

**Tender conditions for**  
**Kriegers Flak Offshore Wind Farm**

Final tender conditions - June 2016  
Latest revised 18 October 2016

FINAL TENDER CONDITIONS

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## 1. The contracting authority

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## 2. The Contract Notice

This invitation to tender is conducted pursuant to the rules regarding public works concessions in title III in Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The tender has been organised as a restricted tender with negotiations.

The Contract Notice is published in the Supplement to the Official Journal of the European Union, cf. Contract Notice no. 2015/S 090-161094 of 9 May 2015, and on the website of the Danish Energy Agency on 6 May 2015.

## 3. Contents of the concession

The following is a description of the overall contents of the concession. The concession consists of a Concession Agreement, licences and authorisation to produce electricity.

In the event of discrepancy between these tender conditions, on the one hand, and the Concession Agreement, the model licences and the model authorisation, on the other hand, the latter shall prevail.

This concession grants a licence to conduct pre-investigations and to construct the Kriegers Flak Offshore Wind Farm in the Baltic Sea at two specified areas of territorial waters under the framework terms and conditions stipulated in the invitation to tender, as well as a licence to exploit the wind resources in these areas for the generation of electricity on the financial terms laid down in connection with the invitation to tender.

Reference is made to the energy policy agreement of 22 March 2012 between the government at that time (the Social Democrats (*Socialdemokraterne*), the Social Liberal Party (*Det Radikale Venstre*) and the Socialist People's Party (*Socialistisk Folkeparti*)), on the one hand, and the Liberal Party (*Venstre*), the Conservatives (*Det Konservative Folkeparti*), the Danish People's Party (*Dansk Folkeparti*) and the Unity Party (*Enhedslisten*), on the other, in which the tendering procedure for Kriegers Flak was decided. The agreement is available (in Danish) at the website of the Danish Energy Agency: <http://www.ens.dk/politik/dansk-klima-energipolitik/politiske-aftaler-pa-energiomradet/energiaftalen-22-marts-2012>. Reference is also made to the Agreement on the withdrawal of FSA etc. and modification of the PSO of 14 July 2014 in which the agreement on the tendering procedure was confirmed and the time schedule was adjusted. This

agreement is available (in Danish) at the website of the Danish Ministry of Finance:

<https://www.fm.dk/nyheder/pressemeddelelser/2014/07/aftale-om-tilbagerulning-af-fsa-mv,-d,-og-lempelser-af-pso>.

The offshore wind farm must have a total capacity of min. 590 MW and max. 610 MW. As described in Appendix 6.1, the facilities for transmission of power to shore (platform and export cables) are designed for a maximum rated power of 600 MW.

All technical aspects of the farm, including the wind turbines and their array, are subject to inclusion within the environmental impact assessment for the project. Questions as to whether deviations, if any, from the technical project description on which the environmental impact assessment is based can be approved, will be decided by the Danish Energy Agency.

The concession does not prevent the Danish Energy Agency from otherwise exploiting the concession area whenever this is compatible with exploitation of the wind resources. Nor does the concession prevent that concessions be granted for the construction of offshore wind turbines in the vicinity of the concession area. However, a buffer zone of 4-6 km around the farm will be kept clear, as described in the model construction licence enclosed, cf. Appendix 6, clause 3. This means that it will not be possible to construct offshore wind turbines in the minerals area without permission from the Concessionaire.

#### *Joint and several liability*

If the Concession Agreement is entered into with a consortium, all participants of the consortium will assume joint and several liability with respect to all obligations of the Concession Agreement and the associated licences and authorisation.

The same applies to undertakings supporting the tenderer economically and financially, thereby contributing to the tenderer's compliance with the economic and financial minimum requirements at the time of prequalification. Undertakings supporting the tenderer must thus assume joint and several liability with the successful tenderer with respect to all obligations of the Concession Agreement and the related licences and authorisation.

If the tenderer is not yet an established undertaking, the establishing undertakings will assume joint and several liability with the tenderer on the date of conclusion of the Concession Agreement.

Any claim arising pursuant to the Concession Agreement or the associated licences as well as the associated authorisation may therefore be directed towards 1) any of the participants in the consortium, 2) any undertaking which the tenderer has used for support in order to meet the minimum requirement for economic and financial capacity, as well as 3) all establishing undertakings, if the tenderer is not yet an established undertaking.

Finally, 4) an undertaking supporting the tenderer technically in relation to project development and project management of construction will be subject to the requirement for joint and several liability, if support from the undertaking is an element in the tenderer being able to meet the technical minimum requirements in connection with prequalification. The joint and several liability for undertakings supporting the tenderer's technical capacity will only involve obligations relating to project development and construction project management.

Joint and several liability will only be imposed to the extent that the Concessionaire is in breach of the Concession Agreement, the associated licences or the associated authorisation, and if such breach is not remediated by the Concessionaire on demand from the Danish Energy Agency. Furthermore, joint and several liability solely covers claims from the Danish Energy Agency.

#### 4. Grid connection and market framework

The transmission grid from shore, including two offshore transformer platforms, to a collection point in the internal grid of the offshore wind turbines, will be financed, established and operated by Energinet.dk. The electricity will be transmitted to the Danish onshore power grid.

With regard to the obligations of Energinet.dk to the Concessionaire, if Energinet.dk fails to fulfil its obligations with respect to providing the possibility of installing cables and with respect to commissioning the transformer platform, Energinet.dk will be liable in damages for the loss suffered by the Concessionaire in this respect. Such costs are documented additional costs as a result of the delay, including production losses, cf. Appendix 1 (draft Concession Agreement). The liability in damages is limited to DKK 1.8 bn. during the construction period of the offshore wind farm. Any losses incurred by the Concessionaire in excess of this maximum will not, therefore, be covered.

New international electricity exchange capacity will be established in connection with construction of Kriegers Flak. The offshore electricity grid links the Danish island of Zealand with Germany via the Kriegers Flak Offshore Wind Farm and the German offshore wind farms, Baltic 1 and Baltic 2. It will be possible to use this electricity grid to route wind turbine electricity onshore and to exchange electrical energy between Denmark and Germany. Appendix 6.1 contains a description of the solution.

##### *High security of supply*

The risk of not being able to export electricity from the offshore wind farm in the event of technical problems will be reduced by establishing a total of four export cables to the platforms for Kriegers Flak. Furthermore, Energinet.dk will also establish a submarine cable between the two Danish transformer platforms. In comparison with grid connection for the previous Danish wind farms and foreign wind farms, this will provide an exceptionally high degree of security that electricity can be exported.

##### *Export cables to Denmark*

The offshore grid connection infrastructure for the offshore wind turbines at Kriegers Flak to the Danish electricity grid will comprise two offshore transmission platforms (KFA and KFB) and three submarine cables. The platforms will be located about 11 km. from each other. This is because the offshore wind turbine area contains a minerals recovery area in which wind turbines cannot be located. An approx. 45-km-long, 220 kV submarine cable will be laid to the coast at Rødvig on Stevns. A 220 kV cable will be laid between the two platforms. This will ensure that all wind turbines can be supplied with voltage, and that much of the electricity from the offshore wind turbines can be routed onshore if an export cable is out of service.

##### *Export cables to Germany*

In addition to routing **electricity** onshore to Denmark, new offshore electricity exchange capacity will be established to Germany. The platform for KFB is to be expanded to make

room for the necessary electrical components and it will be linked to the Baltic 2 offshore wind farm with two 150 kV submarine cables. An HVDC direct current converter will be established in Bentwisch, where electricity from the German offshore wind farms is currently routed onshore. The link will establish 400 MW exchange capacity between East Denmark and Germany.

East Denmark is part of the Nordic synchronous power system, which has not been synchronised with the continental synchronous zone, including Germany. Therefore, the two synchronous zones cannot be linked with alternating current connections. As the Danish and German offshore platforms are connected directly, the converter is to be located in Germany so that the Nordic and continental synchronous zones are kept separate. With this location of the converter, both Kriegers Flak and the German Baltic 1 and Baltic 2 offshore wind farms will be part of the Nordic synchronous zone.

Translation of map

CGS-projektet = CGS project

Omformerstation = transformer station

Kabel = cable

Danmark = Denmark

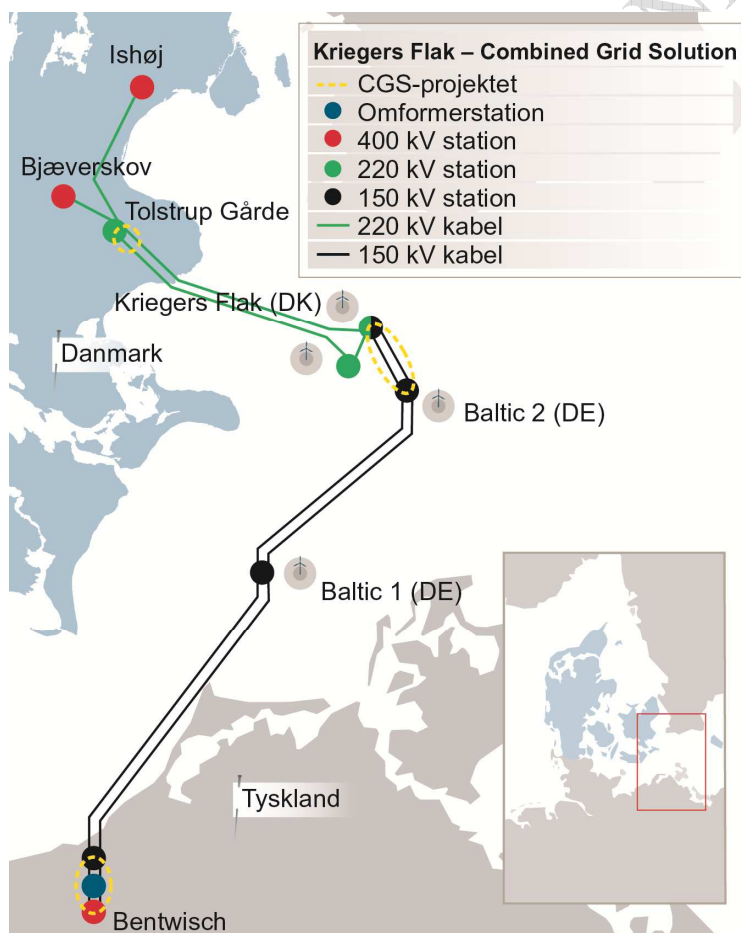


Figure 1: Illustration of the offshore grid connection infrastructure and export cables

*Option to move offshore wind turbines from the eastern to the western area.*

It has been assumed that capacity for the offshore wind farm Kriegers Flak is distributed to the two areas designated in the east and west; each with their pre-stipulated transmission capacity. The transformer platform in the western part of Kriegers Flak has a capacity making it possible to connect a maximum of 200 MW. The transformer platform in the eastern part of Kriegers Flak has a capacity making it possible to connect a maximum of 400 MW. It is not possible to change these capacity limits.

However, within the framework of the EIA for Kriegers Flak and the capacity limits mentioned above, the Concessionaire has the flexibility that a maximum of ten turbines can be moved from the eastern area to the western area, provided that, via its own cables, the Concessionaire connects these turbines to the transformer platform in the eastern part of Kriegers Flak. For example, if the Concessionaire uses a 6 MW turbine, this means that a total production capacity of 60 MW can be moved from the eastern area to the western area. If this is the case, the turbines to be moved must be stated in the detailed project plan, which is to be submitted to the Danish Energy Agency before construction work on the offshore wind farm can commence, cf. clause 6b.3.

*The market framework for cross-border exchange of electricity at Kriegers Flak*

The combination of grid connection for the offshore wind turbines and electrical connection to Germany will be the first offshore grid in the world to combine integration of renewable energy and cross-border trade in the single market. The market framework for exploitation of the combined grid solution focusses on meeting European regulation of the single market for electricity. Cross-border trade with Germany will therefore be within the existing mechanisms - more specifically the European market coupling - and it will secure equal access to the cross-border capacity for all users of the grid.

Grid connection of the offshore wind farm will primarily function as traditional routing onshore of the electricity from the offshore wind turbines, although with some exceptions, as the link to Germany will enable transport of electricity to Germany, for example in the event of technical problems in the Danish grid connection. The link to Germany will also make it possible to import electricity in these situations. The more detailed framework for this is being clarified between Energinet.dk and 50 Hertz Transmission GmbH, the German TSO. Possibilities to secure export and import of electricity in the event of outages in the Danish part of the grid connection is described in the memo "Market and Technical framework for the Danish Kriegers Flak offshore wind park" December 2015.

## **5. Pre-investigations and EIA process**

Energinet.dk has prepared an environmental impact assessment (EIA), preliminary geotechnical and geophysical surveys and provided MetOcean data, etc. The results of these surveys are published at [www.ens.dk/offshorewind](http://www.ens.dk/offshorewind) and at <http://energinet.dk/EN/ANLAEG-OG-PROJEKTER/Anlaegsprojekter-el/Kriegers-Flak-havmoellepark/Sider/data.aspx>

The Danish Nature Agency and the Danish Energy Agency are jointly the EIA authority for the project; the Danish Nature Agency is the authority for onshore installations, while Danish Energy Agency is the authority of offshore installations (turbines and routing onshore etc.)



The complete draft EIA has been through the public consultation in October-December 2015. Furthermore, an Espoo consultation has been carried out (consultation with neighbouring countries). Objections received in connection with the public consultations are published on the Danish Nature Agency website (<http://naturstyrelsen.dk/annonceringer/alle-annonceringer/2015/okt/offentlig-hoering-af-krigers-flak-havmoellepark/>). There has already in the summer of 2015 been an authority consultation of a draft of the EIA.

The EIA concludes that the construction and presence of the offshore wind farm, the transformer platforms, the cables routing onshore and the associated onshore installations will have impacts on the environment. In by far the majority of cases, however, the environmental impacts will be temporary and are linked to the actual construction work. In addition to improving security of supply in East Denmark, the benefit of completing the project will be that in the long term there will be reductions in CO<sub>2</sub> emissions in Denmark.

On the basis of the EIA and of the completion of the public consultations together with the ESPOO-consultation, the Danish Energy Agency ascertains that the EIA can be approved. The EIA and its consultations have led to few changes or adjustments of the terms in the model licences.

Consultations of authorities on the pre-investigation licences and construction licences were carried out in June 2016 in order to ensure that the terms that have been inserted following the public and authority consultations on the EIA are in compliance with the authorities' requirements. Changes to the tender conditions following these consultations have been added to the draft licences. The tenderers will thus be given good opportunity to review the complete EIA material as well as any objections prior to the deadline for submission of best and final offer.

With regard to the detailed terms and conditions based on the EIA, note that terms regarding underwater noise have been inserted in the construction licence, to protect marine mammals (seals and porpoise). The terms have been set on the basis of the conclusions of a working group including Danish experts on the area. The need for special terms has arisen because ramming the foundations for the new larger types of turbine produced significantly more noise than for the turbine types hitherto used in Danish offshore wind farms. A limit value for impacts will be stipulated, but the Concessionaire is free to choose any method which complies with this limit.

Furthermore, note that, on the current basis, the bird surveys included in the EIA will not lead to any restriction either on the design or operation of the offshore wind farm

#### *Costs of pre-investigations*

The successful tenderer must pay Energinet.dk's costs of pre-investigations and EIA, cf. section 23(3) of the RE Act. The costs will not exceed DKK [80] million (excluding VAT). When all the reservations regarding the Concession Agreement have been met, cf. clause 7, so that the agreement is unconditional, the Concessionaire must transfer an amount covering Energinet.dk's costs of carrying out the pre-investigations.

## **6. Procedure, licences and decommissioning**

The following is a further description of the licences, procedure for constructing the offshore wind farm, the most essential requirements imposed on the Concessionaire, and terms regarding

decommissioning the offshore wind farm. Reference is also made to the provisions of the model licences, the model authorisation and the Concession Agreement.

#### *Licences etc...*

The licences and the authorisation which are issued pursuant to the Promotion of Renewable Energy Act (the RE Act) and the Electricity Supply Act, respectively, are as follows:

- A licence to conduct pre-investigations.
- A licence to construct an electric power generating plant.
- A licence to exploit the wind power from the electric power generating plant.
- An authorisation to produce electricity.

The above licences and authorisation, which are issued under more detailed terms, are contained in these tender conditions in the form of model licences and a model authorisation, cf. Appendices 5-8.

The successful tenderer will shortly after the signature of the Concession Agreement, be granted a licence to conduct pre-investigations and a licence to construct the electric power generating plant, cf. Appendices 5 and 6. Subsequently, the successful tenderer must submit a detailed project plan to the Danish Energy Agency for approval. The detailed project plan must be approved prior to commencement of the construction work. Finally, following an application, a licence will be granted to exploit the wind power along with an authorisation to produce electricity, cf. Appendices 7 and 8, before the plant is connected to the grid.

#### a) Pre-investigations

Shortly after signature of the Concession Agreement with the Concessionaire, the Concessionaire will obtain a licence to conduct pre-investigations pursuant to section 22 of the RE Act, cf. Appendix 5 (model licence for pre-investigations). The licence can be exercised immediately after being granted and before expiry of the time limit for complaints, although at the risk of the Concessionaire.

The licence to conduct pre-investigations will be granted and notified to the Concessionaire so as to provide the Concessionaire with opportunity to carry out supplementary geotechnical and geophysical surveys as well as MetOcean and possibly UXO studies.

#### b) Construction licence and complaint procedure

Shortly after the signature of the Concession Agreement with the successful tenderer, the latter will obtain a licence to construct an electric power generating plant and related internal grid pursuant to section 25 of the RE Act, cf. Appendix 6 (model construction licence). The licence will also be given on the basis of the EIA.

The licence granted to the Concessionaire to construct the electric power generating plant must be published, and appeals against the licence may be lodged with the Danish Energy Board of Appeal (*Energiklagenævnet*). The licence may not be exploited until the expiry of the four-week period allowed for complaints. Complaints about the licence shall have no suspensory effect unless the Danish Energy Board of Appeal decides otherwise. The decision of the Danish Energy Board of Appeal may not be challenged before any other administrative authority. The Danish

Energy Agency refers to the website of the Danish Energy Board of Appeal for decisions regarding other offshore wind farms: [www.ekn.dk](http://www.ekn.dk).

The model licence to construct the electric power generating plant with related internal grid (Appendix 6) stipulates a number of coordinates defining the area within which the offshore wind farm is to be located. The offshore wind farm must take up no more than 132 km<sup>2</sup> within this area. In addition, the EIA may stipulate other requirements for the layout of the wind farm.

#### b.1) Detailed time schedule

As one of the terms of the licence to construct the electric power generating plant, the Concessionaire must prepare a detailed time schedule for implementation of the project. This time schedule must be submitted to the Danish Energy Agency and Energinet.dk by no later than 1 March 2017. The time schedule must show how the Concessionaire plans to fulfil the requirements for constructing the offshore wind farm, including how the deadline for completion of the farm prior to 1 January 2022 will be met. Requirements regarding the contents of the detailed time schedule are stated in the construction licence.

The time schedule is organic and will regularly be adjusted as the project develops. Changes in the time schedule must, however, always be discussed with the Danish Energy Agency in advance.

#### b.2) Coordination with Energinet.dk

Energinet.dk will be able to ensure commissioning of the transformer platform from 1 January 2019 and expects to make installation of the Concessionaire's cables possible from 1 November 2018, unless later dates are agreed between the Concessionaire and Energinet.dk.

To ensure coordination in relation to Energinet.dk's construction of the facilities for transmission of power to shore and the transformer platform, the Concessionaire must provide the information etc. described below to Energinet.dk, cf. the terms of the licence to construct the electric power generating plant (Appendix 6):

- The Concessionaire must, together with Energinet.dk, agree on a plan for delivery of the technical information on the Concessionaire's equipment for installation at the platform by no later than 30 days after award of the concession.
- Equipment for installation at the platform must be delivered by the Concessionaire to the yard by no later than 1 December 2017.
- By no later than 1 March 2017, the Concessionaire must notify the date requested for commissioning the transformer platform and installation of cables.

Equipment for installation at the platform which has not been delivered to the yard by 1 December 2017 at the latest will have to be installed offshore, unless other agreed with Energinet.dk. Any additional costs in this regard are to be met in full by the Concessionaire, just as installation offshore otherwise remains at the cost and risk of the Concessionaire.

Energinet.dk will provide space at the platform for the Concessionaire's 33 kV installation, SCADA and communications systems, etc., cf. Appendix 6.1. The design of the platform has already been decided, which means that any requests for additional equipment at the platform will only be granted if practicable.

### b.3) Detailed project plan

As one of the terms in the licence to construct the electric power generating plant, and as a condition for exploiting the licence for construction work, the Concessionaire must prepare a detailed project plan for the construction work.

The detailed project plan is to be prepared after the Concessionaire has decided on the turbines, the foundations, the design of the farm, etc. Hence, the detailed project plan must document in detail to the Danish Energy Agency that the terms of the construction licence will be complied with.

It is expected that the Danish Energy Agency will be able to approve the start of the wind farm project, so that the construction of the wind farm can commence, no later than two months after the Danish Energy Agency has received sufficient documentation regarding the above detailed project plan.

### c) Licence to exploit the wind power (electricity production licence)

The licence to exploit the wind power pursuant to section 29 of the RE Act may not be applied for until the construction work has been initiated and no later than two months prior to connection to the grid of the first turbine. A model electricity production licence is attached as Appendix 7.

Production of electricity for the collective electricity supply grid must not be carried out until the licence has been obtained. A condition for obtaining the licence to exploit the wind power is that the Concessionaire can document that all terms of the licence to construct the electric power generating plant have been complied with or will be complied with.

### d) Authorisation to produce electricity

Pursuant to section 10 of the Danish Electricity Supply Act (*elforsyningsloven*), electricity production from plants with a capacity of more than 25 MW may only be carried out by undertakings which have obtained authorisation from the Minister for Energy, Utilities and Climate. Requirements are made with respect to technical and financial capacity in the application for authorisation to produce electricity.

See the model authorisation in Appendix 8.

### e) Decommissioning of the plant

Irrespective of when the electric power generating plant is decommissioned, the Concessionaire is obliged, at its own account, to restore the area to its former condition and to decommission the plant pursuant to a plan approved by the Danish Energy Agency.

The Concessionaire must provide a guarantee, approved in advance by the Danish Energy Agency, covering the dismantling of the plant. The guarantee must be provided by no later than 12 years after the first turbine is connected to the grid. At least six months prior to this time, the Concessionaire must submit a plan to the Danish Energy Agency with details of how the guarantee will be provided.

Initially, the guarantee must be for DKK 600 million and must be provided in the form of a guarantee from a financial institution, an insurance company, or similar, approved by the Danish Energy Agency. However, part of the guarantee (up to DKK 500 million of this amount) may be provided as a parent company guarantee. In connection with provision of the guarantee, the Danish Energy Agency may approve a guarantee for a lower amount, if it can be documented with adequate certainty that the costs of decommissioning will be less than DKK 600 million.

Reference is furthermore made to the provisions regarding decommissioning and guarantee set out in Appendix 6 (model construction licence) and Appendix 8 (model authorisation to produce electricity).

#### **7. Reservations regarding the Concession Agreement**

The Concession Agreement will be conditional upon the following:

1. That the Danish Parliament (*Folketinget*) adopts the necessary amendments to the RE Act, among other things settlement terms, by no later than 1 April 2017, that make it possible to approve the kWh price quoted by the winning tenderer. However this is not possible before a successful tenderer has been determined, cf. clause 16.

The Concession Agreement will be established with the successful tenderer after expiry of the standstill period, cf. clause 16, but on the condition that a bill is adopted on the premium and on the settlement terms otherwise for the wind turbines covered by the tender.

2. That premiums paid to the successful tenderer according to the Concession Agreement on construction and operation of Kriegers Flak constitute state aid and therefore must be reported to the European Commission. The Danish Energy Agency commenced the procedure for reporting in July 2016. As there is no certainty that the approval will be issued prior to the deadline for submission of final tenders, the Concession Agreement is also conditional upon the European Commission approving the state aid as compatible with the EU state aid regulations by no later than 1 April 2017.
3. That an agreement is reached by a majority of the Danish Parliament on Treaty-compatible financing of the premium for Kriegers Flak offshore wind farm by no later than 1 April 2017, and upon the European Commission accepting this financing solution.
4. That, as expected, the project is not prevented or significantly changed because of complaints about the construction licence.

In the event that

- legislation on the price tendered is not adopted by the Danish Parliament, and/or
  - the support is not approved/accepted by the European Commission as compatible with the EU state aid regulations, or
  - no Treaty-compatible agreement on a financial solution has been reached, or finally
  - against expectations, the project cannot be completed because of complaints,
- the concession will be revoked (i.e. the Concession Agreement will be cancelled/cease without notice), unless, within the framework for the relevant tendering and procurement regulations, another agreement can be established.

In the event of the cancellation of the Concession Agreement as a result of the reservation above (i.e. that one or more of the conditions are not met), the Concessionaire alone will be able to make a claim, as stated in more detail in the Concession Agreement. The Concessionaire is not entitled to any further financial compensation, damages, reimbursement, etc. in the event of cancellation of the concession.

Before the end of 2016, the Danish Parliament must have adopted long-term treaty-compliant financing of the expansion of Danish renewable energy, including the premium for Kriegers Flak. The Danish Energy Agency expects that, before a best and final offer is to be issued, a solution will be found regarding future financing for the expansion of Danish renewable energy. However, as this cannot be guaranteed, the above condition regarding treaty-compliant financing of the premium has been added in the draft Concession Agreement.

## **8. Penalty for defective performance and incentive for completion**

### *Penalty for defective performance*

If, irrespective of the reason, the Concessionaire states that it will not construct the electric power generating plant and connect it to the grid, or if circumstances show that this is so, a penalty for defective performance (an agreed penalty) will be immediately payable upon demand.

The penalty for defective performance will also fall due immediately upon demand if the construction work on the offshore wind farm is not commenced by 1 June 2021.

Until twelve months after the conclusion of the Concession Agreement, the penalty for defective performance will be DKK 100 million. The penalty for defective performance will thereafter be increased to DKK 450 million.

The penalty for defective performance will cease to apply when the first kWh from the first turbine has been delivered to the collective grid. The penalty for defective performance is described in more detail in the Concession Agreement, in which it is stated that the penalty for defective performance also covers the Concessionaire's objective liability for damages pursuant to section 31(1) of the RE Act, cf. Appendix 1 (draft Concession Agreement). The Concessionaire's liability to pay damages pursuant to section 31(1) of the RE Act is therefore limited to the penalty for defective performance. The penalty for defective performance will also cover the concession holder's costs for the pre-investigations carried out by Energinet.dk.

Upon signature of the Concession Agreement for construction and connection to the grid of the electric power generating plant, the tenderer must provide a guarantee from a financial institution, an insurance company or similar of DKK 100 million covering the above penalty for defective performance. The guarantee must be provided on the terms set out in Appendix 1.1 (model demand guarantee). The guarantee provided must be increased to DKK 450 million after twelve months. The additional DKK 350 million may either be provided in the form of a parent company guarantee, cf. Appendix 1.2, or as a bank guarantee or similar, cf. Appendix 1.1. The guarantee for the penalty for defective performance is described in more detail in the draft Concession Agreement.

The Danish Energy Agency will be entitled to claim payment under the guarantee if the Concessionaire breaches the Concession Agreement regarding construction and connection to the grid, cf. Appendix 1 (draft Concession Agreement).

The guarantee obligation will expire fully when

1. The Concessionaire has either documented to have paid costs after the award of the concession of at least DKK 1,000,000,000 (one billion Danish Kroner) incl. VAT for planning, design and construction of the electric power generating plant, Kriegers Flak Offshore Wind Farm, or
2. When the first kWh from the first turbine has been delivered to the collective grid.

However, the Concessionaire still has a right to gradual release of the guarantee when the Concessionaire has proven to have incurred costs after the award of the concession of at least DKK 700 million (seven hundred million Danish Kroner) incl. VAT. The conditions for this are described in Appendix 1 (draft Concession Agreement).

#### *Incentive for completion*

In order to ensure that Kriegers Flak is completed before 1 January 2022, an incentive for completion is to be provided, as described in Appendix 1 (draft Concession Agreement). The incentive is to be provided as a reduction in the production eligible for supplement.

The incentive has been set as follows:

- If less than 95 % of the capacity of the farm is connected to the grid on 1 January 2022, the production eligible for supplement will be reduced by 0.3 TWh to 29.7 TWh.
- For each six month-period thereafter in which at least 95 % of the projected capacity is still not connected to the grid, the production eligible for supplement will be reduced by an additional 0.3 TWh.

### **9. Working conditions and establishment of apprenticeships/work placements**

#### *Labour clause*

The Concession Agreement contains a standard ILO labour clause (the International Labour Organisation is United Nations' professional body for labour related questions). According to the clause the Concessionaire is obliged to ensure that the Concessionaire guarantees to workers in Denmark wages, including allowances, hours of work and other conditions of labour which are not less favourable than those applicable to work of the same character pursuant to a collective agreement entered into by the most representative social partners in Denmark within the trade or industry concerned and which apply to the entire territory of Denmark.

The Danish Energy Agency may, at any time, request relevant documentation that pay and working conditions for employees meet the obligations laid down in this clause.

The Danish Energy Agency may demand that, following a written order and within 10 working days, the Concessionaire procure the relevant documentation such as payslips, records of hours

worked, payrolls and employment contracts for both its own employees and any subcontractor's employees.

In its assessment of whether the Concessionaire or its subcontractors has complied with this clause, the Danish Energy Agency may seek advice from relevant employers' organisations and/or employees' organisations.

If the Concessionaire fails to meet its obligations pursuant to the labour clause, and if this leads to a justified demand from employees for additional pay, the Danish Energy Agency may order the Concessionaire to pay a fine corresponding to twice the amount of each such demand.

#### *Social clause (creation of apprenticeships)*

The Danish government wishes to encourage the establishment of apprenticeships in connection with tenders regarding large public construction projects.

As far as possible, the Concessionaire must therefore ensure that a certain number of positions that are relevant to the construction and subsequent operation and maintenance of the Kriegers Flak Offshore Wind Farm "on site" (both offshore and onshore) can be filled with apprentices. Apprentices are defined as employees with whom the Concessionaire or its subcontractors etc. enter into, or have entered into, a training agreement. The training agreement is to be entered into as part of a course the apprentice follows and must ensure that the apprentice achieves personal, social and professional skills that support the apprentice's training course and provide a basis for employment in the labour market.

Training courses pursuant to Consolidating Act no. 987 of 16 August 2010 on basic vocational training etc. and pursuant to Consolidating Act No. 789 of 16 June 2015 on vocational training are deemed to meet the above requirements for a course.

The Concessionaire or its subcontractors may enter into training agreements on training courses pursuant to other similar education/training schemes in the EU/EEA, including apprentices from other EU/EEA countries that meet the above requirements for a course.

No later than twelve months after signature of the Concession Agreement, the Concessionaire and the Danish Energy Agency will establish an agreement on the number of apprenticeships to be secured in connection with construction and subsequent operation and maintenance of Kriegers Flak Offshore Wind Farm. The Concessionaire and the Danish Energy Agency must have initiated a process for establishment of this agreement by no later than six months after signature of the Concession Agreement.

### **10. Award criterion**

The concession will be awarded on the basis of the award criterion "the lowest price", assessed on the following basis:

- **Price in "øre" per kWh to be paid for 30 TWh**

The tenderer is to quote a kWh price to be paid for 30 TWh (corresponding to 50,000 full-load hours for 600 MW). The price tendered is to be a fixed "øre" amount (constant in current prices) and will not be indexed. The price must be stated as a "øre" amount to max. 1 decimal place.



The concession will be awarded to the tenderer quoting the lowest price.

If less than 95% of capacity of the entire offshore wind farm is connected to the grid by 1 January 2022, the production eligible for supplement of 30 Twh will be reduced as set out in clause 8 and Appendix 1, point 1.4 and point 8.3 (draft Concession Agreement).

## **11. Best and final offer**

Tenderers must submit their best and final offer on the basis of the final revised tender material.

The tender must contain only one tender price which must be binding on the tenderer.

