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Phase One Engagement Summary

NATURAL RESOURCES CANADA'S OFFSHORE RENEWABLE ENERGY REGULATIONS INITIATIVE

Canada

1. Introduction

The purpose of the Offshore Renewable Energy Regulations initiative is to develop modern safety and environmental protection regulations. The regulations will apply to exploration, construction, operation and decommissioning activities related to renewable energy projects and power lines in Canada's offshore areas.

The regulations will support Part 5 – Offshore Renewable Energy Projects and Offshore Power Lines - of the *Canadian Energy Regulator Act*, which came into force in August 2019. This legislation enables the Canada Energy Regulator (CER) to review and authorize activities related to offshore renewable energy (ORE) in Canada's offshore areas.

Natural Resources Canada (NRCan) is leading the development of the ORER. The CER, as the life-cycle regulator responsible for enforcing these future regulations, supports the initiative and provides technical expertise.

NRCan views government, stakeholder and Indigenous engagement as a critical input to the development of the ORER. Consequently, NRCan is conducting two phases of engagement before the first draft of the regulations. The draft regulations will then be published in Part 1 of the *Canada Gazette* for public comments. Following the review of these comments, NRCan will make any necessary amendments to the draft regulations before final publication in the *Canada Gazette*, where the regulations will become law.

The first phase of engagement took place from October 4, 2020, to January 8, 2021, and focused on NRCan's general approach to developing the regulations. The second phase of engagement will be in the fall of 2021 and will focus on the technical regulatory requirements that will inform the drafting of the regulations. NRCan will consider comments provided throughout the process and reflect them where appropriate in the regulations.

This paper is a summary of input provided to NRCan during the first phase of engagement.

NRCan is committed to providing a summary of comments from each phase so that all participants can see them.

2. Engagement method

NRCan launched its first phase of engagement for developing the ORER on October 4, 2020. During the first phase, NRCan contacted stakeholders[1] with an interest in the future development of ORE projects in Canada. The stakeholders included federal departments and regulators, provincial and territorial governments, offshore wind and electricity companies, utilities, environmental non-government organizations (NGO), industry associations, labour groups, modern treaty signatories, national Indigenous organizations, and coastal Indigenous groups across Canada.

To engage with stakeholders, NRCan released a discussion paper titled *Canada's Approach to Offshore Renewable Energy Regulations* (Discussion Paper) and hosted a webinar. The discussion paper provided an overview of ORE projects, NRCan's general approach to developing the regulations, and a series of questions to guide stakeholder feedback. NRCan received both verbal and written feedback.

[1] In this paper, NRCan refers to all participants as stakeholders to keep all input anonymous when summarizing comments. We recognize that provinces and territories, modern treaty signatories, national Indigenous organizations and Indigenous groups are more than stakeholders.

3. Webinar feedback

NRCan hosted its Phase 1 webinar for the ORER on November 26, 2020. During the webinar, NRCan provided participants with an overview of the regulatory initiative and the contents of the Discussion Paper, outlined key steps and timelines in the regulatory development process, and concluded with a question and answer session. More than 50 stakeholders participated in the webinar, including provincial and territorial governments, industry, Indigenous groups, NGOs, and federal departments and regulators.

Overall, participants were supportive of the ORER initiative, which will provide regulatory clarity for renewable energy development in coastal areas and help facilitate an emerging industry.

Some stakeholders sought clarity on the role of provincial and territorial governments in the future development of ORE projects in Canada. This was particularly of interest in provinces that have joint-management agreements with the federal government for developing offshore oil and gas resources. NRCan clarified that it is open to discussing joint-management with interested provinces.

NRCan also stated that the future development of offshore renewable energy in Canada will require working closely with provincial and territorial governments, which have jurisdiction over the electricity sector. However, joint-management discussions fall outside the scope of the ORER initiative.

Other questions sought clarification on the kinds of regulatory approvals required for an ORE project, such as approvals from other federal, provincial, and territorial entities. Other questions were about the type of information the regulations will require at different stages, the primary difference between regulatory requirements that are outcome-based and those that are prescriptive, and the involvement of Indigenous groups during project reviews. NRCan concluded the webinar by inviting stakeholders to submit written comments on the discussion paper by January 8, 2021.

4. Discussion paper feedback

The discussion paper provides an overview of the life-cycle phases of an ORE project and outlines major safety and environmental risks that need to be considered by regulators during each life-cycle phase. It then proposes guiding principles NRCan will use in developing the regulations and a general approach for the proposed regulations that follows the life-cycle phases of an ORE project. It concludes with a series of discussion questions for stakeholders to answer and invites comments on any other elements introduced in the paper.

NRCan received feedback from provincial counterparts, engineering firms, energy regulators, Indigenous groups, NGOs and industry associations. Feedback was received for each discussion question in the discussion paper, in addition to other comments.

Generally, the feedback about the ORER initiative was supportive because ORE is a growing industry globally, and the development of the ORER will help support coastal jurisdictions in Canada meet emission reduction targets. A summary of the comments for each question is presented on the following pages.

Q1. NRCan has proposed five guiding principles for developing the ORER. Do the guiding principles make sense for developing safety and environmental protection requirements for ORE projects? What changes, if any, would you suggest to the guiding principles? Are there any other principles NRCan should use when developing the ORER?

Stakeholders were supportive overall of the five guiding principles presented in the discussion paper that will be used to develop the safety and environmental protection requirements for the ORER. However, multiple stakeholders requested more information on how NRCan will consider the principles in developing the regulations or suggested additional information to guide how the principles will be used.

