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File Ref. 20151126_SLR letter to PASA_Time extension for Scoping_Rhino 294 ER

26 November 2015

Acting Chief Executive Officer
Petroleum Agency of South Africa
Typerpoort Building
7 Mispel Street
Bellville, 7530

ATTENTION: MS LINDIWE MEKWE

Dear Madam

RHINO OIL AND GAS EXPLORATION SOUTH AFRICA (“RHINO”) – APPLICATION FOR EXPLORATION RIGHT FOR PETROLEUM IN FREE-STATE, GAUTENG & MPUMALANGA PROVINCES, SOUTH AFRICA (12/3/294 ER): MOTIVATION IN TERMS OF REGULATION 3(7) TO EXTEND THE SCOPING TIMEFRAME

Our meeting with representatives of the Petroleum Agency of South Africa (“PASA”) on 19 November 2015 has reference.

Rhino has appointed SLR Consulting (“SLR”) to undertake the Environmental Impact Assessment (“EIA”) process as required in terms of National Environmental Management Act, 1998 for the Exploration Right application in the Free-State, Gauteng & Mpumalanga (reference 12/3/294 ER). SLR has commenced with the Scoping and EIA process for the project and the application for environmental authorisation was submitted to PASA on 12 October 2015. Public consultation for the project has commenced and a series of public information meetings were held across the application area in the week of 12 to 16 October 2015.

As was discussed at the meeting with representatives of PASA on 19 November 2015, the public participation process to date has elicited significant objections to the exploration right applications. In this regard, there are five (5) key issues that have been raised consistently by the majority of the interested and/or affected parties (“IAPs”). All of them provide challenges to the EIA process and need to be dealt with, however Issues 4 and 5, summarised below, have the most relevance from a Scoping and EIA timeframe perspective.

Issue 4: Most IAPs have argued that the time available in the current EIA schedule is insufficient to allow for comprehensive public consultation for projects of such large extent. There is also a related argument that the method of consultation has not been adequate given the given the demographic and cultural diversity of potentially interested and/or affected parties that are resident in the large application areas.

Issue 5: Most IAPs have raised the concern that many sites within the application areas are either protected outright or incompatible with exploration and/or the production of oil and gas and that legislation prevents such work from taking place in these areas. The question has been asked “why undertake an EIA to obtain exploration rights in areas where any gas, if it were to be found, would not be able to be extracted because of the restrictions imposed by protected area legislation and Regulation 122 of the Petroleum Regulations (GN R 466 of 2015) relating to the location of wells?”. It has also been stated that these restrictions make it unlawful to apply for a right, even for exploration, in the restricted areas. The related demand is that the ER applications be stopped, all of the future non-compatible/unlawful areas removed and then new EIAs commenced for these revised areas.

To a degree the IAPs in this project have raised such issues to a lesser extent than in the other Rhino applications. However we know that many of the NGOs and objectors in the other areas are offering support to IAPs in this project and the same issues will be raised.

SLR acknowledges that PASA previously granted a time extension to Rhino. The bulk of this time was however used solely by Rhino’s land surveyors to produce the final project area maps and list of farm owners and as such it was not available to SLR for the purpose of public consultation and environmental assessment.

To this end SLR has, within the time constraints of the current applications, made a reasonable attempt to follow the requirements of the public participation regulations contained in the 2014 EIA Regulations. A significant related challenge is the large size of the application areas and the vast number of IAPs that are located therein. These IAPs range from more easily contactable land owners and NGOs to the other extreme of rural communities that are not as easy to access. Within this range there are also other IAPs with varying demographic and cultural attributes.

Had IAPs engaged with the Rhino scoping and EIA process on the same basis as previous exploration applications run by SLR (e.g. for Badimo Gas and Afro Energy), then the current approach to public consultation would have been adequate. However, the nature of the IAP responses on this project has been exceptional and the key issues have been documented in our ‘Public Issues’ letter to you, dated 26 November 2015.

It follows that PASA, Rhino and SLR can reasonably expect continued objections to the applications and numerous appeals to any potential decision. One of the key potential areas that could be used as a basis for appeal is the public consultation process. The 2014 EIA Regulations require that all potentially interested and affected parties are consulted. Taken literally this is challenging to achieve especially when there is insufficient time to devise and roll out an appropriate public participation strategy for a very large application area.

