

Marine Licensing
Marine Scotland on behalf of the Scottish Ministers
Marine Laboratory
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Aberdeen
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For the attention of Laura Morley

1 July 2013

Dear Sirs

Inch Cape Offshore Wind Farm and Offshore Transmission Works: Application for Marine Licences, Section 36 Consents and Section 36A Declaration

Inch Cape Offshore Limited (ICOL) hereby submits an application (the **Application**) for:

- three marine licences pursuant to Section 20 of the Marine (Scotland) Act 2010 (the **2010 Act**) for the deposit of substances and objects, and the construction, alteration or improvement of works, within the Scottish Marine Area (**Marine Licences**), two in relation to the Wind Farm and one in relation to the Offshore Transmission Works;
- two consents under Section 36 of the Electricity Act 1989 (the **1989 Act**) for the construction and operation of a Generating Station (**Section 36 Consents**); and
- two declarations under Section 36A of the 1989 Act to extinguish public rights of navigation so far as they pass through those places within the Scottish Marine Area where structures forming part of the Offshore Wind Farm and Offshore Transmission Works are to be located but not, for the avoidance of doubt, the areas of sea between those structures (**Section 36A Declaration**).

This is in accordance with ICOL's consenting strategy previously endorsed by you.

Each of the two Marine Licences for the Wind Farm and the two Section 36 Consents applied for are for 'up to' 213 turbines, the maximum within the project design envelope. This is to provide ICOL with the required flexibility to divide the Wind Farm into two or three separate sub-projects and is in line with the grid connection agreements secured for the project. However, it is not yet possible to identify how much of the total capacity would be constructed for each sub-project, or where. It is accepted that for the avoidance of any doubt, the Scottish Ministers may wish to include a condition in each consent/licence which only allows the construction of 'up to' 213 turbines only to the extent that there are fewer than 213 turbines already constructed (or with details approved for construction) in total within the Wind Farm boundary. The approval of conditions by MS (such as approval of a final layout or FEP5 return form) would determine which consent/licence applies to each sub-project.

The Application also includes one Marine Licence for the Offshore Transmission Works.

The Wind Farm, Offshore Transmission Works, Generating Station, scope of the Section 36A Declaration application and the construction works to which this Application relates are as described below.

1. SUBJECT OF THE APPLICATION

Wind Farm

- 1.1 The proposed Wind Farm is situated approximately 15-22 km off the Angus coastline to the east of the Firth of Tay and lies entirely within the Scottish Marine Area (as such term is defined in the 2010 Act).
- 1.2 The Wind Farm comprises:
- a) up to 213 wind turbine generators to be laid out in grid or off-set grid pattern, spaced a minimum of 820 m apart with a maximum height to blade tip of up to 215 m (from the lowest astronomical tide) and a minimum blade clearance of 22 m (from the highest astronomical tide);
 - b) inter-array cables;
 - c) up to three meteorological masts;
 - d) up to three metocean buoys; and
 - e) all associated foundations, substructures, fixtures, fittings, fixings, protections and cable crossings
- 1.3 The Generating Station to which the proposed Section 36 Consents relate comprises the wind turbine generators and inter-array cables forming part of the Wind Farm. The structures to which the proposed Section 36A Declaration relates comprise the wind turbine generators, meteorological masts and metocean equipment (including foundations and substructures) forming part of the Wind Farm together with the offshore substations (including foundations and substructures) forming part of the Offshore Transmission Works described below. The Section 36 Consents and Section 36A Declaration are required for the operational life of the Wind Farm and Offshore Transmission Works.

Offshore Transmission Works

- 1.4 The proposed Offshore Transmission Works lie within the Scottish Marine Area and comprise:
- a) up to six subsea export power cables, approximately 83 km in length from the edge of the Wind Farm to the mean high water springs ;
 - b) up to five offshore substations; and
 - c) all foundations, substructures, fixtures, fittings, fixings, protections and cable crossings.
- 1.5 The export power cables will be either High Voltage Direct Current (HVDC) or High Voltage Alternating Current (HVAC). The cables will run from the proposed Wind Farm to a landfall at either Cockenzie or Seton Sands in East Lothian.

Construction Works

1.6 The proposed offshore construction works are associated with the Wind Farm and Offshore Transmission Works and include, in summary:

- a) excavation for foundations;
- b) transportation of construction materials;
- c) construction of foundations and wind turbine generator bases;
- d) transportation and erection of wind turbine generators;
- e) construction of substations;
- f) construction of meteorological masts; and
- g) installation of metocean equipment.

2. **DOCUMENTATION ENCLOSED AND APPLICATION FEE**

2.1 ICOL has been in correspondence with Marine Scotland-Licensing Operations Team (**MS-LOT**) regarding compliance with MS-LOT's checklist for the Gate Checking Exercise. The below list is understood to be a complete list of all required submission documents.

