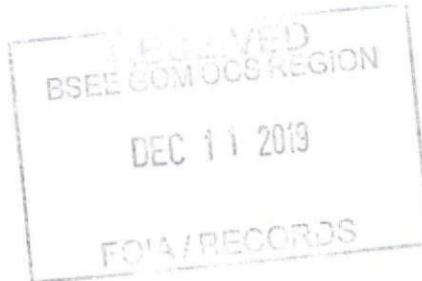


DEC 11 2019

In Reply Refer To: GE 973E



DEC 05 2019

FEDERAL EXPRESS

Mr. David Monico
TOPCO OFFSHORE, LLC
9950 Westpark Drive, Suite 602
Houston, Texas 77063

Dear Mr. Monico:

By letter dated November 28, 2019, TOPCO OFFSHORE, LLC (TOPCO) requests a Suspension of Production (SOP) for Lease OCS-G 34802 (the Lease), Vermilion (VR) Block 153. The Lease was held by an SOP through November 30, 2019.

BACKGROUND

TOPCO filed a previous SOP request with the Bureau of Safety and Environmental Enforcement (BSEE) by letter dated June 22, 2018. The June 22, 2018, SOP request proposed a schedule of work whereby TOPCO would commence drilling Well A002 on the Lease by December 2018, and commence production from the Lease by March 2019. BSEE denied that SOP request on October 16, 2018, and TOPCO subsequently appealed the BSEE decision. The parties agreed to settle the dispute, and, per the terms of the November 6, 2018, Settlement Agreement, BSEE issued a Directed SOP on January 31, 2019, with an effective period from July 1, 2018, through October 28, 2019. The Directed SOP included an agreed-upon schedule of work whereby TOPCO was to commence drilling Well A002 by April 2019, and commence production from the Lease by June 2019. After receiving the Directed SOP, TOPCO revealed that it had funding issues, and submitted monthly progress reports to BSEE that demonstrated a pattern of delays and unachieved milestones:

- In January 2019, TOPCO claimed it would commence drilling in the first quarter of 2019;
- In February 2019, TOPCO claimed it would commence drilling in April 2019;
- In March 2019, TOPCO claimed it would commence drilling in late April or early May 2019;
- In April 2019, TOPCO claimed it would commence drilling in mid-May 2019;
- In May 2019, TOPCO claimed it would commence drilling in late May 2019;
- In June 2019, TOPCO claimed it would commence drilling in late June 2019;
- In July 2019, TOPCO claimed it would commence drilling in late August 2019;
- In August 2019, TOPCO claimed it would commence drilling in late August 2019; and
- In September 2019, TOPCO claimed it would commence drilling by October 28, 2019 (the date the Directed SOP and the Lease were set to expire).

By letter dated October 23, 2019, TOPCO requested another SOP, claiming it would commence drilling operations by mid-November 2019 and commence production by January 2020. TOPCO provided documentation to BSEE, which included an executed rig contract, a signed Prepayment Agreement, and a receipt from the drilling contractor indicating that an initial prepayment had been received. Additionally, TOPCO provided Amendment #1 to the executed rig contract, signed on October 21, 2019, which stated “[b]y October 29, 2019 [amended from October 18, 2019], Operator [TOPCO] shall provide Contractor with a Letter of Credit in form substantially similar to the pro-forma Letter of Credit attached to this Contract as Appendix J and acceptable to Contractor from a mutually acceptable bank securing Operator’s obligations under the Contract in the amount equal to... [REDACTED].” On October 28, 2019, BSEE approved the October 23, 2019, request, granting TOPCO an additional SOP through November 30, 2019.

TOPCO did not provide the Letter of Credit to the drilling contractor by October 29, 2019, nor had it done so by November 30, 2019, the date the Lease was set to expire.¹ A letter from [REDACTED] (the proposed funding source) to TOPCO, dated November 26, 2019, indicates that [REDACTED] provision of the needed funding was contingent upon reaching agreement in the future to unspecified terms and conditions with TOPCO. TOPCO also acknowledges that it did not begin drilling Well A002 in November 2019, and the drilling rig purportedly secured for those operations was instead moved to another location. Since June 2018, TOPCO represented that it would commence drilling Well A002 on at least 10 different dates, and failed to do so every time. TOPCO now offers an 11th date, claiming that it would begin drilling operations by February 2020 if another SOP were granted.

