Star of the South

CIP
Copenhagen Infrastructure Partners

Offshore Electricity Infrastructure Regulations Exposure Draft

Submission into the offshore electricity infrastructure framework: regulations and cost recovery 2022

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Submission

Overview

Star of the South and Copenhagen Infrastructure IV (CI IV), a fund managed by Copenhagen Infrastructure Partners, welcome the opportunity to make a submission into the Commonwealth Government's consultation process for the *Offshore Electricity Infrastructure Framework: Regulations and Cost Recovery 2022*.

We welcome this first suite of proposed regulations and guidelines, which will provide further clarity around the maximum licence area sizing and the application process/merit criteria for granting licences. We also note the fees and levies under the cost recovery framework, which are appropriate for projects of this scale and for an industry at this level of maturity.

We are encouraged by the continued pace of regulatory development for offshore wind in Australia – ongoing timely progress is critical to realising the government's objectives and delivering significant benefits including jobs, regional development, and a more reliable and affordable electricity network.

The regulations provide clarity for several aspects of the offshore electricity infrastructure framework. We are pleased to offer feedback on these aspects, providing an industry view to ensure a strong, workable framework.

Licence area

The maximum area for feasibility and commercial licences is proposed to be capped at 700km^2. We support this approach, noting this size is appropriate for offshore wind projects.

Offshore wind projects are complex with many constraints, such as marine habitats and geological conditions, dictating where turbines and other infrastructure can be built. Therefore, the proposed size is required to avoid unnecessary challenges for projects due to the reduced size and flexibility.

In the draft licencing scheme, a 2.5km buffer zone is proposed to prevent proponents from building offshore infrastructure within 5km of each other. This is a sensible rule that is designed to protect proponents from negative impacts (such as wake loss) of neighbouring projects.

We support the inclusion of a 2.5km buffer zone, but strongly recommend that it be included in addition to the maximum 700km^2 licence area to ensure maximum production and efficient use of the marine area. Additionally, we propose consideration of how the buffer zone may or may not apply to licence areas that border state waters, noting the potential for cross-jurisdictional challenges.

Licencing process and merit criteria

We support the government's merit-based approach to assessing and awarding licences. This will encourage projects that meet community expectations while delivering on the nation's energy and economic goals. It is a fair and suitable system of allocating licence areas.

The four high level merit criteria outlined in the regulations are broadly appropriate and we look forward to seeing further detail in the relevant licence application forms, once published. We recognise that the final details of the merit criteria will be critical in shaping the framework and we welcome any opportunity to provide feedback on the detailed criteria during their development. We offer three suggestions to strengthen the merit criteria further or clarify the merit criteria to achieve the government's intended outcomes while ensuring a workable framework for industry:

1. **Community and stakeholder consultation**

   Under the '*suitability of the applicant*' criteria, we believe a proponent's demonstrated track record in engaging local communities and engagement with stakeholders should be a relevant factor in determining merit. Additionally, consideration should be given to proponents who have already undertaken consultation ahead of applying for a licence, to ensure there is community and stakeholder awareness of a proposed project at an early stage, reducing risks and ensuring seabed licences can be used for their intended purpose.

2. **Recognition of existing work and data collected**

   The four merit criteria are appropriate, but broad in their definitions. This may result in equally meritorious applications on paper, but the actual viability of projects is quite different based on the level of work and due diligence already conducted for a proposed project. We recommend an additional point of consideration under the *'viability'* criteria that acknowledges and gives weight to applications where prior work has been undertaken or knowledge is obtained through data collection. This will help avoid speculative proposals proceeding and 'locking up' seabed at the expense of more solid and informed proposals that meet the government's objectives.

3. **Commercially sensitive information**

   We query the requirement for commercially sensitive information to be included in a licence application to determine a project's viability, provided other criteria around the suitability and financial capability of the applicant are met and the Registrar is satisfied with these aspects. Specifically, commercial rates of return and/or pricing in a competitive market are considered highly sensitive and of little value in assessing the merits of a licence application. Projects applying for a Commercial Licence will have met strict bankability standards and it will be too early in the project lifecycle to provide this detail in a Feasibility Licence application. While we agree that applications should be able to provide evidence of viability, we recommend removing requirements for commercial rates of return and offtake agreements, noting that reputable investors, developers, and financiers would not support speculative projects that don't have a viable development path.