In the best and final offer, the tenderer is not entitled to make reservations on the final tender material. If the Danish Energy Agency identifies one or more reservations on the tender material in the best and final offer, the Danish Energy Agency may reject the tender or contact the tenderer requesting that the reservations be withdrawn. The tenderer will not be given the opportunity to quote a new price.

With the submission of the best and final offer, the tenderer must undertake to construct the electric power generating plant and connect it to the grid.

In connection with submitting their tenders, tenderers must also declare that they have complied with any possible requirement to repay aid which they may have received and which, in a previous decision, the European Commission has declared illegal and incompatible with the single market.

The tenderer must submit a solemn declaration stating, where relevant, whether the tenderer has unpaid, due debt to public authorities, cf. description in clause 13.

A specimen tender covering letter which the tenderer may use when submitting the best and final offer and the undertaking to construct the electric power generating plant and connect it to the grid is attached as Appendix 4.

If, in the best and final offer phase, several tenders are submitted quoting the same lowest price, the tenderers in question will be requested to submit a new tender with a lower “øre” amount/kWh (“øre” stated to 1 decimal place). The Danish Energy Agency must be in receipt of the new tender within 14 calendar days of date of the request.

The tenderer bears full commercial risk for the kWh price quoted.

## **12. Tender deadline and formal requirements**

The best and final offer as described under clause 11 must be handed in to the Danish Energy Agency by **no later than Tuesday, 8 November 2016 at 14.00 CET**.

The address is stated in clause 1 above.

Best and final offers received after this date and time will not be considered.

The Danish Energy Agency would prefer that tenders are submitted in 1 hardcopy original, 1 copy and 1 electronic copy on CD-ROM/USB. In the event of any discrepancy between the hardcopy of the tenders and the electronic version, the hardcopy version will prevail. If one or several documents are missing in the paper version, but are present in the electronic version, the Danish Energy Agency retains the right, however, to prioritise the electronic version with regard to the document(s) in question.

The final offer should be marked "BEST AND FINAL OFFER – Kriegers Flak Offshore Wind Farm".

#### *Language*

The tenders must be drafted in English or Danish. cf. Appendix 4 (best and final offer).

The Danish Energy Agency has prepared the tender documents in Danish. The tender documents will also be published in an English translation, although the Danish version takes precedence. In the event of any discrepancy between the Danish version and the English translation, the Danish version shall prevail.

The Danish authorities may require that case processing for the project be conducted in Danish.

### **13. Conditions for participation in the tendering procedure**

#### *Solemn Declaration - tenderer*

With the first indicative offer, the tenderer must submit a solemn declaration stating whether the tenderer has unpaid debt due to public authorities exceeding DKK 100,000 (one hundred thousand Danish Kroner or a corresponding amount in another currency) in form of tax, charges or social security contributions under the law in the tenderer's Member State or country or in the country where the tenderer resides. Reference is made to the principles in section 135(3) of Consolidating Act no. 1564 of 15 December 2015, the Public Procurement Act.

If, after submitting a first indicative offer, the tenderer has incurred unpaid, due debt as described above, the tenderer should enclose a new declaration with the best and final offer, cf. Appendix 2. If the tenderer does not enclose a new declaration with its best and final offer, the Danish Energy Agency will consider this as evidence that the tenderer (still) does not have unpaid, due debt that exceeds DKK 100,000.

#### *Solemn declaration in the event of changes in consortium participants*

In the event of changes in the composition of a tenderer (consortia), a new solemn declaration must be submitted by each new legal entity, stating that the legal entity has no unpaid, due debt as described above.

#### *Solemn declaration from establishing entities and entities on which the tenderer has based its economic, financial and technical capacity*

The tenderer must also enclose a solemn declaration from:

- entities that are founders of the tenderer, and

- entities on which the tenderer has relied in respect of its economic, financial or technical capacity.

In their solemn declaration, the entities mentioned above should declare that they have no unpaid, due debt as described above. See the principle in section 144(4), no. 2 of the Public Procurement Act, Consolidating Act no. 1564 of 15 December 2015 and Appendix 2 of the tender conditions.

With regard to entities on which the tenderer has relied in respect of its technical capacity, the tenderer shall only submit a solemn declaration if the entity on which the tenderer has relied in respect of its technical capacity is to be a co-signatory to the contract. In this context, see the sub-clause in clause 3 on joint and several liability (no.4).

If the tenderer has already submitted a solemn declaration from the establishing entity(ies) on which the tenderer has relied in respect of its economic, financial or technical capacity, a new solemn declaration should only be submitted if, after submitting its first indicative offer, the establishing entity has incurred unpaid, due debt as described above. If the tenderer does not enclose a new declaration with its best and final offer, the Danish Energy Agency will consider this as evidence that the entity (still) does not have unpaid, due debt that exceeds DKK 100,000.

If there is an overlap between the establishing entities and entities on which the tenderer has relied in respect of its economic, financial or technical capacity, only one solemn declaration should be submitted for each entity.

#### *Failure to submit a solemn declaration*

If a tenderer fails to enclose a solemn declaration in the best and final offer (e.g. due to an omission or an error in connection with the preparation of the material), the Danish Energy Agency has the option to give the tenderer an additional opportunity to submit the declaration. If so, the Danish Energy Agency will inform the tenderer of a new time limit for submission of the declaration.

## **14. Changes to the tender material, request for additional material**

### *Changes to the final tender material*

The Danish Energy Agency reserves the right to carry out changes to the final tender material by publishing an addendum to the tender material or by publishing revised tender conditions in which the changes are marked. Changes will be published on the Danish Energy Agency's website well in advance of, and if possible at least three weeks prior to, the expiry of the deadline for submission of the best and final offer.

The current political negotiations on long-term treaty-compliant financing of the expansion of Danish renewable energy, including the premium for Kriegers Flak, may cause changes to the tender materials.

### *Questions*

The tenderer may submit written questions regarding the tender material.

It is important to the Danish Energy Agency that all potential tenderers be given the opportunity to submit relevant tenders within the framework of the tender conditions, i.e. without reservations on elements in the final tender material. All potential tenderers are therefore encouraged to use the

opportunity to submit written questions on the tender material, pointing out conditions which the tenderers find less appropriate or inadequately described.

Questions are to be submitted by e-mail to [offshorewind@ens.dk](mailto:offshorewind@ens.dk) and to Benoît Bizet at [bbi@ens.dk](mailto:bbi@ens.dk).

Questions and replies will be published on the Danish Energy Agency's website in anonymised form.

In order to ensure that all tenderers have been given the same information at the time of submission of best and final offers, **questions may not be submitted from 13 October 2016 and thereafter.**

Tenderers are requested to submit questions well in advance of this time. The Danish Energy Agency will endeavour to reply in writing to all relevant questions by **no later than 26 October 2016.**

#### *Option for meetings*

The Danish Energy Agency offers all tenderers the option to hold meetings during the questions phases, cf. above, at which the tenderers can motivate and explain their written questions. Meetings can therefore **not be held from 13 October 2016 and thereafter** as no questions may be submitted from and including this date.

The meetings will be conducted in compliance with the principles of equal treatment and transparency.

Prior to such meetings, tenderers must have forwarded their questions in advance to [offshorewind@ens.dk](mailto:offshorewind@ens.dk). The questions will act as the agenda for the meeting. As mentioned above, the questions must be written in anonymised form so that the Danish Energy Agency can publish the questions with the final reply from the Danish Energy Agency. The Danish Energy Agency will draw no conclusions at the meeting. These will be stated in the published reply.

The Danish Energy Agency will take short internal minutes from each meeting in order to document what was discussed. Such minutes will not be sent to the tenderers. Any replies to specific questions or new information arising at the meetings will be published on the website for the tendering procedure.

As a public authority, however, the Danish Energy Agency is subject to the provisions of the Danish Public Information Act (*offentlighedsloven*) and the Danish Public Administration Act (*forvaltningsloven*) and, therefore, it cannot be ruled out that at a later stage access will be granted to all or parts of the minutes of meetings. In this case the tenderer will be consulted.

### **15. Changes in the tender conditions after negotiations etc.**

The Danish Energy Agency has completed one negotiation meeting with each of the tenderers. Furthermore, all tenderers have submitted replies to the negotiation paper by the Danish Energy Agency. The negotiation process, completion of the EIA process, etc. have led to a number of changes to the tender materials. The most important changes are listed below.

- A reservation has been inserted for European Commission approval of support for the project and for political approval of Treaty-compatible financing.
- The retention penalty has been adjusted such that the retention penalty does not increase from DKK 100 million to DKK 450 million until 12 months after signature of the Concession Agreement.

- The guarantee for the retention penalty can be released gradually upon documentation of DKK 700 million, including costs, spent on planning, project design and construction of the Kriegers Flak electricity production plant.
- Extension of the option to extend the deadline for commencement of construction work and the deadline for grid connection.
- Energinet.dk's liability to pay damages in the event of any delay in grid connection has been raised from DKK 1.2 bn. to DKK 1.8 bn. The method of measurement in connection with compensation from losses of production in the event of forced reductions has also been clarified.

In addition to these changes, a number of clarifications in licences and the concession contract have also been made.

## **16. The award of the contract**

When the Danish Energy Agency has assessed whether the best and final offers received are conditional, and which tender has the lowest tender price, this tender price will be presented to the parties behind the agreement (all the parties behind the Energy Agreement 2012) for a decision.

Once the parties behind the agreement have decided whether the tender price can be accepted, the Danish Energy Agency will simultaneously notify all tenderers of this decision. If the parties behind the agreement have decided to accept the tender price, the notification will contain information about expiry of the standstill period, cf. below.

The Danish Energy Agency reserves the right to cancel the tendering procedure without awarding the Concession Agreement, if there is objective reason to do so. Such reason might be if the lowest tender price (the kWh price) is deemed too high.

Notification of the award decision to the tenderers does not mean that the Concession Agreement has been concluded. The Concession Agreement is not considered concluded (and the tendering procedure finally completed) until the Concession Agreement has been signed. The Concession Agreement cannot be signed until the expiry of the 10 days standstill period.

It is a condition for the Danish Energy Agency's signature to the Concession Agreement that the guarantee of DKK 100 million covering the penalty for defective performance has been provided, cf. clause 8.

When the Concession Agreement has been signed, licences for pre-investigations and for construction of the electric power generating plant will be issued to the winner shortly after, cf. Appendix 5 (model licence for pre-investigations) and Appendix 6 (model construction licence).

In parallel with this, the Danish Parliament (the Folketing) will adopt the necessary legislative amendments to insert the winning tender price and the other settlement terms in the RE Act.

## **17. Costs of participation and period of validity of tenders**

All tenderers must keep their best and final tenders open until the Concession Agreement has been signed, although for no longer than four months after the deadline for submission best and final tender (the period of validity of tenders).

The tenderers' costs in connection with the tender procedure are of no concern to the Danish Energy Agency. In this connection, note that the Danish Energy Agency assumes no liability in the event that the necessary legislation cannot be adopted, and/or the project is not approved/accepted by the European Commission as compatible with the EU state aid regulations, or if no Treaty-compatible agreement on a financial solution has been reached or, finally, if complaints have the effect that the project cannot be implemented, cf. clause 7.

### **18. Processing of tenders, etc.**

Tenderers are not permitted to attend the opening of the best and final offers. The Danish Energy Agency will treat the tenders confidentially.

However, the Danish Energy Agency is required to publish information on the contents of the winning tender. The Danish Energy Agency may also be required to give access to documents pursuant to the rules on access to documents in the Danish Public Information Act (*offentlighedsloven*) and the Danish Public Administration Act (*forvaltningsloven*).

The Danish Energy Agency is not obliged to return the tender to the tenderer.

The tenderer must observe unconditional confidentiality to third parties concerning matters which might come to the tenderer's knowledge in connection with the tendering procedure.

In the evaluation of the tenders and the documentation, the Danish Energy Agency reserves the right to use external assistance if required.

The Danish Energy Agency considers it important that the invitation to tender creates effective competition between the tenderers and that the tenderers are treated equally.

### **19. Changes to the composition of the tenderer during the tendering procedure**

If a tenderer has relied on the economic/financial capacity or technical capacity of other legal entities (e.g. a partner, a parent company or one or more affiliated companies), and if, in the course of the tendering procedure, a tenderer needs to replace such legal entity on which it has relied with another legal entity, this can only take place with the prior written consent of the Danish Energy Agency.

Furthermore, as a rule a tenderer cannot be replaced or supplemented during the tendering procedure with one or more economic operator(s), for instance in order to form a consortium. If a tenderer should nevertheless wish to do so, this requires the prior written consent of the Danish Energy Agency.

When deciding if a request for change is acceptable, the Danish Energy Agency will assess present law at the time of the request and the general nature and extent of the change, including whether the tenderer would have been prequalified with the relevant change.

If the tenderer is composed of a group of economic operators, there will also be a specific assessment of whether a tenderer will maintain the same identity if one of the economic operators wishes to resign from the consortium. If the other economic operator(s) wish to continue with their tender, this is only possible with prior written consent from the Danish Energy Agency. In assessing this, the Danish Energy Agency will place corresponding priority on the above factors.

## 20. Time schedule for the tendering procedure

Date, time	Activity
Up to and including 12 October 2016.	Questions may be posed. All questions must be submitted in writing and in English. Tenderers are requested to have submitted all of their questions by no later than 12 October 2016.
<b>Tuesday 8 November 2016, 14:00 CET</b>	<b>Deadline for best and final offers.</b>
December 2016	Expected decision regarding award of the contract.  After a 10-day standstill period, the Concession Agreement will be signed and licences for pre-investigations and construction will be granted

## 21. Further information

Please note that,

- all information about the invitation to tender, including answers to questions and changes in the tender material will be published at the website of the Danish Energy Agency: <http://www.ens.dk/offshorewind>
- all information about material for pre-investigations will be published at Energinet.dk's website: <http://energinet.dk/DA/ANLAEG-OG-PROJEKTER/Anlaegsprojekter-el/Havmoelleparken-Horns-Rev-3/Sider/default.aspx>

## 22. Check list

Have the tenderers in their best and final offer remembered:

- Tender letter (Appendix 4) containing the tender price per kWh for 30 TWh and the undertaking to construct Kriegers Flak and connect it to the grid. The tender letter should clearly identify the company or the consortium (pre-qualified) submitting the tender.
- The tender material in hardcopy and electronic format as stated in clause 12.
- Solemn declaration that economic operators on which the tenderer has relied economically, financially or technically do not have unpaid, due debt to public authorities exceeding DKK 100,000, cf. clause 13 of the tender conditions.
- Solemn declaration that the tenderer has not incurred unpaid, due debt to public authorities that exceeds DKK 100,000, cf. clause 13 of the tender conditions, if, in the period from submitting the declaration in connection with the first indicative offer to the date of submission of the best and final offer, the tenderer has incurred unpaid, due debt to public authorities exceeding DKK 100,000.

FINAL TENDER CONDITIONS



**Appendix 1**

**Draft agreement regarding obligation to construct and connect to the grid an  
electricity production plant, Kriegers Flak, in the Baltic Sea**

(hereinafter referred to as "the Concession Agreement")

Agreement

between

The Danish Energy Agency (*Energistyrelsen*)  
Amaliegade 44  
DK-1256 Copenhagen K, Denmark

and

.....  
.....  
.....

CVR no. (business reg. no.)  
(in the following referred to as the Concessionaire)

Formateret: Engelsk (USA)

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## Appendices

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**1. Obligation to establish an electricity production plant and connect it to the grid**

- 1.1.** The Concessionaire shall construct and connect to the grid an electric power generating plant, Kriegers Flak, of between 590 and 610 MW in the Baltic Sea in accordance with the terms of the licence for construction of an electric power generating plant, Kriegers Flak Offshore Wind Farm, as well as an internal grid (in the following referred to as the licence for construction).
- 1.2.** By no later than 1 March 2017, the Concessionaire shall present a detailed timetable to the Danish Energy Agency as stated in the licence for construction. Moreover, in accordance with the timetable above, the Concessionaire shall present the detailed project plan to the Danish Energy Agency as stated in the licence for construction.
- 1.3.** Before 1 June 2021, the Concessionaire shall commence the construction work regarding construction of the offshore wind farm.
- 1.4.** Before 1 January 2022, the Concessionaire shall connect the entire offshore wind farm to the collective grid. If less than 95% of the capacity of the wind farm is connected to the collective grid on 1 January 2022, the production eligible for subsidy will be reduced as stated in point 8.
- 1.5.** Shortly after signing this Concession Agreement with the Concessionaire, the Danish Energy Agency will grant the Concessionaire a licence to conduct pre-investigations and a licence for construction.

**2. Penalty for defective performance**

- 2.1.** If, irrespective of the reason, the Concessionaire states that it will not construct the electricity production plant and connect it to the grid in accordance with the terms and conditions in the Concession Agreement, a penalty shall immediately become payable upon demand.

The same requirement applies if:

- a. circumstances show that the Concessionaire will not construct the electricity production plant and connect it to the grid in accordance with the terms and conditions in this Concession Agreement, or
- b. construction work has not commenced before 1 June 2021. By 'commencement of construction work' is to be understood that offshore activities have been commenced which are directly linked to the actual establishment of the wind farm, e.g. establishment of scour protection. Pre-investigations are not covered by this definition.
- 2.2.** Until 12 months after the conclusion of this Concession Agreement, the penalty for defective performance (agreed penalty) will be DKK 100 million, after which it will increase to DKK 450 million.
- 2.3.** The penalty for defective performance covers full an final settlement of any claim Energinet.dk may receive against the Concessionaire pursuant to section 31(1) of the Promotion of Renewable Energy Act (in the following referred to as the RE Act) in

the event that the Concessionaire fails to construct the electricity production plant and connect it to the grid in accordance with the terms and conditions in this Concession Agreement.

Thus the penalty for defective performance covers the Concessionaire's objective liability pursuant to section 31(1) and (3) of the RE Act for Energinet.dk's loss, including additional costs in connection with possible cancellation by Energinet.dk of orders for facilities for transmission of power to shore.

The Concessionaire may therefore not be made subject to claims that exceed the penalty for defective performance pursuant to section 31(1) of the RE Act or otherwise according to the Concession Agreement in the event that the Concessionaire fails to construct the electricity production plant and connect it to the grid in accordance with the terms and conditions of this Concession Agreement.

- 2.4. The penalty for defective performance will also cover the Concessionaire's expenditures on pre-investigations conducted by Energinet.dk
- 2.5. Moreover, the penalty for defective performance covers full and final settlement of any claim the Danish Energy Agency receives against the Concessionaire according to the Concession Agreement and the associated licences and authorisations in the event that the Concessionaire fails to construct the electricity production plant and connect it to the grid in accordance with the terms and conditions of this Concession Agreement.
- 2.6. The penalty for defective performance shall be payable in full according to point 2.1 and be payable upon written demand from the Danish Energy Agency to the Concessionaire. The penalty for defective performance shall be paid to the Danish Energy Agency which, to the extent necessary, will be responsible for distribution of the penalty between Energinet.dk and Danish Energy Agency.

Payment of the penalty for defective performance does not require that the Danish Energy Agency and/or Energinet.dk is/are able to document a loss because the Concessionaire has failed to construct the electricity production plant and connect it to the grid in accordance with the terms and conditions in this Concession Agreement and the associated licences and authorisations.

If the demand for payment is not met, irrespective of the reason, the Concessionaire shall be liable to pay default interest 20 days after the date the demand for payment was made until payment takes place.

The Danish Energy Agency shall determine the size of the default interest in accordance with section 5 of the Interest on Overdue Payments Act.

- 2.7. The penalty for defective performance ceases to apply when the first kWh from the first wind turbine has been supplied to the collective grid. This is the case irrespective of any previous release of the demand guarantee according to point 3.5 or 3.6.

### 3. **Guarantee for penalty for defective performance**

- 3.1.** As security for payment of the penalty for defective performance in point 2, a demand guarantee of DKK 100 million shall be provided. The guarantee shall be prepared in accordance with Appendix 1.1. By “prepared in accordance with Appendix 1.1 means that minor wording clarifications are allowed, but not substantive changes that impairs the guarantee for the Danish Energy Agency.
- 3.2.** The guarantee shall be provided by a recognised financial institution, insurance company, or similar, which has been approved by the Danish Energy Agency in advance. The Guarantor shall have a long-term credit rating of at least A- (Standard & Poor’s and Fitch) or A3 (Moody’s) or equivalent rating from another recognised international rating agency.
- 3.3.** The guarantee provided shall be increased to DKK 450 million 12 months after conclusion of the Concession Agreement. The additional DKK 350 million may either be provided by:
- a) increasing the guarantee already provided, cf. points 3.1 and 3.2 to DKK 450 million or replacing it with a guarantee of DKK 450 million, cf. Appendix 1.1, or
  - b) providing a new guarantee of DKK 350 million from a recognised financial institution, bank, insurance company or similar with a long-term credit rating of at least A- (Standard & Poor’s and Fitch) or A3 (Moody’s) or equivalent rating from another recognised international rating agency, cf. Appendix 1.1, which supplements the guarantee provided under points 3.1 and 3.2, or
  - c) supplementing the guarantee already provided under points 3.1 and 3.2 with a parent-company guarantee of DKK 350 million, cf. Appendix 1.2.
- 3.4.** Documentation of the guarantee of the DKK 100 million shall be received by the Danish Energy Agency by no later than at the conclusion of this Concession Agreement.
- The Concessionaire shall, at its own initiative, submit documentation of the additional guarantee of DKK 350 million. This documentation shall be received by the Danish Energy Agency by no later than 12 months after the conclusion of this Concession Agreement.
- 3.5.** The Danish Energy Agency shall release the guarantee on one of the following two dates, whichever comes first:
- a) No later than one month after the Concessionaire has documented that the Concessionaire, after award of the concession, has paid costs of at least DKK 1,000,000,000 including VAT for planning, cf. point 3.8.
  - b) When the first kWh from the first turbine has been supplied to the collective grid.
- 3.6.** As an alternative to fully releasing the guarantee pursuant to point 3.5, the Concessionaire is entitled to release DKK 150 million of the guarantee no later than one month after the Concessionaire has documented that, following award

of the concession, the Concessionaire had incurred costs of at least DKK 700 million including VAT, cf. point 3.8.

The Concessionaire is entitled to have a further DKK 150 million of the guarantee released by no later than one month after the Concessionaire has documented that, following award of the concession, the Concessionaire has incurred costs of at least DKK 850 million including VAT, cf. point 3.8.

The remaining part of the guarantee at any time can be released in accordance with point 3.5.

- 3.7.** If the Concessionaire has chosen to provide a parent-company guarantee pursuant to point 3.3 c), the parent-company guarantee will be released first, if partial release pursuant to point 3.6 is invoked.

Release from guarantees provided by a recognised, and approved by the Danish Energy Agency, financial institution, insurance company, or similar, as described in points 3.1.-3.3. a) and b) may therefore only be invoked after any parent-company guarantee has been fully released.

- 3.8.** The Concessionaire shall issue a declaration from a state-authorized or registered public accountant to document that the costs under points 3.5 and 3.6 have been incurred in planning, project design and construction of the Kriegers Flak electricity production plant. The costs may include both internal and external documented costs.

It is not sufficient, that the costs have been accrued; they shall also have been paid.

- 3.9.** The Danish Energy Agency is entitled to demand further documentation for costs paid as a condition for releasing the demand guarantee.

- 3.10.** If the Danish Energy Agency has requested further documentation for the expenditure as a condition for releasing the demand guarantee, the Danish Energy Agency, is however, only required to release the guarantee within 1 month after this additional documentation is received.

#### **4. Extension of the time limit**

- 4.1.** The Concessionaire shall be entitled to an extension of the time limit for commencement of the construction work (before 1 June 2021) and the time limit for connection of the entire offshore wind farm (before 1 January 2022) in the event of delay caused by one or several of the following circumstances:

- a) Amendments to the licence for construction required by the Danish Energy Agency.
- b) Other circumstances relating to the Danish Energy Agency.
- c) Circumstances arising for which the Concessionaire is without fault and over which the Concessionaire has no control, for example war, extraordinary natural events, fire, strikes, lockout or malicious damage.

- d) Precipitation, low temperatures, strong winds or other meteorological conditions preventing or delaying the work, where such weather meteorologically occurs to a significantly greater extent than usual for the season and area in question.
- e) Public orders or bans which are not caused by circumstances attributable to the Concessionaire.
- f) In case of appeals in relation to the construction licence, the Energy Board of Appeal has assessed that the appeals are justified and that the Board of Appeal will hear the appeal.
- g) If the Concessionaire fails to obtain the necessary licences and approvals from the authorities in accordance with the detailed time schedule, cf. the construction licence (Appendix 6), despite the Concessionaire having applied to the relevant authority for a licence or approval in reasonable time.
- h) Delays in grid connection that are not the responsibility of the Concessionaire.
- i) If more than two UXOs are to be removed.

**4.2.** The Concessionaire shall, however, seek to avoid or mitigate the delay by taking such measures as may reasonably be required.

**4.3.** If the Concessionaire considers that it is entitled to an extension of a time-limit, the Danish Energy Agency shall be notified thereof in writing as soon as possible.

**4.4.** Upon request, the Concessionaire shall send the documents that the delay is caused by the circumstances claimed, and that the delay cannot reasonably be avoided or mitigated.

Extension of the time limit will therefore correspond to the actual delay caused by the circumstances claimed in point 4.1, a)-i).

## **5. Obligation to dismantle and decommission the offshore wind farm**

**5.1.** The Concessionaire shall, on its own account and at its own risk, dismantle and decommission the offshore wind farm in accordance with the terms and conditions in the licence for construction and in the electricity production authorisation. Moreover, the Concessionaire shall provide a guarantee for dismantling and decommissioning the installation pursuant to the terms and conditions in the licence for construction and the authorisation.

**5.2.** Irrespective of the guarantee, the Concessionaire shall take the necessary steps to dismantle and decommission the offshore wind farm and pay all costs in this respect. The Concessionaire's liability according to this point 5 is therefore not limited to the size of the guarantee provided.

## **6. Terms and conditions of the Concession Agreement**

**6.1.** The Concession Agreement, and thereby the Concessionaire's obligation to construct and connect to the grid the electric power generating plant, shall, on the part of the Danish Energy Agency, be conditional upon:

1. by no later than 1 April 2017, the Danish Parliament adopting the required amendments to the RE Act which entitle the Concessionaire to the premium and related terms contained in the Concessionaire's best and final offer.
2. the state aid, which might be linked to the establishment and operation of Kriegers Flak, after notification thereof, is approved by European Commission in accordance with EU state aid rules, by no later than 1 April 2017.
3. by no later than 1 April 2017 a majority of the Danish Parliament agree on Treaty-compliant financing of the premium for the Kriegers Flak offshore wind farm which is approved by the European Commission.
4. appeals against the licence for construction not giving rise to changes in the licence for construction, such that the project cannot be implemented as originally described in the licence for construction granted.

In circumstances where these four conditions for the Concession Agreement are not met, the concession will be withdrawn (i.e. the Concession Agreement will lapse/be cancelled without notice), unless, within the framework of relevant tender-procedure regulations, another agreement can be established between the Danish Energy Agency and the Concessionaire.

- 6.2. If the Concession lapses as a consequence of one or several of the four reasons above under point 6.1 (conditions nos. 1, 2, 3 and 4), only costs paid by the Concessionaire according to points 7.1 and 7.2 of the Concession Agreement to cover Energinet.dk's costs for the pre-investigation will be reimbursed. Any other costs of any nature paid by the Concessionaire to fulfil the Concession Agreement and the associated licences and authorisations will not be reimbursed and are irrelevant to the Danish Energy Agency and Energinet.dk.
- 6.3. Reimbursement of such costs shall be carried out by Energinet.dk repaying to the Concessionaire the costs paid by the Concessionaire according to points 7.1 and 7.2, with addition of interest from the due date of payment calculated as the discount rate (in Danish: diskonto) + 1%.
- 6.4. The Concessionaire shall not be entitled to any further financial compensation, damages, reimbursement, etc., in the event of cancellation of the concession as a consequence of one of the four conditions in point 6.1.

## **7. Responsibility and payment of costs of various pre-investigations**

- 7.1. Energinet.dk has prepared an environmental impact assessment (EIA), an assessment of impacts on designated international nature protection sites, and an assessment of impacts on Annex IV species; it has had geotechnical and geophysical surveys completed, and it has obtained MetOcean data, etc. The Concessionaire shall pay for the costs incurred by Energinet.dk for preparation of these pre-investigations, cf. section 23(3) of the RE Act.



- 7.2. Energinet.dk will submit a statement of the costs incurred by Energinet.dk in connection with the pre-investigations carried out under point 7.1 and will issue an invoice to the Concessionaire when the conditions under point 6 of the Concession Agreement have been met and the Concession Agreement is unconditional. The costs will not exceed DKK 80 million (excluding VAT).

If appeals have been received before expiry of the time limit for appeal, Energinet.dk will first submit a statement and issue an invoice as described above after the final decision on the final appeal. A final decision means that the decision cannot be appealed to a higher judicial body.

- 7.3. Energinet.dk and the Danish Energy Agency are not liable for the correctness and/or completeness of the pre-investigations. The Concessionaire shall thus have neither remedies of breach nor any other claims for financial compensation against Energinet.dk or the Danish Energy Agency if the pre-investigations should turn out to be erroneous or insufficient in fact or in law. If the pre-investigations should turn out to be insufficient or erroneous in fact or in law, to the extent possible, Energinet.dk will assign its rights under the contract with the relevant adviser to the Concessionaire.

- 7.4. If further pre-investigations are required, e.g. as part of rectification of errors or omissions in pre-investigations already carried out, the Concessionaire shall also pay the costs of such further surveys.

Such additional pre-investigations shall be carried out by the Concessionaire itself or a consultant of the Concessionaire. Costs paid in this respect or for any consultants are also irrelevant to the Danish Energy Agency.

## 8. **Terms of settlement, etc.**

The main principles for the financial terms for settlement are described below (points 8.1.-8.14), see otherwise the provisions of the RE Act.

- 8.1. A premium shall be granted ("contract for difference") for electricity produced at Kriegers Flak electricity production plant in the Baltic Sea. The premium shall be calculated per hour as the difference between the price per kWh tendered by the Concessionaire and the spot price of electricity in the relevant area. The total premium in a given hour shall be the product of the premium and the output measured in that hour. The spot price of electricity shall mean the hourly rate per kWh on the spot market in the relevant electricity grid price area (DK 2) stated by the Nordic electricity exchange, Nordpool.

- 8.2. The kWh-price tendered by the Concessionaire shall not be indexed.

- 8.3. If at least 95% of the planned capacity of the wind farm is connected to the grid prior to 1 January 2022, the premium mentioned shall be granted for electricity production corresponding to a production of 30 TWh. If less than 95% of the capacity of the wind farm is connected to the grid at this time, the production eligible for premium shall be reduced by 0.3 TWh to 29.7 TWh. For each six month-period thereafter in which at least 95% of the projected capacity is still

not connected to the grid, the production eligible for supplement thereafter will be reduced by an additional 0.3 TWh. In the calculation of the amount of the capacity of the wind farm connected to the grid, the capacity of one wind turbine shall be included as connected to the grid from the time when it has supplied the first kWh to the collective electricity supply grid. This shall apply even if subsequent technical problems should temporarily render the wind turbine out of service.

- 8.4. Premiums shall not be granted for production in hours when the spot price is not positive. However, the production shall not be included as part of the production eligible for premium.
- 8.5. Payment shall be made on a monthly basis and shall be made by Energinet.dk.
- 8.6. If the Concessionaire is to pay a feed-in tariff for transmission of electricity to the main electricity supply grid, a premium shall be granted corresponding to this tariff. The premium mentioned shall be granted for electricity production corresponding to the production described under 8.3 above.
- 8.7. If the market price (the hourly rate on the spot market) of electricity produced at the plant exceeds DKK [*the tender price*] per kWh, Energinet.dk shall calculate a negative premium. Any negative premium shall not be charged but set off against the next positive premium. There is no limitation in the length of the period in which negative premiums can be calculated.
- 8.8. The Concessionaire itself shall ensure the sale of the production in the electricity market and pay costs in this connection.
- 8.9. Balancing costs for the electricity from the wind turbines shall not be reimbursed.
- 8.10. By notifying Energinet.dk, the Concessionaire shall be entitled to opt out of the premium scheme. This opt-out shall be effective from the first day of a month and with prior notice of at least one month. Once the Concessionaire has opted out, the Concessionaire shall not be entitled to resume the premium scheme.
- 8.11. The premium scheme shall apply for a period of no more than 20 years from the connection of the wind turbines to the collective grid. The offshore wind farm shall be deemed to be connected to the grid when the first kWh from one or more of the wind turbine has been supplied to the collective grid.
- 8.12. The Concessionaire may not receive any other state aid in connection with construction and grid connection of Kriegers Flak electricity production plant than the premium mentioned under this point, without approval from the Danish Energy Agency.
- 8.13. The premium shall be subject to the electricity from the offshore wind farm being supplied to the Danish collective electricity supply grid, which the two transformer platforms are part of.

