORRI Steering Committee and Project Team as they develop the Framework Regulations.

Also, CAPP would like to advise that further comments to sections specific to the Canadian Oil and Gas Operations Act may be provided in the coming weeks.

If you have any questions please do not hesitate to contact me at 709 724-4200.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Paul Barnes".

R. Paul Barnes
Manager, Atlantic Canada and Arctic

cc.

1. Fred Allen, FORRI Co-Chair, NL Department of Natural Resources; and,
2. Kim Himmelman, FORRI Co-Chair, Nova Scotia Department of Energy

Attachment