

## **Final Commissioning and Initial Startup of Offshore Facilities – Legal Issues**

---

This article contains an overview of legal and other issues that are likely to arise when an offshore energy project is transferring from development and into production.

We cover both offshore wind projects and oil and gas projects. Whereas these two industries are quite different, the lawyer's or project manager's conceptual approach is likely to be comparable.

### **Summary**

- Final commissioning and initial startup of production from an offshore facility (oil and gas or wind) is one of the most critical phases of a development project, with a number of technical and organizational challenges.
- In this overview article we list some of the most important legal issues in both oil and gas projects and offshore wind projects that in-house lawyers and other advisers should be aware of and check when a development project goes into production phase.
- Issues include contractual relations with suppliers/contractors, joint operating and ownership agreements, regulatory issues and potentially other issues such as HR and document and data retention.

The article is based on our experience within both segments of the offshore industry and is meant as an inspiration to the lawyer or project manager responsible for the legal issues surrounding first production, which may often hold unique legal challenges.

### **Background**

In the final commissioning and initial startup phase of the project, the work of multiple teams over several years culminates in the start-up of production. According to many industry professionals, the outcome of this phase is one of the most critical indicators of overall project success or failure.

For an oil and gas field, the technical challenges include protection of the reservoir/completion, treatment of flow-back fluids, unusual flow assurance issues, as well as first use failures of equipment. For an offshore wind park challenges include termination and testing of inter-array and export cables, energization and transmission issues as well as take-over by an operations and maintenance team.

# WSCO

The phase also includes many organizational challenges, such as ambiguous roles and responsibilities that change over the course of the startup, personnel on board (POB) issues, compressed timelines and management pressure, simultaneous operations, and staff who are still relatively unfamiliar with new process systems.

Such critical phase also entails a large number of legal issues. In-house lawyers are a part of most development project teams. Prior to handover to production, the lawyer should ensure that legal issues pertaining to finalization of commissioning and the introduction of first production have been addressed.

The issues include (here in a random and non-exhaustive order):

1. Contracts with suppliers/contractors
2. Joint operating and ownership agreements
3. Permits, approvals and certificates
4. Other issues

## **1. Contracts**

There is a host of contractual and commercial issues related to:

- a) the “outgoing” development contracts (fabrication, transportation, installation, hook-up and commissioning, various offshore services),
- b) the potential “incoming” production agreements (operations and maintenance, for oil and gas: export, lifting and sales, and for offshore wind: power production and operations and maintenance (O&M)),
- c) any continuing contracts that have been in force during development and which will continue un-interrupted – but perhaps with some changes – during production (supply-boat/standby services, transportation, telecom, others).

# WSCO

The project manager or lawyer may consider preparing a list as follows, with current development contracts in the first column and the upcoming production contracts in the second column.

<b>Final Commissioning</b>	<b>Initial Startup</b>
Fabrication	Operations and maintenance
Transportation	Performance monitoring
Installation	Digital systems, real-time data
Heavy-lift	Others.....
Others.....	

The contracts can also be listed in a matrix on the X and Y axes in order to identify the contractual relations and potential overlaps or holes in the legal cover of activities.

It goes without saying that the “right” contract strategy will have been employed in connection with the start of the project and continuously thereafter as contracts are entered into; hence, at first production this “check” will hopefully only be a confirmation that each contract is in good shape and that all contracts are internally congruent.

There is often also a number of operational issues on the facility (equipment being removed, vessels entering/leaving the safety zone, personnel change-out on-board etc.) that must be dealt with in accordance with the contract terms.

One legal issue of importance is the question of warranty or defects notification periods for the goods, supplies and services that have been commissioned and which will now be a part of the production phase. Take-over or final delivery is usually accompanied by a take-over certificate or delivery protocol, including a punch-list of outstanding items. Furthermore, any defects that are identified will be “carried-over” into the production phase. For the developer/operator it is of critical importance to make sure that any defects or outstanding items are “placed” with the right counterpart, i.e. the EPC contractor or the O&M contractor.