8.14. The Concessionaire shall bear the full commercial risk of the tender price per kWh, and the offshore wind farm shall be at the Concessionaire's own cost and risk. Hence, the Concessionaire shall not be entitled to bring claims against the Danish Energy Agency in this respect.

**9. Compensation for non-compliance with obligations regarding grid connection (before and during the construction phase of the offshore wind farm)**

9.1. Before and during the construction phase of the offshore wind farm, Energinet.dk shall, on an objective basis, compensate for losses that the Concessionaire might suffer as a consequence of Energinet.dk not meeting deadlines and conditions for grid connection of the offshore wind farm, including deadlines for commissioning, cf. section 31(2) of the RE Act.

9.2. The "construction phase" of the offshore wind farm will be fully completed when all the wind turbines in the offshore windfarm have been put into operation.

An individual wind turbine will be considered as "in the construction phase" until it has supplied its first kWh to the collective electricity grid. Compensation will be paid for wind turbines "in the construction phase" on an objective basis pursuant to section 31(2) of the RE Act.

When a wind turbine has supplied its first kWh to the collective grid, compensation for losses on an objective basis according to section 31(2) of the RE Act may no longer be granted. Instead, payment will be granted according to section 35 of the RE Act in the event of reductions. Reference is made to section 35 of the RE Act and point 10 below.

If some wind turbines are still "in the construction phase", and other wind turbines have supplied their first kWh to the collective grid, it may be necessary to pay compensation according to section 31(2) of the RE Act for the first-mentioned wind turbines, while the latter wind turbines will receive payment for losses according to section 35 of the RE Act.

9.3. Energinet.dk shall ensure that grid connection can take place from 1 January 2019, unless Energinet.dk has agreed another date with the Concessionaire.

It shall be a condition that the grid connection is commissioned and can receive power from the Kriegers Flak electricity production plant in the Baltic Sea. The collective grid including facilities for transmission of power to shore are considered suitable for receiving power from the wind turbines when the facilities for transmission of power to shore have successfully undergone a commissioning test and have been put into operation.

9.4. In connection with the construction phase of the offshore wind farm, Energinet.dk shall also compensate on an objective basis losses that the Concessionaire might suffer as a consequence of the particular situation that the facilities for transmission of power to shore contain a design fault or other similar error and therefore are not able to supply electricity to the collective grid from the offshore wind farm after the installation has been put into operation.

When the facilities for transmission of power to shore have undergone a successful commissioning test, facilities for transmission of power to shore are assumed not to contain any design faults or other similar errors.

However, there may be extraordinary situations where it has been ascertained that the facilities for transmission of power to shore cannot supply electricity from the commissioned wind turbines to the collective grid because the cable routing onshore does not have the specified transmission capacity, and where some - but not all - wind turbines have been put into operation. This may also be the case in situations where the facilities for transmission of power to shore cannot supply electricity from the commissioned wind turbines due to a fault in the facilities for transmission of power to shore as a consequence of external damage (e.g. that the subsea cable is damaged by an anchor on the seabed or in case of a fire), or due to damage to individual components or technical problems or other faults.

**9.5.** Energinet.dk's liability in damages pursuant to section 31(2) and (3) of the RE Act is limited to a total of DKK 1.8 bn.

**9.6.** The compensation shall cover documented necessary additional costs as a consequence of delay or lack of functionality. Among other things, the compensation could cover costs for necessary measures for e.g. emergency power generators or for interest on investments already made and necessary additional costs as a consequence of lack of electricity production.

Compensation for lost production shall be based on the tender price and shall be calculated on the basis of the production the wind turbines would have produced under the actual conditions.

The calculation of losses of production shall include lost revenues less the costs saved. The production included in the calculation of the losses of production, and for which the Concessionaire is compensated, shall be included in the calculation of the production eligible for supplement.

**9.7.** The Concessionaire is obligated to limit its losses as much as possible.

**9.8.** No compensation will be granted in the event of force majeure. Force majeure covers circumstances arising at no fault of the Concessionaire/Energinet.dk, and which are beyond the control of the Concessionaire/Energinet.dk, e.g. war, sabotage, earthquake, extreme meteorological conditions and similar.

**9.9.** Disagreements and entitlement to compensation as well as the amount of compensation shall be decided by a court of law, cf. section 31(3) of the RE Act.

**9.10.** Reference is made to the licence for construction on requirements for grid connection, etc. in point 13.

**9.11.** The Danish Energy Agency shall not be liable to pay compensation for non-compliance with obligations regarding grid connection according to this point 9.

**10. Payment for reductions (after the construction phase of the offshore wind farm)**

**10.1.** Energinet.dk shall make payment for any loss that the Concessionaire might suffer due to Energinet.dk carrying out reductions for wind turbines that have supplied the first kWh to the collective electricity supply grid and which therefore are no longer “in the construction phase”, cf. point 9.2. Reference is made to section 35 of the RE Act, cf. section 34, which regulates this payment.

The following is merely for information about the provisions of section 35 of the RE Act, cf. section 34.

**10.2.** The payment is not limited to a specific amount.

**10.3.** Section 34(3) and (4) of the RE Act stipulate the circumstances in which Energinet.dk may order reductions. Such an order is conditional upon the reduction being necessary for security of supply or socio-economically optimum exploitation of the general electricity supply system, including ensuring efficient competition in the market.

**10.4.** The provision states that Energinet.dk may order a reduction or shut-down in the production of electricity if this is necessary due to faults or maintenance work on the transmission plant for leading electricity production onshore, or in the rest of the transmission grid or limitations in capacity in the general transmission grid which can be remediated by a reduction.

**10.5.** For example, this may be in the event of:

- lack of physical capacity in the transmission grid,
- repairs, maintenance and inspection of the transformer platform, its installations, as well as equipment which does not belong to the Concessionaire, cables routing onshore, transmission grid as well as high-voltage connection equipment onshore,
- breakdowns of the transformer, unless breakdowns are due to the owner of the wind turbine’s electrical installations,
- damage to the cables routing onshore, unless this is caused by the owner of the wind turbine’s vessels or workers,
- lightning damage to the transformer platform, its installations and equipment not belonging to the owner of the wind turbine, the cable routing onshore, and high voltage switching equipment onshore.

**10.6.** The calculation of the payment for loss of income of the Concessionaire shall be based on the price per kWh tendered by the Concessionaire, cf. point 8. The production for which the Concessionaire receives compensation shall be included in the total production of 30 TWh for which subsidies are paid. The payment shall be based on the price per kWh tendered by the Concessionaire, cf. point 10.1 as long as a premium is paid for the production from the offshore wind turbines.

- 10.7. When the production eligible for supplement has run out, or if the Concessionaire opts out of the premium scheme, the payment shall be based on the hourly spot price for the area (DK2).
- 10.8. If so, payments according to point 10 shall not be made for more than a 25-year period, corresponding to the duration of the licence to produce electricity.
- 10.9. Payments for loss of production shall not be made for production losses due to limits on production for hours when the spot price is not positive and no premium is provided. However, the production in these hours shall not be included in the production eligible for premium.
- 10.10. It should be noted that Energinet.dk has issued regulations for methods of calculating the amount of lost electricity production and loss of earnings. Reference is made to <http://www.energinet.dk>, Regulation E with annex. The regulation can be viewed via the following link. If the link is outdated, the correct regulations can be obtained by contacting Energinet.dk:  
<http://www.energinet.dk/SiteCollectionDocuments/Danske%20dokumenter/EI/Bilag%20til%20forskrift%20E%20-%20Kompensation%20til%20havvindmølleparker%20ved%20påbudt%20nedregulering.pdf>
- 10.11. On agreement with Energinet.dk, the Concessionaire shall install a LiDAR on each of the transformer platforms to ensure reliable measurements of the wind resources. The LiDARs are to be installed and maintained by the Concessionaire and the Concessionaire is to incur the costs and risks of installing and maintaining the LiDAR.
- 10.12. Furthermore, there will be no compensation in the event of force majeure, cf. section 35(3), 1st clause of the RE Act. Force majeure includes circumstances arising at no fault of Energinet.dk and which are beyond the control of Energinet.dk, e.g. war, sabotage, earthquake, extreme meteorological conditions and similar.
- 11. Labour clause**
- 11.1. The Concessionaire and any subcontractors who assist in the Contract are obliged to ensure that workers in Denmark are secured wages, including special allowances, hours of work and other conditions of labour which are not less favourable than those applicable for work of the same nature pursuant to a collective agreement entered into by the most representative social partners in Denmark within the trade or industry concerned, and which apply to the entire territory of Denmark. "Assist in the Contract", cf. above, shall mean work performed in Denmark in order to fulfil the Contract.
- 11.2. The Concessionaire and possible subcontractors shall ensure that employees receive information about the conditions in the labour clause.
- 11.3. The Danish Energy Agency may, at any time, request relevant documentation that pay and working conditions for employees meet the obligations laid down in this clause.

- 11.4.** The Danish Energy Agency may demand that, following a written order and within 10 working days, the Concessionaire procure the relevant documentation such as payslips, records of hours worked, payrolls, employment contracts and so on, for both its own employees and any subcontractor's employees together with a statement of compliance with labour clause.
- 11.5.** The Concessionaire shall ensure that any potential information in the material regarding the employees' racial or ethnic origin, political, religious or philosophical beliefs, information concerning health or sex life, significant social problems and other clearly personal information be removed before the material is submitted to the Danish Energy Agency.
- 11.6.** If the Concessionaire disregards its obligation to procure the document required by the Danish Energy Agency, the Danish Energy Agency may after above mentioned time limit, cf. 11.4 order the Concessionaire to pay a daily fine per calendar day of DKK 1,000 until the required documentation has been properly procured for the Danish Energy Agency.
- 11.7.** If the Concessionaire fails to meet its obligations pursuant to the labour clause, and if this leads to a justified demand from employees for additional pay, the Danish Energy Agency may order the Concessionaire to pay a fine corresponding to twice the amount of each such demand.
- 12. Social clause regarding apprenticeships and placements**
- 12.1.** As far as possible, the Concessionaire must ensure that a certain number of positions that are relevant to the construction and subsequent operation and maintenance of the Kriegers Flak Offshore Wind Farm "on site" (both offshore and onshore) can be filled with apprentices.
- 12.2.** Apprentices are defined as employees with whom the Concessionaire or its contractors and suppliers etc. enter into, or have entered into, a training agreement. The training agreement is to be entered into as part of a course the apprentice follows and must ensure that the apprentice achieves personal, social and professional skills that support the apprentice's training course and provide a basis for employment in the labour market.
- 12.3.** Training courses pursuant to Consolidating Act no. 987 of 16 August 2010 on basic vocational training etc. and pursuant to Act No. 789 of 16 June 2015 on vocational training are deemed to meet the above requirements for a course.
- 12.4.** The Concessionaire or the Concessionaire's contractors may enter into training contracts for training courses pursuant to other similar training schemes in the EU/EEA, including with apprentices from other EU/EEA Member States, which comply with the above requirements for a training course.
- 12.5.** Unless otherwise agreed with the Danish Energy Agency, by no later than 12 months after signature of this Concession Agreement, the Concessionaire and the Danish Energy Agency shall enter into an agreement on the number of apprenticeship places

to be secured in connection with construction and subsequent operation and maintenance of Kriegers Flak Offshore Wind Farm. By no later than six months after signature of this Concession Agreement, the Concessionaire and the Danish Energy Agency shall have initiated a process for conclusion of an apprenticeship agreement.

*[Insert this heading if one or more of the paragraphs below are relevant]*

### **13. Joint and several liability**

*[Insert the following text prior to signature of this Concession Agreement if the Concessionaire is a consortium:]*

#### **13.1. [Consortia**

**13.1.1.** *The Concessionaire is a consortium comprising:*

*[Insert names of participants in the consortium]*

**13.1.2.** *The above participant(s) in the consortium has/have assumed joint and several liability in respect of this Concession Agreement and related licences and authorisations which have been granted or might be granted in future to the Concessionaire. This means that the participants in the consortium shall assume liability in respect of all claims arising out of this Concession Agreement and related licences and authorisations which have been granted or might be granted in future to the Concessionaire. Claims that may be made by third parties, for example arising from pollution or harm to others, are not subject to the requirement for joint and several liability.*

*Therefore, the Danish Energy Agency may direct the full claim against any participant in the consortium in the event that the Concessionaire breaches this Concession Agreement and/or the terms and conditions of the licences and authorisations mentioned.]*

*[Insert the following text prior to signature of this Concession Agreement if the Concessionaire is a newly established company, and a tender has been submitted on the behalf of a company not yet established.]*

**13.2. [Funding companies, where the Concessionaire is a newly established company, and the tender has been submitted on the behalf of a company not yet established.**

**13.2.1.** *The Concessionaire is a newly established company, and a tender for this Concession has therefore been submitted by the funding company(ies) below on behalf of the Concessionaire:*

*[The details of the relevant parties must be provided in accordance with the application]*

**13.2.2.** *The above funding company(ies) has/have assumed joint and several liability together with the Concessionaire in respect of this Concession Agreement and*



*related licences and authorisations which have been granted or might be granted in future to the Concessionaire.*

*This means that this/these other funding company(ies) shall assume liability on an equal basis with the Concessionaire, in respect of all obligations from the Danish Energy Agency arising out of this Concession Agreement and related licences and authorisations which have been granted or might be granted in future to the Concessionaire.*

*Hence, the Danish Energy Agency shall not acquire any rights with regard to this/these other funding company(ies) which the Danish Energy Agency does not hold with regard to the Concessionaire at any given time.*

- 13.2.3.** *In order for the joint and several liability of this/these other funding company(ies) to apply, the Concessionaire must therefore have breached this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisations. The Concessionaire must also have failed to remedy the infringement within a reasonable deadline set by the Danish Energy Agency.*

*If the Danish Energy Agency directs claims against this/these other economic operator(s) under this clause, this/these other funding company(ies) have the same rights as the Concessionaire to raise objections about an alleged breach of this Concession Agreement and/or the terms of the licences and authorisations.*

- 13.2.4.** *If the Danish Energy Agency's claims against the Concessionaire are covered by a guarantee pursuant to the point 3.1 of the Concession Agreement or by the guarantees issued pursuant to the licences and authorisations under the Concession Agreement, the joint and several liability of this/these other funding company(ies) shall only apply to the extent – for whatever reason – that payment on demand is not made to the Danish Energy Agency under the applicable guarantee or if the guarantee is released at the time that the Danish Energy Agency makes its claim.*

- 13.2.5.** *The joint and several liability of this/these other funding company(ies) shall remain in force until after the expiry of the obligations under this Concession Agreement and/or the mentioned licences and authorisations.*

- 13.2.6.** *In the event of a dispute between the Danish Energy Agency and this/these other funding company(ies), point 19 on disputes below shall apply. This/these other funding company(ies) have by its/their signature to this Concession Agreement accepted these terms and conditions.]*

*[Insert the following text prior to signature of this Concession Agreement if the Concessionaire has relied on economic or financial capacity of other entities:]*

- 13.3.** ***[Economic entities on which the Concessionaire has relied in respect of its economic and financial capacity]***

- 13.3.1.** *In the application to participate in the tendering procedure, the Concessionaire has relied on one or more economic entity(ies) which are not a part of the Concessionaire in respect of its economic and financial capacity.*

**13.3.2.** *This/these other economic entity(ies) is/are the following:*

*[The details of the relevant parties must be provided in accordance with the application]*

**13.3.3.** *The above economic entity(ies) has/have assumed joint and several liability together with the Concessionaire in respect of this Concession Agreement and related licences and authorisations which have been granted or might be granted in future to the Concessionaire.*

*This means that this/these other economic entity(ies) shall assume liability on an equal basis with the Concessionaire in respect of all claims from the Danish Energy Agency arising out of this Concession Agreement and related licences and authorisations which have been granted or might be granted in future to the Concessionaire.*

*Hence, the Danish Energy Agency shall not acquire any rights with regard to this/these other economic entity(ies) which the Danish Energy Agency does not hold with regard to the Concessionaire at any given time.*

**13.3.4.** *In order for the joint and several liability of this/these other economic entity(ies) to apply, the Concessionaire must therefore have breached this Concession Agreement and/or the terms and conditions of the licences and authorisations mentioned. The Concessionaire must also have failed to remedy the infringement within a reasonable deadline set by the Danish Energy Agency.*

*This/these other economic entity(ies) shall have the same rights as the Concessionaire to make objections against alleged breaches of this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisation, if the Danish Energy Agency addresses a claim against this/these other economic entity(ies) under the present provisions.*

**13.3.5.** *If the Danish Energy Agency's claims against the Concessionaire are covered by the guarantee pursuant to point 3.1 of the Concession Agreement or by the guarantees issued pursuant to licences and authorisations under the Concession Agreement, the joint and several liability of this/these other economic entity(ies) shall only apply to the extent – for whatever reason – that payment on demand is not made to the Danish Energy Agency under the applicable guarantee or if the guarantee is released at the time that the Danish Energy Agency makes its claim.*

**13.3.6.** *The joint and several liability of this/these other economic entity(ies) shall remain in force until the expiry of the obligations under this Concession Agreement and/or the mentioned licences and authorisations.*

**13.3.7.** *In the event of a dispute between the Danish Energy Agency and this/these other economic entity(ies), point 19 on disputes below shall apply. This/these other economic entity(ies) have by its/their signature to this Concession Agreement accepted these terms and conditions.]*

*[Insert the following text prior to signature of this Concession Agreement if the Concessionaire has relied on the technical capacity of other entities:]*

**13.4. [Economic entity(ies) on which the Concessionaire has relied in respect of its technical capacity]**

**13.4.1.** *In the application to participate in the tendering procedure, the Concessionaire has relied on one or more economic entity(ies) which are not a part of the Concessionaire in respect of its technical capacity (in relation to project development and managing construction). The Concessionaire does not meet the minimum requirement for technical suitability without this/these other economic entity(ies).*

**13.4.2.** *This/these other economic entity(ies) is/are the following:*

*[The details of the relevant parties must be provided in accordance with the application]*

**13.4.3.** *The above economic entity(ies) has/have assumed joint and several liability together with the Concessionaire in respect of this Concession Agreement and related licences and authorisations which have been granted or might be granted in future to the Concessionaire.*

*This means that this/these other economic entity(ies) shall assume liability on an equal basis with the Concessionaire in respect of claims arising in relation to project development and managing construction (but not other obligations such as the decommissioning obligation) pursuant to this Concession Agreement and related licences and authorisation which have been granted, or might be granted in future, to the Concessionaire.*

*Hence, the Danish Energy Agency shall not acquire any rights with regard to this/these other economic entity(ies) which the Danish Energy Agency does not hold with regard to the Concessionaire at any given time.*

**13.4.4.** *In order for the joint and several liability of this/these other economic entity(ies) to apply, the Concessionaire must therefore have breached this Concession Agreement and/or the terms and conditions of the above-mentioned licences and authorisations in relation to project development and managing construction. In this respect, this/these other economic entity(ies) shall have the same rights as the Concessionaire to make objections against alleged breaches of this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisations. The Concessionaire must also have failed to remedy the infringement within a reasonable deadline set by the Danish Energy Agency.*

*This/these other economic entity(ies) shall have the same rights as the Concessionaire to make objections against alleged breaches of this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisations, if the Danish Energy Agency addresses a claim against this/these other economic entity(ies) under the present provisions.*

**13.4.5.** *If the Danish Energy Agency's claims against the Concessionaire are covered by the guarantee pursuant to point 3.1 of the Concession Agreement, the joint and several liability of this/these other economic entity(ies) shall only apply to the extent – for whatever reason – that payment on demand is not made to the Danish Energy Agency under the applicable guarantee or if the guarantee is released at the time that the Danish Energy Agency makes its claim.*

**13.4.6.** *The joint and several liability of this/these other economic entity(ies) shall remain in force until the expiry of the obligations for project development and managing construction under this Concession Agreement and/or the licences and authorisations mentioned.*

**13.4.7.** *In the event of a dispute between the Danish Energy Agency and this/these other economic entity(ies), point 19 on disputes below shall apply. This/these other economic entity(ies) has/have by its/their signature to this Concession Agreement accepted these terms and conditions.]*

**13.14. Transfer of the concession by the Danish Energy Agency**

**13.0.14.1.** The Danish Energy Agency shall be entitled to transfer its rights and obligations under this Concession Agreement to another public institution or any institution or private entity ultimately controlled (controlled in this provision is defined in accordance with the International Accounting Standard (IAS 27) of the International Accounting Standards Board (IASB)) by the Danish State or another Danish public authority or mainly financed by public funds, if the public tasks hitherto performed by the Danish Energy Agency, or if the public tasks covered by this Concession Agreement, are transferred, in whole or in part, to any of the mentioned parties (change of remit).

**13.15. Transfer of the concession by the Concessionaire to a third party**

**15.1.** The Concessionaire may not, without written consent from the Danish Energy Agency, transfer to a third party its rights and obligations pursuant to this Concession Agreement and the concession.

**15.2.** The Danish Energy Agency will grant its consent to a transfer if:

- The third party in question is assessed to possess the required economic, financial and technical capacity to establish, operate, maintain and decommission the offshore wind farm. This assessment of whether the third party has the required economic, financial and technical capacity will be based on a specific assessment carried out at the time of the Concessionaire's request for consent to transfer the Concession.
- To the extent necessary, the Danish Energy Agency consents to the transfer of the electricity production authorisation pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if the electricity production authorisation has been issued at the time of the request for change.

- 15.3.** The Danish Energy Agency is entitled to refuse a request for consent to a transfer if the transfer – according to the Danish Energy Agency’s assessment - cannot be allowed in accordance with the relevant procurement rules and rules regulating the relevant licences and authorisations to construct and/or operate an offshore wind farm in Denmark.
- 15.4.** The Danish Energy Agency shall be entitled to request from the Concessionaire any additional document deemed relevant by the Danish Energy Agency for assessment of the desired transfer.

*[Insert the following text prior to signature of the Concession Agreement if the Concessionaire is a company with share capital]*

- 16. Changes in the control of the Concessionaire (indirect transfer)**
- 16.1.** *At the time of the conclusion of the Concession Agreement, the Concessionaire shall be owned by the following parties [name and ownership share]. The Parties shall control the Concessionaire in accordance with their respective ownership shares, and no party shall have been granted the right to veto in relation to significant decisions or access to appoint the majority of the Board or similar. [otherwise the rights to veto etc. shall be stated and the preceding text shall be adjusted]*
- 16.2.** *Any change in control of the Concessionaire shall require prior written approval from the Danish Energy Agency.*
- 16.3.** *Change of control shall mean transfer of a majority shareholding in the Concessionaire and/or changes in the rights stated in point 16.1.*
- 16.4.** *Consent to change of control will only be granted if:*
- after the change, the Concessionaire is still deemed to have the required economic, financial and technical capacity to operate, maintain and dismantle the offshore wind farm. The assessment of what constitutes the required economic, financial and technical capacity will be decided following a specific assessment at the time the Concessionaire requests a change.*
  - to the extent necessary, the Danish Energy Agency consents to the transfer of the electricity production authorisation pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if the electricity production authorisation has been issued at the time of the request for change.*
- 16.5.** *The Danish Energy Agency may only refuse the request for consent to transfer if there are objective reasons to do so.*
- 16.6.** *The Danish Energy Agency is entitled to refuse a request for consent for a change of control if the change in question – due to the Danish Energy Agency’s assessment - cannot be allowed in accordance with the relevant procurement rules or the rules regulating the relevant licences and authorisations to construct and/or operate a wind farm in Denmark.*

- 16.7.** *For use by the Danish Energy Agency in its assessment of a request to change the control with the Concessionaire, such request shall enclose documentation of the economic, financial and technical capacity for the new shareholder or controlling entity.*
- 16.8.** *The Danish Energy Agency shall be entitled to request that the Concessionaire submit any additional document deemed relevant by the Danish Energy Agency for the assessment of the desired change.*
- 16.9.** *As a general rule, a new shareholder, which joins the Concessionaire pursuant to this provision, is not obliged to assume joint and several liability together with the Concessionaire. However, the Danish Energy Agency reserves the right to demand this if the Danish Energy Agency finds there are objective reasons for doing so on the basis of a specific assessment.*
- 16.10.** *If a shareholder, which initially assumed joint and several liability pursuant to the Concession Agreement as a funding company pursuant to clause 13.2., transfers its ownership share of the Concessionaire in full, then the Danish Energy Agency may, upon request, consent to the resigning shareholder to be released from its joint and several liability with regard to obligations that arise after the date on which the shareholder transferred all of its shares to the Concessionaire. The Danish Energy Agency may only refuse to grant its consent for this if there are objective reasons for doing so.*

*[Insert the following text prior to signature of the Concession Agreement if the Concessionaire is a consortium]*

- 17.** ***[Exit, replacement and admission of consortium participants (changes)***
- 17.1.** *Replacement, exit or admission of participants in a consortium is generally not permitted and, at all events, requires prior written consent from the Danish Energy Agency.*
- 17.2.** *Consent to replacement, exit or admission will only be granted if:*
- *The Concessionaire is still assessed to have the required economic, financial and technical capacity to establish, operate, maintain and decommission the offshore wind farm after the change. The assessment of whether the Concessionaire still has the required economic, financial and technical capacity will be based on a specific assessment carried out at the time of the Concessionaire's request for a change.*
  - *To the extent necessary, the Danish Energy Agency consents to the transfer of the electricity production authorisation pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if the electricity production authorisation has been issued at the time of the request for change.*
- 17.3.** *The Danish Energy Agency is entitled to request of the Concessionaire any other documentation which the Danish Energy Agency finds relevant for its assessment of the requested change.*

**17.4.** *However, regardless of the above, the Concessionaire is entitled to remove, replace or admit new participants of the consortium as stipulated in clauses 17.5-17.7 following a written consent from the Danish Energy Agency.*

**17.5.** *Allowed changes(exit or replacement):*

*a) Exit of consortium participants*

*The Concessionaire is entitled to allow consortium participants to exit the consortium if the role of the relevant consortium participant in the best and final offer was limited to a specific phase of the project (e.g. the construction phase).*

*The consent from the Danish Energy Agency to the exit of a consortium participant requires that all obligations of the Concessionaire in relation to this phase be fulfilled in accordance with the Concession Agreement (for example, a consortium participant whose participation only relates to the construction phase will not be able to exit the consortium until the offshore wind farm has been constructed and all turbines have been connected to the grid in accordance with this Concession Agreement).*

*b) Replacement of consortium participants*

*The Concessionaire is entitled to replace a consortium participant (an original participant) if the replacement is part of a total or partial succession as a consequence of reorganisation of the original participant (e.g. a merger).*

*To the extent that an original participant does not exit as part of the reorganisation, such replacement shall not influence the liabilities and obligations of the original participant to the Danish Energy Agency according to this Concession Agreement. Thus, the original participant shall still have joint and several liability to the Danish Energy Agency for any claim arising from conditions originating from before the date of the replacement.*

*In the event of partial succession (e.g. demerger, in which the Concession Agreement is transferred to another legal entity without the original participant exiting the consortium) the new consortium participant shall assume joint and several liability with the original participant to the Danish Energy Agency for all claims arising from conditions originating from before the date of the replacement.*

*If the replacement takes place as a consequence of bankruptcy of the original participant, depending on the specific circumstances, cf. also below about significant changes, the Danish Energy Agency may accept that the new participant is not jointly and severally liable with the original participant for claims arising from conditions originating from before the exit of the original participant from the consortium.*

*Moreover, the Concessionaire shall be entitled to replace a consortium participant, where this takes place as part of an internal reorganisation (e.g. establishment of a 100% owned and controlled subsidiary company by a*

consortium participant, which enters the consortium instead of the original consortium participant). Such replacement requires both consortium participants (the original participant as well as the new participant) to assume joint and several liability for all claims and obligations pursuant to the Concession Agreement. Subsequent transfer of ownership or control of the new participant to a third party shall generally be deemed a significant change, cf. below, which cannot be accepted unless the specific circumstances associated with the transfer fall under one of the changes allowed according to this provision.

- 17.6.** The Concessionaire is only entitled to allow a consortium participant to exit or be replaced pursuant to point 17.5 above if:
1. after the change, where this is desired to be implemented before grid connection of all turbines in the offshore wind farm, the Concessionaire still fulfils the original criteria for the qualitative selection during the tendering procedure for this Concession Agreement, and the change does not otherwise lead to significant changes in the Concession Agreement,
  2. after the change, where this is desired to be implemented after grid connection of all turbines in the offshore wind farm, the Concessionaire still has the required economic, financial and technical capacity to operate, maintain and dismantle the offshore wind farm. The assessment of what constitutes the required economic, financial and technical capacity will be decided by the Danish Energy Agency following a specific assessment at the time the Concessionaire requests a change, and
  3. to the extent necessary, the Danish Energy Agency consents to the transfer of the electricity production authorisation pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if the electricity production authorisation has been issued at the time of the request for change.
- 17.7.** The Concessionaire is entitled to admit new consortium participants (without the exit of an original participant) if the new participant submits a solemn declaration concerning debt to public authorities, cf. the principles in section 135(3) of Consolidating Act no. 1564 of 15 December 2015 on, cf. below.
- 17.8.** The Danish Energy Agency is entitled to refuse a request to exit, replace and admit consortium participants if, according to an assessment by the Danish Energy Agency, the relevant change:
- a) does not fall under one or more of the changes allowed in points 17.5 – 17.7 above,
  - b) cannot be allowed under the relevant tendering and procurement regulations and/or regulations for the relevant licences and authorisation to construct and/or operate an offshore wind farm in Denmark.



- 17.9.** *If the Concessionaire requests exit, replacement or admission of a consortium participant pursuant to clauses 17.5 – 17.7 above, the Danish Energy Agency shall not unduly withhold its consent and a refusal shall be justified in writing.*
- 17.10.** *For the Danish Energy Agency's assessment of a request for exit, replacement or admission of a consortium participant, the Concessionaire shall enclose with the request documentation for the economic, financial and technical capacity of the new consortium participant.*
- 17.11.** *The Danish Energy Agency is entitled to request from the Concessionaire any additional document deemed relevant by the Danish Energy Agency for the assessment of the desired change. ]*

*[Insert the following text prior to signature of this Concession Agreement if the Concessionaire has relied on the technical and/or financial capacity of others.]*

**18.** ***[Replacement or exit of economic entity on which the Concessionaire has relied in respect of its economic, financial or technical capacity***

**18.1.** *Replacement or exit of economic entity on which the Concessionaire has relied in respect of its economic, financial or technical capacity [adjusted depending on whether the Concessionaire obtains economic, financial or technical capacity from the economic entity] in connection with the prequalification round shall generally not be permitted and shall, at all events, be subject to written consent from the Danish Energy Agency.*

**18.2.** *Consent to replacement or exit will only be granted if:*

- After replacement or exit of the supporting economic entity, where this is desired to be implemented before grid connection of all wind turbines in the offshore wind farm, the Concessionaire still fulfils the original criteria for qualitative selection under the tendering procedure for this Concession Agreement, and the change does not otherwise lead to significant changes in the Concession Agreement.*
- After replacement or exit of the supporting economic entity where this is desired to be implemented after grid connection of all turbines in the offshore wind farm, the Concessionaire still has the required economic, financial and technical capacity to operate, maintain and decommission the offshore wind farm. The assessment of what constitutes the required economic, financial and technical capacity will be decided on the basis of specific assessments by the Danish Energy Agency at the time of the Concessionaire's change request.*

**18.3.** *The Danish Energy Agency may only refuse consent to a transfer if there are objective reasons for doing so.*

**18.4.** *The Danish Energy Agency is entitled to refuse a request for consent to exit or replace the supporting economic entity if, according to an assessment by the Danish Energy Agency, said replacement or exit cannot be allowed under the relevant tender conditions and the relevant licences and authorisations to construct and/or operate an offshore wind farm in Denmark.*

- 18.5. *The Danish Energy Agency is entitled to request from the Concessionaire any additional documentation deemed relevant by the Danish Energy Agency for assessment of the desired change.*
- 18.6. *In the event of replacement, the new supporting economic entity shall assume joint and several liability by entering into this Concession Agreement, unless, in connection with its consent, the Danish Energy Agency confirms in writing that this requirement no longer applies. The joint and several liability will enter into force from the date on which the new supporting economic operator enters into the Concession Agreement.*
- 18.7. *An exiting economic entity on whom the Concessionaire has relied in relation to economic and financial capacity shall still have joint and several liability for any claim pursuant to point 13.3 of this Concession Agreement originating from before the relevant exit.*
- 18.8. *An exiting economic entity on whom the Concessionaire has relied in relation to the technical capacity shall still have joint and several liability for any claim pursuant to point 13.4 of this Concession Agreement originating from before the relevant exit.]*

19. **Disputes and choice of law**

This Agreement shall be governed by Danish law, and the ordinary courts of Copenhagen shall be proper venue.

