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Commencement of procedure for the issue of a superficies licence and environmental impact assessment

Passed 28.05.2020 No. 183

The order is established based on subsections 22⁷(1) and (7) of the Water Act in force until 9 April 2015 and based on clauses 6 (1) 5) and 17) and subsection 11 (3) of the Environmental Impact Assessment and Environmental Management System Act and in compliance with subsection 25 (1) of the Building Code and Planning Act Implementation Act and subsection 56 (12) of the Environmental Impact Assessment and Environmental Management System Act.

1. Circumstances and procedures

Saare Wind Energy OÜ (registry code 12747106, seat at Mõisa St 10, Jüri small town, Rae rural municipality, 75301 Harju County, hereinafter the *applicant*) submitted an application to the Ministry of Economic Affairs and Communications on 9 April 2015 for a superficies licence accompanied with an expert opinion for encumbering a public water body with a wind power plant. The applicant is the developer of the project, the consultant of the project is OÜ Hendrikson&Ko (registry code 10269950). The applicant's principal area of activity according to the commercial register is the production of other electric energy (Classification of economic activities code 35119, NACE international classification 35.11). According to the applicant he produces electricity with HL Solar and Hyundai solar panels and is a small producer for the purposes of subsection 7 (2) of the Electricity Market Act (hereinafter EMA). Therefore, the applicant complies with the requirements provided for in § 92² of the EMA according to which a superficies licence for building a wind power plant on a public water body may only be granted to an electricity undertaking within the meaning of the EMA or to an undertaking which belongs to the same group with an electricity undertaking within the meaning of section 2(3) of the Competition Act.

According to the application an offshore wind farm with 100 wind turbines is planned at the distance of 10–27 km from the western coast of Saaremaa, with the total output of 600 MW. The annual planned electricity production of the wind farm is 2800 GWh.

The offshore wind farm is composed of the following parts:

- 1) 100 offshore wind turbines, each with the power of 6 MW;
- 2) offshore substation;
- 3) power cables connected to the offshore substation;
- 4) electricity transmission system up to the mainland connection point (transmission network's substation).

The maximum area encompassed with the application for an offshore wind farm superficies licence is 154.4 million m² (154.4 km²) and the coordinates of vertexes are as follows:

X 6449098.6 Y: 351529.2
X 6451485.7 Y: 368758.4
X 6442546.7 Y: 375585.7
X 6441998.9 Y: 352769.

The submarine power cable has been planned in the direction of Saaremaa from the offshore wind farm and from there to the mainland. In addition, the applicant is considering the landing of the submarine power cable both in Häädemeeste and Virtsu regions. The exact location of the wind turbines and the final location of the transmission system line shall be established as a result of the environmental impact assessment and studies. Additionally, upon choosing the location of wind turbines and the cable, the conditions of the spatial plan of marine areas bordering Pärnu County must be taken into account as well as the conditions of national spatial plan of Estonian marine areas initiated with order No 157 by the Government of the Republic on 25 May 2017.

In order to decide on the commencement of superficies licence procedure, opinions were asked on 25 April 2015 according to subsection 22⁷ (2) of the Water Act (hereinafter WA) from the Ministry of the Environment, Ministry of Defence, Ministry of the Interior, Estonian Maritime Administration, Estonian Civil Aviation Administration, National Heritage Board, Ministry of Finance and Ministry of Economic Affairs and Communications.

The Technical Regulatory Authority (since 1 January 2019 Consumer Protection and Technical Regulatory Authority) published according to subsection 22⁷(3) of the Water Act a notice on the intention to commence superfices licence procedure in the official publication *Ametlikud Teadaanded* on 3 February 2016, in national newspaper *Eesti Päevaleht* on 4 February 2016 and on its website.

No other applications were submitted for applying for a superfices licence for the sea area set out in the application within the term of 20 days specified in subsection 22⁷ (4) of the WA as of publication of a notice.

The content of the order, including the conditions for the commencement of superfices licence procedure, has been introduced to the applicant on 6 October 2016 and on 26 May 2020 and the applicant did not have any objections.

