

STATEMENT OF CONSIDERATIONS

REQUEST BY BPXA EXPLORATION (ALASKA), INC., FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT No. DE-FC26-01NT41332; W(A)-03-023, CH-1149

The Petitioner, BPXA Exploration (Alaska), Inc. (BPXA), was awarded this cooperative agreement for the performance of work entitled, "Resource Characterization and Quantification of Natural Gas-Hydrate and Associated Free-Gas Accumulations in the Prudhoe Bay – Kuparuk River Area on the North Slope of Alaska." The purpose of the cooperative agreement is to characterize, quantify and determine the commercial potential of in-place and recoverable gas-hydrate and associated free-gas resources in the Prudhoe Bay Unit (PBU), Kuparuk River Unit (KRU) and Milne Point Unit (MPU) areas on the Alaska North Slope (ANS). Only limited gas hydrate reservoir characterization studies have been conducted; ANS gas hydrates have not been characterized by detailed reservoir analyses to determine reservoir extent, stratigraphy, structure, continuity, quality, variability, and geophysical and petrophysical property distribution. This project will study these characteristics to provide practical input to reservoir, production and economic models, to determine the technical feasibility of gas hydrate production, and to provide leverage for exploration and field extension of the resource in the PBU, KRU, and MPU areas on the ANS. To accomplish these objectives, to be carried out over three phases for the next three years, BPXA has formed a project team with gas hydrate researchers from the University of Alaska Fairbanks and the University of Arizona Tucson. BPX will facilitate the research and act as industry liaison with ANS industry and other gas hydrate researchers. This project will develop a detailed gas hydrate and associated free gas resource appraisal and extraction methodology on the Alaska North Slope. This waiver is for inventions of BPXA only.

The total estimated cost of the cooperative agreement is \$18,999,515, with the DOE share being \$13,121,879, or 69%, while the remaining cost share of 31%, or \$5,877,636, will be provided by BPXA. The period of performance is from October 10, 2001 through December 31, 2005.

In its response to question 5 of the attached waiver petition, BPXA has described its technical competence in the field of gas hydrates. BPXA explains that the assembled team is highly experienced in forming and managing large-scale projects and has the capability to commercialize project results. BPXA operates extensive oil and gas production infrastructure within the study area (see figs 1 and 2 of the waiver petition) necessary if the project proceeds into pilot development operations. BPXA is providing reservoir characterization, drilling, completion and production testing technologies to help determine the commercial viability of gas hydrate as an energy source. In response to question 7, BPXA explains it owns and operates extensive ANS facilities and infrastructure which overlie established methane hydrate accumulations on the ANS. BPXA's response fully demonstrates its technical competency in the field of methane hydrates.

In its response to question 10 of the attached waiver petition, BPXA states granting the waiver will not place it in a preferred or dominant position in this research field. BPX is one of multiple gas hydrate research supporters throughout the world. Granting of the waiver will allow BPXA to actively pursue innovative development of the technologies necessary to operationally prove gas hydrate resource extraction on the Alaska North Slope. Therefore grant of the waiver will have a positive effect on competition and market concentration.

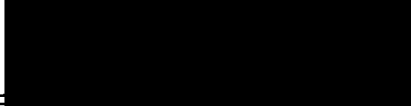
The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein BPXA has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which BPXA agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, BPXA agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements. The petitioner has further agreed to modification of the data clause of the subject cooperative agreement (48 C.F.R. 952.227-14) by adding paragraph (k), Alternative VI, concerning contractor licensing of data

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.

 7.2.03
Mark P. Dvorscak
Assistant Chief Counsel
Intellectual Property Law Division

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE: /


George Rudine *Guido DeHornis*
Deputy Assistant Secretary *Director*
Office of Fossil Energy
Coal and Power Systems

Date: 8/27/03

APPROVAL:


Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: 9-3-03

(t) U. S. COMPETITIVENESS

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.