2.2 Five hard copies of the following are enclosed:

- a) completed and signed Marine Licences application forms for the Wind Farm;
- b) completed and signed Marine Licence application form for the Offshore Transmission Works;
- c) project Location Plan for the Wind Farm (as per section 6 of Marine Licence application form) and list of coordinates;
- d) project Location Plan for the Offshore Transmission Works (as per section 6. of Marine Licence application form) and list of coordinates;
- e) Environmental Statement covering both the Wind Farm and the Offshore Transmission Works (including information to inform a Habitats Regulations Appraisal, a Navigational Risk Assessment and annexes and figures) with the Non Technical Summary (NTS) as a stand-alone document; and
- f) Planning and Policy Statement.

2.3 We also enclose 10 electronic copies of the Application Forms, Location Plans, Draft Press Notice, Environmental Statement and Planning and Policy Statement.

2.4 Fees for the sum of £120,000.00 for the Section 36 Consents for the Generating Station; £85,030.00 for the Marine Licence for the Wind Farm and £31,885.00 for the Marine Licence for the Offshore Transmission Works have been submitted to the Scottish Government.

3. APPLICATION REQUIREMENTS

- 3.1 The Application seeks consent and licences for the development described in summary above and in full in Section 7 of the Environmental Statement titled "Description of Development".
- 3.2 Once constructed and commissioned, all or most of the Offshore Transmission Works will be transferred to a new Offshore Transmission Networks Owner. It is not yet clear exactly which assets will be transferred to the Offshore Transmission Networks Owner and the timing.
- 3.3 The following matters are relevant to the Scottish Ministers' determination of the Application.

Environmental Impact Assessment

- 3.4 ICOL has carried out an environmental impact assessment under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (the **2000 Regulations**) and the Marine Works (Environmental Impact Assessment) Regulations 2007 (the **2007 Regulations**) in support of the Application.
- 3.5 Regulations 3 and 4(2) of the 2000 Regulations prohibit the Scottish Ministers from granting a consent under Section 36 of the 1989 Act unless they have taken into consideration the environmental information and state in their decision that they have done so.
- 3.6 Under Regulation 22 of the 2007 Regulations, the Scottish Ministers, in reaching their decision on the application for Marine Licences, must do so on the basis of, among other things, the Environmental Statement and must take into account the direct and indirect effects of the project on:
- a) human beings, fauna and flora;
 - b) soil, water air, climate and the landscape;
 - c) material assets and the cultural heritage; and
 - d) the interaction between any two or more of the items listed above in 3.6 (a), (b) and (c).
- 3.7 When providing written confirmation of their decision on the Marine Licences applications, the Scottish Ministers must also include a reference to the environmental information that they took into consideration and, if giving consent, must describe any measures that must be taken in consequence of the decision:
- a) to avoid, reduce and, if possible, offset the principal adverse effects of the Wind Farm and Offshore Transmission Works; and
 - b) to monitor the risk of the Wind Farm and Offshore Transmission Works having any such effects, the extent of any such effects, or the effectiveness of any measures for the purposes in 3.7(a).

Habitats Regulations Assessment

- 3.8 The Conservation (Natural Habitats, &c.) Regulations 1994 and the Conservation of Habitats and Species Regulations 2010 require a consideration of whether the Wind Farm or Offshore Transmission Works would be likely to have a significant effect on a European site, as defined therein and, if yes, then an Appropriate Assessment is required. This process is commonly referred to as a Habitats Regulations Appraisal.
- 3.9 Information to inform a Habitats Regulations Appraisal is included in the Environmental Statement in Chapters 13, 14 and 15.

Navigational Risk Assessment

- 3.10 Section 36B(1) and (2) of the 1989 Act requires that the Scottish Ministers undertake a two stage consideration of certain matters in relation to navigational safety before granting consent for an offshore wind farm.
- 3.11 As a first stage 36B(1) must be considered. This sub-section requires the Scottish Ministers to refuse to grant consent under Section 36 of the 1989 Act in relation to “offshore generating activities” if they consider that interference with the use of recognised sea-lanes essential to international navigation is likely to be caused by the carrying on of those activities or likely to result from their having been carried on. The effects of “offshore generating activities” include those arising from the development, as well as the effects of extinguishment of rights of navigation, declaration of safety zones and requirement for decommissioning plans. Assessment of impacts from these “offshore generating activities” upon recognised sea- lanes needs to take into account those impacts arising from nearby wind farm developments. In this case, the effects of such activities carried out or proposed at Firth of Forth Phase 1 (Alpha and Bravo) and Neart na Gaoithe also need to be taken into account.
- 3.12 The second stage 36B(2) imposes a duty upon the Scottish Ministers to have regard to the nature and extent of any obstruction of or danger to navigation which (without amounting to interference with use of recognised sea-lanes) is likely to be caused by the carrying on of the offshore generating activities listed above in paragraphs 1.2 and 1.4 (or is likely to result from their having been carried on) in determining:
- a) whether to consent a particular offshore generating activity; and
 - b) what conditions to attach to such a consent.
- 3.13 Assessment of the nature and extent of any obstruction or danger to navigation, likely to be caused by carrying on these “offshore generating activities”, needs to take into account those arising from the same nearby wind farm developments as identified at the first stage.
- 3.14 The information ICOL considers necessary to carry out this navigational risk assessment is contained in Appendices 19A and 19B of the Environmental Statement.