Financial offers

We acknowledge the mechanisms for addressing overlapping Feasibility Licence applications and support the notion of revising applications to avoid duplication. We understand under a 'tie break' situation for overlapping licence applications, the Minister may ask for financial offers pursuant to *section 55* of the draft regulations. However, as the draft regulations are currently worded, there is ambiguity surrounding the opportunity for financial offers (*section 90*).

It is possible to interpret *section 90* as though financial offers **can** be provided with the initial licence application and **must** be considered by the Minister. We recommend that this section is re-worded to remove all uncertainty around **when** the Minister must consider financial offers.

Where financial offers are called for in a 'tie-break' situation, we recommend some guidance around the quantum and nature of the offer, with the inclusion of a cap, as is the case in other global markets. This will avoid excessive offers that would inevitably push up electricity prices for consumers, while maintaining the government's principle of a 'cost recovered' framework.

Project description

We note that a project description is required as part of the Feasibility Licence application process. This ensures that projects proposed at the Feasibility Licence application stage are substantially similar to projects constructed under subsequent commercial licences.

Section 4.3.5 of the draft guideline offers further details regarding the requirement of the project description noting that *'comprehensive details'* of the commercial project must be provided as part of the Feasibility Licence application.

Given the fast rate of advancement in offshore electricity technology, it will be difficult for proponents to provide a precise and comprehensive level of detail of their proposal at such an early stage in the project lifecycle.

We encourage the Registrar to allow for flexibility in the project description, allowing for ranges in capacity size, number of turbines and other supporting information which is generally confirmed much further into the project development and design process (and once constraints are better understood through relevant planning and environmental assessment processes). The regulatory system should acknowledge the potential for the size and shape of a project to evolve as new information becomes available about wind resource and environmental constraints under the Feasibility Licence.

Confidentiality and protection of information

Section 125 of the regulations provides an overview of reporting requirements for proponents with licences under the offshore electricity infrastructure framework. While we support these requirements, we note that *section 230* states *"the Registrar may make reports required under section 125 of this instrument publicly available"*, which may lead to the release of confidential material publicly.

We recommend the inclusion of provisions for the protection of information and confidentiality to avoid any confidential or commercially sensitive information inadvertently being made public, including an opportunity for the proponent to remove or redact sensitive material before documents are released to the public.

Change in control

We welcome the increased regulation and clarity regarding the change in control provisions. As mentioned in our submission on the *Offshore Electricity Infrastructure Bill 2021*, we recognise that the change in control provisions reflects recent amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, meaning the penalties for non-compliance will be substantial.

We respect the need for provisions that limit future liabilities for the government and limit speculative activity. However, these strict requirements also significantly increase the risk to projects and proponents with standard but complex financing arrangements.

We note the opportunity to nominate potential changes in control within nine months of a licence application but **recommend the regulations go a step further to enable potential (inconsequential) changes in control to be carved out from these provisions within an individual licence**. Examples of these transactions could include:

- where 'control' moves from one fund to another within the same corporate group – for example, Star of the South has already moved from CI III (the predecessor fund of CI IV) to CI IV – without any change in practical control of the shareholding of Star of the South
- where a party's share of ownership of a project changes (sometimes automatically) when the project reaches certain milestones
- where the composition of 'limited partners' (investors in CI IV funds with no control over Star of the South and other projects) changes.

We believe this proposal strikes the right balance between protecting the government's interests and intent for these provisions while reducing risk and administrative burden for both the licence holder and government over the licence term. Decisions would still ultimately rest with the Registrar while taking a 'common sense approach' to resolving some of these matters at the point of the licence being granted, ensuring efficient use of government resources and industry costs.

We also note the recommendation from the Senate's Environment and Communications Legislation Committee to consider amending these provisions during last year's legislative process, highlighting bipartisan support for these changes.

Other matters

This first suite of regulations is a decisive step toward creating an offshore wind industry and clarifies many aspects of the *Offshore Electricity Infrastructure Act 2021*.

We anticipate future regulations that will cover decommissioning requirements, management plans, work health and safety, financial security, safety and protection zones, inspections and infringements and the maintenance of a licence register. Many of these topics are of significant importance to us, and we look forward to commenting on these areas as they are released.

Thank you for the opportunity to provide our industry feedback into this consultation process. We would be pleased to discuss our feedback or provide any further required information.