THE NET ZERO PROJECT

OFFSHORE RENEWABLES

Feedback on Technical Requirements Paper
February 21, 2022

Introduction

The Offshore Renewable Energy Regulations (ORER) is an initiative led by Natural Resources Canada (NRCan) to develop modern safety and environmental protection regulations that will apply to exploration, construction, operation and decommissioning activities related to renewable energy projects and power lines in Canada's offshore areas.

NRCan has drafted a technical requirements paper to detail to government, stakeholder and Indigenous participants the proposed requirements that will form the basis of future regulations. The requirements are divided into the following Parts:

- General Requirements
- Site Assessment Activities Requirements
- Transportation, Construction, Installation and Commissioning Activities Requirements
- Operations and Maintenance Activities Requirements
- Decommissioning, Repowering, and/or Life Extension Activities Requirements

NRCan is seeking feedback on these proposed requirements; the below recommendations are being made by *The Net Zero Project* based in Newfoundland and Labrador. These recommendations were compiled based on a series of direct engagements with key stakeholders in the province's emerging ORE industry.

About The Net Zero Project

The Net Zero Project is a collaboration within the energy and environmental industries to drive economic growth, diversification, investment, and awareness through the lens of sustainability and the pursuit of net zero in Newfoundland and Labrador's energy sector.

The initiative supports the development of clean growth strategies and projects in priority areas of Canada's net zero journey as they relate to its offshore energy industry: carbon capture, utilization, and storage; electrification and renewable energy; and hydrogen.

The Net Zero Project was formed by econext, Noia, and the Oil and Gas Corporation of Newfoundland and Labrador. More information on the initiative can be found at http://netzeroproject.ca/.

General Comments

The *Canadian Energy Regulatory Act* (CER Act) provides the authority to make regulations respecting safety and environmental protection as it pertains to offshore renewable energy (ORE) projects. However, the Offshore Renewable Energy Regulations (ORER) under the CER Act do not cover the process for the use of federal seabed lands for ORE projects in Canada's offshore. Public Services and Procurement Canada (PSPC) under *the Federal Real Properties and Federal Immovables Act* administers the process to use federal seabed lands in Canada's offshore for ORE development. PSPC issues land for ORE projects but has no role as a regulator and therefore no mechanism for marine spatial planning. We are therefore recommending that a Regional Assessment for ORE projects be undertaken to initiate stakeholder and rightsholder engagement and regulatory consultations to identify suitable areas for ORE projects.

We understand there are ongoing efforts and conversations regarding a joint-management approach to offshore energy in Atlantic Canada. Newfoundland and Labrador is fortunate to have a model for such an approach in legislation under the Atlantic Accord Act and in practice under the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB). The incorporation of offshore renewables into existing legislation and regulation of ORE by existing organizations is perhaps the most efficient approach, however many of the existing legislative requirements are not transferable between the oil and gas and offshore renewables industries, as detailed below. Further, the addition of new responsibilities related to ORE are beyond the scope and capacity of existing organizations; investments in new capacity may be required at least up until the point where ORE processes are fully integrated into existing ones.

Discussion Questions

Question 1: Are the proposed technical requirements adequate for ensuring the safety, security and reliability of projects, as well as environmental protection? What gaps would you like to see addressed?

Overall, we believe modelling the technical requirements after regulations for oil and gas facilities is excessive, particularly for unmanned facilities. ORE projects do not have the same health and safety or environmental concerns as oil and gas projects. We must ensure that regulations are fit for purpose.

If the regulatory model eventually implemented for ORE mirrors that for oil and gas, initiatives like the Frontier Offshore Regulatory Renewal Initiative (FORRI) will ensure that regulatory requirements remain up to date and reflect current best practices. The process for FORRI and the new Framework Regulations thereunder will streamline regulatory requirements, reduce duplication and transition prescriptive language to performance-based language where possible. The regulatory initiatives for ORE should adopt a similar approach.

The proposed technical requirements appear to allow for the adoption of best practices and standards without specification, which is preferable to prescriptive regulations. We encourage this approach in the development of guidelines to these regulations given that standards and codes are continually being updated, leaving guidelines perpetually outdated. If guidelines require mention of specific best practices, standards and codes, we expect early consultation with industry to determine those most appropriate.

Question 2: Are the proposed technical requirements feasible for project proponents? Do they allow for best industry practices, codes and standards to be adopted, including those reflecting local conditions at the project site?