Amenity Duties under the Electricity Act 1989

- 3.15 To operate the Wind Farm a generation licence will be required under the 1989 Act. Paragraph 3(1)(a) of Schedule 9 to the 1989 Act places a duty on licence holders to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological and physiographical features of special interest and of protecting sites, buildings

and objects of architectural, historic or archaeological interest in forming proposals for the construction and operation of a Generating Station. Paragraph 3(1)(b) of Schedule 9 to the 1989 Act places a duty on licence holders to do what they reasonably can to mitigate the effect that the development would have on the aforesaid features. Paragraph 3(2)(a) and (b) of Schedule 9 to the 1989 Act requires that, before granting consent under Section 36 of the 1989 Act, the Scottish Ministers must have regard to the desirability of preserving the aforesaid features and the extent to which the licence holder has complied with its duties in respect of them.

- 3.16 The effects on the matters referred to in Schedule 9 are contained in the Environmental Statement and ICOL has had regard to these in preparing the Application. The mitigation measures identified by ICOL are also contained in the Environmental Statement.

Water Framework Directive

- 3.17 Under Section 2(1) of the Water Environment and Water Services (Scotland) Act 2003 and Schedule 1(1) of the Water Environment (Relevant Enactments and Designation of Responsible Authorities and Functions) (Scotland) Order 2011, the Scottish Ministers must exercise their functions under the 2010 Act so as to secure compliance with the Water Framework Directive (2000/60/EC) (the **WFD**). The requirements of the WFD extend to 3 nautical miles offshore in Scotland. There are a number of requirements in the WFD although Article 4, which requires Member States to prevent deterioration in the status of bodies of water (subject to certain exceptions), is of particular relevance in the context of the Application. Information on the effects of the Project on the water environment is contained in the Environmental Statement.

Material/Relevant Considerations

- 3.18 The Scottish Ministers are required to take into account all material considerations in determining a consent application under Section 36 of the 1989 Act.
- 3.19 Section 15 of the 2010 Act requires that the Scottish Ministers make their decision on the Application insofar as it relates to the Scottish Marine Area in accordance with the appropriate marine plans (as therein defined), unless relevant considerations indicate otherwise.
- 3.20 Section 27 of the 2010 Act requires that in determining an application for a Marine Licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the Scottish Ministers must have regard to: the need to protect the environment, the need to protect human health, the need to prevent interference with legitimate uses of the sea; to the effects of any use intended to be made of the works in question when constructed, altered or improved; and to any representations made by anyone with an interest in the outcome of the Application and such other matters as the Scottish Ministers consider relevant.
- 3.21 The specific matters referred to above to which the Scottish Ministers must have regard are each considered in the Environmental Statement and an assessment of the proposed Wind Farm and Offshore Transmission Works in the context of the appropriate marine plans and appropriate marine policy documents is contained in the Planning and Policy Statement. In the Planning and Policy Statement ICOL has also identified what it considers to be the considerations material/relevant to the Scottish Ministers' decision on the Application.

4. OTHER CONSENTS

- 4.1 A separate consent will be required for the onshore transmission works under the Town and Country Planning (Scotland) Act 1997.
- 4.2 Applications to the Secretary of State for Energy and Climate Change for safety zones under Section 95 of the Energy Act 2004 may also be made in the event that the Application is granted. ICOL is also aware of the potential requirement for European Protected Species Licences under the Conservation (Natural Habitats, &c.) Regulations 1994 and also under the Conservation of Habitats and Species Regulations 2010 and both have considered in the Environmental Statement.
- 4.3 With regard to the electricity consenting regime, an application has already been made to National Grid for permission to connect to the grid, and three grid connection offers have been secured and accepted by the applicant for a total of 1,050 MW at Cockenzie, in East Lothian.

5. CONSULTATION

- 5.1 Although not a legal requirement ICOL has carried out pre-application consultation. Statutory consultation on the Application and the ES will also be required pursuant to the 2010 Act, the 2009 Act and the 1989 Act as well as pursuant to the 2000 Regulations and the 2007 Regulations.
- 5.2 Details of the pre-application consultation undertaken are contained in the Environmental Statement at Chapter 5. The responses of statutory and non-statutory consultees are listed and summarised in the Environmental Statement and these have informed the evolution of the Application and the project overall.

We look forward to hearing from you in relation to the formal acceptance of the Application. If we can be of any assistance in that regard, please do not hesitate to contact us.

Yours faithfully



Stephen Kerr

Project Director

Inch Cape Offshore Limited