

APACHE ENERGY LIMITED

SUBMISSION TO PRODUCTIVITY COMMISSION REVIEW OF REGULATORY BURDEN ON THE UPSTREAM PETROLEUM SECTOR

1.0. Introduction and Context

Apache Energy has operated oil and gas production in Australia since it entered the country in 1993. Apache is a significant producer of oil and gas in Western Australia, operating 16 oil and gas production facilities. Apache holds 167 million barrels of oil equivalent (BOE) in reserves in Australia and operates production of approximately 27,500 barrels of oil and condensate per day and 365 Terajoules per day (TJ/d) of gas. Currently Apache produces from three locations in WA: Varanus Island, Stag and Legendre. Apache is also Australia's most active offshore explorer, drilling 35-45 wells a year, currently holding 5.3 million net acres, 31 Exploration Permits and 10 Production Licenses. Apache's focus is offshore exploration, development and production in the Carnarvon Basin in Western Australia, offshore exploration in the Gippsland Basin in Victoria and offshore exploration in the Browse Basin in Western Australia. Current Apache operated development projects (i.e. sanctioned projects under construction and not yet producing) include Van Gogh (oil) and Reindeer / Devil Creek (gas).

Apache has a preference to be the Operator of its Joint Ventures in Australia and as such engages in the regulatory environment and process at first hand.

2.0. Summary of Apache's Position

Apache fully supports the work of the Productivity Commission in its review of the regulatory burden on the upstream petroleum sector. The regulatory obligations to which the industry is subject in Australia impose material additional costs on Apache as a company.

The negative effects of the regulatory regime may be categorized as follows:

1. complexity and / or lack of clarity within the regulations themselves;
2. duplication and /or lack of clarity on responsibilities between regulatory authorities; and
3. shortage of competent personnel in the offices of the regulators.

Generally 1 is regarded as less of a problem. The main issues faced by Apache in respect of the Productivity Commission's review fall into categories 2 and 3.

3.0. Remarks on Cost Impacts

Oil and gas companies undertake projects which last for decades. Consequently these companies evaluate costs and benefits on a Present Value (PV) basis using discounted cash flow calculations. **The actual monetary cost consequent on regulatory compliance is commonly far less than the cost of delay in PV terms to a profitable project.**

When looking at an oil project, the PV cost of delay to its owners is probably the most appropriate measure of cost to use (though of course a cost is also incurred to the nation in the form of deferred tax receipts). However in some instances this measure of the cost of delay is not adequate. As an example, Apache supplies a significant proportion of the domestic gas market in Western Australia and this gas is essential to the resource industry upon which the State's economy is founded. Therefore delay to a critical gas supply project will impose reductions in PV not only on the project's owners but also on the gas customers, many of which are critical resource sector undertakings.

Australia competes with all other nations to attract upstream oil and gas investment. At all times, irrespective of the level of oil and gas prices, this competition is fierce. Governments need to be aware that oil and gas companies factor in the costs and risks associated with the regulatory regime when allocating capital.

4.0. Exploration

4.1. Frontier Exploration

Apache does not explore in frontier basins in Australia. This is in part because we believe, based on our experience at Devil Creek (see below) that the regulatory regime will add an unacceptable layer of risk to exploration and development activities in parts of Australia where the oil and gas industry does not currently operate. Apache drills more offshore wells than any other company in Australia. The government will take its own view on the value loss (if any) occasioned by the disinclination of Apache and like minded companies to explore in frontier basins.

4.2. Qualification Requirements for Permittees

The regulatory regime imposes minimal pre-qualification requirements upon persons or companies wishing to apply for gazetted exploration acreage. The effect of this is that persons and companies without operatorship experience have been able to acquire (in some cases very large) exploration portfolios. As a consequence, exploration in these areas by capable companies has been delayed and money which might otherwise have been spent on exploration has been diverted to fund acreage acquisitions. Apache recommends that the regulations for award of offshore exploration acreage include a meaningful operatorship capability test.

