

New procedures for environmental permits in offshore wind

Denmark considers its regulatory framework for offshore wind as both stable and predictable, whilst at the same providing reasonable flexibility.

This continues to be true, however, in the area of environmental approvals, especially environmental impact assessments (EIA's), the last few months have seen a number of changes to the regulatory framework, which both developers and investors should be attentive to.

Changes are likely to affect both projects under the open-door procedure and under the tendering procedure, which are the two procedures by which approvals of offshore wind farm projects are granted in Denmark.

In the following we summarize these changes with a focus on those affecting the typically larger wind farm projects that follow the tendering procedure.

1. Projects under the open-door procedure

In early October 2019 the Danish Energy Agency (DEA) announced new procedures applicable to wind farm project approvals granted pursuant to the open-door procedure. It was announced that public consultations (hearings) must be conducted on the environmental impacts of the specific projects before granting an establishment permit.

The Danish Energy Complaints Board's decision of 20 December 2018 on the Vesterhav Syd wind farm had given rise to adjusting the process for environmental assessment and public involvement in future offshore wind projects.

In the future, the DEA states that it will always conduct a public consultation on the specific environmental impact assessment and draft establishment permit when a project developer applies for an establishment permit for a specific project.

According to the DEA, this requirement applies to all current and future offshore wind turbine projects under the open door procedure.

2. Projects under the tendering procedure

For the larger offshore wind farms, the approval of which is given pursuant to a tendering round, such as the future Thor wind farm, a changed procedure has also been announced.

According to guidelines issued by the DEA in September 2019, the forward-looking approach is based on a comprehensive analysis of the legal basis, approaches in other areas and in other countries, risk mitigation, etc.

The reasoning for the forward-looking solution seems to be that a project-specific assessment and consultation is called for, due to the fact that e.g. the Thor wind farm will be tendered with a flexible farm size (800-1,000 MW), and the placement of both the farm and the transformer platform, as well as export cable and landfall solution, is subject to greater uncertainty prior to final award, than in previous projects where large elements, such as the export solution, did not form a part of the tender basis.

As a part of the DEA's analysis, external advice was obtained from the Ministry of the Environment, the Danish Environmental Protection Agency, Energinet, the government's legal advisor Kammeradvokaten and the industry at Wind Denmark. In addition, a representative selection of market players has been involved.

Going forward, the Danish Energy Agency will first use an approach where a strategic environmental assessment (SEA) of the offshore wind project "plan" is made before the bid deadline in accordance with the requirements of the Environmental Assessment Act.

The "plan" for the Thor offshore wind farm project, which is to be strategically assessed (SEA), is the Danish parliament's Energy Agreement of 2018 and subsequent decisions on the tender, including the location and capacity of the offshore wind farm, and the decision to include the landfall in the tender. In practice, Energinet conducts the SEA process following an order from the Danish Energy Agency.

In addition to the SEA, and second, before the bid deadline Energinet also conducts a large number of supplementary environmental studies, as has been the case in the past.

These studies aim to provide critical data that can identify risk areas of the offshore wind farm as far as possible and they include bird surveys, boating risk analysis, radar, fishing, noise, marine archeology and cumulative effects.

Third, the concession winner of the offshore wind tender will have to carry out an actual environmental impact assessment (EIA) of the specific project's offshore parts after the bidding deadline, i.e. an assessment of the offshore wind farm, the transformer platform and landfall/export cable solution, which is planned to be realized. The Danish Energy Agency is the EIA responsible authority for the offshore project.

Fourth, and in addition, Energinet conducts an EIA of the overall concrete project on land, ie. from landfall and up to the switching station and from the switching station up to the 400 kV transmission network at Idomlund. The Danish Environmental Protection Agency is the EIA responsible authority for the project on land.

The DEA has stated that the model chosen for the Thor wind farm also will be applicable to other, future offshore wind farms.

Overall assessment

For both projects under the open-door procedure and the tendering procedure there is ample reason for both investors and developer to pay close attention to developments in the environmental assessment area.

The timelines and schedules of project plans for offshore wind farms, both larger and smaller, can be impacted by the permitting procedure, not least public consultations and hearings, and care should be given to minimizing those risks and including them in the planning process.

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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@wsko.dk.

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