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Offshore Renewables
Department of Industry, Science, Energy and Resources
Via: offshorerenewables@industry.gov.au

Offshore electricity infrastructure framework: regulations and cost recovery

The Clean Energy Council (CEC) is pleased to feedback to the Department of Industry, Science, Energy and Resources (DISER) on the offshore electricity infrastructure draft regulations. This submission focuses on the Exposure Draft Offshore Electricity Infrastructure Regulations 2022 (Regulations) and the Draft Guideline: Offshore Electricity Infrastructure Licensing Scheme (Guideline), but also comments on the Exposure Draft Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022 (Levies Regulations) and Draft Cost Recovery Implementation Statement.

The CEC welcomes the latest suite of regulations to enable and support the nation’s offshore wind industry. We represent and work with over 1,000 of the leading businesses operating in renewable energy, energy storage and renewable hydrogen. We are committed to accelerating Australia’s clean energy transformation.

The CEC welcomes the latest suite of regulations to enable and support the nation’s offshore wind industry. We consider it important that there be continued and timely progress of these regulations, future regulations and the process outlined in the Offshore Electricity Infrastructure Act 2021 (the Act) to ensure Australia’s offshore wind energy opportunity is optimised. We look forward to the Minister declaring suitable areas in the coming months.

The offshore wind industry is progressing at a rapid pace. Since our last submission to DISER, dated 15 September 2021, we have seen several new projects announced, as well as Victoria announcing targets of 4GW of offshore capacity by 2035 and 9GW by 2040.

As an overarching comment, the CEC considers it critical that DISER work with the states to develop a regulatory system for transmission access and connection for the offshore electricity infrastructure. This is consistent with the Blue Economy CRC’s Recommendation 4. To focus only on Commonwealth waters will lead to inconsistency and drawn-out timelines which may impact project feasibility. Collaboration between Federal and State governments is necessary to allow for a clear process for proponents in the feasibility and construction phases and will help ensure that projects will be connected to the grid. Proponents need confidence that if they are successful in applying for a feasibility licence under the Act that they will be able to connect to the grid through state waters. We suggest that DISER consider developing bilateral agreements with the states, similar to what has occurred with the Environmental Protection and Biodiversity Conservation Act, to strengthen cooperation and avoid duplication.

In the remainder of this submission, the CEC makes comments on the following aspects of the regulations and Act:
1. Timelines
2. Eligible persons
3. Declaration of areas
4. Licence types
5. Applying for licences
6. Fees and levies
7. Cost recovery model

1. Set timelines should be provided

The CEC submits the Regulations should include set turn-around times for the determination of licences and specific elements during the determination process, for both applicants and the Minister/Registrar. These timelines could differ between the different licences or elements, but should outline a set number of days or months between the invitation to apply for a licence closing and the Minister offering the licence to an applicant.

We consider that providing clear timeframes for requests for information and licence decisions will enable a streamlined, efficient, transparent and predictable process that is less likely to lead to delays and/or legal challenges and will benefit all parties involved. We consider it particularly important where the Registrar is the National Offshore Petroleum Titles Administrator that they be accountable to timeframes to avoid any perception that they are preferential towards the petroleum industry over the offshore wind industry. Set timelines will also assist applicants to plan for how the licence application process fits into the overall programme of work. It would also allow for Government to better plan its resources.

2. The definition of ‘eligible person’ should be expanded

The CEC considers that the definition of ‘eligible person’ is overly restrictive for several reasons.

Firstly, it limits licence applications to Australian body corporates, thus excluding foreign developers who may not yet wish to establish an Australian body corporate. Offshore wind is an established industry overseas with many successful companies now looking to invest in Australia. We recommend that the definition should allow flexibility for special purpose vehicles and other non-Australian corporates to qualify for a licence. At the very least, this broader scope should be allowed for feasibility licences.

Secondly, the Guideline specifies that joint ventures are not permitted. We consider that this was not explicit in the explanatory memorandum of the Act. This is an unusual restriction and may unnecessarily inhibit or constrain good projects and project delivery solutions, particularly as these projects are very large and cost intensive.

3. The process for declaration of areas should be efficient and transparent

The CEC understands that the Minister will be able to declare suitable areas from June 2022. We are concerned that there is not more guidance around the declaration process in the Guideline or Regulations.

We submit that the Guideline should clearly state that the Minister is able to declare multiple areas at once. Indeed, we recommend that the Minister should endeavour to declare multiple areas to encourage the economies of scale that will likely benefit the offshore electricity sector and therefore the Australian economy.

We also submit that currently the process for a declaration is opaque. We understand that DISER intends to establish a portal similar to what has been used in the extractive industries. The CEC considers that this process should be outlined in the framework so that it is clear and consistent. It
should allow proponents to put forward suggested areas and provide certainty to proponents that due consideration is being given to areas of interest.