5.0. Geoscience Australia

Apache considers that the role of this organization should be clearly defined in order to promote efficiency and to minimize duplication. Broadly, GA's contribution to commercial geoscience and reservoir engineering is superfluous; for instance its review of Field Development Plans tends to focus unnecessarily on inconsequential detail or to stray into commercial areas which are properly managed between the project proponents (and, in special cases, the DA). Apache is a strong supporter of genuinely pre-competitive geoscience data; in our view that is the best way that Australia's frontier prospectivity may be efficiently evaluated. GA has a crucial role in conducting regional studies on behalf of the Commonwealth designed to disseminate information regarding petroleum potential in frontier areas. GA also has important parts to play in guiding geoscience aspects of gazettals, in evaluating the national

resource endowment and in representing the oil and gas industry to government. There may be value in giving GA the benefit of an industry advisory board to guide and inform its work program.

6.0. Projects

As a general observation, the Joint State-Federal approvals process for development plans in State waters can be cumbersome. Often the State and Federal approvers have different viewpoints which extends the approvals process markedly. Locally we seem to be able to keep things moving. Federally, the regulators often seem to lack local knowledge pertinent to applications and they impose conditions which do not take local circumstances into account.

Devil Creek is a new domestic gas processing project located east of Cape Preston in the Pilbara region of WA. Devil Creek is an onshore project connected to an offshore gas field (Reindeer) in Commonwealth waters by means of a pipeline. Devil Creek has been awarded special facilitation status as a key infrastructure project, and accordingly enjoys support by Office of Development Approvals Coordination (ODAC). Despite this, Apache has been required to obtain numerous approvals from three tiers of government, i.e. from both State and Commonwealth regulators and from the Shire of Roebourne. Some of these bodies are attempting to undertake work which is clearly beyond their capabilities (e.g. the Shire of Roebourne is reviewing aspects of the gas plant design based upon Building Council of Australia compliance requirements). Also, different regulators have overlapping areas of influence and responsibility (the gas supply pipeline is the responsibility of the Department of Industry and Resources (DoIR) offshore and of the Department of Consumer and Employment Protection (DOCEP) onshore). Another example relates to the Devil Creek Gas Plant which has been determined by DOCEP Resources Safety Division (RSD) as a Major Hazard Facility under the Dangerous Goods Safety Act 2004 and the Dangerous Goods (Major Hazard Facilities) Regulations 2007. Whilst DOCEP RSD is the regulator for the gas plant the Shire of Roebourne also has an overlapping responsibility concerning planning and building approvals.

Several of the regulatory authorities are understaffed, or the level of expertise of the staff is inadequate to process and expedite the types of approvals being sought, and this has required Apache to pay the costs of consultants hired by the authorities to process the applications in a timely manner. The shortage of experienced staff is clearly a consequence of the regulatory authorities paying "below market" salaries. It is important that the regulatory authorities are adequately resourced to attract and to retain key staff.

Heritage issues within the process of regulatory approval for Devil Creek have been especially troublesome (see below).

6.1. Heritage and Native Title

Heritage approvals have caused several months of delay to Devil Creek, and in addition the project proponents have spent \$440,000 on heritage surveys and \$220,000 on Native Title administrative requirements (this is in addition to compensation to claimants under NT agreements). The legal background to heritage approvals, and in particular the *WA Aboriginal Heritage Act 1972*, is complex, lacks

transparency and accountability and at times presents questionable outcomes that at best lack impartiality.

6.2. Environment

Apache considers that problems are caused in this area by duplication between (a) environmental approval conditions under the Environment Protection and Biodiversity Conservation (EPBC) Act, administered by the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA) and (b) the requirements of the Petroleum Submerged Lands, Management of Environment (P(SL)(MoE)) Regulations administered on behalf of the Commonwealth Department of Resources, Energy and Tourism (DRET) by the State Designated Authority (in WA, the DoIR).

The EPBC Act deals with the environmental assessment of matters of national environmental significance (NES) as defined under that Act (biodiversity issues associated with listed threatened and migratory species, the marine environment, World and National Heritage places). The P(SL)(MoE) Regulations deal with environmental approvals and the setting of environmental conditions associated with petroleum activities. Both of these Commonwealth pieces of legislation were promulgated at around the same time (1999) and enacted in the same year (2000); consequently there was no opportunity to review the impact of either piece of legislation in isolation before implementation.

The issue arises for a project like Van Gogh in Commonwealth waters, where under the EPBC Act a project is assessed as a “controlled action” requiring formal assessment by the Commonwealth (DEWHA). Controlling provisions of the Act include:

- Listed threatened species and communities (Section 18 and 18A of the Act)
- Listed migratory species (Section 20 and 20A)
- The marine environment (Section 23, 24 and 24A)

DEWHA have assessed Van Gogh under a Public Environment Report (PER) and have stipulated environmental conditions of approval that cover all environmental matters associated with the project and not just those that are related to the initial controlling provisions of why the project was initially assessed under the EPBC (i.e. their conditions of approval relate to all environmental matters associated with the project and not just the three above-mentioned controlling provisions).