20. **Duration of the Agreement**

This Agreement shall become effective upon its signature.

The Agreement shall expire when the electric power generating plant has been decommissioned.

21. **Language**

This Agreement has been drawn up in Danish and English. In the event of discrepancy between the Danish and the English language version, the Danish language version shall prevail.

22. **Signatures**

This Agreement shall be signed by the Danish Energy Agency and the Concessionaire in two original copies of the Danish language version, of which each Party shall receive one copy each. Each Party shall furthermore receive one copy of the English language version of the Agreement.

*[The Agreement shall also be signed by the economic entity(ies) subject to joint and several liability pursuant to point 13. These economic entity(ies) shall receive a copy of the Agreement in each language version.]*

Date:  
For the Danish Energy Agency

Date:  
For the Concessionaire

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*[Add here the signatures of additional parties, if any, to sign the Concession Agreement, cf. point 13. about joint and several liability]*

FINAL TENDER CONDITIONS

## Appendix 1.1

### Model Demand Guarantee

#### 1. Guarantor/Guarantee amount

At the request and expense of [*insert the name of the Concessionaire, CVR no. (business reg. no.), address, etc.*] (the Concessionaire), [*recognised financial institution, insurance company, or similar*] (the Guarantor) hereby confirms to provide an irrevocable and unconditional guarantee to the Danish Energy Agency in the amount of DKK 100,000,000 (one hundred million Danish Kroner).

*[Insert the following text, provided the model for demand guarantee is used to make a demand that 12 months after the conclusion of the concession agreement, will be increased to 450 million DKK, see. 3.3., point a in the Concession Agreement]*

*[The Guarantee amount is increased to 450 million DKK (write four hundred fifty million Danish kroner) 12 months after the conclusion of the Concession Agreement of [xx. xx] 2016 with later amendments, on the obligation to establish and to connect to the grid an electricity production plant, Kriegers Flak in the Baltic Sea.]*

#### 2. Background for the Guarantee

The amount shall serve as full security for the payment of a penalty for defective performance which the Concessionaire might become liable to pay pursuant to the Concession Agreement of [xx. xx] 2016 with any subsequent amendments regarding the obligation to construct and connect to the grid an electric power generating plant offshore with internal collection grid, Kriegers Flak, in the Baltic Sea.

#### 3. Effective date of the Guarantee

This Guarantee shall apply from today's date.

#### 4. Payment under the Guarantee

The Guarantee amount shall be paid to the Danish Energy Agency upon the first written demand for payment to the Guarantor stating that the Danish Energy Agency is entitled to the amount demanded pursuant the Concession Agreement mentioned in point 2 above.

The Guarantee shall be paid on demand without examination or other documentation of the legitimacy of the demand. Payment shall take place by no later than seven calendar days after receipt of the demand for payment from the Danish Energy Agency.

If the demand for payment is not met, irrespective of the reason, the Guarantor shall be liable to pay default interest from 20 days after the date the demand for payment was made until payment takes place.

The size of the default interest shall be determined in accordance with section 5 of the Interest on Overdue Payments Act.

#### 5. Expiry (release) of the Guarantee

This Guarantee shall be valid until the Danish Energy Agency informs the Guarantor in writing that the Guarantee has been released. If the Guarantee is partially released, the Guarantee shall remain valid to cover the amount which has not been released.

The Danish Energy Agency shall release the guarantee on one of the two dates, whichever comes first:

- a) No later than one month after the Concessionaire's state-authorized public accountant or registered public accountant has submitted an opinion documenting that the Concessionaire, after having been awarded the concession, has incurred expenditure of DKK 1,000,000,000 (i.e. DKK one billion) VAT included, or
- b) When the first kWh from the first turbine has been supplied to the collective grid

*[Insert the following text, provided the model for demand guarantee is used to make a demand that 12 months after the conclusion of the Concession Agreement, will be increased to 450 million DKK, see. 3.3., point a in the Concession Agreement or if, pursuant to section 3.3., point b of the Concession Agreement a new guarantee of 350 million. DKK is presented]*

*[As an alternative to a full release of the guarantee, the Concessionaire is entitled to release 150,000,000 million DKK (write one hundred and fifty million Danish kroner) of the guarantee within one month after the Concessionaire has documented that the Concessionaire after the award of the concession has incurred costs of at least 700,000,000 DKK (write seven hundred million Danish kroner) incl. VAT.*

*The Concessionaire is entitled to release further 150,000,000 DKK (write one hundred and fifty million Danish kroner) of the guarantee no later than one month after, the Concessionaire has proven, that the Concessionaire after the award of the concession has incurred costs of at least 850,000,000 DKK (write eight hundred and fifty million Danish kroner) incl. VAT.*

*The remainder of the guarantee may at any time be released, when either 1 billion DKK (writes one billion Danish kroner) incl. VAT has been incurred, or when the first kWh from the first turbine is delivered to the collective grid.]*

The Concessionaire shall issue a declaration from a state-authorized or registered public accountant to document that the costs under points 3.5 and 3.6 have been incurred in planning, project design and construction of the Kriegers Flak electricity production plant. The costs may include both internal and external documented costs.

It is not sufficient, that the costs have been accrued; they shall also have been paid.

The Danish Energy Agency is entitled to demand further documentation for costs paid as a condition for releasing the demand guarantee.

If the Danish Energy Agency has requested further documentation for costs paid as a condition for releasing the Demand Guarantee, the Danish Energy Agency shall not be obliged to release the Guarantee until one month after the additional documentation has been received.

The Guarantee shall be returned to the Guarantor with an endorsement of release as soon as the Guarantee has been released in full.

**6. Credit Rating**

By its signature to this Guarantee, the Guarantor declares that it has a long-term credit rating of at least A- (Standard & Poor's and Fitch) or A3 (Moody's) or equivalent rating from another recognised international rating agency.

**7. Transfer**

The Guarantor accepts the right of the Danish Energy Agency pursuant to the Concession Agreement mentioned in point 2 to transfer its rights and obligations under this Concession Agreement to another public institution or any institution or private entity ultimately controlled (controlled in this provision is defined in accordance with the International Accounting Standard (IAS 27) issued by the International Accounting Standards Board (IASB)) by the Danish State or another Danish public authority or mainly financed by public funds, if the public tasks hitherto performed by the Danish Energy Agency or if the public tasks covered by the Concession Agreement are transferred, in whole or in part, to any of the mentioned parties.

**8. Choice of law and legal venue**

This Demand Guarantee shall be governed by Danish law, and the ordinary courts of Copenhagen shall be proper venue.

Date .....

.....

Signature of Guarantor

FINAL TENDER CONDITIONS

## Appendix 1.2

### Model Parent Company Guarantee

#### 1. Principal/Guarantee amount

At the request and expense of *[insert the name of the Concessionaire, CVR no. (business reg. no.), address, etc.]* (the Concessionaire), *[insert the name of the parent company, CVR no. (business reg. no.), address, etc.]* (the Guarantor), hereby confirms to provide an irrevocable and unconditional guarantee to the Danish Energy Agency (*Energistyrelsen*) in the amount of DKK [x] (*[complete in letters]* Danish Kroner).

#### 2. Background for the Guarantee

The amount shall serve as full security for the payment of a penalty for defective performance which the Concessionaire might become liable to pay pursuant to the Concession Agreement of [xx. xx] 2016 with any subsequent amendments regarding the obligation to construct and connect to the grid an electric power generating plant offshore with internal collection grid, Kriegers Flak, in the Baltic Sea.

#### 3. Effective date of the Guarantee

This Guarantee shall apply from today's date.

#### 4. Payment under the Guarantee

The Guarantee amount shall be paid to the Danish Energy Agency upon the first written demand for payment to the Guarantor stating that the Danish Energy Agency is entitled to the amount demanded pursuant the Concession Agreement mentioned in point 2 above.

The Guarantee shall be paid on demand without examination or other documentation of the legitimacy of the demand. Payment shall take place no later than seven calendar days after receipt of the demand for payment from the Danish Energy Agency.

If the demand for payment is not met, irrespective of the reason, the Guarantor shall be liable to pay default interest from 20 days after the date the demand for payment was made until payment takes place.

The size of the default interest shall be determined in accordance with section 5 of the Interest on Overdue Payments Act.

#### 5. Expiry (release) of the Guarantee

This Guarantee shall be valid until the Danish Energy Agency informs the Guarantor in writing that the Guarantee has been released. If the Guarantee is partially released, the Guarantee shall remain valid to cover the amount which has not been released.

The Danish Energy Agency shall release the guarantee on one of the two dates, whichever comes first:

- a) No later than one month after the Concessionaire has documented that the Concessionaire, after award of the concession, has paid costs of at least DKK 1,000,000,000 (i.e. DKK one billion) VAT included.
- b) When the first kWh from the first turbine has been supplied to the collective grid

As an alternative to a full release of the guarantee, the Concessionaire is entitled to release 150,000,000 million DKK (write one hundred and fifty million Danish kroner) of the guarantee within one month after the Concessionaire has documented that the Concessionaire after the award of the concession has incurred costs of at least 700,000,000 DKK (write seven hundred million Danish kroner) incl. VAT.

The Concessionaire is entitled to have released further 150,000,000 DKK (write one hundred and fifty million Danish kroner) of the guarantee by no later than one month after, the Concessionaire has documented, that the Concessionaire after the award of the concession has incurred costs of at least 850,000,000 DKK (write eight hundred and fifty million Danish kroner) incl. VAT.

The remainder of the guarantee may at any time be released, when either 1 billion DKK (writes one billion Danish kroner) incl. VAT has been incurred, or when the first kWh from the first turbine is delivered to the collective grid.

The Concessionaire shall issue a declaration from a state-authorized or registered public accountant to document that the costs under points 3.5 and 3.6 have been incurred in planning, project design and construction of the Kriegers Flak electricity production plant. The costs may include both internal and external documented costs.

It is not sufficient, that the costs have been accrued; they shall also have been paid.

The Danish Energy Agency is entitled to demand further documentation for costs paid as a condition for releasing the demand guarantee.

If the Danish Energy Agency has requested further documentation for costs paid as a condition for releasing the Demand Guarantee, the Danish Energy Agency shall not be obliged to release the Guarantee until one month after the additional documentation has been received.

The Guarantee shall be returned to the Guarantor with an endorsement of release as soon as the Guarantee has been released in full.

## 6. **Transfer**

The Guarantor accepts the right of the Danish Energy Agency pursuant to the Concession Agreement mentioned in point 2 to transfer its rights and obligations under this Concession Agreement to another public institution or any institution or private entity ultimately controlled (controlled in this provision is defined in accordance with the International Accounting Standard (IAS 27) issued by the International Accounting Standards Board (IASB)) by the Danish State or another Danish public authority or mainly financed by public funds, if the public tasks hitherto performed by the Danish Energy Agency or if the public tasks covered by the Concession Agreement are transferred, in whole or in part, to any of the mentioned parties.



**7. Choice of law and legal venue**

This Demand Guarantee shall be governed by Danish law, and the ordinary courts of Copenhagen shall be proper venue.

Date .....

.....  
Signature of Guarantor

FINAL TENDER CONDITIONS

### Appendix 1.3.

## Outline of important dates in connection with the establishment of Kriegers Flak (all times are CET)

8 November 2016 at 2pm	<ul style="list-style-type: none"><li>Deadline for tenders. Award of Concession Agreement and licence for construction are expected by the end of 2016.</li></ul>
No later than one month after the award decision	<ul style="list-style-type: none"><li>Plan for supply of technical information to Energinet.dk on equipment for installation on the platform.</li></ul>
1 March 2017	<ul style="list-style-type: none"><li>Detailed timetable for construction of the windfarm to be submitted to the Danish Energy Agency.</li></ul>
1 December 2017	<ul style="list-style-type: none"><li>Equipment to be installed on the platform must be supplied to the shipyard.</li></ul>
By no later than two months before commencement of construction	<ul style="list-style-type: none"><li>Detailed project description submitted for approval by the Danish Energy Agency.</li></ul>
1 October 2018 or 3 months before grid connection	<ul style="list-style-type: none"><li>Preliminary documentation for the offshore wind farm to be submitted to Energinet.dk</li></ul>
After commencement of construction and by no later than 2 months before grid connection	<ul style="list-style-type: none"><li>Application for electricity production licence</li><li>Application for electricity production authorisation</li></ul>
1 November 2018	<ul style="list-style-type: none"><li>Possibility for the Concessionaire to begin connecting cables, unless a later date is agreed between the Concessionaire and Energinet.dk.</li></ul>
Before grid connection	<ul style="list-style-type: none"><li>Collaborate with Energinet.dk on establishing installation, collaboration agreement on operation and operator agreement, cf. the High Voltage Executive Order</li></ul>
1 January 2019	<ul style="list-style-type: none"><li>Commissioning of the transformer platform - unless a later date is agreed between the Concessionaire and Energinet.dk.</li></ul>
1 June 2021	<ul style="list-style-type: none"><li>If construction work has not commenced before this date the penalty for defective performance must be paid</li></ul>
1 January 2022	<ul style="list-style-type: none"><li>The windfarm is established and in operation</li></ul>
3 months after commissioning of the entire installation or by no later than 1 April 2022	<ul style="list-style-type: none"><li>Documentation for fulfilment of Energinet.dk's grid connection provisions to be submitted to Energinet.dk</li></ul>
The installation has produced 30 TWh or 20 years from supply of the first kWh	<ul style="list-style-type: none"><li>Premium will cease</li></ul>
12 years after grid connection of the first wind turbine	<ul style="list-style-type: none"><li>A guarantee for decommissioning the installation must be provided</li><li>6 months before, the Concessionaire must present a plan for this guarantee</li></ul>
By no later than 2 years within expiry of the electricity production licence or 2 years before the installation has come to the end of its useful life	<ul style="list-style-type: none"><li>Plan for decommissioning the installation to be submitted for approval by the Danish Energy Agency</li></ul>
25 years after the first kWh	<ul style="list-style-type: none"><li>Licence to exploit wind energy will expire</li></ul>

## Appendix 2

### Solemn declaration on unpaid, debt due to public authorities

*[This declaration should only be submitted if a declaration has not already been submitted or there is a need to submit a new declaration. See clause 13 in the tender conditions]*

Pursuant to the principles in [SELECT section 135(3) if it is the tenderer / 144(4) if it is an establishing entity or an entity on which the tenderer is relying for its economic, financial or technical capacity] in the Public Procurement Act, Consolidating Act no. 1564 of 15 December 2015, the undersigned, [name of tenderer or entity], solemnly declares that the enterprise's unpaid debt due to public authorities at the time of submission of the best and final offer amounts to

DKK \_\_\_\_\_

As a general rule, a contracting body may not accept tenders from a tenderer which has not signed a solemn declaration, or submitted a solemn declaration from founding companies or entities on which the tenderer has relied for its economic, financial or technical capacity, or which has unpaid, due debt to public authorities of DKK 100,000 or more.

Debt due to public authorities means

- unpaid due taxes
- other unpaid due charges , including consumption taxes
- unpaid due social security contributions

This is debt to public authorities pursuant to legislation in the tenderer's member state or home country or in the country in which the tenderer is established.

The undersigned hereby solemnly declares that the information stated above is correct.

### 3. Details about the tenderer

Name of the tenderer/consortium/entity:

The exact names and CVR numbers (business reg. numbers), or similar, of the tenderer/the consortium/the entity:

### 4. Signature

\_\_\_\_\_ on \_\_\_\_\_  
place date

\_\_\_\_\_  
Signature of the tenderer

Name:

Title:

**Appendix 3**  
*No longer relevant*

FINAL TENDER CONDITIONS

## Appendix 4

### **Best and final offer letter and a declaration to undertake to construct and connect to the grid an electricity production plant, the offshore wind farm Kriegers Flak, in the Baltic Sea**

#### **1. Best and final offer**

The undersigned tenderer hereby submits its best and final offer of the following kWh price:

\_\_\_\_\_ Danish øre per kWh

*The price is to be stated in Danish øre-amount to max. 1 decimal place*

For electricity produced at the offshore wind farm Kriegers Flak in the Baltic Sea, a premium is granted which is fixed so that the premium and the market price fixed pursuant to section 51(2), no. 1 of the RE Act in combination make up the price per kWh stated above.

The price quoted for 30 TWh (corresponding to 600 MW in 50,000 full-load hours) is a fixed øre-amount (constant in current prices) and will not be indexed.

The tenderer will bear the full commercial risk for the kWh-price offered.

#### **2. Declaration**

The undersigned tenderer hereby undertakes to construct and connect to the grid the electric power generating plant Kriegers Flak.

The obligation to construct the electric power generating plant with collection grid and connect it to the grid applies on the terms and conditions set out in the tender material, including Appendix 1 - draft agreement regarding construction and connection to the grid of an electric power generating plant with collection grid, Kriegers Flak Offshore Wind Farm, in the Baltic Sea, and terms and conditions in this offer.

The undersigned furthermore declares that the undersigned has complied with any requirements for repayment of State Aid which the undersigned has received and which, in a previous decision, the European Commission has declared illegal and incompatible with the EU single market.

#### **3. Details about the tenderer**

Name of the tenderer/grouping of economic operators:

*[state the exact name of the tenderer, and for groupings/consortia, the name of all participants of the grouping/the consortium]*

The exact names and CVR numbers (business reg. numbers), or similar, of the tenderer/the grouping/the consortium and all participants:

*[state the relevant name(s) and identification number(s) of the tenderer/the grouping]*

#### **4. Signature**

\_\_\_\_\_ on \_\_\_\_\_  
place date

\_\_\_\_\_  
Signature of the tenderer

Name:

Title:

*[In the event that the tenderer is a company that has not yet been established, the founding companies must co-sign the offer, cf. point X of the tender specifications. If so, the text below should be inserted in the best and final offer]*

The above tenderer is a company that has not yet been established. The current offer has therefore been co-signed independently by the companies below as founding companies pursuant to point 3 of the tender specifications.

By signing below, the companies listed guarantee the validity of the offer and they guarantee the establishment of the tenderer if the tenderer is awarded a concession under this tendering procedure. If the tenderer has not been established before conclusion of the Concession Agreement, the signing companies moreover guarantee fulfilment of the Concession Agreement.

**On behalf of [name of founding company]**

\_\_\_\_\_ on \_\_\_\_\_  
place date

\_\_\_\_\_  
[signed on behalf of founder]

Name:

Title:

**On behalf of [name of founding company]**

\_\_\_\_\_ on \_\_\_\_\_  
place date

\_\_\_\_\_  
[signed on behalf of founder]

Name:

Title:

## Appendix 5.

### **Draft model pre-investigation licence for the offshore wind farm Kriegers Flak ("pre-investigation licence")**

*[Energinet.dk has prepared a draft Environmental Impact Assessment (EIA), an impact assessment for designated international nature reserves and an impact assessment for protected species (Annex IV species). A public consultation on this material and an ESPOO consultation (consultation with neighbouring countries) have been carried out. This model licence has taken into account the EIA process and has been adjusted. After this, in June 2016, the licence was submitted to a supplementary consultation with the authorities in order to ensure that the terms inserted after the authority consultations and the public consultations of the EIA meet the authorities' requirements.*

*Changes may be made to the conditions of the final pre-investigation licence regarding circumstances which the Danish Energy Agency or other authorities are not aware of at present.]*

#### Contents

1. General terms and conditions
2. Scope of the licence
3. Procedure and requirements in connection with pre-investigations
4. Reporting and processing of data
5. Direct and indirect transfer of licence
6. Compliance with the terms and conditions of the licence
7. Right of appeal

Pursuant to section 22 of the Promotion of Renewable Energy Act (in the following referred to as the RE Act), cf. Consolidating Act no. 1141 of 29 August 2016, the Concessionaire must hold a licence in order to be able to conduct additional pre-investigations to supplement the pre-investigations already conducted by Energinet.dk.

The Danish Energy Agency has been delegated the authority to make decisions regarding this licence, cf. section 3(1), no. 5 of Executive Order no. 436 of 11 May 2012 on the tasks and powers of the Danish Energy Agency.

The Concessionaire should note that the legal basis for a number of terms and conditions for the licence is in legislation and a regulatory foundation under the auspices of other authorities than the Danish Ministry of Energy, Utilities and Climate.

The Danish Energy Agency make reservation for that all relevant legislation etc. that the Concessionaire is obligated to comply with has been mentioned in this licence.

In this context, it should be noted that amendments to current legislation may take place. The Concessionaire should note that it must comply with legislation in force at any time.

Costs incurred as a result of terms and conditions imposed on the basis of legislation in force at any time are of no concern to the Danish Energy Agency.

**This licence pursuant to the RE Act is granted on the following terms:**

**1. General terms and conditions**

- 1.1. A licence to conduct pre-investigations is granted to the Concessionaire based on the tender submitted on 8 November 2016.
- 1.2. This licence to conduct pre-investigations will be valid until the Danish Energy Agency has approved the detailed project plan, cf. the construction licence in Appendix 6. Moreover, the time limits in the agreement to establish and connect to the grid an electricity production plant, Kriegers Flak Offshore Wind Farm, in the Baltic Sea (in the following referred to as the Concession Agreement) will apply.

**2. Scope of the licence**

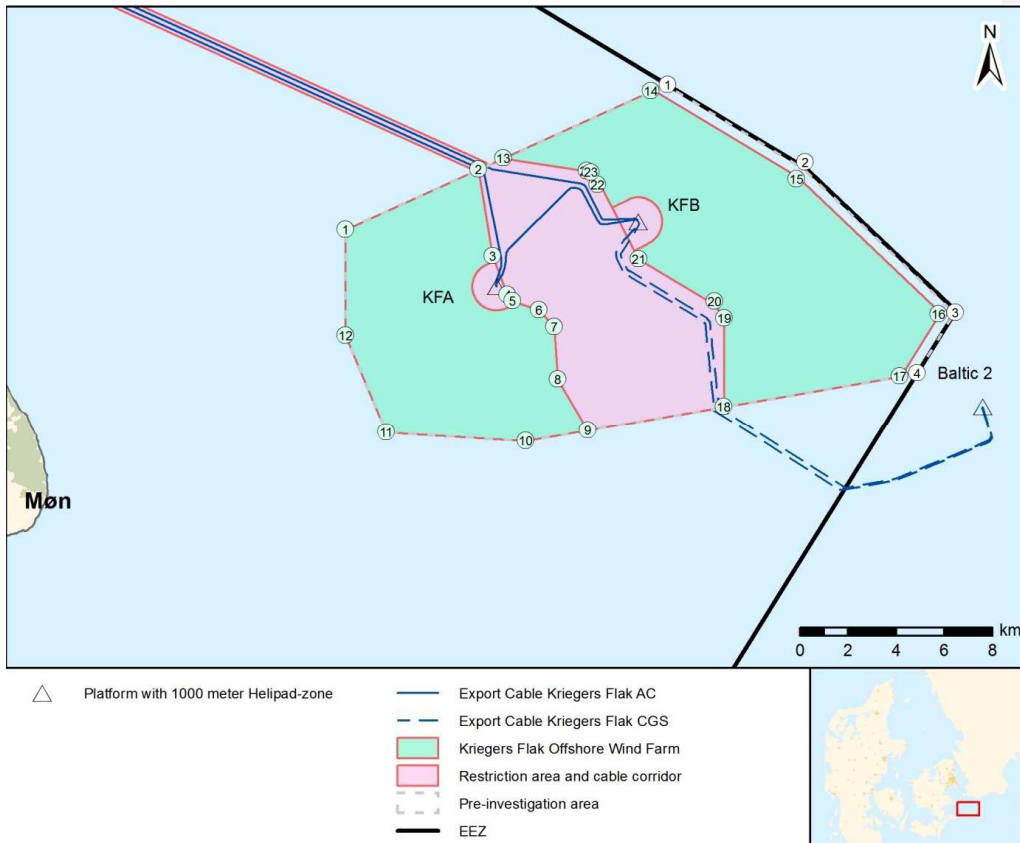
- 2.1. The Concessionaire has the right to carry out pre-investigations in an area on the western part of Kriegers Flak of 69 km<sup>2</sup> and an area on the eastern part of 110 km<sup>2</sup>.

Between the western and eastern offshore wind turbine areas, and centrally on Kriegers Flak, areas have been reserved for transformer platforms and cables routing onshore as well as for sand extraction.

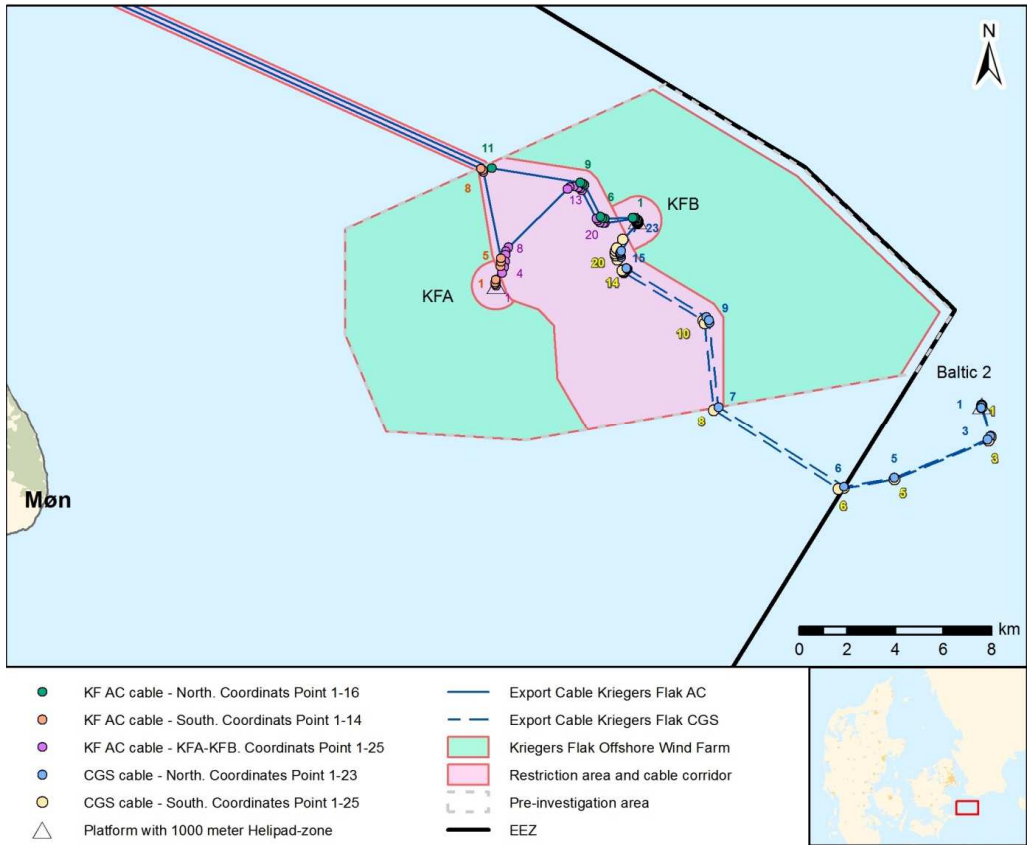
The coordinates of the pre-investigation area for Kriegers Flak, of both areas of the wind farm as well as of the transformer platforms, the cable corridors, the Baltic Cable and of the EEZ-border are illustrated in the figures and stated in the tables below:



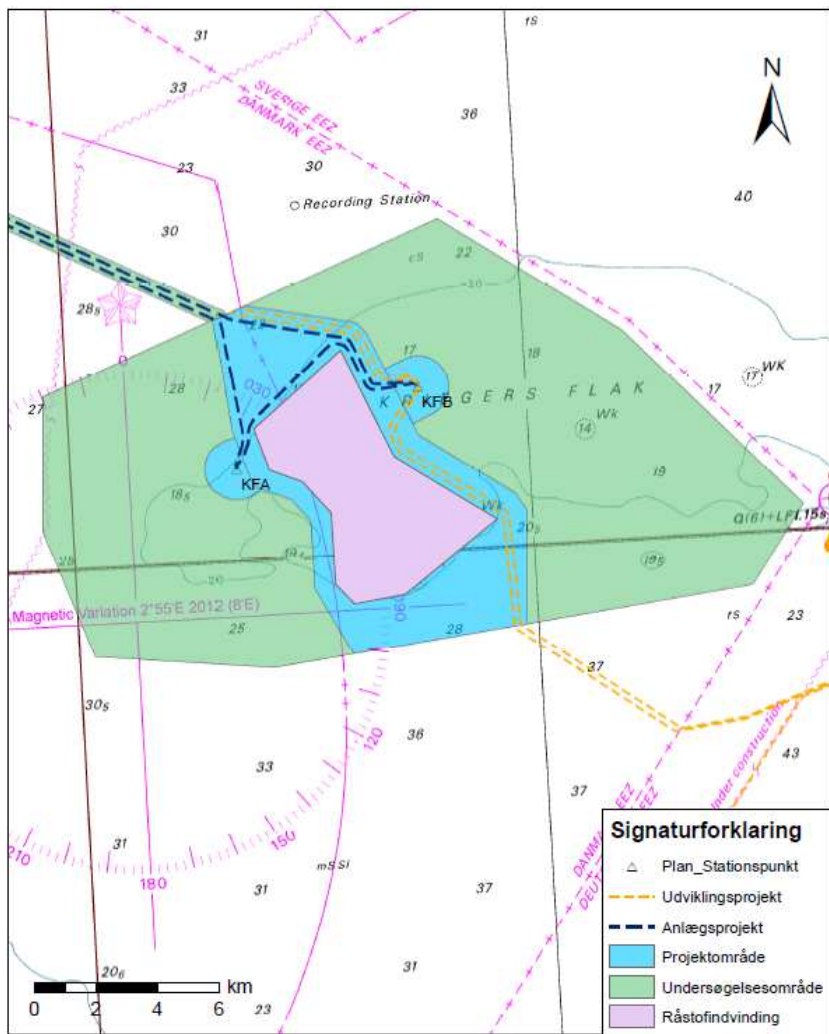
Figure one to three present the location of the Kriegers Flak offshore wind farm (600 MW). The numbers refer to ID in the tables below:



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Tables 1 and 2 present the coordinates for both wind farms areas, for the offshore platforms as well as for the different cable corridors. The coordinates are specified in UTM ETRS89 zone 32N.

Wind farm area - Western			Wind farm area - Eastern			Points on EEZ – limits of pre-investigation area			Offshore platforms		
ID	East	North	ID	East	North	ID	East	North	ID	East	North
1	739829	6106961	13	746387	6109914	1	753157	6112962	KFA	746103	6104602
2	745344	6109440	14	752519	6112702	2	758952	6109422	KFB	751999	6107300
3	745949	6105854	15	758587	6109053	3	765136	6103492	Baltic 2	766327	6099610
4	746568	6104243	16	764491	6103428	4	763597	6100973			
5	746775	6103995	17	762879	6100851						
6	747876	6103610	18	755554	6099575						
7	748509	6102922	19	755568	6103263						
8	748647	6100719	20	755172	6103830						
9	749900	6098597	21	752020	6105730						
10	747313	6098149	22	750313	6109047						
11	741529	6098509	23	750029	6109332						
12	739829	6102553	24	749862	6109393						

Table one: Coordinates for wind farm areas and pre-investigation area on Kriegers Flak as well as the offshore platforms KFA and KFB.