The CEC recommends that the development of this process is prioritised so that it is established prior to the Minister being able to declare areas and ensures the expediency of the declaration of areas, a key step in the acceleration of the offshore wind industry.

Finally, the CEC seeks clarification whether it should be assumed that once an area is declared by the Minister, there would not be a subsequent decision following an application’s assessment that the project location is not in the ‘national interest’ under the merit criteria for feasibility licences (for example, sensitive military areas). The CEC notes that the factors listed in s85(4) of the draft Regulations are similar to the factors to be considered by the Minister in making a declaration of an area [eg. ss17(3)(c), 17(3)(d), 19(1) of the Act]. We submit that the national interest test may be better applied at the moment of declaring an area (as the Act already seems to require), rather than being a merit criteria for individual projects or licence applications.

4. Licence types

A) Feasibility licences should include transmission corridors

The CEC understands that proponents should be able to apply for a transmission licence only to enable export projects that may not have offshore electricity generating infrastructures. However, we consider that where proponents are seeking a feasibility licence, transmission is part and parcel of that application to be able to access the mainland.

Transmission and infrastructure licences allow a licence holder to construct and operate offshore transmission infrastructure. We consider that there is a gap for proponents that are seeking to conduct feasibility studies and environmental surveys (e.g. geotechnical or geophysical) required for the transmission corridors, well before the need to construct and operate transmission infrastructure.

The CEC therefore submits that feasibility licences should cover the project’s potential transmission corridor (to the extent that this is within Commonwealth waters). The transmission corridor would not be included in the maximum area for the feasibility licence, which is logical considering there is no maximum area prescribed for transmission licences.

Furthermore, we submit that any transmission corridor in an existing feasibility licence could then be factored into the assessment of a subsequent application for a transmission and infrastructure licence. We note that any successful application for a transmission and infrastructure licence while a related feasibility licence is still valid should take into account the proposed change in licences, and the feasibility licence area should be adjusted accordingly so that fees/levies are not being paid twice by the proponent for the same area.

B) Licence areas and buffer zones

We submit the limit of 700km² for a feasibility licence area may be too small. Firstly, this limit may reduce the economy of scale for GW-scale projects. Secondly, it may require proponents to substantially narrow down their area of interest and exploration before conducting the various environmental surveys required to develop a project. This may place geographic constraints on the ability of proponents to respond to environmental sensitivities, community feedback and the needs of existing marine users that are only identified in more detail after obtaining a feasibility licence. Best practice principles of avoiding and minimising environmental impacts through site selection, project design and layout will be more difficult to implement if limited by a smaller 700km² area in the feasibility stage.
However, we also see the argument for limiting licence area sizes, to enable as many projects as possible to be considered within a given declared area and avoiding the risk of areas effectively being neutralised because smaller projects have started with much broader licence areas than is needed. Relatively smaller licence areas also create an incentive for higher energy densities.

Around 10 of the proposed offshore wind projects around Australia are in the order of 1500 MW or more, with a number of these exceeding 2000 MW. Based on the “minimum energy density” of 3 MW per km² used in the UK, a 2000 MW project could need a licence area of approximately 670 km². Starting with a feasibility licence area of 700 km² does not leave much scope for managing site constraints such as those noted above.

DISER could consider a mechanism that allows a feasibility licence holder to reduce the size of their initial licence area after one or two years. We note that the current fee structure acts as a disincentive to applications for “larger-than-necessary” licence areas.

On buffer zones, we submit that having buffer zones counted as being within the licence area further constrains the usable space, potentially limiting the size and therefore potentially the viability of many projects. For example, a project of 20 km by 35 km is a licence area of 700 km². Factoring in 2.5 km buffer zones on just two boundaries reduces the usable area to 568 km². Buffers on all 4 sides reduces it to 450 km² – a significantly smaller project. We submit the buffers should sit outside licence areas. Otherwise this is up to a third of the licence area, on which fees are being paid, that the project proponent effectively cannot use.

Finally, we submit that buffer zones are a restrictive and unnecessary requirement if there are no adjacent competing licence areas. This requirement should only apply to licences where there are neighbouring licence areas, but still on the basis that the buffers zones are outside the licence area itself.

5. Applications for licences

A) Assessment of merit criteria should be explicit

The CEC submits that it is critical that the Guideline (or another appropriate document) provides an indication of how the criteria will be evaluated and weighted so that the proponent understands what they are being assessed on. We submit that a transparent system on the evaluation criteria and weightings would improve the market and it would lead to better competition as projects could price in the qualitative criteria.