DEWHA have required Apache to produce various plans (construction and operational Environment Plans or EPs and an Oil Spill Contingency Plan or OSCP) for their approval before construction and operations of the projects can commence. These conditions are also required by DoIR. This duplication will oblige Apache to produce documents (a construction EP, OSCP and Operations EP) that will be required to be approved by DEWHA under the EPBC Act and by DoIR on behalf of DRET under the P(SL)(MoE) Regulations.

7.0. Planning Issues

It is evident that the State of WA has not planned adequately for major resource projects and that it has not set aside industrial land for critical infrastructure projects such as Devil Creek. Land that has been set aside for industrial development (e.g. existing areas on the Burrup Peninsula and areas as proposed for the Maitland

estate) carry development risks that considered and appropriate strategic planning might have avoided. Internationally significant Aboriginal petroglyphs in the case of the Burrup and the Maitland estate being entirely devoid of infrastructure services as well as being located within a cyclone surge zone render these options for industrial development as unattractive. Suitable alternative development areas invariably require all of the heavy lifting on NT and Aboriginal heritage matters to be done by the project proponents (e.g. Apache) with the State only participating once the NT and heritage issues have been resolved. Moreover the State government has not planned to provide adequate accommodation for workforces which are required to carry out these projects; rental costs in Karratha are evidence for this. While these are not specifically regulatory issues, the regulatory authorities in WA could reduce the regulatory and administrative burden on project proponents markedly by better strategic planning, by taking on issues of sovereign risk (e.g. NT) and by taking a more proactive approach to infrastructure projects. It has been pointed out that the Northern Territory has a more proactive approach in respect of securing land for industrial purposes.

8.0. Legal / Title Administration Issues

8.1. The Designated Authority

The DoIR's Perth office appears to be understaffed. More than half of the Retention Leases in WA are "pending renewal" (i.e. they have expired and even though Retention Leases represent a key public policy issue no decision has been made either to grant or to refuse their renewal). Apache has a Pipeline License which expired in 2005 for which we have sought approval but DoIR has not yet renewed it. As stated above, it is important that the regulatory authorities are adequately resourced to attract and to retain key staff.

Notwithstanding the above Apache was very favourably impressed by DoIR's capable and professional approach following the Varanus Island incident in June 2008.

8.2. The Offshore Petroleum Act 2006 (OPA)

The OPA is welcome but not all predecessor mirror legislation has yet been repealed (e.g. the WA Petroleum (Submerged Lands) Act 1982 is still in force). This has led to a complicated legal situation, requiring Apache to take costly legal advice and putting the company at risk of losing good title to its acreage. Legislation should be put in place to simplify this situation.

8.3. Title Administration in Commonwealth Waters

Complexity in title administration is introduced by the regulators' practice of regarding an Exploration Permit as a single Title even though the Permittees may have subdivided their beneficial interests in the Permit several times over the years. Deeds of Coordination are required to cover this eventuality and some of these on Apache interest Permits have been in existence for many years. Apache acknowledges that the regulator requires clarity between the different Joint Ventures in respect of work commitments, relinquishments etc. However Apache recommends that each time a Permit is renewed the regulator commence regarding subdivided beneficial interests as separate titles with their own work commitments and

relinquishments. This would have the effect of requiring no Deed of Coordination to last more than five years.

9.0. Proposed Regulations in respect of Carbon Capture and Storage (CCS)

The regulatory regime for CCS is currently being worked out. The potential for administrative complexity is great and there are grounds for concern that arbitrary decisions may be made in respect of the competing claims of CCS and exploration and production (E&P) project proponents. Apache refers the Productivity Commission to APPEA's submission on this matter.

10.0. A National Regulator

A single approver would be useful and Apache while cautiously supporting the concept would be keen to understand how it might work in detail and in practice. In Apache's view, more important than the organisational structure are (i) genuine local knowledge (ii) adequate staffing levels and competent personnel (iii) clear, distinct (i.e. not overlapping) responsibilities between departments and authorities and (iv) the ability to make approvals at an appropriate level and with transparency and accountability.