Several stakeholders noted the principle on reducing administrative burden should focus on avoiding duplication between federal and provincial and territorial regulators. If roles are not clarified early in a project review, there is a potential that different regulators will assess the same type of information for different approvals, thereby causing additional administrative costs for developers.

It was noted that, although it is important to reduce administrative burden to encourage investment in an emerging ORE industry, the regulations should focus on achieving the highest levels of safety and environmental protection and encourage responsible development.

It was remarked that the regulations will need to provide proponents with clear methods to quantify and assess risks, particularly for projects that are deploying new technologies whose risks are unknown. To support an outcome-based approach to the regulations, the regulations or supporting guidance documents should reference best practices and international standards to increase regulatory certainty.

Multiple stakeholders also proposed additional principles that should be used when developing the regulations. These principles included ensuring transparency during public engagement processes and having professional engineers incorporated in the review process to ensure the highest safety standards are met during project reviews.

Q2. NRCan has proposed five key components for the regulations that include requirements for project proponents to meet based on the type of activity proposed. Do the proposed components and requirements make sense? What changes, if any, would you suggest? Are there any other components or requirements NRCan should address when developing the ORER?

Stakeholders were supportive overall of the five key components and requirements proposed for the regulations, but noted more information is needed to fully assess what NRCan is proposing.

Several stakeholders highlighted the types of information the regulations could incorporate under each proposed component of the regulatory framework or sought clarification on the types of activities that will be covered.

Common areas to consider that were noted by stakeholders are the financial requirements of companies and how cost recovery will apply to regulated companies during project reviews for ORE projects.

During the site selection and planning phase, one stakeholder asked if environmental information (e.g. fisheries data, metocean data, marine mammals, birds) will be publicly available to proponents to help inform survey programs.

One stakeholder stressed that the effects of ORE technologies in Canadian waters are unknown. Therefore, to avoid the largest effects, marine protected areas or other designated conservation areas should not be used as potential project development sites during the site selection and planning phase.

For the proposed general requirements section, stakeholders sought clarity on the type of management systems required and how they will be applied to projects.

Stakeholders sought clarity on the types of safety and environmental incidents that operators will need to report on. They also noted the need to ensure that reporting requirements include close coordination with local and regional stakeholders (e.g. remote Indigenous groups). This need is particularly important for projects in remote areas of the ocean, where emergency preparedness and response are vital.

Comments about the approval of the Design, Fabrication, and Construction section questioned the scope of the authority of the CER (e.g. does it extend to ports and onshore activities). Further details were requested about the Certificate of Fitness process and about which organizations are eligible to carry it out for developers. Comments also questioned whether the design of all projects should be subject to the highest engineering standards in Canada to ensure the highest safety and environmental protection standards are met.

Stakeholders proposed that they be included as part of the regulatory framework and requested clarification in several other areas. They asked which types of ORE projects will be regulated, such as offshore wind farms that are attached to offshore oil and gas platforms. One query asked if developers are required to show proof of a power purchase agreement as part of the review process. Another comment highlighted the need to include review timelines in supporting guidance documents for the regulator to follow to ensure project reviews take place in a timely manner.

Q3. What are your views on the use of outcome-based requirements for regulating ORE activities? Do you agree with using such an approach to these proposed regulations? Are there any specific areas where prescriptive requirements would be more appropriate?

Stakeholders were supportive overall of taking an outcome-based approach to developing the regulations and noted areas where prescriptive requirements are more appropriate.

Stakeholders noted that an outcome-based approach is more effective at helping organizations achieve well-defined outcomes. This approach allows more flexibility to achieve outcomes through incorporating lessons learned, innovating, and adapting to the specific environments where they are proposing ORE projects.

However, stakeholders stressed that outcome-based regulations need to be supported by clear guidance documents. The guidance documents need to include well-defined outcomes within the regulations to avoid confusion or misinterpretation, and, where possible, need to reference best practices and international standards to ensure some standardization.

It was noted that prescriptive requirements may be more effective for outlining information required for the project application. The same is true for reporting requirements and the requirements for activities that have uncertain outcomes, such as deploying new technologies as part of a pilot or research project.

General comments

Stakeholders also provided comments that deal with the development of ORE in Canada but do not relate to the discussion questions.

For example, stakeholders noted that although the ORER will fill an important regulatory gap for ORE projects in Canada, more regulation is needed. Their position is that the best way to regulate ORE projects in Canada is to incorporate joint-management arrangements between the federal government and individual provincial governments to regulate ORE projects in Canada to incorporate provincial electricity priorities.

One stakeholder sought clarification on the scope of the regulations and how they apply to regions with Indigenous governments, noting that a comprehensive, but streamlined, review process is needed in these regions.

The importance of considering electricity reliability was also noted by stakeholders. One stakeholder stated that electricity reliability should be considered separately from the scope of the regulations and reviewed by system operators for a given region to avoid duplicating regulatory processes.

Next steps

The feedback from the first round of public engagement for the ORER initiative was invaluable because ORE is a nascent industry in Canada. The information will help ensure the ORER meet the highest standards of safety and environmental protection while also facilitating the growth of an industry.

NRCan reviewed, and incorporated where appropriate, the feedback into the proposed technical requirements for the regulations. These updated technical requirements will facilitate Phase 2 of the engagement process.

Phase 2 will start in the fall of 2021 and will provide stakeholders the chance to review and comment on the detailed technical requirements of the future regulations. Information about the next phase of engagement will be released as it becomes available, and NRCan will continue to work in partnership with stakeholders in the ongoing development of the ORER.