ANALYSIS

Pursuant to 30 CFR 250.171(d), an SOP request must include a commitment to production in order to be eligible for a granted SOP. In addition, guidance found in Notice to Lessees and Operators No. 2019-G01 clarifies that this requires the operator to “demonstrate a firm commitment to develop and produce the hydrocarbons that have been discovered by wellbore penetration.” An operator must also demonstrate that it satisfied all of the requirements for obtaining an SOP, including a commitment to production, before the date that the lease would otherwise expire. *Statoil*, 42 OHA at 269. Further, 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. *Id.* at 292-97.

A legitimate commitment to production requires that you have demonstrated to the satisfaction of the Regional Supervisor that you will produce the discovered reserves, which includes, among other things, providing evidence that sufficient funds are available to cover the full cost of operations required to achieve production. Since June 2018, TOPCO has claimed many times that

¹ You have provided a copy of Amendment #2 to the rig contract (dated November 27, 2019), which appears to again extend the due date for the required Letter of Credit to December 17, 2019. However, evidence of developments and further actions designed to satisfy the regulatory requirements for an SOP that post-date the scheduled expiration of the Lease cannot be considered for purposes of evaluating an SOP request. *Statoil Gulf of Mexico*, 42 OHA 261, 269 (2011) (*Statoil*). As of the date of scheduled Lease expiration, this material term of the drilling contract had not been satisfied, and its potential future satisfaction (while not relevant for these purposes) was contingent upon further agreements with third parties outside of TOPCO’s control.

sufficient funds were available, or would soon become available, to drill the proposed well and commence production from the Lease. However, such funds repeatedly failed to fully materialize, and TOPCO repeatedly failed to fulfill its promises to begin drilling the well on quoted timelines. When BSEE approved TOPCO's SOP request on October 28, 2019, the funds were supposedly set to be delivered by the end of the next day, yet they were not. Further, the record indicates that TOPCO had not secured an agreement with its proposed funding source as of the scheduled termination of its last SOP, and its ability to do so was at least in part contingent upon the occurrence of uncertain future events outside of its control. In light of the evidentiary record and TOPCO's historical pattern of claiming a commitment to production, then failing to live up to its commitments, we conclude that TOPCO has not demonstrated that it had a legitimate commitment to production on or before November 30, 2019.

Furthermore, pursuant to 30 CFR 250.171(b), an SOP request must include a "reasonable schedule of work leading to the commencement or restoration of the suspended activity." TOPCO's proposed schedule of work includes milestones dependent on securing sufficient funding for drilling and completing a producible well. We conclude that it is not reasonable for a schedule of work to rely upon milestones that depend upon securing uncertain future funding from a third party outside of the operator's control. Further, TOPCO's failure to materially adhere to its numerous previous activity schedules leads us to conclude that TOPCO has not demonstrated to the satisfaction of the Regional Supervisor that it can and would adhere to the work schedule provided. *See, e.g., Conn Energy, Inc.*, 189 IBLA 51, 71 (2016) (affirming denial of SOP on grounds that "it was reasonable for BSEE to conclude that a company that did not adhere to numerous prior activity schedules would not adhere to a subsequent activity schedule reflecting many of the same milestones that previously had been missed repeatedly.").

DECISION

The decision whether to grant or not grant an SOP is at the discretion of the Regional Supervisor. *See Statoil*, 42 OHA at 267; *Conn Energy*, 189 IBLA at 67-68, 74. After consideration of all available information, we have determined that TOPCO did not demonstrate that it had a firm commitment to production or a reasonable schedule of work leading to the commencement or restoration of the suspended activity, as of November 30, 2019, as required by 30 CFR 250.171(b) and (d). Therefore, your request for an SOP for Lease OCS-G 34802 is hereby denied.

This decision may be appealed pursuant to 30 CFR 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. If you have any questions regarding this matter, contact Mr. Mark Hanan at (504) 736-2650 or mark.hanan@bsee.gov.

Sincerely,

(Orig. Signed) Richie D. Baud

Richie D. Baud
Regional Supervisor
Production and Development

bc:

[REDACTED]

✓ Lease OCS-G 34802 - Public, (GE 555A)

[REDACTED]

[REDACTED]