

In Reply Refer To: GE 973E

AUG 02 2018

FEDERAL EXPRESS

Ms. Janet S. Northrup
Chapter 7 Trustee
Bennu Oil & Gas, L.L.C
Total Plaza
1201 Louisiana Avenue, 28th Floor
Houston, Texas 77002

Dear Ms. Northrup:

On September 28, 2016, Bennu Oil & Gas, LLC (Bennu) submitted a request for a Suspension of Production (SOP) for Lease OCS-G 13198 (the Lease), Atwater Valley (AT) Block 63 (subsequently amended on October 5, 2016, and January 18, February 28, April 13, and June 14, 2017). The Lease was held by production, pursuant to 30 C.F.R. 250.180, through November 26, 2016.

BACKGROUND

Well SS004 produced sporadically from the Lease for several years. On May 30, 2016, production from the Lease ceased due to problems with that well. On August 24, 2016, Bennu submitted an Application for Permit to Modify (APM) to the Bureau of Safety and Environmental Enforcement (BSEE) requesting "approval to temporarily close the E 3.5 Sand sliding sleeve and open the E4 Sand sliding sleeve to prepare for well intervention operations to restore production from the E 3.5 Sand." BSEE approved that APM on August 30, 2016. On September 1, 2016, Bennu submitted another APM to BSEE indicating that a rig would begin the intervention operations on the well on or around September 25, 2016. On September 28, 2016, however, Bennu submitted the subject SOP request letter, indicating that it would mobilize a rig and conduct well intervention operations in November 2016, and restore production to the Lease in December 2016. On October 5, 2016, Bennu sent an email to BSEE with a revision to its proposed schedule of work, indicating that it would restore production by the end of January 2017 (rather than December 2016).

On November 9, 2016, Bennu communicated a significant change in course when it submitted a Revised Permit to Modify (RPM) to BSEE and said that the revision reflected a "change in objective to secure the well for extended shut-in period." On November 21, 2016, Bennu notified BSEE that the production measurement meters on the A-Titan spar, where previous production

from the Lease had been measured, had been locked-out and tagged-out. On November 30, 2016, Benu filed a Chapter 7 voluntary bankruptcy petition with the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division (Bankruptcy Court), and you were appointed trustee of the Benu bankruptcy estate.

By letter dated January 18, 2017, Benu amended its SOP request. The amended request sought an SOP “in order to provide for a sales process to allow qualified and financially stable entities to exploit the remaining reserves associated with AT 63.” Benu also proposed a new schedule of work that it asserted would result in production from the Lease by August 1, 2017. The new proposed schedule included milestones such as “File motion for sale or other disposition of AT 63”, “Order confirming sale to third party purchaser”, “APM Approval by the court approved third party purchaser”, and additional milestones dependent upon an unidentified third party purchaser of the Lease materializing, obtaining court approval, obtaining necessary regulatory approvals, mobilizing a rig to the location, performing lease-holding operations, and re-establishing production from the Lease. On February 28, and again on April 13, 2017, Benu further amended its SOP request, similarly proposing schedules of work centered on selling the Lease to an unidentified third party who would allegedly obtain all required approvals and take all actions necessary to restore production. The February 28 and April 13 proposed schedules speculated that a future third-party purchaser would restore production to the Lease by October 1 and December 1, 2017, respectively. On June 14, 2017, Benu further modified its request, proposing more time to file a motion for sale or other disposition of the Lease.

ANALYSIS

In its January 18, 2017, letter, Benu asserts that an SOP is justified under 30 C.F.R. 250.172(a). Under this regulation, BSEE may grant an SOP “[w]hen necessary to comply with judicial decrees prohibiting any activities or the permitting of those activities. The effective date of the suspension will be the effective date required by action of the court.” However, Benu did not identify a judicial decree prohibiting lease-holding operations or the permitting of operations, and BSEE is not aware of any such decree. Instead, Benu provided a proposed schedule of work reflecting transaction-related milestones that would require approvals of the Bankruptcy Court. This does not fit within the language or purpose of 30 C.F.R. 250.172(a).