Especially for offshore wind, both employer and contractor under an O&M contract must start to implement systems to monitor adherence to any KPI’s for performance that have been agreed. For an O&M contractor these could include

- Achieving the conduct of all O&M services that require a shut-down to be performed during the downtime that is notified by the transmission systems owner or employer, and/or
- Achieving to react within any agreed response times.

Other KPI’s may also have been agreed.

# WSCO

Also make sure that a check is made of the applicable insurances to determine whether notifications to brokers or underwriters are required.

Finally, the transition may also necessitate a review of bank guarantees/performance bonds under existing or new contracts to determine if changes are required under the contract terms.

## **2. Intra joint-venture (ownership) issues and joint operating agreement**

There are numerous issues in final commissioning and initial startup that trigger provisions in a joint operating agreement or in ownership/shareholder agreements. It would be too ambitious to cover all these issues in detail in this article, however, below is provided a brief checklist of issues that should be revisited:

- Insurances
- Work programs and budgets for development and production, respectively
- For offshore wind: financing provisions, loans, covenants with financial sponsors
- For oil and gas: cash calls and AFE's, allocations and measurement, disposition of production and lifting procedure

## **3. Permits, approvals and certificates**

Obviously the approval/permit situation is different from oil and gas on the one hand, and offshore wind on the other hand.

Prior to bringing an offshore oil and gas facility into operations, including normal production activities, the operator must obtain an operating permit in accordance with §28 in the Offshore Safety Act. The application must contain a health and safety plan and a detailed description of the facility and the expected time of commencement of operations, as well as any changes to the original design basis.

Permits required at final commissioning and initial startup may also include permissions in accordance with §§14-15 and §28 of the Subsoil Act.

Furthermore, under Chapter 7a of the Danish Subsoil Act, the Danish Energy has certain powers to request financial security and insurance from the holder of an oil and gas licence once activities move from one phase of operations to the next.

# WSCO

For offshore wind the most important permits at this stage are the power production permit pursuant to §10 of the Danish Electricity Supply Act (ESA) and the permit to use the facility according to §29 of the Act on the Promotion of Renewable Energy (APRE).

According to §10(1) of the ESA, any production from a facility with a capacity of more than 25 MW may only be exercised by a company that has received a permit from the Minister of Climate, Energy and Supply. According to §10(3) a permit can only be granted to a company that can demonstrate that it has the sufficient technical and financial capacity.

According to §29 of the APRE, wind power facilities established pursuant to §25 of the Act may only be put into operation following the approval by the Minister. As with §10 of the ESA the authorities may set conditions for the approval, ref. §29(3) of the APRE.

At commencement of production activities, other permits may be required, such as permits for special vessels, e.g. heavy-lift vessels/crane vessels and stimulation vessels, where such vessels present a substantial increase in the risk of accidents to the production facility.

Finally, applicable standards and certifications (e.g. from DNV, Lloyds) should be reviewed in collaboration with the department responsible for quality assurance/quality control.

The same applies to the agreements made with marine warranty surveyor.

## **4. Other issues**

The HR department responsible for the offshore workforce will typically be in control of offshore work permits, rotations, offshore transportation and other HR and logistical issues in connection with initial startup of production. The lawyer or project manager may however check for a confirmation hereof to keep on file.

Finally, it would be appropriate to ensure that all relevant documents and critical data relating to the completion of final commissioning and initial startup of operations/production have been properly filed and archived, both for regulatory purposes, and for purposes of reporting.

## **In conclusion**

Final commissioning and initial startup of production from an offshore wind farm or an oil and gas field is one the most critical phases of an energy development project.

In this overview article, we have established a list of the most common legal issues that should be checked when such development projects go into production.

We have worked with both wind and oil companies and their suppliers and contractors and have learned the challenges when transferring projects from development to production. It is our hope that the above list of issues could serve as the basis for the company's own checklist in connection with projects. This would serve to avoid costly mistakes, discussions and potential disputes when an offshore wind farm or an oil and gas field goes into production.

----- 00 -----

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](mailto:bos@wsco.dk).

The information in this newsletter is for information only and cannot replace legal advice.

*WSCO is a leading law firm with a special focus on energy and offshore, transportation and shipping, global trade, insurance and dispute resolution. [www.wsco.dk](http://www.wsco.dk).*