Please note that the Baltic Cable crosses the western area of the Kriegers Flak Wind farm at points 1 and 12 in table 1 (highlighted in yellow).

Kriegers Flak AC Cable corridor south			Kriegers Flak AC Cable corridor North			Kriegers Flak AC Cable corridor KFA-KFB			Kriegers Flak CGS Cable corridor south			Kriegers Flak CGS Cable corridor North		
ID	East	North	ID	East	North	ID	East	North	ID	East	North	ID	East	North
1	746071	6104662	1	751969	6107349	1	746108	6104606	1	766327	6099610	1	766327	6099610
2	746068	6104736	2	751920	6107396	2	746094	6104641	2	766336	6099532	2	766303	6099522
3	746088	6104844	3	751866	6107417	3	746096	6104688	3	766703	6098267	3	766659	6098292
4	746276	6105395	4	751796	6107423	4	746119	6104754	4	766606	6098127	4	766569	6098166
5	746311	6105576	5	750627	6107366	5	746352	6105119	5	762698	6096522	5	762684	6096570
6	746298	6105716	6	750526	6107392	6	746431	6105353	6	760564	6096135	6	760599	6096192
7	745588	6109293	7	750454	6107468	7	746484	6105588	7	760364	6096105	7	755356	6099541
8	745556	6109385	8	749791	6108768	8	746485	6105862	8	755168	6099424	8	754992	6103046
9	745484	6109447	9	749711	6108839	9	746517	6106024	9	754795	6103006	9	754954	6103171
10	729792	6116563	10	749603	6108883	10	746621	6106182	10	754773	6103078	10	754859	6103295
11	716346	6125193	11	745933	6109463	11	749074	6108606	11	754723	6103143	11	751568	6105288
12	714609	6125997	12	729888	6116739	12	749193	6108687	12	751433	6105136	12	751548	6105305
13	713640	6126696	13	716449	6125365	13	749343	6108708	13	751398	6105166	13	751534	6105326
14	713507	6126877	14	714684	6126133	14	749522	6108669	14	751371	6105205	14	751314	6105767
			15	713696	6126893	15	749603	6108624	15	751154	6105651	15	751280	6105843
			16	713509	6126884	16	749678	6108548	16	751085	6105825	16	751261	6105916
						17	750275	6107379	17	751073	6105923	17	751275	6105976
						18	750337	6107296	18	751087	6106032	18	751314	6106044
						19	750431	6107215	19	751129	6106143	19	752026	6107160
						20	750553	6107187	20	751376	6106504	20	752038	6107208
						21	750632	6107188	21	752004	6107175	21	752030	6107246
						22	751805	6107383	22	752020	6107204	22	752008	6107285
						23	751870	6107381	23	752018	6107241	23	751998	6107299
						24	751921	6107369	24	751997	6107281			
						25	751962	6107344	25	751998	6107299			

Table two: Coordinates for the different cable corridors for Kriegers Flak.

- 2.2. Investigations may be carried out in the entire area of the western and the eastern part of Kriegers Flak, respectively, but the planned wind turbines must not cover an area of more than 132 km<sup>2</sup>, excluding the offshore turbine radials for the transformer substation. For a more detailed description of the calculation of the 132 km<sup>2</sup>, see the construction licence in Appendix 6.
- 2.3. If the area covered by the licence (or areas within this area) is not subject to – or is exempt from – Danish sovereignty pursuant to international law (including by international agreement), the Concessionaire must respect any resulting reduction of the area without the right to make claims against the Danish Energy Agency or the Danish State in general.
- 2.4. The licence does not entail any restrictions on the sovereignty of the Danish State over Danish territorial waters or the exclusive right of the Danish State to the Exclusive Economic Zone. The licence does not therefore, within the area covered by the licence, preclude other operators than the Concessionaire from being granted a licence to conduct other forms of activity than the activities covered by this licence. In this connection the Danish Energy Agency will ensure that any such activities are not of major inconvenience to activities covered by this licence.

### **3. Procedure and requirements in connection with pre-investigations**

*[It should be noted that prior to the pre-investigations already carried out, Energinet.dk has prepared an impact assessment for these surveys.]*

- 3.1. Prior to commencement of pre-investigations in the area, the Concessionaire must inform the Danish Energy Agency of the surveys it will undertake as well as declare that these surveys will be within the framework of the aspects examined in the EIA report and the impact assessment.
- 3.2. If the Concessionaire intends to carry out other pre-investigations which are not within the framework of the aspects examined in the EIA report and the impact assessment, the Concessionaire must, before initiation of the pre-investigations can take place, submit a preliminary assessment of the possible impacts of these pre-investigations on the designated international nature reserves (habitat sites, special bird protection sites and Ramsar areas) as well as possible impacts on protected species (Annex IV species), cf. Executive Order no. 1476 of 13 December 2010 on environmental impact assessments regarding international nature conservation sites and protection of certain species in connection with projects on the establishment etc. of offshore electricity production plants and electricity supply grids.

On the basis of the documentation submitted, the Danish Energy Agency will decide whether a full impact assessment of these other pre-investigations is required. If so, the Concessionaire must prepare a full impact assessment and submit this to the Danish Energy Agency.

- 3.3. The Concessionaire must carry out the pre-investigations in a responsible manner and so that any activities by other rights holders under the Subsoil Act, and activities relating to fisheries, navigation and other commercial activities, are not made unreasonably difficult.
- 3.4. If residues of ammunition, war gas or unidentified items which may be hazardous are ascertained, work in the relevant area must be temporarily discontinued, and contact should be made to the Joint Defence Command Denmark via the Defence Command Operations Centre in Aarhus. The Joint Defence Command Denmark will destroy potentially explosive items. The Concessionaire is to cover the costs of the Joint Defence Command Denmark in connection with this destruction.
- 3.5. Prior to completing geotechnical surveys, the Concessionaire must conduct a UXO survey. The procedure for this must be approved by the Joint Defence Command Denmark.

The result of the UXO survey is to be sent to the Joint Defence Command Denmark with a statement of what has been found, its position (Geographical coordinate system in degrees and decimal minutes (XX°XX.XXXX' N, XX°XX.XXXX' E) in datum WGS 84), and depth under water or under the seabed. The results must be submitted collated as an independent report, the format of which is to be agreed with the Joint Defence Command Denmark.

The Joint Defence Command Denmark returns its comments in the event that any object must be subject to further investigation.

If objects are identified that are to be exploded, a more detailed investigation should be completed with the Naval mines service (Minørtjenesten). The Concessionaire must make available platforms, manpower and equipment to remove any dangerous objects. The Naval mine service will make available manpower and equipment to perform the removal of any dangerous objects. Payment will be in accordance with relevant practice for the area.

- 3.6. Certain types of pre-investigation activities may cause underwater noise, including in connection with geotechnical surveys and blasting of potentially explosive items. Underwater noise must be reduced to an acceptable level to accommodate Denmark's obligations to protect certain species and nearby nature reserves. Therefore, in connection with noisy activities, pingers and seal frighteners must be used as a minimum, so that protected species leave the noise-generating activities. As the Joint Defence Command Denmark is to carry out the task to destroy potentially explosive items, any measures regarding underwater noise in this connection will be the responsibility of the Joint Defence Command Denmark.
- 3.7. The Concessionaire must notify relevant authorities, for example the Danish Maritime Authority and the Danish AgriFish Agency about any specific offshore investigations (cf. Executive Order no. 1351 of 29 November 2013). For

example, the Danish Maritime Authority must be notified six weeks prior to the commencement of any specific investigations in Danish waters.

- 3.8. The authorities must have access to attend all investigations. All costs incurred for travel and subsistence for these representatives must, if necessary, be borne by the Concessionaire.
- 3.9. If the Concessionaire carries out investigations from a vessel, the Concessionaire must:
- Contact the Danish Fishermen's Association, H. C. Andersens Boulevard 37, 1504 Copenhagen V, Denmark, tel.: + 45 70 10 40 40, for a more detailed discussion of how to organise the investigations so as to ensure that proper and greatest possible account is taken of fishery;
  - Submit information on the planned investigations to "Fiskeri Tidende" (The Fishermen's Gazette), Nordensvej 3, Taulov, 7000 Fredericia, Denmark, tel.: +45 76 10 96 63, fax.: +45 75 45 20 65, e-mail: [tl@dkfisk.dk](mailto:tl@dkfisk.dk).
  - Notify the Defence Command Operations Centre Aarhus of when work will be carried out and the ships and shipping company that will be carrying out the work.
  - Contact information for the Defence Command Operations Centre Aarhus (JOC ARH)
- |                             | Telephone     | E-mail:  |
|-----------------------------|---------------|--|
| Duty officer:               | +45 7285 0380 | <a href="mailto:opscent@sok.dk">opscent@sok.dk</a> |
| Maritime assistance centre: | +45 7285 0371 | <a href="mailto:mas@sok.dk">mas@sok.dk</a>         |
| Shift leader JOC ARH:       | +45 7285 0332 |  |
| Main phone number:          | +45 7285 0000 |  |
- 3.10. The Concessionaire must take out insurance to cover any damage which the Concessionaire or other persons acting on behalf of the Concessionaire may cause in connection with these investigations. Documentation for such insurance must be submitted to the Danish Energy Agency before surveys are carried out in Danish waters.
- 3.11. The Concessionaire itself must obtain any licences pursuant to other legislation, for example licences for hydrographic surveys must be applied for from the Danish Geodata Agency.
- 3.12. If, in connection with the pre-investigations, the Concessionaire discovers protected cultural relics – be it ancient monuments or historic shipwrecks – or if the Concessionaire is informed that within the site there are interests of this nature, any discoveries and information must immediately be reported to the Danish Agency for Culture, att.: Torben Malm, Fortidsminder, H.C. Andersens Boulevard 2, 1553 Copenhagen V, Denmark, tel.: +45 33 74 51 00. Cultural heritage interests in territorial waters are protected under the Museum Act.



#### **4. Reporting and processing of data**

- 4.1. Raw data from any supplementary geo-technical pre-investigations must be submitted free of cost to GEUS (Geological Survey of Denmark and Greenland). Data reporting and formats are to be coordinated with GEUS.
- 4.2. All data from hydrographic surveys are to be submitted free of charge to the Danish Geodata Agency.

#### **5. Direct and indirect transfer of licence**

- 5.1. The Concessionaire may not, without the consent of the Danish Energy Agency, transfer its rights and obligations under this licence to a third party.
- 5.2. In this connection, the Danish Energy Agency will ensure that the required economic, financial and technical capacity is still in place.
- 5.3. In the event of an objective reason, the Danish Energy Agency is entitled to reject the transfer of licences.
- 5.4. Moreover, consent will only be given if this is possible in accordance with the EU public procurement regulations, the current RE Act, the Concession Agreement as well as all the terms and conditions set out in this licence.
- 5.5. The Danish Energy Agency is entitled to request from the Concessionaire any additional document deemed relevant by the Danish Energy Agency for the assessment of the desired transfer.

#### **6. Compliance with the terms and conditions of the licence**

- 6.1. The Danish Energy Agency is entitled to demand a fee for work performed in connection with processing and supervision of this licence, cf. Executive Order no. 835 of 27 June 2013 on payment for authority processing under the Electricity Supply Act and the RE Act.
- 6.2. The Concessionaire is obliged to provide the Danish Energy Agency with such information as the Danish Energy Agency deems necessary for supervision, cf. section 59 of the RE Act. The Danish Energy Agency must keep commercially sensitive information confidential.
- 6.3. The Concessionaire must comply with current regulations in force at any time, including EU regulations which are immediately applicable.
- 6.4. This licence may be revoked if any of the terms and conditions of the licence are not fulfilled.
- 6.5. Fines may be imposed, cf. section 72 of the RE Act, in the event of:
  - breach of the terms and conditions of this licence,

- failure to provide information pursuant to section 59, or
- submission of incorrect or misleading information or failure to submit information upon request.

## **7. Right of appeal**

- 7.1. Pursuant to section 66 of the RE Act, a party entitled to appeal may bring an appeal against this licence before the Danish Energy Board of Appeal, Frederiksborggade 15, 1360 Copenhagen K, Denmark.
- 7.2. The appeal must be in writing and must be submitted within four weeks of the decision to grant a pre-investigation licence.
- 7.3. Appeals will not have suspensory effect, unless the Energy Board of Appeal decides otherwise. Decisions by the Energy Board of Appeal cannot be appealed to another administrative authority.

FINAL TENDER CONDITIONS

## Appendix 6

### **Draft model licence for the construction of Kriegers Flak electricity production plant and internal grid (construction licence)**

*[Energinet.dk has completed an environmental impact assessment (EIA report). The EIA has been taken into consideration in the terms and conditions of this model licence. This model licence has taken account of the EIA process and has been adjusted. After this, in June 2016, the licence was submitted to a supplementary consultation with the authorities in order to ensure that the terms which have been inserted after the authorities and public consultations meet the authorities' requirements.*

*Changes may be made to the conditions of the final licence regarding circumstances which the Danish Energy Agency or other authorities are not aware of at present.]*

The Concessionaire should note that the legal basis for a number of terms and conditions for the licence is in legislation and a regulatory foundation under the auspices of other authorities than the Danish Ministry of Energy, Utilities and Climate.

The Danish Energy Agency makes reservation for that all relevant legislation etc. that the Concessionaire is obligated to comply with has been mentioned in this licence.

In this context, it should be noted that amendments to current legislation may take place. The Concessionaire should note that it must comply with legislation in force at any time.

Costs incurred as a result of terms and conditions imposed on the basis of legislation in force at any time are of no concern to the Danish Energy Agency.

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**This licence is granted pursuant to section 25 of the Promotion of Renewable Energy Act (in the following referred to as the RE Act), cf. Consolidating Act no. 1141 of 29 August 2016, and is subject to the following terms and conditions:**

**1. General terms and conditions**

- 1.1 This licence for the construction of Kriegers Flak electricity production plant, with associated internal cables, is granted to the Concessionaire on the basis of the Concessionaire's tender of 8 November 2016, cf. section 25 of the RE Act.
- 1.2 This licence will expire upon issue of a licence to put into operation the electricity production plant to exploit wind power pursuant to section 29 of the RE Act.
- 1.3 The Concessionaire is responsible for ensuring that the offshore wind farm project stays within the framework of the EIA report for Kriegers Flak.

The EIA report for Kriegers Flak comprises an assessment of the potential impact of the offshore wind farm project on the physical/chemical, human and natural environment during the life expectancy of the project - the construction phase, the operating phase and the decommissioning phase - as well as an assessment of the accumulated impacts of the offshore wind farm project, cf. the Executive Order no. 68 of 26 January 2012 on environmental impact assessments (EIA) in connection with projects to establish offshore electricity production plants. The EIA report also includes an assessment of impacts of the offshore wind turbines on international nature conservation sites and an assessment of impacts on protected species (Annex IV species) in the area, cf. Executive Order no. 1476 of 13 December 2010 on impact assessments concerning international nature conservation sites and protection of certain species in connection with projects on establishment, etc. of offshore electricity production plants and offshore electricity supply grids.

- 1.4 The Concessionaire must not launch construction, operational or decommissioning works which are not within the framework of the approved EIA report. The Concessionaire must notify the Danish Energy Agency if the Concessionaire is in doubt as to whether specific construction, operational or decommissioning works are within the framework of the approved EIA report.
- 1.5 A capacity of at least 590 MW, and no more than 610 MW, must be installed.
- 1.6 The Concessionaire can construct an offshore wind farm able to deliver a maximum output of 600 MW measured at the connection point, which has been defined as the 33 KV side of the 220/33 kV transformer platform on Energinet.dk's platform. The facilities for transmission of power to shore (platform and export cables) have been designed for a maximum rated power of 600 MW. Although a maximum of up to 610 MW may be installed, no more than what constitutes 600 MW installed capacity must be connected to the grid at any given time. This means that any supplementary reserve turbines must not be used to ensure an overall larger production for the wind farm. The voltage reference point for the offshore wind farm is the Point of Common Coupling (PCC). For Kriegers Flak, the PCC has been defined at 220 kV operating voltage level.

The distribution between the primary transformers is described in Appendix 6.1. "Interfaces regarding grid connection", section 3.2.1.

1.7 A detailed timetable for completion of the project must be made available to the Danish Energy Agency for information by no later than 1 March 2017. The timetable must demonstrate that the Concessionaire is able to connect the entire offshore wind farm to the collective grid before 1 January 2022. Furthermore, the timetable must demonstrate that the Concessionaire is able to meet the deadlines stated below under point 1.7 about the detailed project plan and under point 12 about requirements for grid connection etc. The timetable must also, as a minimum, contain information about when the Concessionaire expects to

- submit an underwater noise forecast, as well as a measurement programme and a plan for noise abatement initiatives;
- present a detailed project plan for the construction work;
- establish or take down marked-off work areas;
- commence construction work;
- apply for a licence to exploit the energy (electricity production licence);
- apply for authorisation to produce electricity;
- supply equipment for installation on the platforms (however by no later than 1 December 2017);
- pull 33 kV cables (however not before 1 November 2018 at the earliest);
- Energinet.dk to perform energization (however not before 1 January 2019 at the earliest);
- supply the first kWh to the electricity supply grid from the first turbine;
- connect the last turbine to the collective grid; and
- perform a verification test to verify compliance with grid connection requirements.

Furthermore, the timetable must contain suggested dates for status meetings, status reporting, etc.

The Danish Energy Agency must be kept continuously up to date about any substantial deviations from the timetable.

1.8 A detailed project plan, including a detailed project description and an updated, detailed timetable, must be presented to the Danish Energy Agency for approval by no later than two months prior to commencement of the construction work. The project description must contain information about underwater noise management, wind farm array layout, choice of suppliers, choice of turbine types, foundations, internal grid system, marking (including proposed permanent marking), etc. Furthermore, the final location and design of the turbines must be described. An updated navigation risk assessment, prepared in connection with the EIA report, must be enclosed, if the wind farm layout chosen so requires. This matter must be clarified with the Danish Maritime Authority beforehand.

Furthermore, the detailed project plan must document that the terms and conditions of this licence will be met. Similarly, the detailed project plan must contain the information which, according to this licence, must be submitted to the Danish Energy Agency for approval or for information. The Danish Energy Agency will coordinate approval of the detailed project plan with other relevant authorities.

- 1.9 The Danish Energy Agency expect to be able to give its approval to start the offshore wind farm project by no later than two months after it has received sufficient documentation for the above detailed project plan. The Danish Energy Agency will provide feedback on any missing information soon after it has received information and documentation. Construction work on the offshore wind farm cannot be commenced until the Danish Energy Agency has granted a licence accordingly.
- 1.10 The Concessionaire must apply for a licence to put the electricity production plant into operation to exploit the wind power pursuant to section 29 of the RE Act (electricity production licence). Application for this licence cannot be submitted until construction work has commenced and by no later than two months before supplying the first kWh to the collective electricity supply grid from the first turbine. Production of electricity which is supplied to the collective electricity supply grid must not be carried out until the licence pursuant to section 29 has been obtained. A condition for obtaining the licence pursuant to section 29 is that the successful tenderer can document in a report that all terms of this licence have been complied with, or will be complied with, cf. section 25 of the RE Act. The report must be presented to the Danish Energy Agency in connection with the application for a licence pursuant to section 29 of the RE Act. At the same time as this application, the Concessionaire must also apply for an authorisation to produce electricity pursuant to section 10 of the Electricity Supply Act, cf. Consolidating Act no. 418 of 25 April 2016.
- [Model electricity production licence and model authorisation has been enclosed with the tender material as Appendix 7 and 8.]*
- 1.11 The Danish Energy Agency is entitled to demand a fee for work performed in connection with processing and supervision of this licence, cf. Executive Order no. 835 of 27 June 2013 on payment for authority processing under the Electricity Supply Act and the RE Act.
- 1.12 The Concessionaire is responsible for applying for any relevant licences pursuant to other legislation.
- 1.13 The Concessionaire must comply with current regulations in force at any time, including EU regulations which are immediately applicable.
- 1.14 Note that this licence does not otherwise exempt the Concessionaire from any liability that may arise in connection with the existence of the plant. Nor does this licence contain a guarantee for the security, safety and stability of the proposed structures.
- 1.15 The Danish Energy Agency reserves the right to require changes to be made to the plants prior to commencement of construction work, if so prescribed by safety reasons.

- 1.16 No substantial changes or extensions must be made to the plant after this licence has been issued without approval from the Danish Energy Agency.
- 1.17 The Concessionaire must take out insurance to cover any damage which the Concessionaire or other persons acting on behalf of the Concessionaire may cause in connection with the activities carried out under this licence. Construction work may not be commenced until documentation for this has been presented to the Danish Energy Agency for information.
- 1.18 If the area covered by the licence (or areas within this area) is not subject to – or is exempt from – Danish sovereignty pursuant to international law (including by international agreement), the Concessionaire must respect any resulting reduction of the area without the right to make claims against the Danish Energy Agency or the Danish State in general.
- 1.19 The licence does not entail any restrictions on the sovereignty of the Danish State over Danish territorial waters or the exclusive right of the Danish State to the Exclusive Economic Zone. The licence does not therefore, within the area covered by the licence, preclude other operators than the Concessionaire from being granted a licence to conduct other forms of activity than the activities covered by this licence. In this connection the Danish Energy Agency will ensure that any such activities are not of major inconvenience to activities covered by this licence.
- 1.20 Large parts of the offshore wind farm are located outside the 12 nautical miles limit, which is also the EU's customs frontier. Transport of materials to the area must therefore be notified to the customs authorities. The Central Customs and Tax Administration (SKAT) offers the opportunity to use a simplified procedure: "*Ansøgning om bevilling til hjemstedsordning, eksport (periodeangivelse)*" (application for on-site clearance procedure, exports), form 13.023. For more information about this simplified procedure, contact the customs guideline on + 45 72221212.

## **2. Inspection**

- 2.1 Detailed agreements concerning terms and conditions for the plant are to be discussed directly with the relevant authority with which the agreement has been entered.
- 2.2 The Danish Energy Agency carries out inspection of compliance with the terms and conditions of the licence pursuant to the provisions of the RE Act.
- 2.3 The Danish Working Environment Authority carries out inspection of occupational health and safety before, during and after construction of the offshore wind farm, including the part which is located in the Danish Exclusive Economic Zone.
- 2.4 The Danish Maritime Authority carries out inspection of occupational health and safety at sea, on floating and movable platforms (jack-up platforms and similar), as well as of diving activities, before, during and after construction of the offshore wind farm.
- 2.5 The Danish Maritime Authority inspects marking and buoys for navigation.
- 2.6 The Danish EPA carries out environmental inspection in connection with the construction and operation of the offshore wind farm with regard to the onshore part of

the project as well as inspection regarding noise from the wind turbines. However, this does not apply to underwater noise.

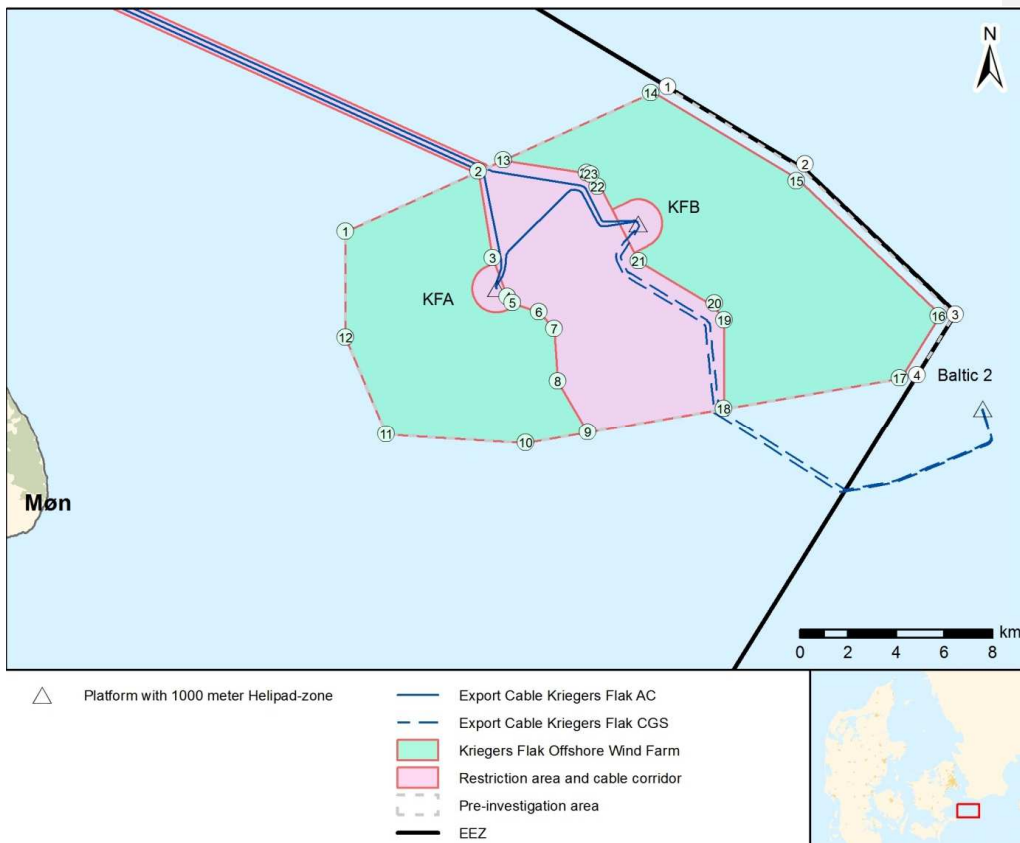
- 2.7 The Joint Defence Command Denmark can make demand access to take oil samples from any onshore facilities as well as from the individual offshore wind turbines.
- 2.8 The Concessionaire is otherwise obliged to tolerate the inspection measures which the police, the customs service, the Royal Danish Navy, the fisheries inspection or any other public authority may take to ensure compliance with the provisions for the construction and operation of the offshore wind farm.
- 2.9 The Concessionaire must make seaborne transport and accommodation facilities as well as internal transport in the construction area available in connection with inspection visits.

### **3. Coordinates and physical design**

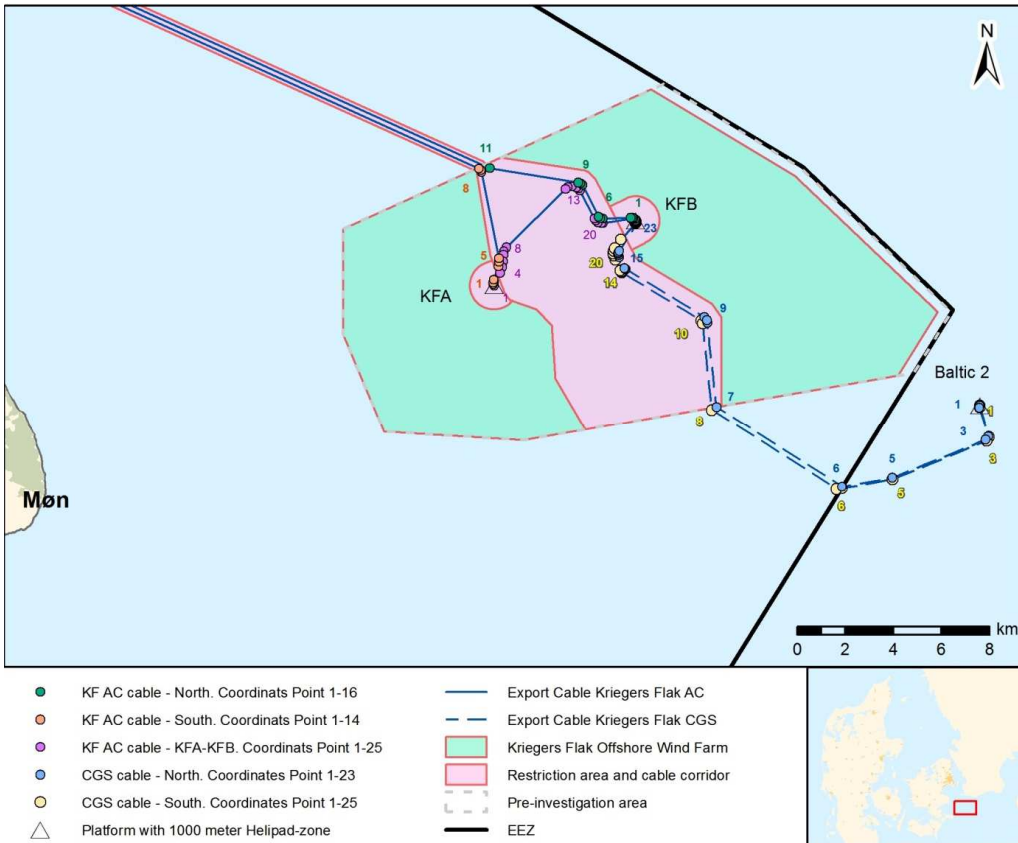
- 3.1 The offshore wind turbines are to be placed inside an area of around 250 km<sup>2</sup>. Centrally in the area is a sand extraction area of around 28 km<sup>2</sup>, which has been reserved for sand extraction and for which a licence for the construction of offshore wind turbines or associated facilities cannot be granted. The coordinates of this area as well as of the transformer platform, cable corridors, EEZ-border and Baltic Cable are illustrated on the maps and stated in the tables below:



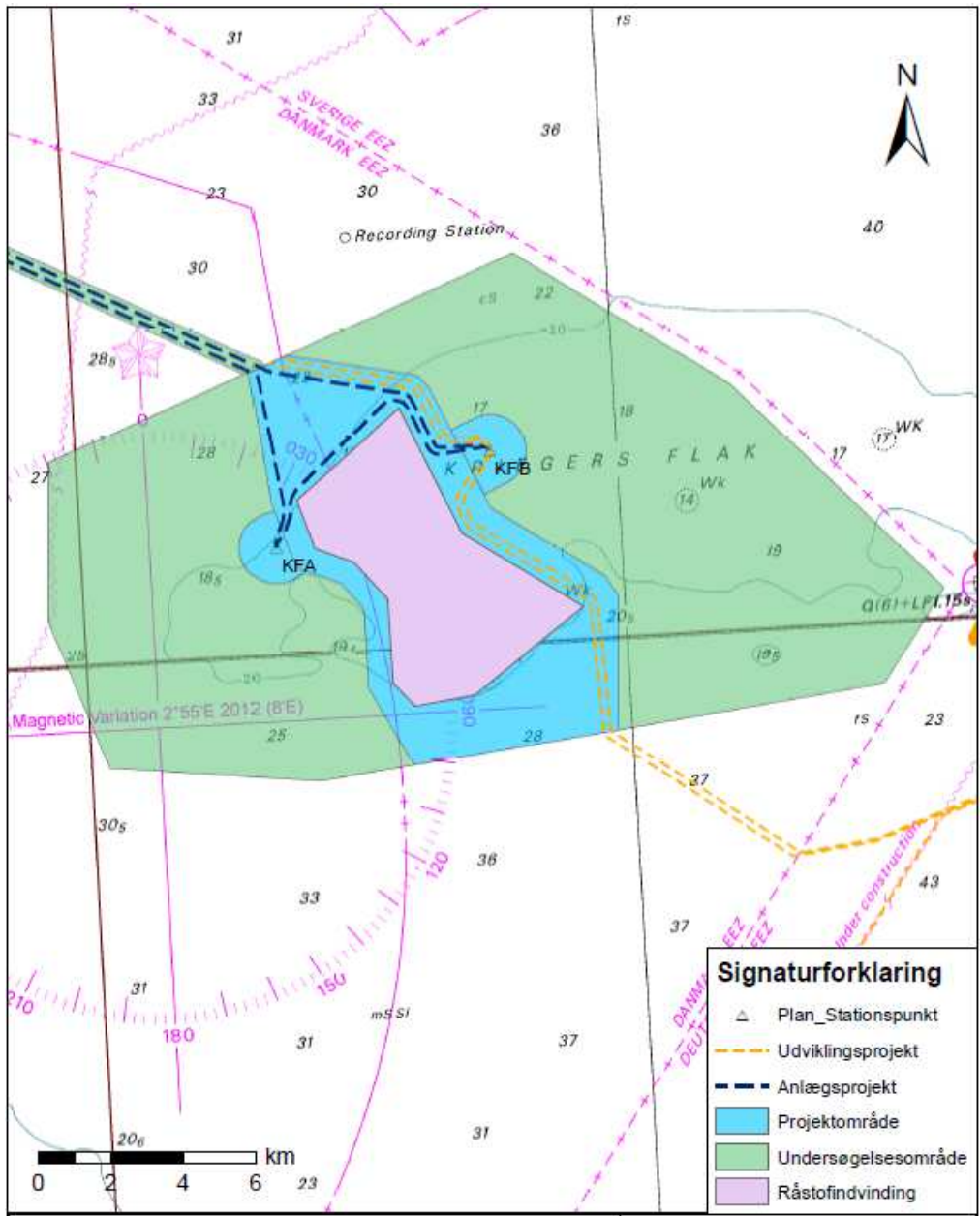
**Figures 1 to 3:** The planned location of Kriegers Flak Offshore Wind Farm (600 MW). The numbers refer to the ID column in the tables below.