It is the opinion of most IAPs that there are real grounds for challenging the current public participation process. These grounds typically cover the following issues:

- Farmers walked out of one of the meetings and boycotted another to show their level of objection. These scoping meetings will have to be redone otherwise the scoping process is flawed. In the current time frame there is no opportunity to hold any more scoping meetings.
- While many of the scoping meetings were well attended by people with access to the written media and emails, there was limited attendance by previously disadvantaged people who, through socio-economic circumstance, do not have the same access to the written media or emails or whom were advised not to attend by local authorities. This was noted by IAPs as an obvious flaw which cannot be addressed in the current scoping time frames.
- Although there are not many rural areas with large rural populations, the area does have many communities and land occupiers who have not yet been involved. This highlights the need to engage with representatives of these previously disadvantaged people in a more

focussed way. Without this intervention the scoping process will not have covered the previously disadvantaged communities located within the application area. There is insufficient time available to address this in the current scoping time frame.

In the context of the above discussion it is SLR's view that:

- To continue with the current project scope will result in significant and coordinated opposition to the scoping process and EIA from IAPs.
- Responding to and dealing with the IAP inputs & issues will be impossible in the scoping and EIA time frames.
- Proceeding with the scoping and EIA process in spite of the IAP issues would most likely only stimulate more opposition.
- Threats of social uprising, process disruption and even violence are real and cannot be ignored.
- Any decision taken on the current scoping and EIA process is likely to be appealed and there is a significant risk that such appeal would be successful in the light of the factors described above. It is re-emphasized that one of the most successful avenues of successfully appealing a decision arising from an EIA process is by attacking the public consultation process. Also of relevance is the fact that in terms of the new legal framework, although PASA makes the decision on the EIA, it would not be entitled to deal with an appeal if one were to be lodged. Such an appeal would be considered by the Department of Environmental Affairs.

SLR therefore proposes that a time extension is required for the purpose of conducting the following actions:

- Reassess the size of the application areas based on the relevant legislative and environmental restriction criteria. By eliminating certain areas the application areas can be reduced in size and the number of IAPs that have to be consulted will be reduced;
- Formulate and implement a focussed strategy for engaging with the key decision making bodies for rural areas. It is emphasized that this is a time consuming process because the traditional processes and protocols have to be followed. Once the decision makers in these bodies are on board a further strategy will be formulated and implemented for engaging with the relevant rural communities. This is critical given the fact that all the meetings planned for the rural areas were cancelled with the intervention of the municipal officials.
- Reassess the strategy for engaging with people in non-rural areas by addressing both the need to redo some meetings with the requirements for conducting a legally defensible process; and
- Receive and adequately addressing the exceptionally (and unexpectedly) large number of IAP comments and objections associated with the public participation process.

Regulation 3(7) of the 2014 EIA Regulations reads "In the event where the scope of work must be expanded based on the outcome of an assessment done in accordance with these Regulations, which outcome could not be anticipated prior to the undertaking of the assessment, or in the event where exceptional circumstances can be demonstrated, the competent authority may, prior to the lapsing of the relevant prescribed timeframe, in writing, extend the relevant prescribed timeframe and agree with the applicant on the length of such extension".

The public response to date has constituted 'exceptional circumstances' and is also requiring an 'expansion of the scope' of the assessment. This situation cannot be addressed within the remaining period of the 44 day timeframe provided for the scoping phase and an extension of the timeframe is thus required. Lastly we only received comment from PASA on the draft scoping report today (i.e. on 26 November 2015). In the letter PASA requests that some of the comments are given consideration when compiling the final scoping report. In the current time frame there is no opportunity to address PASA's comments. We hereby request from PASA for an extension of time as detailed below.

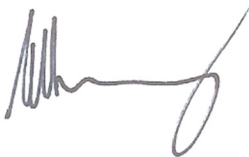
- 4 weeks for the project team to consider the possible exclusion areas on the basis of environmental, commercial and legal parameters. This includes time for the Rhino surveyors to redraw the area in terms of Regulation 2(2)). [and will largely fall over the December/January break]
- 2 weeks to reassess and plan the revised public consultation strategy on the basis of the revised area.
- 8 weeks to physically go into the field and implement the various elements of the revised public consultation strategy. This includes up-front focussed engagement with key rural decision-making stakeholders in the rural areas, developing a plan based on the outcomes of the initial engagement, re- advertising (with sufficient notice periods), and running of additional/rescheduled meetings in both the rural and non-rural areas.
- 4 weeks to receive and address comments and objections and to compile the draft Scoping Report for public review.
- 4 weeks (30 days) for the mandatory public review of the draft Scoping Report; and
- 4 weeks to incorporate the responses and finalise the Scoping Report for submission to PASA.

We feel very strongly that adequate time is required to undertake these activities properly and to give the scoping and EIA process the best chance of being a legally defensible process. We would also like to emphasize that although elements of these different activities could be undertaken in parallel, the key items of each activity form a chain in series with the prior information being vital to the later process. The proposed timeframes thus need to run in series.

We would therefore request for a 26 week extension of time from the date of this letter to submission of the final scoping report.

SLR would be grateful for your urgent consideration and written response to this request.

Yours faithfully



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Environmental Assessment Practitioner