Monday, 15 April 2024

Department of Energy and Mining
South Australia
By email: HRE@sa.gov.au

Dear Department of Energy and Mining

Clean Energy Council submission to draft Hydrogen and Renewable Energy Regulations

The Clean Energy Council (CEC) is the peak body for the renewable energy industry in Australia. We represent and work with nearly 1000 of the leading businesses operating in the solar, onshore and offshore wind, storage and renewable hydrogen sectors. We are committed to accelerating Australia's clean energy transformation. We welcome the opportunity to make this submission on the draft *Hydrogen and Renewable Energy Regulations 2024* (the Regulations).

Our key points are made with respect to data disclosure, transitional provisions for existing projects, rental determinations, offers and reviews, and requirements for work force and training opportunities.

Data disclosure

In previous submissions regarding the draft *Hydrogen and Renewable Energy Act 2023* (SA) (the Act), we outlined our concerns regarding requirement of renewable energy developers to disclose meteorological data on freehold land. While we appreciate that the South Australian government wants to receive and use meteorological data from Crown land, we question the appropriateness of disclosure of such data collected on freehold land. Our understanding was that the introduction of the Renewable Energy Feasibility Permit in the Act, which would be required for investigative activities on freehold land, was intended to address the renewable energy industry's concerns that regarding the application of Renewable Energy Feasibility Licences on freehold land including data reporting requirements that applied to licences.

We are disappointed to see that clause 25 of the Regulations proposes to apply the data reporting requirements for Renewable Energy Permit holders *and* licencees. Our view is

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that the disclosure of such data does not assist in the regulation of activities, monitor compliance or protect the interests of the public or environment. Our overarching concern is that imposing an obligation on renewable energy feasibility permit holders to disclose data, will disincentivise renewable energy project developers from investing in freehold South Australian land. We assume that this is not the South Australian government's intention and recommend that the Regulations do not apply section 46 of the Act to Renewable Energy Feasibility Permits.

Transitional provisions

Our submission on the draft Act also expressed concerns about the uncertainty, cost and sovereign risk that the introduction of the Act would pose to existing projects. This concern stems from the intention that the Act would apply to projects that had been developed and costed without expectation that new requirements in the Act would be imposed. We particularly note the imposition of annual licence fees, rehabilitation bonds and preparation of documentation such as a Statement of Environmental Objectives and Operational Management Plan.

In response to our concerns, the State published a table of proposed transitional provisions in July 2023 that provided the renewable energy sector with reassurance that existing projects would be afforded a grace period in which they were exempted from paying licence fees and bond requirements. These transitional arrangements have not been included in the Act or Regulations.

The absence of these arrangements is concerning. We recommend that the State incorporate these transitional provisions in the Regulations or by amending the Act. Failure to implement those provisions puts South Australian projects that were developed in good faith at risk.

Rental determinations, offers and review

Rental determinations

Rent determinations will be made by the Minister and apply to renewable energy research, feasibility and infrastructure licences, and special enterprises licences.

It is not clear in the Act, Regulations, or information sheet regarding rent provisions in the Regulations how the Minister will make rental determinations. Although the Rent Information Sheet outlines potential factors relevant to informing the value of a relevant licence type to determine rental amount, and states that the Department of Energy and

Mining is investigating rental determination methods, we note the following with respect to renewable energy research, feasibility and infrastructure licences on pastoral land:

- clarity on procedure to determine rental determinations will be important to ensure 'double-dipping' is not occurring where a fee is imposed on renewable energy developers to access and use of pastoral land under the *Pastoral Land Management and Conservation Act 1989* (SA).

- rental determinations should be consistent with, or made in consultation with, the South Australian Valuer General under the *Valuation of Land Act 1971* (SA) and methodologies contained within the *Pastoral Land Management and Conservation Act 1989* (SA) to avoid reinventing a process that ought to be informed by extant legislative processes and requirements.

More generally, we note that renewable energy proponents are likely to make a number of payments including to native title holders and owners of freehold land in the course of negotiating land access and use which may include continued payments. Arguably these payments partly comprise the 'value' of a licence in which case should be factored into rental determinations.

Rental offers

Clause 22(1)(b) of the Regulations, as currently drafted, would permit applicants for renewable energy feasibility licences and renewable energy infrastructure licences to propose an annual rental amount above the rental determination made by the Minister in their licence applications.

We are concerned that such a process is not aligned with the intention of the Act and the facilitation of cost-effective renewable energy and hydrogen development. Rental bidding is a foreseeable outcome of clause 22(1)(b) which could produce a number of unintended consequences. Such consequences could include:

- favouritism being extended to renewable energy feasibility licence tenders that propose rental amounts higher than either the rental determination, or offers made by other proponents, or both.

- facilitation of bidding 'wars' that pushes rents too high and at an amount disproportionate to other payments that proponents make including to native title holders.

- reducing the amount of compensation and other payments to, for example, native title holders in favour of securing a licence based on higher rent proposals.

- adding cost to electricity generation and hydrogen productions and ultimately consumers as developers recoup costs associated with rents through pricing.

Rental reviews

There are a number of complicated factors likely to arise in reviewing the value of a renewable energy feasibility and infrastructure licence and potential amendment of rental determinations. We propose that guidelines are prepared to assist the Minister in their review of rental determination.

Workforce and training opportunities

The assessment criteria outlined in Clause 12(c)(ii) of the Regulations requires an assessment of the extent to which a proponent will create and maintain jobs and provide skills and opportunities including for young people, apprentices, Aboriginal and Torres Strait Islander people and people with a disability. We applaud the South Australian government for articulating the importance of creating opportunities for these communities as a consideration of the net economic and social benefit to the state.

Our strong view is that development of workforce and training opportunities can be achieved in partnership between the renewable energy industry and the South Australian government. Smaller renewable energy developers may have the best of intentions to provide opportunities for the cohort of people articulated in clause 12 but not the resources to provide certainty that those jobs and training opportunities will be available. The tender process is too early in the stage of a project's development for smaller developers to make confident commitments of jobs and training availability or indeed fulsomely understand the aspirations of young people, apprentices, Aboriginal and Torres Strait Islander people and/or people with a disability.

A way to navigate this could include a requirement that smaller proponents demonstrate that their values are aligned with the intention of clause 12(c)(ii) by providing company policies on Diversity and Inclusion, Code of Conduct, and Environmental and Social Governance Policies. Once satisfied that a company's values are aligned with the intention of the clause, the Minister could include a condition of approval that those policies are acted on in preparation of documentation required for a final renewable energy infrastructure or hydrogen generation licence.

The CEC reiterates our support for the introduction of both the Act and Regulations. However we restate our concerns about the applicability of reporting requirements for renewable energy feasibility permits; failure of the Regulations to include appropriate transitional arrangements for extant operating projects; potential for adverse consequences as a result of introducing rental bidding; and imposition of workforce training and employment opportunities that can be provided to deserving cohorts of the community at an early state in the project development and licencing process.

We urge you to take these concerns into account when finalising the Regulations.

Please do not hesitate to contact me to discuss the content of this submission.

Kind regards,

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