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Tables 1 and 2 show the coordinates for: the wind farm areas, the pre-investigation area at Kriegers Flak, as well as the cable corridors. The coordinates are specified in UTM ETRS89 zone 32N.

Wind farm area West			Wind farm area East			Pre-investigation area - points in EEZ			Offshore platforms		
ID	East	North	ID	East	North	ID	East	North	ID	East	North
1	739829	6106961	13	746387	6109914	1	753157	6112962	KFA	746103	6104602
2	745344	6109440	14	752519	6112702	2	758952	6109422	KFB	751999	6107300
3	745949	6105854	15	758587	6109053	3	765136	6103492	Baltic 2	766327	6099610
4	746568	6104243	16	764491	6103428	4	763597	6100973			
5	746775	6103995	17	762879	6100851						
6	747876	6103610	18	755554	6099575						
7	748509	6102922	19	755568	6103263						
8	748647	6100719	20	755172	6103830						
9	749900	6098597	21	752020	6105730						
10	747313	6098149	22	750313	6109047						
11	741529	6098509	23	750029	6109332						
12	739829	6102553	24	749862	6109393						

Table 1: Coordinates for the wind farm areas and the pre-investigation area at Kriegers Flak, as well as platforms KFA and KFB.

Please note that the Baltic Cable crosses the western area of the Kriegers Flak Wind farm at points 1 and 12 in table 1 (highlighted in yellow).

Kriegers Flak AC cable corridor South			Kriegers Flak AC cable corridor North			Kriegers Flak AC cable corridor KFA-KFB			Kriegers Flak CGS cable corridor South			Kriegers Flak CGS cable corridor North		
ID	East	North	ID	East	North	ID	East	North	ID	East	North	ID	East	North
1	746071	6104662	1	751969	6107349	1	746108	6104606	1	766327	6099610	1	766327	6099610
2	746068	6104736	2	751920	6107396	2	746094	6104641	2	766336	6099532	2	766303	6099522
3	746088	6104844	3	751866	6107417	3	746096	6104688	3	766703	6098267	3	766659	6098292
4	746276	6105395	4	751796	6107423	4	746119	6104754	4	766606	6098127	4	766569	6098166
5	746311	6105576	5	750627	6107366	5	746352	6105119	5	762698	6096522	5	762684	6096570
6	746298	6105716	6	750526	6107392	6	746431	6105353	6	760564	6096135	6	760599	6096192
7	745588	6109293	7	750454	6107468	7	746484	6105588	7	760364	6096105	7	755356	6099541
8	745556	6109385	8	749791	6108768	8	746485	6105862	8	755168	6099424	8	754992	6103046
9	745484	6109447	9	749711	6108839	9	746517	6106024	9	754795	6103006	9	754954	6103171
10	729792	6116563	10	749603	6108883	10	746621	6106182	10	754773	6103078	10	754859	6103295
11	716346	6125193	11	745933	6109463	11	749074	6108606	11	754723	6103143	11	751568	6105288
12	714609	6125997	12	729888	6116739	12	749193	6108687	12	751433	6105136	12	751548	6105305
13	713640	6126696	13	716449	6125365	13	749343	6108708	13	751398	6105166	13	751534	6105326
14	713507	6126877	14	714684	6126133	14	749522	6108669	14	751371	6105205	14	751314	6105767
			15	713696	6126893	15	749603	6108624	15	751154	6105651	15	751280	6105843
			16	713509	6126884	16	749678	6108548	16	751085	6105825	16	751261	6105916
						17	750275	6107379	17	751073	6105923	17	751275	6105976
						18	750337	6107296	18	751087	6106032	18	751314	6106044
						19	750431	6107215	19	751129	6106143	19	752026	6107160
						20	750553	6107187	20	751376	6106504	20	752038	6107208
						21	750632	6107188	21	752004	6107175	21	752030	6107246
						22	751805	6107383	22	752020	6107204	22	752008	6107285
						23	751870	6107381	23	752018	6107241	23	751998	6107299
						24	751921	6107369	24	751997	6107281			
						25	751962	6107344	25	751998	6107299			

Table 2: Coordinates for the various cable corridors for Kriegers Flak.

3.2 The planned offshore wind farm must not cover an area exceeding 132 km<sup>2</sup>. The area is defined on the basis of the location of the foundations for the turbines. The calculation of this area excludes the turbine radials to the transformer platform and the buffer zone of at least 200 m on either side of the export cable, as well as the buffer zones around the platforms, where, to avoid interference with helicopter flightpaths, wind turbines must not be erected within a distance of 1,000 m from the platforms, cf. terms and conditions under 3.3. This must be confirmed in the detailed project plan, which is a term under this licence, see above under 1.8. A larger buffer zone area around the export cable and the transformer platforms than that stated above cannot be included in the calculation.

*[The Danish Energy Agency will base calculations of the area on a Delaunay Triangulation method with an alpha value of  $\alpha=20$  calculated in kilometres. For further information, please refer to the "Published material" on the DEA homepage.]*

3.3 Wind turbines must not be erected inside a buffer zone of at least 200 m on either side of the export cables. Around the two platforms (in the western part and the eastern part of the offshore wind farm area, respectively), in order to avoid interference with helicopter flightpaths to the platform, wind turbines must not be erected within a distance of 1000 m from the individual transformer platform.

Furthermore turbines must be placed with a minimum distance of 500 metres from the Swedish and German EEZ borders. The minimum distance of 500m to the EEZ border must be measured from the centre of the foundation, which is represented by the coordinates of the wind turbine.

3.4 A buffer zone area will be determined around the new wind farm. This buffer zone area only applies in Danish waters. Until and including the end of 2034, the buffer zone area will be 6 km in all directions. After this time, the buffer zone area will be reduced to 4 km in all directions. The establishment of the buffer zone area means that no licences will be granted to construct new offshore wind turbines in this buffer zone area, without prior consent from the Concessionaire.

3.5 The turbines must be white in colour (ral no. 7035). The bottom part must be yellow, from the sea surface to a height that will be agreed with the Danish Maritime Authority prior to the detailed project plan. Furthermore, the turbines must be fitted with reflective numbers/letters and have a clockwise rotational direction seen from windward. Technical installations must be placed e.g. in the turbine tower, so that the wind turbine appears as a homogenous structure. A homogenous structure is to be understood as a structure which visually has a homogenous appearance when seen from land. Furthermore, the minimum height from the bottom-most blade tip on the turbines to the sea surface (HAT) must be 20 meters.

3.6 When it is connected to the collective grid, the offshore wind farm must meet the requirements for technical certification of wind turbines. These requirements entail e.g. that there is documentation that the wind turbine is certified, cf. Executive Order no. 73 of 25 January 2013 on a technical certification scheme for wind turbines.

Pursuant to section 7(1) of this Executive Order, project certification must, as a minimum, include requirements corresponding to the mandatory modules and requirements for project certification stipulated in European standard DS/EN 61400-22, including specified DS/EN, IEC and ISO standards. The project certificate must be available upon completion of the release of the wind turbine plant after it has been put into operation, and by no later than three months after all the turbines have been put into operation or have produced electricity to the grid.

- 3.7 Oil-free cables are to be used for the internal cabling in order to reduce the risk of subsequent pollution, and the plant is to be designed with devices for recovery of any oil leakages.
- 3.8 The Concessionaire must comply with the regulations set out in the Chemicals Act, cf. Consolidating Act no. 849 of 24 June 2014 with later amendments, and must heed the lists of harmful substances published by the Danish EPA. These lists include substances which the Danish EPA recommends against using, including anti-fouling paints and biocides containing tributyltin (TBT).

#### **4. Decommissioning plan and guarantee**

- 4.1 The Concessionaire is obliged, at its own account, to restore the area to its former condition, including to carry out the necessary remediation and clean up in the area, as well as to decommission and dispose the electricity production plant pursuant to a decommissioning plan approved by the Danish Energy Agency, in the event that
- the electricity production licence expires;
  - the plant is not being maintained or is destroyed;
  - the plant is no longer used as a wind farm; or
  - the terms and conditions of the electricity production licence are not being met or are not being complied with.

The Danish Energy Agency may require the Concessionaire to remove all plant in full or in part in accordance with a timetable stipulated by the Danish Energy Agency.

- 4.2 The Concessionaire must submit a plan for decommissioning the wind turbines and the cable links between the turbines (decommissioning plan) to the Danish Energy Agency for approval
- by no later than two years before expiry of the electricity production licence;
  - two years before the date at which one or more facilities etc. are expected to have served their purpose;
  - if the plant is not being maintained or is destroyed; or
  - if the terms and conditions of the electricity production licence are not being met or are not being complied with.

The decommissioning plan must contain an account of how the plant facilities will be removed and a proposal for a timetable for doing so. The Danish Energy Agency may stipulate more detailed requirements for the contents of the plan.

In addition to a plan for physical decommissioning of the wind farm, pursuant to the regulations on EIAs in force at that time, and together with the decommissioning plan, the Concessionaire must submit a detailed assessment of any environmental impacts entailed by the plan.

The assessment of the environmental impacts must provide the Danish Energy Agency with a decision basis for whether an EIA report is to be prepared. If an EIA report is not required, the Danish Energy Agency will make this decision public at the same time as it grants authorisation to the applicant.

The Danish Energy Agency will submit the decommissioning plan and the assessment of the environmental impacts for consultation with relevant authorities in order to set specific terms for decommissioning the wind farm. For example, this may include terms regarding safety of navigation, marking and buoying or environmental protection.

If, at that time, only partial removal of the plant is required, this may be accompanied by a requirement that no remaining parts of the foundations become exposed as a consequence of natural, dynamic changes in the seabed sediment. Furthermore, it is likely that there will be requirements to use the best available technology and the best environmental practice when removing the plant.

4.3

The Concessionaire must provide an adequate guarantee for decommissioning the plant, and this guarantee must be approved by the Danish Energy Agency. The guarantee must be provided by no later than 12 years after the first turbine has supplied the first KWh to the collective electricity supply grid. This also applies in the event that a duty to decommission the plant arises before this time, see above under point 4.1. At least six months prior to this time, the Concessionaire must submit a plan to the Danish Energy Agency with details of how the guarantee will be provided. The guarantee must be at least DKK 600 million, unless the Danish Energy Agency finds it can approve a lower amount. If the Concessionaire fails to meet its duty to clean up the area, the expenditures for clean-up will be paid for by the guarantee to the extent that the guarantee covers these expenditures.

If, by no later than 11 years and six months after grid connection of the first turbine, the Concessionaire can document to the Danish Energy Agency that the costs of cleaning up are likely to be less than the DKK 600 million, then the Danish Energy Agency may decide to reduce this amount. The Danish Energy Agency may require a third-party verification of the assessment of the cost of dismantling and settlement on the Concessionaire's expenses.

At least DKK 100 million of the guarantee must be provided in the form of a guarantee from a financial institution, an insurance company, or similar. The financial institution or insurance company or similar which provides the guarantee must meet specific rating requirements. These requirements will be set by the Danish Energy Agency in reasonable time before the deadline for provision of a guarantee. The remainder of the guarantee may be provided in the form of a parent-company guarantee. In this event, the guarantee must cover all potential costs associated with the duty to clean up. The Danish Energy Agency can only accept a parent-company guarantee for the remainder of the guarantee if the Danish Energy Agency assesses



that the parent company has the required financial capacity. Furthermore, the parent company must submit renewed documentation of its financial capacity to the Danish Energy Agency every five years, so that the Danish Energy Agency can assess regularly whether the required financial capacity is in place.

However, the Concessionaire will be liable to cover all expenditures associated with the clean-up, regardless of whether these exceed the guarantee provided.

## **5. Safety, etc.**

5.1 The Concessionaire must describe how maintenance and service of the offshore wind farm will be performed and submit this description to the Danish Energy Agency. This must be as a part of the detailed project plan.

5.2 Before commencement of construction work at sea, the Concessionaire must establish a plan for environmental management and quality assurance of the works in question. The Concessionaire must perform all works in accordance with this plan.

5.3 From 1 January 2016, the plant must be constructed in compliance with the new Electricity Safety Act (Act no. 525 of 29 April 2015) This new Act replaces the High-Voltage Current Act, cf. Consolidated Act no. 990 of 8 December 2003.

*[With authorisation in the new Act, a number of executive orders will be issued with detailed regulations on electricity products, electrical installations and electricity plants (supply plants). The new executive orders are being prepared and will have a transitional period before entry into force. The executive orders in the areas of electrical installations and electricity plants will contain general safety requirements and specific Danish requirements. Furthermore, they will refer to standards, which provide reason to assume that the safety requirements will be met. In contrast to the current regulations, there will not be detailed requirements in areas in which standards already exist which ensure the required level of safety. It is planned that the provisions will be available in both Danish and English in the future.*

*The Electricity Safety Act is being administrated by the Danish Safety Technology Authority and acts and executive orders will be available at [Elsikkerhed.dk](http://Elsikkerhed.dk) in Danish and English.]*

5.4 An emergency response plan must be prepared covering the construction period and the operating period. This plan must be forwarded to the Danish Energy Agency in due time before commencement of construction work. The emergency response plan must contain a procedure for contact to, and involvement of, the Defence Command Denmark Operations Centre in Aarhus, if there is a risk of collision with one or several wind turbines. This plan is to e.g. enable the Joint Defence Command Denmark to have one or several turbines shut down if there is a risk of collision.

5.5 The Concessionaire must follow the guidelines and regulations stated in the Working Environment Act of the Ministry of Employment (Consolidating Act no. 1072 of 7 September 2010 with later amendments) and associated executive orders, e.g. Executive Order no. 117 of 5 February 2013 on the duties of the contractor; Executive Order no. 110 of 5 February 2013 on the duties etc. of planners and

consultants pursuant to the Working Environment Act; as well as Executive Order no. 1516 of 16 December 2010 on the organisation of building and construction works. Furthermore, a number of special executive orders apply, e.g. Executive Order no. 302 of 13 May 1993 on work with code-numbered products; Executive Order no. 292 of 26 April 2001 on work involving substances and materials; Executive Order no. 612 of 25 June 2008 on the design of technical equipment; Executive Order no. 693 of 10 June 2013 on design etc. of machinery; Executive Order no. 908 of 27 September 2005 on measures to prevent the risk of cancer from work with substances and materials; and Executive Order no. 1109 of 15 December 1992 on use of technical equipment.

## **6. Environmental considerations**

6.1 If construction activities cause disturbance and spread of seabed sediment, e.g. in connection with excavation or sluicing, the disturbance must be reduced as much as possible through the use of methods and material which ensure the best environmental practice. The actual spread of sediments in relation to time, place and method is to be agreed with the environmental authorities. However, there is a precondition that the environmental authorities accept the actual spread of sediments.

6.2 Construction activities are likely to cause underwater noise. In order to protect marine mammals against the harmful effects of underwater noise, the terms and conditions in 6.2 and 6.6 apply to underwater noise in connection with the installation of foundations (pile driving).

The so-called accumulated SEL from each installation sequence must not exceed a threshold value of 190dB. The fulfilment of this term must comply with the Danish Energy Agency's guidelines on underwater noise when pile driving "Guideline for underwater noise – Installation of impact-driven piles". Furthermore, this guideline must be followed both before and during the installation of the piles.

Detailed provisions on how to calculate the accumulated SEL and requirements for noise forecasting, control measurements, documentation and other technical matters can be found in the "Guideline for underwater noise – Installation of impact-driven piles".

6.3 At a time defined by the Concessionaire, when submitting the detailed project plan at the latest, the following information must be submitted to the Danish Energy Agency for approval:

- a. A forecast of the source noise level and the distribution of noise from at least four piles. This must include a forecast for the fourth pile to be first installed. Further a forecast for three piles selected so that none of the other piles can be expected to cause more noise. Control measurements must be performed when installing at least the first four of the piles for which forecasts have been made.
- b. Calculation of accumulated SEL on the basis of the forecasted source noise level. The calculation may assume that efficient use of pingers and a seal repellent system can scare off marine mammals up to 1.3 km.

- c. A statement of the noise abatement measures planned in accordance with the forecast and what measures have been planned as reserves in the event that the forecast underestimates the noise.
  - d. A programme for control measurements when installing the piles for which forecasts have been made, including how the Concessionaire will ensure compliance with the terms and conditions set out.
- 6.4 Prior to the installation of the individual foundations, marine mammals must be scared away from the vicinity using pingers and seal repellent systems.
- 6.5 When approval from the Danish Energy Agency is available, the following procedure applies for the actual installation of piles:
- a. The first installation round must include between four and eight piles. When installing the four first piles, control measurements of underwater noise must be performed. If the noise distribution constants have been validated beforehand, the actual accumulated SEL can be calculated immediately after installation. If this is not the case, the noise distribution constants will have to be validated and, then, the actual accumulated SEL can be calculated. The Concessionaire must have a quality-assured value for the actual accumulated SEL, before proceeding to the next step.
  - b. If the actual accumulated SEL does not exceed the threshold value, installation work can proceed as planned. If, on the other hand, the actual accumulated SEL exceeds the threshold value, then the Concessionaire must take measures to identify the causes of this deviation and perform corrective measures, including adjusting the installation method. When this work has been carried out, the next piles can be installed. In this situation, control measurements of underwater noise must also be performed for this next pile, and so forth, until the threshold value is complied with or the final pile in the installation round has been installed.
  - c. When the first installation round including the four to eight piles has been completed, the Concessionaire must prepare a detailed report to the Danish Energy Agency about control measurements and any adjustments to the prognosis and the installation method. If the Concessionaire has found an installation method for which there are control measurements and prognosis which can document compliance with the threshold value for all remaining piles including the ones that are expected to cause the most noise, then the installation work can proceed directly to the next installation round and does not have to wait while the Danish Energy Agency processes the submitted report. In the event that the Concessionaire cannot document compliance with the threshold value through control measurements and prognosis, the Concessionaire must propose substantial methods for reducing underwater noise as well as prepare a revised forecast in addition to the report. Proposals for improved methods for reducing underwater noise are to be submitted to the Danish Energy Agency for approval. The next installation round cannot be commenced until the Danish Energy Agency has approved proposals and forecasts.

- 6.6 Upon completion of the overall installation work, a detailed report on all control measurements is to be submitted to the Danish Energy Agency for approval.
- 6.7 With regard to other construction activities which cause underwater noise, the accumulated SEL from each construction activity must not exceed a threshold value of 190 dB.
- 6.8 In order to monitor impulse noise from construction activities (pile driving, air guns, etc.), these activities are to be reported to the Danish Energy Agency. These reports are to include the time of the noise-generating activity (day), position, sound level and a statement of the activity causing the impulse noise. *[The Danish Energy Agency will develop a reporting form to be used to report underwater noise. Data collection will be part of Danish obligations under the Marine Strategy Directive on monitoring and assessing the environmental status of Danish marine areas.]*
- 6.9 Guidelines must be set out for transport, including fixed sea and air transport routes in an out of the turbine area, which can contribute to reducing the impact of noise and other disturbances, especially with regard to marine mammals and bird populations in the area.
- 6.10 The Concessionaire must follow the regulations set out in the Marine Environment Act, cf. Consolidating Act no. 963 of 3 July 2013, including Executive Order no. 1130 of 23 September 2015 on bypass, exploitation and dredging of excavated seabed material, as well as regulations issued in pursuance of the Environmental Protection Act, cf. Consolidating Act no. 879 of 26 June 2010, including regulations in Executive Order no. 1284 of 15 December 2011 on noise from wind turbines.

## **7. Fisheries**

- 7.1 The Concessionaire must take contact to relevant commercial fishermen with a view to organising the construction activities in a way that does not affect commercial fishing more than necessary.
- 7.2 The Concessionaire must take contact to the commercial fishermen operating in the area with a view to negotiating possible compensation for documented losses under the Fisheries Act, cf. clauses 76-80 of the Consolidating Act no. 568 of 21 May 2014. Queries about legislation pertaining to fisheries may be addressed to the Danish AgriFish Agency.
- As a general rule, negotiations on compensation are carried out by the Danish Fishermen's Association. However, the Concessionaire should be aware that the Danish Fisherman's Association does not represent all commercial fishermen. Any compensation will cover the offshore wind farm as well as the internal grid system. If a compensation sum is determined, the sum must be paid by the Concessionaire.
- 7.3 The question of compensation for disturbances to fisheries during the construction phase and for permanent losses, as well as the amount of possible compensation, should as far as possible be determined prior to the construction phase.

## **8. Cultural heritage**

The work will be discontinued immediately if the Concessionaire discovers protected cultural relics – be it ancient monuments or historic shipwrecks – or if the Concessionaire is informed that within the site there are interests of this nature. Such discoveries and information are to be notified to the Danish Agency for Culture immediately, addressed to: Torben Malm, Fortidsminder, H.C. Andersens Boulevard 2, 1553 Copenhagen V, telephone +45 33 74 51 00. Cultural heritage interests in territorial waters are protected under the Museum Act.

## **9. Considerations for other offshore activities**

- 9.1 Construction works must be coordinated with the Danish Maritime Authority so that the shipping industry can be made aware of any relevant information via the Danish equivalent to Notices to Mariners (Efterretninger for Søfarende, EfS). Reference is made to Executive Order no. 1351 of 29 November 2013 on safety of navigation in connection with construction works and other activities etc. in Danish waters. When assessing the safety of navigation, a special form is to be used, which is enclosed as Appendix 6.3 (Assessment form for assessing the safety of navigation in connection with works at sea).
- 9.2 Siting of the individual turbine must adhere to the requirement for at least 200 meters between the turbines and the line of sight in existing radio link systems.
- 9.3 Navigation between the turbines is to be allowed, if deemed safe by the Danish Maritime Authority.
- 9.4 According to an evaluation by the Danish Maritime Authority, relevant preventive measures must be launched to safeguard navigation, i.e. collision-friendly foundation design and requirements for temporary and permanent marking and buoying. Marking and buoying must be approved by the Danish Maritime Authority.
- 9.5 In collaboration with Joint Defence Command Denmark, a more detailed analysis must be completed of the impact on existing Search and Rescue (SAR) response, when it has been decided which type of turbine and foundation are to be installed.
- 9.6 The safety of navigation analysis in the EIA report is based on AIS data from 2010 to 2011, as well as a smaller set of data from 2012 to 2013. Because changes to the pattern of shipping may have occurred since then, the analysis will have to be updated on the basis of newer data, when the final wind farm layout is known.
- 9.7 Permanent marking and buoying of the wind farm must have obtained approval from the Danish Maritime Authority by no later than two months before construction commences. A description of the permanent marking and buoying must be included in the detailed project plan.
- 9.8 Temporary buoying of work areas etc., must have obtained approval from the Danish Maritime Authority at least three months before the commencement of construction work.

- 9.9 During the construction phase, prohibition zones will be established to keep order and to prevent dangers around the offshore wind farm. An application for this must be filed with the Danish Maritime Authority no later than three months in advance.
- 9.10 After the wind farm has been constructed, there must be no negative changes in depth relative to the information in nautical charts of the area. To document this, either a complete hydrographic survey must be made or a statement by the Concessionaire that no negative changes have been made to the sea depth.
- 10. Marking and buoying**
- 10.1 The Concessionaire must follow the terms and conditions set out by the Danish Maritime Authority concerning marking and buoying before, during and after construction; correct siting of foundations and cables; reporting of time and date of work; etc., cf. Appendix 6.2. Final requirements for marking and buoying will be determined on the basis of the specific project.
- Furthermore, each turbine must be identifiable from numbers/letters on the turbine towers. These numbers/letters must have an appropriate size (approx. 1 metre). Specific proposals must be approved by the Danish Maritime Authority along with the other marking and buoying on the basis of the regulations in Executive Order no. 1351 of 29 November 2013 on safety of navigation in connection with construction works (and the associated assessment form - see Appendix 6.3) and other activities etc. in Danish waters. Reference is made to the Executive Order on Buoying, Executive Order no. 45 of 22 January 2015; the publication "*Afmærkning af danske farvande*" (buoying of Danish waters); as well as IALA Recommendation 0-139 on the Marking of Man-Made Offshore Structures.
- 10.2 It is likely there will be requirements for racons (radar beacons) in the western part of the wind farm area. Probably on the north-westernmost turbine. The final requirements are pending detailed planning and the final farm layout. Depending on the layout, two racons may be required on the turbine in question (as in the case of Anholt Offshore Wind Farm). The costs of this must be paid by the Concessionaire (cf. term 10.10). Any subsequent needs and requirements for changed or additional marking that may be determined for navigation must be paid by the Concessionaire. *[All marking established or changed due to the offshore wind farm must be paid by the Concessionaire. This also applies for any additional floating marking that may be necessary because of ferry routes etc.]*
- 10.3 When planning marking and buoying, the German Baltic II offshore wind farm should not be taken into account, as German and Danish marking do not align.
- 10.4 As a general rule, Kriegers Flak is to be considered and marked as a *single* offshore wind farm. However, depending on the final layout and the location of the turbines relative to the two platforms, there will be a need for marking and buoying on the basis of two sub areas.
- 10.5 There are no requirements for AIS marking.
- 10.6 Any planned project of a height of 100 meters or more above ground level must be notified in advance to the Danish Transport and Construction Agency, cf. section 67a

of the Danish Air Navigation Act, cf. Consolidating Act no. 1036 of 28 August 2013. The Danish Transport and Construction Agency will then issue a certificate for the project, which contains the requirements for lighting. Final requirements for lighting will be determined in the specific case, when the final height and siting of the turbines have been decided.

- 10.7 As a general rule, lighting must be fitted in accordance with the regulations in Regulations for Civil Aviation (BL) 3-11, available in Danish at [www.trafikstyrelsen.dk](http://www.trafikstyrelsen.dk). The following standard requirements apply under BL 3-11: Offshore wind turbines sited along the perimeter of the farm and inside the farm proper must be marked by a permanent low-intensity red light (at least 10 candela). The light must be placed at the top of the nacelle and must be visible from all directions 360-degrees horizontally around the nacelle, which will often require fitting two lights on each nacelle. Offshore wind turbines sited in bends and corners of the wind farm perimeter must be marked by 20,000-candela white lights in the daytime and 2,000-candela red, flashing lights at night. Marking for aviation must not obstruct shipping navigation.
- 10.8 For offshore wind turbines above 150 m, there is a requirement for a monitoring system to monitor the lighting and associated emergency power system.
- 10.9 If cranes with a height of more than 150 m are to be used during the construction phase, these will have to be notified to, and approved by, the Transport and Construction Agency before being taken into use.
- 10.10 The Concessionaire must pay all costs for marking and buoying for navigation and aviation.

## **11. Radar installations and UXO**

- 11.1 The construction of Kriegers Flak may have implications for Defence Command Denmark's radars. In the event that the offshore wind farm leads to changes in the quality of existing radar surveillance, which will be determined by the Danish Defence Acquisition and Logistics Organisation, the Concessionaire must enter into an agreement with the Danish Defence Acquisition and Logistics Organisation about the required remedial measures such as updating hardware, including whether supplementary radars and/or software will have to be procured. The Danish Defence Acquisition and Logistics Organisation will determine which measures are necessary. Such measures must be carried out and paid for by the Concessionaire and will have no delaying effect on the offshore wind farm project.
- 11.2 If so determined by the Danish Defence Acquisition and Logistics Organisation, the Concessionaire must also enter into an agreement with the Danish Defence Acquisition and Logistics Organisation on preparation of analyses to establish which remedial measures are necessary. Such analyses must also be carried out and paid for by the Concessionaire and will have no delaying effect on the offshore wind farm project. When assessing whether a wind farm interrupts air surveillance radars, the Danish Defence Acquisition and Logistics Organisation will apply the procedures described in the publication "EUROCONTROL Guidelines on How to Assess the Potential Impact of Wind Turbines on Surveillance Sensors". The Concessionaire must complete and submit the questionnaire in Annex E of the "EUROCONTROL

Guidelines on How to Assess the Potential Impact of Wind Turbines on Surveillance Sensors” (see Appendix 6.4).

11.3 The Danish Defence Acquisition and Logistics Organisation may initiate temporary remedial measures necessary to maintain the quality of the current radar surveillance until the necessary remedial measures can be determined. Temporary remedial measures must also be carried out at the cost of the Concessionaire, if so determined by the Danish Defence Acquisition and Logistics Organisation, and will have no delaying effect on the offshore wind farm project.

11.4 The Danish Defence Acquisition and Logistics Organisation may request that this be registered as a restrictive covenant on the offshore wind farm.

*[As part of the EIA process – Defence Command Denmark has provided a description of the estimated scope and cost of any necessary mitigation actions in relation to Danish radar installations.*

*The total cost – from a worst case perspective – is estimated to be DKK 24 million for Kriegers Flak.*

*The cost related to the following anticipated mitigation actions:*

*Complete replacement of the radar on Møn: DKK 20 million*

*Two gap fillers on Stevns or close to the farm: DKK 4 million*

*These are worst case prices.*

*The Concessionaire will only be required to compensate the Danish defence on the basis of documented costs in relation to concrete mitigation actions undertaken by the Danish defence.*

*Further, the compensation requirement does not interfere with the construction timeline as the mitigation only takes place after the farm has been built.*

*In the assessment of the DEA it is highly unlikely that the Concessionaire will be required to compensate foreign defence authorities, including authorities in Germany and Sweden, for any negative effect Kriegers Flak might have on their radars.*

*The ESPOO-hearing procedure, including Germany and Sweden, ended in February 2016. In the first ESPOO-hearing, Sweden noticed the negative impact on the country's defence radars, but made no specific demands on the grounds that the farm is being built in Denmark. Germany made no remarks.*

*As part of the finale ESPOO hearing the issue of radar has been highlighted separately with the clear message that the DEA does not expect to introduce rules that require the Concessionaire to compensate foreign defence authorities. Answers to the ESPOO hearing is published on the homepage under “Published material”.]*



11.5 When UXO (UneXploded Ordnance) is identified in the area, all work must cease temporarily and the Joint Services Defence Command must be contacted via the Defence Command Operations Centre in Aarhus, cf. section 14 of Executive Order no. 1351 of 29 November 2013 on safety of navigation during construction work and other activities etc. in Danish waters. The contact information below to the Defence Command Operations Centre in Aarhus (JOC ARH) should be used in connection with UXO:

	Telephone:	Mail:
Shift leader JOC ARH:	+45 72850332	
Duty officer:	+45 72850380	<a href="mailto:jrcc@sok.dk">jrcc@sok.dk</a>
Maritime Assistance Service:	+45 72850371	<a href="mailto:mas@sok.dk">mas@sok.dk</a>

The Joint Services Defence Command takes care of the case and will defuse the potentially explosive objects. The Concessionaire covering the costs associated with this neutralization.

11.6 In connection with pre-investigations, the Concessionaire has completed UXO surveys. If, during cabling, turbine siting and other construction work there are areas that are not covered by the above UXO surveys, additional UXO surveys must be completed before work is commenced.

