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Let's Hit the Reset Button on Regulating Offshore Oil & Gas

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In July 2016, through agency action and without congressional approval, the Bureau of Ocean Energy Management issued new regulations (NTL No. 2016-N01) requiring oil and gas lessees to post supplemental surety bonds to guarantee 100 percent of the future decommissioning costs for offshore properties in which they own a working interest.

The facts driving the government's actions then were that languishing crude prices have reduced the lessees' liquidity and the economic lives of their assets. The Obama administration's theory was that the offshore industry's capital must be diverted into surety bonds that will fund decommissioning costs in the event lessees file bankruptcy; all in the name of protecting the U.S. taxpayers, shielding them from any exposure to pick up the tab for abandoned structures and platforms.

However, it doesn't take Sherlock Holmes to realize that the previous administration twisted the facts to suit its theory, instead of theories to suit the facts. Existing regulations require previous owners of properties to foot the decommissioning bill of bankrupt lessees. Through many pricing cycles and bankruptcies over the past 80 years, the U.S. taxpayer has never once paid to decommission an offshore oil and gas property.

An independent study conducted by Opportune LLP estimates that this existing NTL will cost U.S. taxpayers approximately $14.6 billion, compared to a maximum benefit of $0.8 billion, through lost royalties, jobs and Gross Domestic Product resulting from foregone investments in offshore drilling. Opportune's study indicates that the NTL will result in less production of approximately 367 million barrels of oil equivalent and approximately 87,000 fewer jobs over a 10-year time horizon. Of course in this event, the Gulf region and its surrounding states, home to countless offshore operators and their vast employee bases, is likely to experience a slowdown.

Sound extreme? Consider the Obama administration's coal industry playbook.

Although decommissioning regulations and bonding requirements already existed in the coal industry, coal companies were pushed to the brink of extinction by regulations to eliminate self-insurance and increase supplemental bonding. In June of last year, the Coal Cleanup Taxpayer Protection Act was introduced to eliminate coal companies' abilities to self-insure future mine reclamation costs. Since the time President Obama was elected in 2008, the coal industry lost over 80,000 jobs and over 45 coal companies have filed for bankruptcy protection.

Economist Adam Smith said, “It is not by augmenting the capital of the country, but by rendering a greater part of that capital active and productive than would otherwise be so, that the most judicious operations of banking can increase the industry of the country.”

On the contrary, the BOEM NTL was aimed at restricting capital for the sole purpose of eliminating our country’s offshore oil and gas industry. Absent repeal of the NTL or new leadership of BOEM under the Trump administration allowing offshore lessees to form a sinking trust to self-fund decommissioning obligations through future royalties, new forms of capital must become active.

In the end, the twilight era of a departing administration was certainly not the appropriate period to draft, propose, and implement sweeping regulations upon an industry without any evidence of harm to the purported protected class – in this instance, the U.S. taxpayer. Should the taxpayer indeed be at risk, regulators and industry stakeholders should collaborate to promulgate safeguards to afford protections for taxpayers while still assuring continued growth for this critical industry in the region.

As the Opportune study has demonstrated, the costs far outweigh the benefits of this proposed regulation, and we believe the Trump administration and the 115th Congress should take a far closer look.

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