B) Further clarity around certain merit criteria is needed

The CEC considers that further information could be provided around certain expectations in the merit criteria to provide guidance for proponents in what to include in their application. This is particularly the case for the new ‘National Interest’ criteria, for example, how the complexity of the project may impact the national interest. We also recommend base expectations be provided where appropriate, for example around consultation with community and local governments.

The CEC recommends that the commencement of genuine project development activities, including community engagement, should be included as part of the merit criteria and weighted accordingly.

We consider that the Minister’s discretion to consider ‘any other matters the Minister considers relevant’ under section 85 of the Regulations is too broad and creates uncertainty for applicants that they have not addressed potentially relevant matters. We therefore recommend that the Guidelines
provide a (non-exhaustive) list of potentially relevant considerations for each section of the merit criteria, to provide some certainty for applicants.

**C) Transparency around projects of ‘equal merit’ is essential**

We consider that more transparency could be provided on how projects are determined to be “of equal merit”. For example, one project may score better on technical and financial capability, but another scores better on national interest. Clarity on how the Minister might weigh these factors to determine “equal merit” would be useful.

Where there are applications found to be of ‘equal merit’, we submit that any decision of one applicant over others should be made public, with clear reasons provided to help other projects better understand how merit criteria will be treated. DISER should also consider creating a right of review and appeal process for unsuccessful applicants.

The CEC notes the guidance under section 4.11 of the Guidelines that

> The financial offer should reflect the relative value of the proposed project to the applicant. The highest financial offer may provide the highest merit for this particular criteria, and is designed to differentiate between competing project applications where they are equal in all other merits.

We recommend that the Guideline provide more information around the assessment process for financial offers of projects that are deemed ‘equal merit’ where the projects are not of a comparable nature or scale. More clarity could also be provided on how the Registrar will interpret “the relative value of the proposed project to the applicant”.

**D) Applicants should be able to apply for multiple feasibility licences**

The CEC notes that the Regulations and Guideline are silent on the option for applicants to apply for more than one declared area. The CEC submits that proponents should be able to apply for licences for multiple declared areas at once and that this should be stated clearly in the framework. This is because proponents may have several proposals in development across different areas.

**E) Commercial licences should account for project uncertainty and change**

We note the requirement that for a commercial licence to be granted, ‘the project must be “substantially similar” to the offshore infrastructure project proposed under the feasibility licence’ (section 42 of the Act). The CEC recommends the Guideline should provide more clarity around what is considered “substantially” similar and how this would be determined. We note that s42(5) of the Act specifies matters the Minister must have regard to when approving a commercial licence that is not “substantially similar” to the feasibility licence – a welcome acknowledgement of the uncertainty in the project development process.

**F) Applicants should be given more visibility on overlapping licences**

Further clarity is needed on procedures where an applicant is requested to resubmit their application due to an overlap. It appears that applicants will have little to no visibility as to the extent to which the other overlapping applicants may reduce their area on resubmission. This creates the risk of an inefficient process whereby insufficient amendments are made by both applicants and / or excessive amendments lead to the creation of redundant corridors where there is no development at all and are insufficient to be utilised for other future purposes. We note the process outlined in s55 of the draft
Regulations but suggest this could be amended to provide a greater focus on eliminating the overlap rather than shifting to financial offers after only one round of revised applications.

We welcome the role of the Registrar in this process, and note that s55(2) sets out that the Registrar may notify the applicants of the overlap. In the interests of transparency, the Guidelines should provide guidance on the circumstances under which the Registrar will or will not notify the applicants.

6. Fees and levies should not be prohibitive

In relation to the levies outlined under the Levies Regulations, the CEC considers that any cost recovery settings must be reasonable, equitable and not prohibitive. Overly burdensome fees with little transparency linked to cost recovery may disincentivise project development. Furthermore, in the interests of the Government supporting this new sector to get off the ground (as it supports other emerging industries, e.g. hydrogen) the Government could also consider waiving or heavily discounting its annual licence fees in the early years (e.g. first 10 years). This would provide incentive and confidence for early investors.

7. Cost Recovery Model needs to be flexible

We recommend that the amount of interest from developers cannot be underestimated given experience to date in other markets. The CEC considers that flexibility in resourcing during the initial application period for feasibility licences will be key. The estimated number of feasibility licences in Table 4 of the Draft Cost Recovery Implementation Statement may not accurately predict the number of proponents with proposed projects.

Thank you again for the opportunity to provide comments on the new regulations and Guideline. We consider it important that there be continued and timely progress of these regulations and future regulations to optimise Australia’s offshore energy opportunity and we look forward to working with DISER on these matters. We also look forward to the development of policies to support and incentivise these important projects.

Please do not hesitate to contact me at naberle@cleanenergycouncil.org.au or 0402 512 121 should you wish to discuss further.

Yours sincerely,

[Signature]

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