The results of the UXO survey must be submitted to the Joint Defence Command Denmark stating what has been found, position (Geographical coordinate system in degrees and decimal minutes (XX°XX.XXXX' N, XX°XX.XXXX' E) in datum WGS 84), depth under water or under the seabed. The results must be submitted as an independent report, the format of which is to be agreed with the Joint Defence Command Denmark. The Joint Defence Command Denmark will reply with any comments regarding objects that are to be investigated more closely.

If objects are identified that are to be exploded, a more detailed investigation must be completed with the Naval mines service (Minørtjenesten). The Concessionaire must make available platforms, manpower and equipment to complete this. The Naval mines service (Minørtjenesten) will make available personnel and equipment to remove any dangerous objects. Payment will be in accordance with relevant practice for the area.

## 12. Internal cabling, etc.

12.1 When the cables have been established and incorporated on the official nautical maps, pursuant to section 4 of Executive Order of the Danish Maritime Authority no. 939 of 27 November 1992 on protecting submarine cables and submarine pipelines, a safety zone of 200 m will be established around the submarine cables. This safety zone includes a ban against anchoring and against any use of gear etc. that are towed along the seabed. The Concessionaire must contact the Danish Maritime Authority with in order to ensure the protection of the submarine cables in the wind farm. In order to avoid having to establish zones around each individual cable, it is expected that two overall protection zones will be established.

- 12.2 If there are large boulders along the cable corridor, these should be relocated within the wind farm area after agreement with the Danish Agency for Water and Nature Management.
- 12.3 The Danish Maritime Authority must be notified about when work to lay the cables is expected to commence. This notification must be submitted no later than four weeks, and preferably as early as six weeks, in advance. A plan/list of the coordinates for the cable corridors, a timetable, and a detailed description of work, including the vessels and call signals to be used, contact details and information about the extent to which navigation will be impeded, must be enclosed with the notification. A proposal for possible temporary marking and buoying during performance of the work must also be enclosed with the notification, including a proposal for possible permanent marking, buoying or sign-posting for the cable corridors. On the basis of the information provided, negotiations will be instigated with the Danish Maritime Authority about how to accommodate traffic during performance of work. The Danish Maritime Authority must be kept informed about changes in times, dates, working methods, etc. throughout performance of work.
- 12.4 Furthermore, on completion of work, the Danish Maritime Authority as well as the Danish Geodata Agency are to be notified that the work has been completed. Soon after this date, the same authorities are to be forwarded updated detailed drawings and information about coordinates.
- 12.5 The terms and conditions in 12.3 and 12.4 do not apply if the work is being carried out inside an area that has already been designated (marked-off) as a work area. In this case, data, cf. 12.4, must be reported in connection with final notification of completion of the project.
- 12.6 No negative changes must have been made to the sea depth in the area after laying of the cables, unless this has been agreed beforehand with the Danish Maritime Authority. If marking and buoying exist in the area, the cables must not be sited closer than 200 meters from these, unless a separate authorisation has been granted.
- 12.7 In the event of subsequent repairs to cables, the Danish Maritime Authority must be notified pursuant to current regulations. If a repair activity entails a change in the location of the cable, or in the seabed depth at which the cable is buried, updated detailed drawings and coordinates as stated above must be submitted to the Danish Maritime Authority after completion of the work.
- 12.8 If cables etc., are no longer being used for their original purpose, they should be removed completely from the territorial waters, unless an alternative solution is approved by the relevant authorities.
- 13. Requirements for grid connection, etc.**
- 13.1 The Concessionaire is to establish the offshore wind farm with an associated internal grid system for collecting the power output from the turbines, including certain grids and installations at the transformer platforms, cf. Appendix 6.1.

- 13.2 The Concessionaire must meet the terms and conditions of grid connection of electricity production plants stipulated by Energinet.dk. The offshore wind farm is subject to the regulations of Energinet.dk, cf. [www.energinet.dk](http://www.energinet.dk). Furthermore, the concessionaire shall comply with "Harmonic Requirements for the Connection of Kriegers Flak A and B" as specified in Appendix 6.1.4.
- 13.3 Before grid connection of the first turbine, the Concessionaire is obliged to enter into a collaboration agreement during the construction phase with Energinet.dk and, in accordance with regulations from Energinet.dk, to make available all information required to carry out monitoring and operation of the plant. A model agreement has been enclosed as Appendix 6.1.1.
- 13.4 Furthermore, the Concessionaire is obliged to establish a collaboration agreement with Energinet.dk about platform operation, as well as an operator and connection agreement, cf. appendices 6.1.2 and 6.1.3.
- 13.5 Energinet.dk will ensure commissioning of the transformer platform from 1 January 2019 and will ensure the possibility of pulling 33 kV cables from 1 November 2018, unless later dates are agreed with the Concessionaire.
- 13.6 The Concessionaire is responsible to Energinet.dk for meeting the following deadlines:
- a. The Concessionaire must agree with Energinet.dk on a plan for delivery of the technical information on the equipment for installation at the platform by no later than 30 days after award of the concession.
  - b. The Concessionaire must deliver to the yard equipment for installation on the platform by no later than 1 December 2017.
  - c. The Concessionaire must provide information by no later than 1 March 2017 about the date requested for commissioning the platform and pulling the cables.
- Equipment for installation on the platform which has not been delivered to the yard by 1 December 2017 at the latest must be installed offshore, unless otherwise agreed with Energinet.dk. Any extra costs of doing this must be paid in full by the Concessionaire, just as any installation offshore will otherwise be at the expense and risk of the Concessionaire
- 13.7 The electricity from the offshore wind farm plant must be transmitted onshore to the Danish collective electricity supply grid.
- 13.8 For the connection of Kriegers Flak Offshore Wind Park it is required to carry out an insulation coordination study. The insulation coordination study must document that critical overvoltages do not arise at the connection point at 33 kV level during switching and faults on the concessionaire's equipment. The insulation coordination study must contain analyses of energization, normal de-energisation, faults (single line to ground fault and 3 phase faults) and de-energisation due to faults in the 33 kV grid as well as in the 220 kV-grid. An analysis of the overvoltages during islanding of the wind farm must document that critical overvoltages at 33 kV level will not arise due to islanding of the wind farm.

The insulation coordination study must be carried out according to IEC 6007 part 1, 2 and 4 and must be finally approved by Energinet.dk.

**14. Direct and indirect transfer of licence**

14.1 The Concessionaire may not, without the consent of the Danish Energy Agency, transfer its rights and obligations under this licence to a third party, either directly or indirectly.

In this connection, the Danish Energy Agency will ensure that the required economic, financial and technical capacity is still in place.

Moreover, consent will only be given if this is possible in accordance with the EU public procurement regulations, the current RE Act, the Concession Agreement as well as all the terms and conditions set out in this licence.

14.2 The Danish Energy Agency shall be entitled to request from the Concessionaire any additional document deemed relevant by the Danish Energy Agency for assessment of the desired transfer.

14.3 The Danish Energy Agency can only reject a licence transfer on the event of an objective reason.

**15. Compliance with the terms and conditions of the licence**

15.1 The Concessionaire is obliged to provide the Danish Energy Agency with such information as the Danish Energy Agency deems necessary for supervision and inspection, cf. section 59 of the RE Act. The Danish Energy Agency must keep commercially sensitive information confidential.

15.2 This licence may be revoked if any of the terms and conditions of the licence are not fulfilled.

15.3 Fines may be imposed, cf. section 72 of the RE Act, in the event of:

1. breach of the terms and conditions of this licence,
2. failure to provide information pursuant to section 59, or
3. submission of incorrect or misleading information or failure to submit information upon request.

**16. Right of appeal**

Pursuant to sections 66 and 67 of the RE Act, a party entitled to appeal may bring an appeal against this licence before the Danish Energy Board of Appeal, Frederiksborggade 15, 1360 Copenhagen K, Denmark. The appeal must be in writing and must be submitted within four weeks of the decision to grant this licence has been announced to the public. The licence may not be exploited until expiry of the time limit for appeal. Appeals will not have suspensory effect, unless the Energy Board of Appeal decides otherwise. Decisions by the Energy Board of Appeal cannot be appealed to another administrative authority.

## **Appendix 6.1.**

### **Interfaces regarding grid connection Kriegers Flak AC and Kriegers Flak**

#### **Content**

#### **1. 220 kV grid connection**

#### **2. Ownership**

2.1 Energinet.dk ownership

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#### **3. 33 kV installations**

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3.4 J pipes

#### **4. Space for equipment on the transformer platform**

#### **5. Other items**

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5.2 Platform layout

5.3 Auxiliary supplies for the Concessionaire's installation

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5.7 33 kV SCADA and communication

5.8 Compensation equipment for the 33 kV grid

5.9 Navigation coordination

5.10 Collaboration agreement

## 1. 220 kV grid connection

On 23 April 2012, Energinet.dk received an order from the Danish Minister for Climate, Energy and Building to establish facilities for transmission of power to shore for the planned offshore wind farm on Kriegers Flak with a capacity of a total of 600 MW.

New international electricity exchange capacity will be established in connection with construction of Kriegers Flak. In addition to routing electricity onshore from the Kriegers Flak Offshore Wind Farm, Energinet.dk will build an offshore electricity grid named "Combined Grid Solution (CGS)" in collaboration with the German system operator, 50Hertz Transmission GmbH. The offshore electricity grid will link the Danish island of Zealand with Germany via the offshore wind farm on Kriegers Flak and the German offshore wind farms, Baltic I and Baltic II.

It will be possible to use this electricity grid to route wind turbine electricity onshore and to exchange electricity between Denmark and Germany.

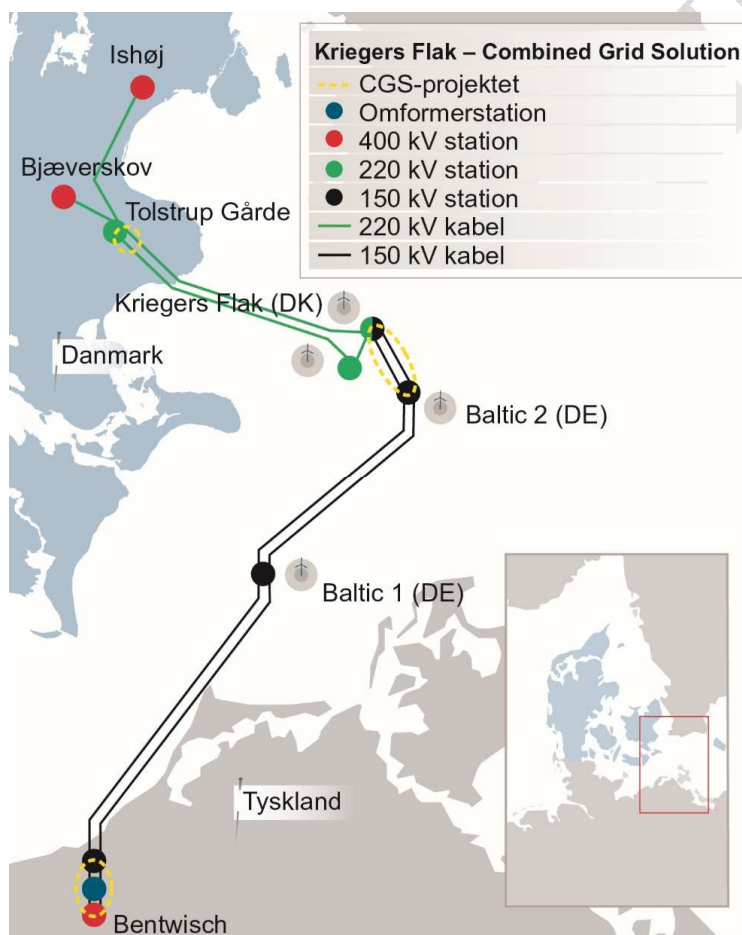


Figure 1A. Overview map of the offshore wind farm Kriegers Flak and the planned corridors for the export cables routing onshore.

Analyses made by Energinet.dk have shown that the optimal grid connection in terms of technology and economy is a solution with 220 kV AC and this will be connected to the existing stations in Bjæverskov and Ishøj.

The grid connection installation will include two onshore transformer platforms connected to one 220 kV cable, and two 220 kV cables that will link the platforms via a routing onshore point at Rødvig on Stevns to a new 220 kV station at Tolstrup Gårde south of Herfølge. From there, a 220 kV cable will run to the existing station in Bjæverskov and another 220 kV cable will run to the existing station in Ishøj. In Bjæverskov and in Ishøj, the 220 kV cables will be connected to the 400 kV grid with new 400/220 kV transformers.

The offshore electricity grid (CGS) will include an extension of one of the Danish transformer platforms and 150 kV submarine-cable connections between Kriegers Flak and the German transformer platform at the Baltic 2 offshore wind farm in the German part of the Baltic Sea. In addition, two converter facilities will be located in Bentwisch in Germany, and a filter will be built in the Tolstrup Gårde station.

Energinet.dk will establish 220 kV grid connections, including two offshore transformer platforms, Kriegers Flak A (KFA) and Kriegers Flak B (KFB), at the offshore wind farm. The Concessionaire will establish the offshore wind farm with an associated internal 33 kV grid to collect the output from the wind turbines to be connected to one 220/33 kV primary transformer with on-load tap-changers (OLTCs) on the KFA transformer platform and two 220/33 kV primary transformers with OLTCs on the KFB transformer platform.

The Concessionaire is to establish collection grids as well as connection installations for a nominal voltage of 33 kV.

Detailed information about interfaces and deliverables by the Concessionaire in connection with the facilities for transmission of power to shore is described below. See also figure 3 and figure 4 at the end of this Appendix.

## **2. Ownership**

### **2.1 Energinet.dk ownership**

Energinet.dk will own, pay for, run and maintain the following on the platforms:

- A 220 kV submarine cable to be connected to a shore-based transmission grid.
- 220 kV routings, J pipes (two on each platform) and their suspensions/supports on the transformer platform.
- KFA and KFB transformer platforms and all auxiliary equipment
- A 220 kV GIS (Gas Insulated Switchgear) installation and 220/33 kV primary transformers and associated control and protection systems
- Primary and back-up meters (turbine production and own consumption)

- A redundant optical-fibre connection, possible temporary alternative communication from platform to land
- Optical-fibre routings, J pipes (one on each platform) and an optical-fibre connection
- Own consumption transformers and switchboards, batteries, etc. supplying the installations on the platform
- Excess voltage conductors for 33 kV mounted directly on the 220/33 kV primary transformers
- Excess voltage conductors for 220 kV
- A diesel generator on each platform providing internal back-up supply for installations on the platforms. Energinet.dk's back-up supply will supply most of the installations the Concessionaire has on Energinet.dk's platforms, but Energinet.dk will not provide UPS (Uninterrupted Power Supply) installations to the Concessionaire. This means that the Concessionaire himself will have to supply power to the installations which must not be interrupted.

## **2.2 Concessionaire ownership**

The Concessionaire will own, pay for, run and maintain the following platforms:

- All 33 kV installations, including cables, bus bars, 33 kV fields for wind turbines, 33 kV bus couplers, 33 kV transformer fields for the primary transformer and associated control and protection systems
- Necessary zero resistors (three)
- 33 kV routings, J pipes (six on KFA and 12 on KFB) and their suspensions/supports on the transformer platform
- Excess voltage conductors for 33 kV, except for conductors mounted directly on the primary transformer and on the own-consumption transformers
- Communication and SCADA installations for processing signals from the wind farm, the 33 kV installation and the farm regulator
- Distribution boards to distribute 230 V AC and 220 V DC for the 33 kV installation and SCADA/communication equipment
- Splice boxes for terminating optical fibres from the wind turbines



The interface between Energinet.dk and the Concessionaire is the 33 kV side of the 220/33 kV primary transformer, see figures 3 and 4.

The Concessionaire owns up to and including the cable termination on the 33 kV side of the 220/33 kV primary transformers, including the 33 kV bays for the 220/33 kV primary transformers.

### **3. 33 kV installations**

#### **Connection to transformers**

Specifications for the 33 kV cable terminations on the transformers will be provided by Energinet.dk.

Each 33 kV winding on the three 220/33 kV primary transformers will be fitted with eight outlets per phase, where one outlet is for an excess-voltage conductor, and one is to be connected to an own-consumption transformer. Thus it is possible to have up to six parallel 33 kV cables from the primary transformer to the busbars on the 33 kV connection installation (three from each of the two parallel-connected bus couplers).

The Concessionaire himself must protect his own installations from overvoltage surge.

#### **3.2 Maximum output on 33 kV windings**

##### *3.2.1 Distribution on the primary transformers*

The requirements for distribution of the turbine production are dictated by the load options of the three primary transformers. There is one 200 MW transformer on the KFA platform and two 200 MW transformers on the KFB. The transformers have the same structure and they each have a 33 kV winding and a 220 kV winding.

In the fully built scenario, with a total turbine production of 600 MW, the output from the turbines is to be distributed with  $200 \text{ MW} \pm 8 \text{ MW}$  between the three transformers, when all three primary transformers are in operation.

##### *3.2.2. Maximum number of connected wind turbines*

The facilities for transmission of power to shore (platform and export cables) are designed for a maximum rated power of 600 MW (from a 600 MW wind farm). No more than 600 MW must be supplied at the connection point at any time. The connection point is defined as the 220/33 kV transformers on the platform.

#### **3.3 Settlement metering**

##### Primary transformers:

Metering and settlement must be on the basis of the 33 kV sides of the transformers.

Metering will be through current transformers incorporated in the bushings of the primary transformer, and voltage measurement through the voltage transformers mounted on the busbars of the 33 kV installation. Installations (boards, wiring, terminals and cables) for this settlement

metering will be fitted and paid for by the Concessionaire. Energinet.dk is only responsible for supplying and installing the actual meters.

Primary and reserve meters will be established. See also "D2 - Technical requirements for electricity metering" which can be downloaded from Energinet.dk's website via the following link:

[D2 - Technical requirements for electricity metering](#)

Specifications of equipment for settlement metering located in the Concessionaire's installation (cables, voltage transformers, wiring, etc.) must be approved by Energinet.dk.

Own-consumption transformers:

Metering and settlement must be on the basis of the 0.4 kV sides of the transformers.

Installations (boards, wiring, terminals and cables) for such metering will be fitted and paid for by Energinet.dk.

**3.4 J pipes**

The KFA platform will be supported by a gravity foundation in which the following J pipes will be incorporated:

- 6 J pipes as well as routings for 33 kV turbine radials (Concessionaire)
- 1 spare J pipe (Energinet.dk reserve)
- 2 J pipes for a 220 kV submarine cable
- 1 J pipe for Energinet.dk signal cables

The KFB platform will be supported by a gravity foundation in which the following J pipes will be incorporated:

- 12 J pipes as well as routings for 33 kV turbine radials (Concessionaire)
- 1 spare J pipe (Energinet.dk reserve)
- 2 J pipes for a 220 kV submarine cable
- 4 J pipes for a 150 kV submarine cable
- 2 J pipes for Energinet.dk signal cables

**Bending radius – J pipes and routings**

The J pipes of the platform will be designed on the basis of the following requirements:

J pipes for 33 kV array cables: ID 350mm. Bending radius of a minimum of 3.0 m

Routings for 33 kV from hang-off to the 33 kV connection installation will be designed with bending radii of a minimum of 1.2 m.

Earliest date for pulling up 33 kV cables is stated in the tender terms and conditions.

**4. Space for equipment on the transformer platform**

Energinet.dk's design of the transformer platforms will include the following space for the Concessionaire's equipment:

- Three rooms for the Concessionaire's 33 kV connection installation, one room on KFA of an estimated 9.5m x 4.0m x 3.5m (inside length x width x height) and two rooms on KFB with the same inside dimensions
- Space for three grounding resistors, located next to each of the three own-consumption transformers
- A room for the Concessionaire's SCADA and communications system on KFA, and a room for the Concessionaire's SCADA and communications system on KFB. The SCADA room on KFA is of an estimated 9.5m x 6.0m x 3.5m (inside length x width x height) and on KFB, the SCADA room has the same inside dimensions.
- Space for routings for the 33 kV cables on KFA as well as on KFB
- Space for splice boxes for optical fibres from the turbines on KFA as well as on KFB

The design of the platform is expected to be completed in December 2015.

Energinet.dk will install lighting and electrical sockets in the rooms, and these will be covered by Energinet.dk's HVAC (Heating Ventilating and Air Conditioning) system and inert-gas fire-fighting system.

As the Concessionaire will not be appointed until after the platform design has been completed and after the manufacturing contracts have been concluded, Energinet.dk will be responsible for the mechanical and electrical interfaces until the Concessionaire has been appointed. Interfaces between the platform and the Concessionaire's equipment (33 kV installations, cabinets for equipment as well as holes in the floor for cable runs, supporting structure, etc.) will be determined by Energinet.dk collaboratively with the manufacturer(s) of the platform. Associated costs, as well as costs for subsequent adaptation to the Concessionaire's equipment will be paid by the Concessionaire.

Energinet.dk's platform design will not allocate additional space for the Concessionaire.

If the Concessionaire has equipment to be installed on the platform before launch, this equipment must be delivered in accordance with the manufacturing contracts according to the milestone plan in the tender terms and conditions.

## **5. Other matters**

### **5.1 Location of the platform**

Positions of platforms and assumed tracing of the 220 kV cables have been determined, see figures 1B and 2 below.

Assumed tracing for the 220 kV submarine cable and the Concessionaire's 33 kV submarine cables will be kept apart in order to separate the installation of cables and maintenance. In order to minimise the risk of damaging Energinet.dk's 220 kV cable running towards the shore, a

buffer zone along the cable corridor of a minimum of 500m will be kept clear on each side of the export cable. A similar cable corridor with a buffer zone is expected around the submarine cable connection to the German transformer platform at the Baltic 2 offshore wind farm. The cable corridor may not be crossed by 33 kV radial cables. Coordinates for cable corridors, etc. are stated in the construction licence (Appendix 6).

To avoid interference with helicopter flightpaths to the platform, wind turbines may not be erected within a distance of 1000 m from the centre point coordinates of the platforms as stated below.

Centre point coordinates of the platforms (UTM WGS84, Zone 32):

	E (m)	N (m)
<b>KFA</b>	746.103	6.104.602
<b>KFB</b>	751.999	6.107.300

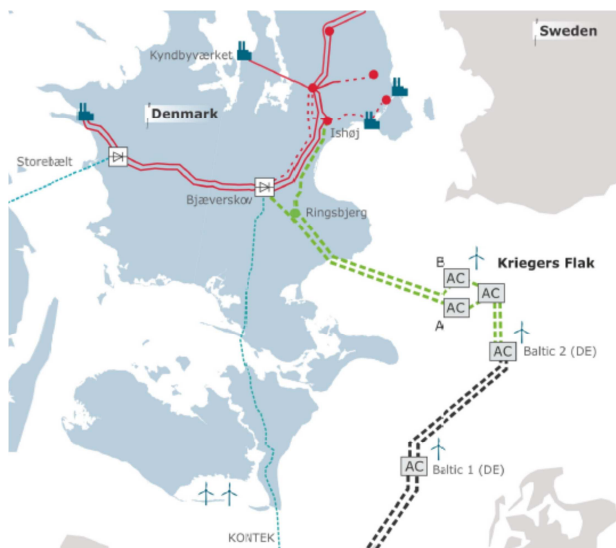


Figure 1B. Location of Kriegers Flak Offshore Wind Farm and the planned corridors for the export cables routing onshore. The total area of Kriegers Flak is about 250 km<sup>2</sup>.

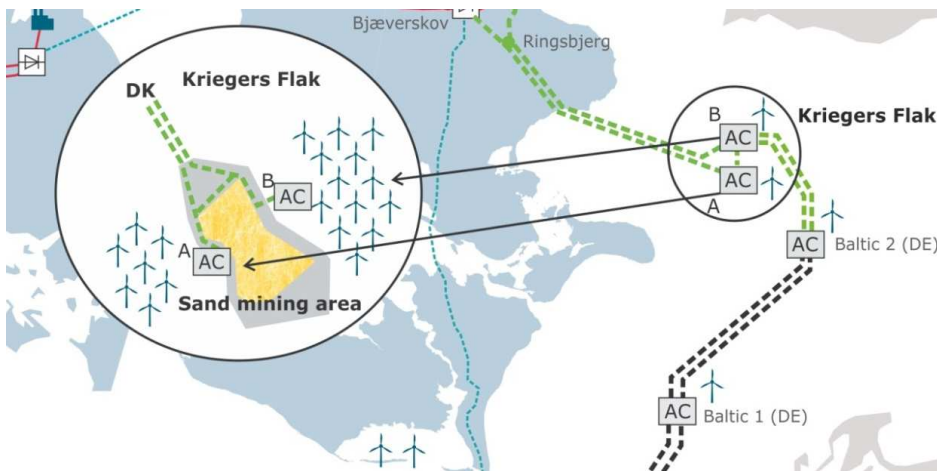


Figure 2. Extract of figure 1 Location of Kriegers Flak Offshore Wind Farm and the planned corridors for the export cables routing onshore. The area has been divided into three areas. A western area of 69 km<sup>2</sup>, a central sand extraction area, and an eastern area of about 110 km<sup>2</sup>.

## 5.2 Platform layout

The platform is designed for unmanned operation in accordance with DNV-OS-J201. Therefore, the platforms have only been designed for overnight stays for emergencies. The transformer platforms will be established with helipads. Access to the platforms can therefore be by boat or helicopter.

The platforms will be fitted with a crane with a lifting capacity of 3500kg and a reach of about 20m for KFA and about 17m for KFB. Equipment weighing more than about 25kg must be lifted from ships to the platform with the platform crane.

## 5.3 Auxiliary supplies for the Concessionaire's installation

Energinet.dk will allocate two redundant outgoing circuits on the switchboards for 400/230 V AC and two redundant outgoing circuits for 220 V DC, to which the Concessionaire will connect his cables to his own sub-switchboards to supply a 33 kV connection installation, SCADA and communications system. The Concessionaire must deliver his own boards for auxiliary supplies for 400/230 V AC, 220 V DC, etc., as necessary.

All cables between Energinet.dk's boards and sub-switchboards are to be supplied by the Concessionaire. The division between ownership is the terminals in Energinet.dk's power supply boards.

## 5.4 Back-up diesel generator

Energinet.dk will install one diesel generator on each of the platforms to back up the supply for the platform. The diesel generator will not be dimensioned for emergency supply to the wind turbines, only for back-up supply to the platform.

No space has been allocated on the platform for a diesel generator to provide back-up supply for the wind farm when the 220 kV connection onshore is out of service.

## 5.5 Short-circuit currents and zero resistors

In connection with the three-phase short circuit on the 33 kV side of the 220/33 kV transformers, Energinet.dk's transformers will contribute to the short-circuit current with a maximum of 21 kA on both KFA and KFB. Moreover, the wind turbines will also contribute to the resulting fault currents. The fault currents are therefore likely to become significantly larger than these values, both in connection with three-phase short circuit and short-circuit to earth. Note that the size of the fault current stated will be subject to some uncertainty, as the transformer impedances have not yet been established.

Zero resistors will be installed at the zero point of own-consumption transformers if the earthing currents in the 33 kV grid exceed the dimensioned fault current for 33 kV connection installations or own-consumption transformers. Calculations for dimensioning zero resistors must be carried out by the Concessionaire and submitted to Energinet.dk for approval.

Energinet.dk has allocated space on the platforms by each of the three own-consumption transformers for any zero resistors. The interface and thereby the division of ownership for zero resistors is the terminal on the neutral point of the 33/0.4 kV own-consumption transformer. If the Concessionaire decides not to use earthing resistors, Energinet.dk will earth the own-consumption transformers directly.

## 5.6 Earthing system

Earthing connections and equipotential bonding connections must be fitted according to Energinet.dk's earthing principle for permanent offshore installations. These principles are described in Energinet.dk's technical standard "ETS - 04 Earthing, Bonding and Lighting Protection".

ETS 04 can be downloaded via the link:

[ETS04](#)

## 5.7 33 kV SCADA and communication

From the platform to Tolstrup Gårde station, the Concessionaire can rent up to three optical-fibre pairs from Energinet.dk on commercial terms and conditions.

Energinet.dk has not yet decided whether to establish a reserve communication connection onshore from the platform. However, there will be a redundant optical-fibre connection via the export cables. A decision on the reserve connection will be made at the beginning of April 2016. If a reserve connection with a limited bandwidth is established, the Concessionaire will be able to rent space on this connection. The price for renting space on the reserve connection and the capacity to be offered will be disclosed at the beginning of April 2016.

The rental price per optical-fibre pair will be DKK 3.5 per metre per year. The distance from the platform to Tolstrup Gårde is expected to be about 43.5 km+ 26.0 km for KFA and about 44.5 km +26.0 km for KFB. The final rental price for the final distance will be determined when the distance has been measured. The rental prices stated are in 2015 prices indexed with the net consumer-price index. The rent is to be paid from a date agreed by the two parties.

The Concessionaire will supply signals for transport in Energinet.dk's optical fibre in a cabinet for the onshore station in Energinet.dk's SCADA room in the telecommunications room on the platform.

### **5.8 Compensation equipment for the 33 kV grid**

No space has been allocated on the platform for compensation equipment (reactor) for the 33 kV grid in the wind farm.

### **5.9 Navigation coordination**

When navigation coordination has been established, the Concessionaire must include Energinet.dk's marine activities in such coordination at no cost to Energinet.dk.

The Concessionaire must accept that Energinet.dk may have its own requirements for offshore safety training in order to gain access to the working area/security zone.

### **5.10 Collaboration agreement**

The Concessionaire must enter into a collaboration agreement with Energinet.dk about matters of common interest during the establishment of the wind farm and subsequently enter into an operating agreement. The collaboration agreement and operating agreement must be concluded in accordance with Energinet.dk's general terms and conditions for such matters as stated in the Collaboration Agreement during the Establishment Phase and in the Collaboration Agreement between the Concessionaire and Energinet.dk in the Operating Phase as well as in the Template - Operator - Connection Agreement (Collaboration Agreement). The three documents are enclosed as appendices 6.1.1., 6.1.2. and 6.1.3.

As a minimum, the collaboration agreement must include the following:

- exchange of technical information about equipment to be installed on the platform (see also section 5.11)
- delivery dates for equipment to be installed on the platform
- access to platform including safety zone
- emergency response
- navigation
- timetables
- commissioning

The Concessionaire must appoint a contact person for Energinet.dk to answer questions about coordination. The parties must pay their own costs with regards to cooperation.

The Concessionaire must be actively involved in the coordination of interfaces on the platform as regards own installations. The Concessionaire must ensure that these installations are delivered from the manufacturer in due time for installation and testing before shipping. Delivery of equipment in due time from the manufacturer will be determined in connection with conclusion of the contract(s) between Energinet.dk and the manufacturer(s). Delivery date(s) will be disclosed in connection with conclusion of the Concession Agreement.

