

## STATEMENT OF CONSIDERATIONS

### REQUEST BY ANADARKO PETROLEUM CORPORATION FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC26-01NT41331; W(A)-03-013, CH-1140

The Petitioner, Anadarko Petroleum Corporation (Anadarko) is a subcontractor to Mauer Engineering (Mauer) under a cooperative agreement awarded by the National Energy Technology Laboratory for work entitled, "Methane Hydrate Production from Alaskan Permafrost." Mauer is a small business whose patent rights under this cooperative agreement are governed by the terms of 48 CFR 952.227-11. The terms of 48 CFR 952.227-13, Acquisition by the Government, were then flowed down by Mauer in the subcontract to Anadarko, a large business. The purpose of the cooperative agreement is to analyze existing geological data and obtain new field data required to predict hydrate occurrences; to test the best methods and tools for drilling and recovering hydrates; and to plan, design, and implement a program to safely and economically drill and produce gas from hydrates in Alaska. As explained in response to questions 5 and 8 of the attached waiver petition, Anadarko has developed a new platform technology (Arctic Platform)<sup>1</sup> which may increase the drilling season in the Alaskan Tundra, thus reducing cycle time. In this project, Anadarko will make available for use the Arctic Platform, and will help to fund a mobile core lab for analyzing core samples from wells which will be used in this hydrates project.

The total estimated cost of the cooperative agreement as stated in Anadarko's petition is \$9,737,655. The revised costs, provided by the DOE Contract Administrator are a total project cost of \$12,610,542, with DOE providing \$6,898,822 or 54.7%. The cost share amount is \$5,155,621: \$671,312 for budget period 1 and \$5,088,490 for budget period 2. Of this, Anadarko is providing \$515,900 (82.7% of cost share) for budget period 1 and \$4,947,490 (97% of cost share) for budget period 2. See attached e-mail from the DOE Contract Administrator that outlines these figures. The period of performance is through September 30, 2003.

In its response to questions 5 and 6 of the attached waiver petition, Anadarko has described its technical competence in the field of hydrates technology. Anadarko states it is in the forefront of hydrates technology, and is in the forefront developing technology for deploying drilling and production equipment to the Tundra in an economically sensitive manner. Prior to this hydrates project, Anadarko developed a new platform technology which may increase the drilling season in the Tundra, reducing cycle time. Anadarko has also helped to fund a mobile core lab for analyzing core samples from wells which will be used in the hydrates project. Anadarko further states it is an independent oil and gas exploration and production company, with operations both domestically and internationally. Its primary business is drilling for or otherwise acquiring oil and gas reserves, and selling the allocable production. Anadarko's response fully demonstrates its technical competency in the field of hydrates technology and drilling in the Arctic.

In its response to questions 9 and 10 of the attached waiver petition, Anadarko states that granting the waiver would provide it with the incentive to further develop and market any technology derived from the project. Further, the nature of the oil and gas industry which are necessary for the exploration for hydrates such as mineral leases, drilling equipment, geological data, and specialized personnel, can mitigate the anticompetitive effects of the waiver. Since any advantage that technology derived from the Hydrates project will convey to Anadarko will most likely be balanced by other industrial factors, it is unlikely that this waiver will act to place Anadarko in a

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<sup>1</sup> The Arctic Platform technology is the subject of two (2) identified waiver requests, W(I)-03-005 and W(I)-03-006.

dominant position. 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 Anadarko 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 Anadarko agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, Anadarko 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.

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Mark P. Dvorscak  
Assistant Chief Counsel  
Intellectual Property Law Division

Date: May 21, 2013

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:

[Redacted signature area]

Guido Bonifacio, P.E. CE  
Director, Office of Natural Gas  
And Petroleum Research and Development

APPROVAL:

[Redacted signature area]

Paul A. Gottlieb  
Assistant General Counsel  
for Technology Transfer and  
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**(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.