

Parent company guarantees in offshore wind farm development

Recently the Danish Energy Agency announced the tender conditions for the Thor offshore wind farm project.

We prepared an article (the first of two) which described the liability for defective performance in connecting the wind park to the grid in a timely fashion or in commencing construction work in accordance with the agreed deadlines, and the requirements for financial security.

Our first article described the on-demand (bank) guarantee required as financial security.

This is the second of the articles on guarantees.

According to the Concession Agreement the major part of the security can be provided by means of a parent company guarantee, and this present article gives an overview of the terms and conditions for the parent company guarantee.

Financial security / guarantee

Section 4.1-4.3 of the Concession Agreement reads as follows:

4.1 Upon conclusion of the Concession Agreement for construction and connection to the grid of the offshore wind farm, the Concessionaire must provide a guarantee of DKK 1.2 bn. as guarantee for payment of the above-mentioned penalty for defective performance, see point 3.3.

4.2 One part of the guarantee must be provided as a demand guarantee amounting to at least DKK 400 million [...].

***4.3 The guarantee for the remaining DKK 800 million up to the full amount of the penalty for defective performance of DKK 1.2 bn. can be provided as a parent-company guarantee of DKK 800 million, see annex 3.6 (model parent company guarantee) [...].** Should the Concessionaire not have a parent company (according to the mentioned definition), the full guarantee of DKK 1.2 bn. must be placed as a demand guarantee, cf. point 4.2 and 4.4.*

Model Parent Company Guarantee – operational provisions

The operational provisions of the model Parent Company Guarantee are points 5 - Payment under the guarantee and 6 - Expiry (release) of the guarantee, as well as point 7 – Credit rating.

Payment:

The guarantee amount must be paid to the Danish Energy Agency upon the first written demand for payment to the Guarantor stating that the Danish Energy Agency is entitled to the amount demanded pursuant to the Concession Agreement.

The guarantee must be paid on demand without examination or other documentation of the legitimacy of the demand. Payment must be by no later than seven calendar days after receipt of the demand for payment from the Danish Energy Agency.

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Release:

Pursuant to point 6 of the model Parent Company Guarantee, the guarantee will be valid until the Danish Energy Agency informs the Guarantor in writing that the guarantee has been released.

The Danish Energy Agency is obligated to release the guarantee no later than one month after Energinet has confirmed that Energinet has received payment for the cost of the grid connection and the preliminary investigations, however, with the possibility of reductions (partly release) of the guarantee as set forth in the Concession Agreement.

If the guarantee is partially released, the guarantee will remain valid to cover the amount, which has not been released.

The guarantee will be returned to the Guarantor with an endorsement of release as soon as the guarantee has been released in full.

Credit rating:

By its signature to the guarantee, the Guarantor declares that the company group (parent/holding company and subsidiary companies) in the last three accounting years has had

- an average annual revenue of no less than DKK 32,000,000,000, and
- a solvency ratio of no less than 20% and/or a credit rating of at least BBB- (Standard & Poor's and Fitch) or Baa3 (Moody's) or equivalent rating from another recognised rating agency.

Summary and conclusion

Penalties for non-compliance with terms for connecting to the grid etc. are not uncommon and have also been applied in earlier Danish offshore wind tenders.

However, consequences of late performance can be serious unless a negotiated extension of the deadlines is achieved from the Danish Energy Agency, which cannot be expected to be granted.

On-demand guarantees can be costly. It is clear from the wording that in the absence of a parent company that fulfils the requirements of the Concession Agreement / the guarantee wording – size of turnover and solvency rating - the concessionaire must provide 100% of the guarantee by means of an on-demand (bank) guarantee.

WSCO law firm will continue to monitor and report on the legal framework of offshore wind projects in Denmark.

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For questions or comments to this newsletter or energy and offshore in general, please contact Bo Sandroos on +45 4088 5422 or bos@wSCO.dk.

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