As a minimum, the operating agreement must include the following:

- Ownership in the operating phase
- Metering and settlement
- Emergency response plans and safety plans, including access to the platform

- Documentation/drawings of common interest
- Coordination and communication
- Operator responsibility
- Joint procurement
- Liabilities and insurance terms

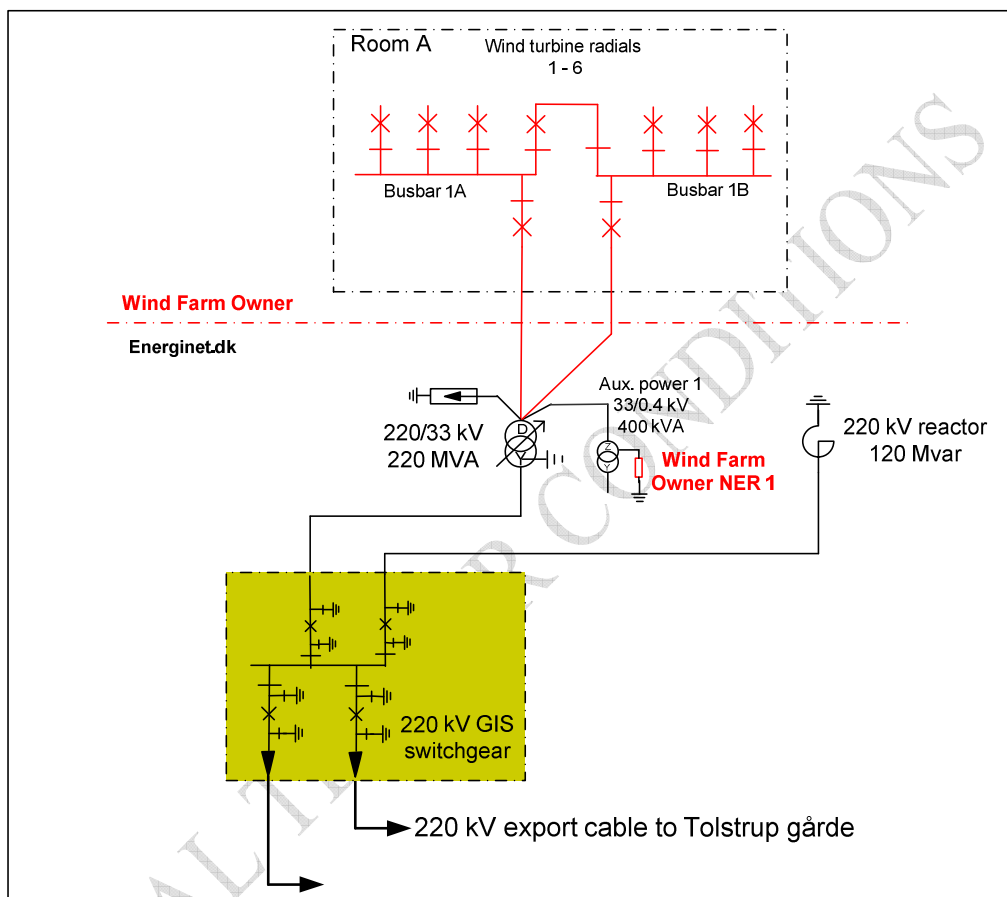


Figure 3: KFA 200MW platform technical drawing and limits of ownership with regard to Energinet.dk  
 Note that the owner of the zero resistor for the own supply transformer platform is the Concessionaire (marked in red in the ownership area of Energinet.dk on the sketch above)



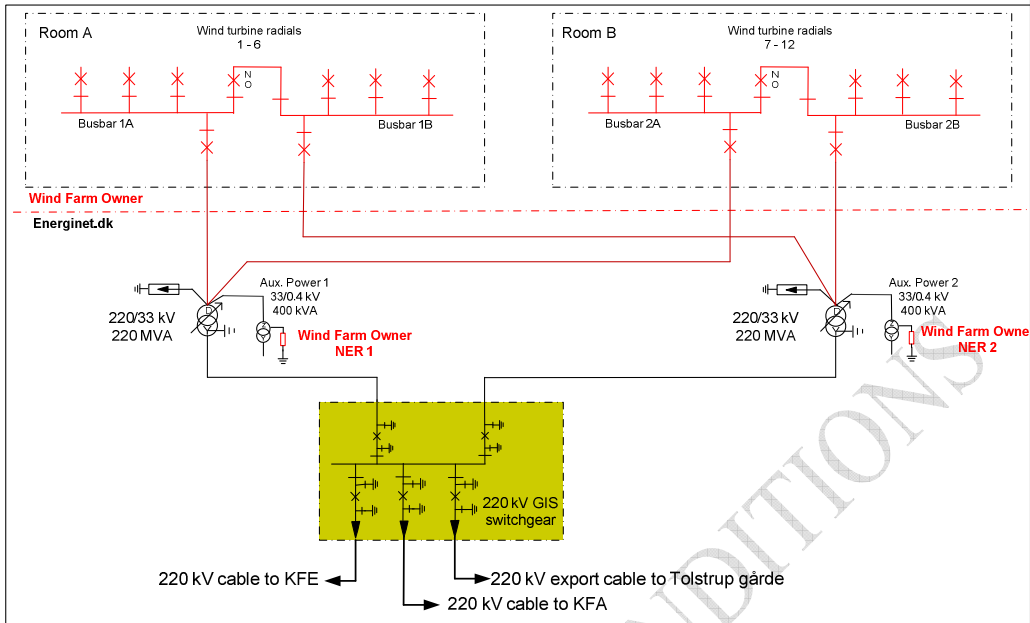


Figure 4: KFB 400MW platform technical drawing and limits of ownership with regard to Energinet.dk  
 Note that the owner of the zero resistor for the own supply transformer platform is the Concessionaire (marked in red in the ownership area of Energinet.dk on the sketch above)

## Appendix 6.2

### **Expected requirements from the Danish Maritime Authority for temporary work area and temporary and permanent marking and buoys, etc.**

Reference is otherwise made to the regulations in Executive Order no. 1351 of 29 November 2013 on safety of navigation in connection with construction works and other activities etc. in Danish waters, as well as Executive Order no. 45 of 22 January 2015 on sea marking in the Danish and Greenland marking areas.

#### **Temporary work area/markings**

##### **Before construction**

- Establishment of work areas requires prior authorisation from the Danish Maritime Authority (cf. terms and conditions in 10.6 and 10.7 of the licence).
- The temporary marking is to comprise yellow light buoys flashing Fl(3)Y10s. (light-dark  $\underline{1}+\underline{1}+\underline{1}+\underline{1}+5$ ). The effective illuminating power must be at least two nautical miles (at least 10 candela). All light buoys must be fitted with yellow stop cross marks, radar reflector and reflector strips. Furthermore, ownership information must appear on each light buoy and mooring. The type and size of the marking must be appropriate for use in open waters.
- Before the light buoys are laid out, the number, location, type and size of these must have been approved by the Danish Maritime Authority.
- By no later than six weeks before expected commencement of the work, the Danish Maritime Authority must be notified about the date and time for establishing the marking, so information about this can be communicated via the Danish equivalent to Notices to Mariners (*Efterretninger for Søfarende, EfS*).

##### **During construction**

- Changes may not be made to the marking without prior approval from the Danish Maritime Authority.

##### **After construction**

- The Danish Maritime Authority must be notified immediately after establishment of the temporary marking. As soon as possible after this time, the Danish Maritime Authority is to receive information about the exact location of the marking. Should the need arise, the Danish Maritime Authority reserves the right to require additional marking to be established at the expense of the contractor, cf. section 9 of Executive Order no. 45 of 22 January 2015 on sea marking in the Danish and Greenland marking area.
- If the marking is observed to be deficient or insufficient, and if this cannot readily be rectified, the Danish Maritime Authority must be notified at telephone +45 91 37 60 00. Outside normal working hours, notification is to be addressed to the Naval Staff of Joint Defence Command Denmark at telephone + 45 89 43 30 99/+45 72 85 00 00.

### **After completion of work**

- Before the work area and temporary marking can be taken down, the following must be clarified:
- In order to ensure that no negative changes have been made to the sea depth in the area, the Danish Maritime Authority must receive a hydrographic survey of the entire work area approved by the Danish Geodata Agency. A guarantee provided by the contractor may be accepted as an alternative.
- The permanent marking must be commissioned after agreement with the Danish Maritime Authority.
- The Danish Maritime Authority must be notified when the work area and temporary marking have been taken down.

### **Permanent marking and buoys of wind turbines, etc.:**

- A proposal for permanent marking and buoys of turbines, masts and so on, must be submitted to the Danish Maritime Authority for approval. The application must cover a proposal for siting/position, make, type, back up etc., and must take account of the following:
- Permanent marking and buoys of the offshore wind farm must as a minimum comprise a number of yellow lights. (Transformer platform, any measuring masts, etc. may have other marking).
- All lights must flash synchronously at Fl.(3)Y.10s and must have an effective illuminating power of 5 nautical miles. Individual lights may be set at 2 nautical miles, if special conditions so prescribe.
- At the corner turbines, the lights must be visible at an angle of at least 270 degrees in order to cover all directions out from the wind farm. The remaining lights must be visible at, at least 180 degrees from the wind farm.
- All lights must have 96-hours independent back up (same as for the offshore platforms).
- As a general rule, the wind turbines must be yellow seen from the sea surface and up to a height of 15 meters or up to the height of the navigation mark if this is positioned higher than 15 meters (all heights are relative to the highest astronomical tide, HAT), cf. IALA Recommendation 0-139 *on the marking of man-made offshore structures*.
- All turbines in the wind farm must be fitted with numbers/letters, so that misunderstandings are prevented in connection with search and rescue operations. The numbers/letters must be reflective.
- The permanent marking is to be commissioned following approval from the Danish Maritime Authority.

### **Cables**

- The Danish Maritime Authority must be notified by no later than six weeks before expected commencement of work to lay cables (outside of the marked-off work area). A plan/list of the coordinates for the cable corridors, a timetable and a detailed description of work, including the vessels and call signals to be used, contact details and information about the extent to which navigation will be impeded, must be enclosed with the notification.
- A proposal for possible temporary marking and buoys during performance of the work must also be enclosed with the notification, including a proposal for possible permanent marking, buoys or sign-posting for the cable corridors.
- During performance of the work, the Danish Maritime Authority must be kept continuously informed about any changes to date and time, work methods, etc.
- No negative changes must have been made to the sea depth in the area after laying of the cables. If marking and buoys exist in the area, the cable must not be sited closer than 200 meters from these, unless a separate authorisation has been granted.
- Furthermore, on completion of work, the Danish Maritime Authority as well as the Danish Geodata Agency are to be notified that the work has been completed. Soon after this date, the same authorities and the cable owner registry (*Ledningsejerregisteret, LER*) (with regard to the territorial waters) are to be forwarded updated information about coordinates as follows:
  - Landfall points, crossing with other facilities, border lines and break points of cable corridors must be reported in a relevant system of coordinates (e.g. UTM and geographical) with datum stated.
  - Furthermore, information about seabed conditions and wrecks or other objects not naturally occurring which are discovered during completion of the work, must be reported.
  - The coordinates for the landfall points and break points of the cables must be supplied in digital format (e.g. in Excel or other format agreed with the Danish Maritime Authority).
- The Danish Maritime Authority makes reservations for conditions which require that markings be placed within 200 m of the cables.
- In the event of subsequent repairs to cables, the Danish Maritime Authority must be notified pursuant to current regulations.
- If a repair activity entails a change in the location of the cable, or in the seabed depth at which the cable is buried, updated detailed drawings and coordinates as stated above must be submitted to the Danish Maritime Authority, as well as any register if cable owners, after completion of the work.

#### **Dismantling or removal**

- Without approval from the Danish Maritime Authority, marking and buoys may not be dismantled/removed or changed.

FINAL TENDER CONDITIONS

## Appendix 7

### **Model licence for electricity production (licence to exploit the energy)** for Kriegers Flak

*[The licence for electricity production cannot be applied before the construction work has commenced and no later than two months before the grid connection of the first wind turbine. All terms of the construction license (Appendix 6), which are relevant at the time of notification of the present licence will be transferred as terms in this license, when granted. Changes may be made to the conditions of the final licence to produce electricity regarding circumstances which the Danish Energy Agency or other authorities are not aware of at present.]*

The Concessionaire should note that the legal basis for a number of terms and conditions for the licence is in legislation and a regulatory foundation under the auspices of other authorities than the Danish Ministry of Energy, Utilities and Climate.

The Danish Energy Agency cannot guarantee that all relevant legislation etc. that the Concessionaire is obligated to comply with has been mentioned in this licence.

In this context, it should be noted that amendments to current legislation may take place. The Concessionaire should note that it must comply with legislation in force at any time.

Costs incurred as a result of terms and conditions imposed on the basis of legislation in force at any time are of no concern to the Danish Energy Agency.

**The licence pursuant to section 29 of the Act on Promotion of Renewable Energy (in the following referred to as the RE Act), see Consolidation Act no. 1141 of 29 August 2016, is granted on the following terms:**

- The licence for exploitation of energy pursuant to section 29 of the RE Act is granted to the Concessionaire for a duration of 25 years from connection to the grid, which is the time when the first kWh is delivered to the collective grid from Kriegers Flak.
- It will be possible to apply for an extension of the period of 25 years with possible renegotiation of the terms of continued operation of the existing plant after expiry of the 25 years, provided that this is possible under the regulations in force at any time.
- The licence granted by the Danish Energy Agency shall not exempt the Concessionaire from obtaining licences, if any, pursuant to other legislation.
- The Concessionaire shall at any given time have at its disposal the required technical and economic capacity to operate Kriegers Flak Offshore Wind Farm. A Concessionaire that complies with the technical and financial requirements for a licence pursuant to section 10 of the Electricity Supply Act, is presumed to also satisfy the technical and economic capacity requirements for this licence.

- All turbines shall be connected to the grid in accordance with Energinet.dk's regulations on grid connection at the time in question. Reference is made to: "*TR 3.2.5 Technical Regulation for wind power plants with a power output greater than 11 kW*", "*TR 5.8.1 Systemtjenester*" (in translation: *System Services (only available in Danish)*) and "*TR 5.9.1 Måleforskrift til systemdriftsformål*" (in translation: *Measurement regulations for system operation purposes (only available in Danish)*) which apply at the time of publication of the tender material.

The Concessionaire shall, three months after commissioning of Kriegers Flak Offshore Wind Farm or at the latest by 1 April 2022, document the Danish Energy Agency compliance with Energinet.dk's regulations on grid connection (Compliance Test).

- The Concessionaire shall comply with regulations in force at any time, including EU rules.
- If the territory covered by the licence or areas within this territory are not covered by or are exempted from Danish sovereignty pursuant to public international law, including international agreements, the Concessionaire shall respect any resulting reduction of the territory without the right to raise claims against the Danish Energy Agency or the Danish State in that regard.
- The licence shall not entail any restrictions in the Danish State's sovereignty of the territorial waters or the Danish State's exclusive right to the exclusive economic zone. The licence shall thus not preclude that other operators than the Concessionaire may be granted, within the area covered by the licence, a licence to conduct other forms of activity than the activities covered by this licence. In this respect, the Danish Energy Agency will ensure that such other activities, if any, are not a serious impediment to activities covered by this licence.
- The Concessionaire shall take out insurance to cover any damage which the Concessionaire - or other persons on behalf of the Concessionaire - might cause in connection with the activities performed in pursuance of the licence. Documentation in this respect shall be submitted to the Danish Energy Agency for information.
- The Concessionaire shall at any time give the Danish Energy Agency access to inspect the entire plant (Kriegers Flak Offshore Wind Farm) and to review compliance with the terms and conditions stipulated in this licence, cf. section 29(3) of the RE Act.

#### **Other conditions**

- Any planned maintenance of the offshore wind farm causing a reduction of the production potential shall be reported to Energinet.dk no later than 3 months prior to removing plant installations for maintenance, etc., so as to allow Energinet.dk to organise maintenance, etc., of other installations during such period. Maintenance of the Concessionaire's installations which has not been planned and any ensuing reduction of the production potential shall be reported to Energinet.dk as soon as possible. Energinet.dk shall receive online information about production possibilities dependant on current wind conditions and operational wind turbines pursuant to Energinet.dk's "Technical Regulation 3.2.5 for grid connection of wind power plants with a power output greater than 11 kW".
- The Concessionaire may request that Energinet.dk issue a certificate of origin for the power generated from the offshore wind farm. Further reference is made to executive order no. 1323 of 20 November 2010 about certificate of origin for RE electricity, as amended by executive order no. 138 of 10 February 2012 providing details of the terms.

#### **Publication and storage of production raw data and MetOcean data**

##### *Publication and storage of raw MetOcean data*

- The Concessionaire shall store and publish, free of charge, raw data for monitored MetOcean parameters so as to allow the information to be included in the work of developing and using meteorological and oceanographic models in Denmark.
- Raw data shall as a minimum include:
  - Monitored meteorological and oceanographic data (wind, waves, current, ice, etc.), including but not limited to measurements from met masts, lidar, wind scanners and other measuring instruments, if any, in or in the vicinity of the plant.
- Complete metadata with description of the measuring equipment used, measuring heights and depths as well as calibration documentation and units, etc., shall be enclosed in the publication where relevant.
- The specific publication requirements of the raw data, including frequency, placing of data, formats and levels of detail (e.g. resolving times) and of the database where the information is to be stored shall be laid down in a manual to be prepared in cooperation with the Concessionaire. The Danish Energy Agency contemplates leaving the responsibility of storing and publishing the data with a third party.
- The Concessionaire shall not be responsible for the quality of the data from the time when the data, including satisfactory meta-data, have been transferred for storage. In case of faults, the Concessionaire shall as quickly as possible report such faults in the data to



the Danish Energy Agency or the designated third party. The Concessionaire shall furthermore as quickly as possible and free of charge correct the fault and submit corrected data to the Danish Energy Agency or the designated third party.

- This obligation shall only apply to all the measurements of wind and waves, etc. (MetOcean data) which the Concessionaire or a third party on behalf of the Concessionaire might voluntarily carry out after award of the concession. The obligation shall apply from the time when the first kWh from one or more of the turbines is delivered to the collective electricity supply grid and, thereafter, for the duration of the life of the offshore wind farm until the electric power generating plant is permanently decommissioned.
- In certain specific cases, the Danish Energy Agency may temporarily exempt certain types of data from publication if the Danish Energy Agency estimates that the publication will impose serious commercial damage or other substantial inconvenience on the Concessionaire. The exemption will be limited to a maximum of 2 years and will furthermore be conditional upon the Danish Energy Agency or a designated third party having access at all times to the data, e.g. in connection with analyses of wind resources in the period of time when the data are kept with the Concessionaire.

*Storage and transfer of raw digital production data*

- The Concessionaire shall, free of charge, store raw data of energy production and related data for the duration of the life of the wind farm. The raw digital data will henceforth be used for developing and strengthening renewable energy in Denmark in connection with new concessions put out to tender. The Danish Energy Agency reserves the right to require data free of charge as needed. The Danish Energy Agency shall also have the option of ordering that such raw data instead be transferred on a regular basis, free of charge, to a database for storage. The Danish Energy Agency will in that case indicate the frequency of such transfer and the format for the transfer.
- Raw data shall as a minimum include:
  - Data on energy production from the farm and for each individual turbine
  - Data on out-of-service time for each individual turbine
- The raw data on energy production and related matters will not be published but will only be used by the Danish Energy Agency and designated third parties, if any, in connection with the work of developing new knowledge about wind resources for use in the planning of new offshore wind farm locations or for validating and certifying wind resource models for the use of, inter alia, invitation to tenders regarding new concessions.

- The Danish Energy Agency and designated third parties, if any, shall keep commercially sensitive information confidential.
- The Danish Energy Agency and Energinet.dk shall keep commercially sensitive information confidential.

#### **Other financial information**

- The Danish Energy Agency shall be entitled, free of charge, to collect other financial information in relation to the construction of the plant, including information about actual construction costs and information about operation and maintenance costs. The information is to be included in the development and strengthening of renewable energy in Denmark, including evaluation of wind potential in Denmark.
- This information will be treated as confidential by the Danish Energy Agency.

#### **Reporting on technical matters, etc.**

- At the request of the Danish Energy Agency, the Concessionaire shall, free of charge, submit an annual report with information about technical experience with the plant. The Danish Energy Agency will notify the Concessionaire of the date when the Concessionaire is to submit the report for the first time after the offshore wind farm's connection to the grid. The reports shall contain at least the following information:
  - Experience with turbine and foundation technology, including measurements regarding wind conditions, shading effects, production as well as turbine and foundation loads.
  - Experience with collection of electricity from the turbines, including adaptation of the wind farm to the grid.
  - Experience of maritime transport of personnel.
  - Experience in relation to safety-related operational incidents.
- The Danish Energy Agency reserves the right to publish the annual reports in whole or in part, unless otherwise stipulated in the general law on transparency in public business.

#### **Direct and indirect transfer of licence**

- The Concessionaire may not, without the consent of the Danish Energy Agency, transfer its rights and obligations under this licence to a third party.

- In this connection, the Danish Energy Agency will ensure that the required economic, financial and technical capacity is still in place.
- The Danish Energy Agency can only reject the licence transfer, in the event of an objective reason.
- Moreover, consent will only be given if this is possible in accordance with the EU public procurement regulations, the current RE Act, the Concession Agreement as well as all the terms and conditions set out in this licence.
- The Danish Energy Agency is entitled to request from the Concessionaire any additional document deemed relevant by the Danish Energy Agency for the assessment of the desired transfer.

#### **Costs**

- Provisions regarding the Danish Energy Agency's costs of work performed in connection with the processing and review of this licence are set out in Executive Order no. 835 of 27 June 2013 on payment for the authority's processing pursuant to Act on Electricity Supply and the RE Act..

#### **Compliance with the terms of the licence**

- The Concessionaire shall provide the Danish Energy Agency with the information which the Danish Energy Agency deems necessary for its review, cf. section 59 of the Renewable Energy Act. The Danish Energy Agency shall keep commercially sensitive information confidential.
- A licence granted may be revoked if any of the terms of the licence are not complied with.
- Fines may be imposed, pursuant to section 72 of the RE Act, in case of:
  - Breach of the terms of this licence,
  - failure to provide information pursuant to section 59, or
  - submission of incorrect or misleading information or failure to submit information upon request.

#### **Complaints procedure**

- Pursuant to section 66 of the RE Act appeals against this licence may be lodged with the Danish Energy Appeals Authority (*Energiklagenævnet*), Frederiksborggade 15, DK-1360

Copenhagen K by persons entitled to appeal. The appeal shall be made in writing within 4 weeks of the granting of this licence. The licence shall not be used until the expiry of the time-limit for bringing complaints. Appeals against the licence shall not have suspensory effect unless otherwise provided for by the Danish Energy Appeals Authority. The decision of the Danish Energy Appeals Authority may not be challenged before any other administrative authority.

FINAL TENDER CONDITIONS

## Appendix 8

### Authorisation for Kriegers Flak Offshore Wind Farm to produce electricity

*[A Concessionaire having been prequalified in this tender procedure and thereby having complied with the requirements for economic/financial standing and technical capacity is presumed to also satisfy the technical and financial capacity requirements for obtaining an authorisation to produce electricity. The text below is based on the assumption that the Concessionaire has not changed since the prequalification. The technical capacity ensures, inter alia, the proper discharge of the day-to-day operation of the farm by competent personnel with technical knowledge. This may be ensured, inter alia, by documentation by the holder of the authorisation through written agreements that he can rely on the technical capacity required. The purpose of the economic and financial capacity is furthermore, in addition to ensuring that the farm has sufficient financial backing, including finances to ensure a technically sound operation of the farm, to ensure that there are sufficient resources to comply with the requirements of the licence on a regular basis, including the requirement of clean-up in the territory when the wind farm is finally decommissioned.]*

#### The scope of the authorisation

Pursuant to section 10 of the Electricity Supply Act (*elforsyningsloven*), see Consolidating Act no. 418 of 25 April 2016 as amended by Act no. 345 of 8 April 2014, Act no. 633 of 16 June 2014, Act no. 1498 of 23 December 2014, Act no. 574 of 4 April 2015 as well as Act no. 744 of 1 June 2015, the Danish Energy Agency hereby grants the Concessionaire authorisation to produce electricity from Kriegers Flak Offshore Wind Farm with a capacity of xx MW on the terms and conditions stipulated in the Electricity Supply Act and the terms and conditions set out below. This authorisation shall not grant the right to produce electricity at any other electric power generating plant.

#### The operator holding the authorisation

The Concessionaire is a public limited company/a private limited company/other, (possibly: which is X % owned by [ ]). The Concessionaire is registered as: [insert name], (in the following referred to as the “the operator”). [Insert business reg. no. (CVR no.)] [insert address]

For evaluation of the operator’s financial capacity, see section 10(3) of the Electricity Supply Act, the operator has stated that it will have a turnover of () DKK and a solvency rate of () or a rating of ().

For evaluation of the operator’s technical capacity, see section 10(3) of the Electricity Supply Act, the Danish Energy Agency has applied the information stated in the application for authorisation with supporting documents. The application states that the level of technical capacity is ensured by the operator having technical capacity in relation to operation and maintenance of an offshore wind farm at its disposal.

The operator is therefore in possession of extensive technical capacity within offshore wind farms, and the operator furthermore possesses environmental expertise. It has thus been informed that ().

Based on the above the Danish Energy Agency has found that the operator meets the requirement of section 10 (3) of the Electricity Supply Act on having the necessary technical and economic capacity.

**The authorisation is granted subject to the following conditions:**

1. The Concessionaire will operate Kriegers Flak Offshore Wind Farm and will have sole responsibility in relation to the authorities. Operation shall be carried out in accordance with licence for production of electricity of [xx.zz.yyyy].
2. The authorisation shall apply for 25 years from connection to the grid, which is the date when the first kWh is delivered to the collective grid from the offshore wind farm. The Concessionaire shall be entitled to apply for an extension of the authorisation beyond this time.
3. The Concessionaire shall in the period of authorisation notify the Danish Energy Agency, if the Concessionaire acquires or sells power generating units of more than 25 MW in Denmark. The holder of the authorisation is furthermore required under the provisions of the Electricity Supply Act to obtain a licence from Energinet.dk as transmission system operator and obtain the consent of the Danish Energy Agency if plants or parts of plants with a capacity above 25 MW are taken out of operation long term.
4. The Concessionaire shall at any given time have at its disposal the required technical and economic capacity to operate Kriegers Flak Offshore Farm.
5. Significant changes, including scrapping of electric power generating plants, shall only take place with the prior permission of the Danish Energy Agency, see section 11 of the Electricity Supply Act.
6. After 5 years from the date of this authorisation and with a prior notice of 1 year, the Danish Energy Agency may stipulate new terms of this authorisation, see section 52 of the Electricity Supply Act.

**Decommissioning and clean-up**

7. The Concessionaire is obliged, at its own account, to restore the area to its former condition, including to carry out the necessary remediation and clean up in the area, as well as to decommission and dispose the electricity production plant pursuant to a decommissioning plan approved by the Danish Energy Agency, in the event that
  - the electricity production licence expires;
  - the plant is not being maintained or is destroyed;
  - the plant is no longer used as a wind farm; or

- the terms and conditions of the electricity production licence are not being met or are not being complied with.

The Danish Energy Agency may require the Concessionaire to remove all plant in full or in part in accordance with a timetable stipulated by the Danish Energy Agency.

8. The Concessionaire must submit a plan for decommissioning the wind turbines and the cable links between the turbines (decommissioning plan) to the Danish Energy Agency for approval
  - by no later than two years before expiry of the electricity production licence;
  - two years before the date at which one or more facilities etc. are expected to have served their purpose;
  - if the plant is not being maintained or is destroyed; or
  - if the terms and conditions of the electricity production licence are not being met or are not being complied with.

The decommissioning plan must contain an account of how the plant facilities will be removed and a proposal for a timetable for doing so. The Danish Energy Agency may stipulate more detailed requirements for the contents of the plan.

In addition to a plan for physical decommissioning of the wind farm, pursuant to the regulations on EIAs in force at that time, and together with the decommissioning plan, the Concessionaire must submit a detailed assessment of any environmental impacts entailed by the plan.

The assessment of the environmental impacts must provide the Danish Energy Agency with a decision basis for whether an EIA report is to be prepared. If an EIA report is not required, the Danish Energy Agency will make this decision public at the same time as it grants authorisation to the applicant.

The Danish Energy Agency will submit the decommissioning plan and the assessment of the environmental impacts for consultation with relevant authorities in order to set specific terms for decommissioning the wind farm. For example, this may include terms regarding safety of navigation, marking and buoys or environmental protection.

If, at that time, only partial removal of the plant is required, this may be accompanied by a requirement that no remaining parts of the foundations become exposed as a consequence of natural, dynamic changes in the seabed sediment. Furthermore, it is likely that there will be requirements to use the best available technology and the best environmental practice when removing the plant.

9. The Concessionaire must provide an adequate guarantee for decommissioning the plant, and this guarantee must be approved by the Danish Energy Agency. The guarantee must be provided by no later than 12 years after the first turbine has supplied the first KWh to the collective electricity supply grid. This also applies in the event that a duty to decommission the plant arises before this time, see above under 4.2. At least six months prior to this time, the Concessionaire must submit a plan to the Danish Energy Agency with details of how the guarantee will be provided. The guarantee must be at least DKK 600 million, unless the Danish Energy Agency finds it can approve a lower amount. If the Concessionaire fails to meet its duty to clean up the area, the expenditures for clean up

will be paid for by the guarantee to the extent that the guarantee covers these expenditures.

If, by no later than 11 years and six months after grid connection of the first turbine, the Concessionaire can document to the Danish Energy Agency that the costs of cleaning up are likely to be less than the DKK 600 million, then the Danish Energy Agency may decide to reduce this amount. The Danish Energy Agency may require a third-party verification of assessment of the cost of dismantling and settlement on behalf of the grantor.

At least DKK 100 million of the guarantee must be provided in the form of a guarantee from a financial institution, an insurance company, or similar. The financial institution or insurance company or similar which provides the guarantee must meet specific rating requirements. These requirements will be set by the Danish Energy Agency in good time before the deadline for provision of a guarantee. The remainder of the guarantee may be provided in the form of a parent-company guarantee. In this event, the guarantee must cover all potential costs associated with the duty to clean up. The Danish Energy Agency can only accept a parent-company guarantee for the remainder of the guarantee if the Danish Energy Agency assesses that the parent company has the required financial capacity. Furthermore, the parent company must submit renewed documentation of its financial capacity to the Danish Energy Agency every five years, so that the Danish Energy Agency can assess regularly whether the required financial capacity is in place.

However, the Concessionaire will be liable to cover all expenditures associated with the clean up, regardless of whether these exceed the guarantee provided.

#### **Other conditions**

10. The Concessionaire shall comply with regulations in force at any time, including EU rules that have direct effect
11. The Concessionaire shall on a commercial basis and to the extent possible contribute to ensuring optimum operation of the interconnected grid in Denmark. [Name of Concessionaire] shall in this connection ensure that the terms and conditions of licences granted for the construction and alterations of electric power generating plants are complied with. [Name of Concessionaire] shall furthermore ensure that requirements are complied with which have been stipulated by the Danish Energy Agency or the transmission system operator for the connection to and use of the collective grid.
12. Within the framework of the provisions of the Electricity Supply Act in this regard, the Concessionaire shall provide to the transmission system operator the information necessary for handling the tasks imposed on the transmission system operator under the Electricity Supply Act.



13. The transmission system operator shall keep commercially sensitive information confidential, see section 84(8) of the Electricity Supply Act.
14. The Concessionaire shall pay the costs relating to the Danish Energy Agency's supervision of the compliance with the terms of this authorisation, see section 51 (1) and (2) of the Electricity Supply Act. The Concessionaire shall provide the Danish Energy Agency with the information which the Danish Energy Agency deems necessary for its supervision, see section 84(1) of the Electricity Supply Act. The Danish Energy Agency shall keep commercially sensitive information confidential.
15. This authorisation is exempted from prosecution and cannot neither directly nor indirectly be transferred to any other entity unless the DEA allows the transfer and approves the conditions, see section 53 (1) of the Electricity Supply Act.

The approval of a direct and indirect transfer of the licence will be granted in accordance with the terms and conditions in the Concession Agreement as well as in accordance with the EU public procurement regulations.

16. The Concessionaire must own the plants used for the implementation of the activities requiring an authorisation, see section 51 (4) of the Electricity Supply Act.

#### **Compliance with the terms of the authorisation**

17. Fines may be imposed, pursuant to section 87 of the Electricity Supply Act, in case of:
  - a) Breach of the terms of this authorisation,
  - b) failure to provide information pursuant to chapter 12 of the Electricity Supply Act, or
  - c) provision of false or misleading information or failure to provide information when requested.
18. Regulation issued under the Electricity Supply Act may prescribe a penalty for violation of the provisions of or terms and orders issued pursuant to said regulation.
19. In the event of repeated breach of the terms of this authorisation, the authorisation may be revoked, see section 54 of the Electricity Supply Act.

#### **Acceptance of the authorisation and its terms and obligations**

The Concessionaire hereby declares by its signatures to this authorisation:

- that the factual information contained in this authorisation to the Concessionaire's knowledge is correct,
- to be willing to comply with the obligations and terms imposed on the Concessionaire pursuant to the provisions of the Electricity Supply Act and this authorisation.

The authorisation shall not apply until it is signed by both the name of Concessionaire and the Danish Energy Agency.

For the Concessionaire

For the Danish Energy Agency

Date

Date

FINAL TENDER CONDITIONS