Given the evolving technologies for offshore wind, we support the project design envelop (PDE) approach to project assessment. A PDE approach provides essential flexibility to a proponent throughout a multiyear assessment process with the option to consider evolving technologies. A PDE approach would also allow an assessment of a renewable energy project that may be constructed in phases over a longer period than a single installation. However, it would be important to maintain the flexibility, should the PDE approach not be necessary for a smaller scale project.

Careful coordination is required between the Canadian Energy Regulator (CER) and the Impact Assessment Agency (IAA) to ensure each design option does not require a separate and complete impact assessment, but that the design option with the potential for most adverse impacts is thoroughly assessed, as a worst-case scenario. The CER and IAA would then evaluate the most significant impacts that are foreseeable based on the parameters in the PDE. A guidance document detailing the integration of the CER and IAA processes would be essential to guide proponents through the parallel processes. We must also ensure the

legislated timelines for review and decision under the IAA are reflected in a process outlined in the ORER.

There is considerable duplication of environmental risk and mitigation analysis between requirements under the Impact Assessment Act and those in the ORER. The scope of review for a Designated Project under the IAA, would include all potential environmental and socioeconomic aspects of the project from construction to decommissioning. The ORER requires a similar assessment in the form of an Environmental Protection Plan (EPP) for each of the project phases, and refers to the Environmental and Socio-Economic Assessment (ESA) as the primary source of information. For example, Section 3.5 of the draft ORER requires an Environmental Protection Plan for the Transportation, Construction, Installation, and Commissioning phase and references the ESA as the source of relevant information on environmental risk and mitigations. There is substantial duplication of requirements between the Impact Assessment, ESA and the EPP. We believe strongly that the IA should be the primary source of environmental and socioeconomic impact analysis. It is during the IA process that consultations with stakeholders, rightsholders and regulators that environmental, Indigenous and socioeconomic risks and mitigations are identified. At the conclusion of the comprehensive IA process, a report is issued to identify the requirements of a follow-up program for each aspect of the assessment. The regulations need to acknowledge that the IA process can satisfy all requirements and factors to be considered by the Commission under 298(3) of the CER Act. It is the report prepared during the IA process on which the Commission must base its authorization decision, so the impact assessment should be the source of all environmental and socioeconomic considerations.

Question 3: Are there any lessons learned from other jurisdictions that you would like to share that would help to improve the proposed requirements?

The designation and requirement of Certifying Authorities (CA) should not be modelled after the oil and gas industry in Canada. We believe a CA would not add the intended level of value to an ORE project, resulting in marginal contribution to reducing ORE project safety and environmental risk to As Low As Reasonably Practicable. ORE projects will have accepted and recognized international certifications from jurisdictions with more comprehensive experience in the manufacturing, operation and maintenance of ORE projects and components. An audit and inspection schedule of ORE projects should also reflect international best practice and not requirements of oil and gas facilities. In developing these regulations, we must acknowledge that most ORE projects will not be connected to petroleum exploration or production activities,

and if an ORE project is used to power an exploration or production facility, it can be captured by existing authorization requirements. Likewise, the safety zone for the exploration or production facility may be extended to include the power cable and power generation facility.

Question 4: Can you identify any flaws or gaps in the proposed technical requirements that may hinder the development of future ORE projects? What solutions would you propose to address them?

ORE regulations need to specify a clearly defined scope of application, especially in a scenario where renewable power will be supplied to a petroleum exploration or production installation. There is risk of regulatory duplication in this scenario.

There is duplication in the requirement of a Facilities Design Report for an ORE project that proposes to connect into a provincial power grid. Similar requirements are in place by the utility and the federal regulator and could be appropriately referenced in the ORER to remove duplication. Such specific technical requirements are best enacted by expertise housed within the utilities and power regulators.

Guidelines to the ORER must be flexible enough to reflect lessons learned in other jurisdictions, through audits and assessments, advancements in technology and improvements to best practice.

The duration of the authorization for an ORE project should be longer than the typical 3-year duration for an oil and gas project, given the static nature of an ORE project, barring any material or significant changes.

There needs to be consideration given to limiting the time between the award of ORE lease and the initiation of an application for project authorization, to avoid dormant leases.

The Impact Assessment process will identify environmental risk, mitigations and follow-up monitoring requirements through consultations with stakeholders, rightsholders and regulators. The environmental and socioeconomic assessment requirements for designated projects under the IAA, should therefore satisfy all requirements of same under the ORER, given that the process for project review and authorization would be parallel.


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