Under 30 C.F.R. 250.171(b) and (d), an SOP request must also include a reasonable schedule of work leading to the commencement or restoration of production as well as a commitment to production. Additional guidance in Notice to Lessees and Operators No. 2000-G17 states that the operator should submit a “reasonable activity schedule with measurable milestones” and “demonstrate a firm commitment to develop and produce the proven reserves that have been discovered by wellbore penetration.” (emphases in original). The requirement for a commitment to production was further elaborated by the Director of the Department of the Interior Office of

Hearings and Appeals in *Statoil Gulf of Mexico*, 42 OHA 261 (2011) (*Statoil*). There the Director concluded that where the operator's ability to bring the lease onto production is contingent upon the occurrence of uncertain future events, some outside the control of the operator, there cannot be a commitment to production sufficient to support the granting of an SOP. *Statoil* at 292-97. Further, the operator must demonstrate that it possessed a commitment to production before the date that the lease would otherwise expire (November 26, 2016, in this case). *Statoil* at 269.

Bennu's actions and correspondence showed that, on or before November 9, 2016 (before November 26, 2016, the date the Lease was set to expire), it changed course and no longer intended to perform well intervention operations to restore production on the Lease. Instead, Bennu's alleged commitment to production relies upon a notional future third party purchasing the Lease, obtaining the necessary court approvals, obtaining the necessary regulatory approvals, performing the necessary operations, and restoring economic production. This hypothetical path to production is speculative, at best, and does not rise to the level of the commitment required by 30 C.F.R. 250.171(d). Bennu did not attempt to demonstrate that it possessed the authority to make guarantees on behalf of the speculated third party. Further, Bennu's proposed path to reestablishing production includes numerous steps that are contingent upon future developments, a number of which are outside of its control. Accordingly, we conclude that Bennu failed to demonstrate that it had a commitment to production on November 26, 2016, or that it has one even today.

Bennu's proposed schedule of work, as revised, is also problematic. The proposed schedule includes milestones related to the sale of the Lease to a third party purchaser and subsequent milestones that the speculated purchaser would allegedly perform. However, Bennu did not show that it has authority to guarantee future actions of any speculated purchaser. Thus, the milestones in Bennu's proposed schedule would only come to fruition if a potential future purchaser secured court approval to acquire the Lease and happened to follow Bennu's vision; a sequence of events that is clearly outside of Bennu's control. There are a number of events contingent upon the decisions of third parties that would all have to fall into place in order for the activities Bennu proposed to be achieved. Bennu has not given BSEE sufficient confidence that the proposed milestones would be accomplished, let alone according to the timeline proposed by Bennu. We therefore conclude that Bennu has not submitted a reasonable schedule of work leading to the restoration of production.

DECISION

The decision whether to grant or not grant an SOP is at the discretion of the Regional Supervisor. *Statoil* at 261, 267. After consideration of all available information, we have determined that Bennu did not demonstrate that it had a commitment to production, did not provide a reasonable schedule of work leading to the restoration of production, and does not otherwise meet the requirements of 30 C.F.R. 250.172(a). Therefore, your request for an SOP for Lease OCS-G 13198 is hereby denied.

This decision may be appealed pursuant to 30 C.F.R. Part 290. If you elect to appeal, a Notice of Appeal must be filed with this office and served on the Associate Solicitor, Division of Mineral Resources, within 60 days of receipt of this letter. This decision does not relieve Bennu of its obligations to comply with all applicable regulatory requirements including, but not limited to, the maintenance of the facilities and all wells in a safe condition in accordance with 30 C.F.R. Part 250, until all decommissioning operations are completed in accordance with 30 C.F.R. Part 250 Subpart Q. If you have any questions regarding this matter, contact Mr. Mark Hanan at (504) 736-2650 or by e-mail at Mark.Hanan@bsee.gov.

Sincerely,

(Org. Signed) Richie D. Baud

Richie D. Baud
Regional Supervisor
Production and Development

cc: Mr. Scott Heck
Bennu Oil & Gas, LLC
1330 Post Oak Boulevard, Suite 1600
Houston, Texas 77056

bc: Lease OCS-G 13198-Public, (GE 555A)