With order No 99 as of 5 April 2019 the Government of the Republic refused to commence the superfices licence procedure based on the additionally submitted information. Tallinn administrative court heard the complaint of Saare Wind Energy OÜ for revocation of order No 99 as of 5 April 2019 of the Government of the Republic (hereinafter GR) and for obliging the GR to initiate the resumption of the superfices licence procedure. Saare Wind Energy OÜ submitted a compromise proposal which the GR approved in a cabinet meeting on 9 April 2020 and which the court approved on 21 April 2020. The court order entered into force on 6 May 2020.

2. Legal conclusions

The opinions asked from the Ministry of the Environment, Ministry of Defence, Ministry of the Interior, Estonian Maritime Administration, Estonian Civil Aviation Administration, National Heritage Board, Ministry of Finance and Ministry of Economic Affairs and Communications according to subsection 22⁷(2) of the Water Act in order to decide on the commencement of procedure for the issue of a superfices licence did not include any circumstances precluding the commencement of procedure. No other persons have submitted an application for the issue of a superfices licence for encumbering the same part of the public water body with a structure.

According to subsection 22⁸ (1) of the Water Act the competent authority shall refuse to commence the procedure for the issue of a superfices licence if the issue of the superfices licence is clearly impossible and according to subsection (2) if procedure for the issue of another superfices licence has already been commenced in the applied area or if a county plan has been commenced in the applied area and the procedure for drawing up the plan has not been completed. Subsection 22⁸ (1) of the WA includes the cases where upon submission of an application for a superfices licence it is clear without a longer procedure that granting the application is not possible. Such circumstances have not been identified. Neither has a procedure for the issue of another superfices licence been commenced with regard to the applied area nor a county plan. The national plan commenced with order No 157 by the Government of the Republic on 25 May 2017 concerning Estonian marine areas and the adjacent coastal areas and the economic area thematic plan is not a county plan. Therefore, in this case it is not a situation where the Government of the Republic should refuse to commence the procedure for the issue of a superfices licence based on subsection 22⁸ (2) of the Water Act. Therefore the commencement of superfices licence procedure upon the application of Saare Wind Energy OÜ is justified.

Pursuant to clauses 6 (1) 5) and 17) and subsection 11 (3) of the Environmental Impact Assessment and Environmental Management System Act in force at the time of submission of the application the assessment of environmental impact must be commenced with the commencement of superfices licence procedure.

Resulting from the assessment of environmental impact, the procedure of activity licence application is suspended according to subsection 11 (11) of the Environmental Impact Assessment and Environmental Management System Act until approval of the environmental impact assessment report.

As in terms of connection of the offshore wind farm the applicant is also considering cooperation possibilities for a potential additional electricity connection between Estonia and Latvia, the planned activity is accompanied with significant transboundary environmental impact. Therefore, in addition to the Environmental Impact Assessment and Environmental Management System Act, the environmental impact assessment must also be based on the Convention on Environmental Impact Assessment in Transboundary Context (Espoo convention) and the agreement between the Government of the Republic of Estonia and the Government of the Republic of Latvia on environmental impact assessment in a transboundary context.

Upon commencement of the superfices licence procedure, the Government of the Republic shall determine the studies according to clause 22⁷ (7) 3) of the Water Act which the applicant must perform in order to decide on the issue of the superfices licence and the term of the studies. Taking into account the fact that the exact scope and content of environmental impact assessment, including the assessment method, is not yet known upon commencement of superfices licence procedure and it is determined in the environmental impact assessment programme, the final list of studies cannot be determined in this decision. The specific need for the conduct of studies shall be determined in the environmental impact assessment programme. In practice different circumstances may appear upon environmental impact assessment which may affect the term for the conduct of studies. Therefore studies must be conducted in the course of environmental impact assessment and the results of studies must be taken as one of the bases for preparing the environmental impact assessment report.

3. Decision

3.1. To commence the superficies licence procedure based on the application submitted by Saare Wind Energy OÜ for the erection of a planned offshore wind farm on the western coast of Saaremaa.

3.2. For the erection of an offshore wind farm in a public water body, to commence environmental impact assessment to ascertain potential long- and short-term, indirect and direct impacts, and also potential transboundary impacts during the construction and commissioning of the wind farm.

3.3. In the course of environmental impact assessment to ascertain the impacts accompanying the erection, commissioning and decommissioning of the wind power plant, to analyse them and to conduct relevant studies regarding the sea area encumbered with the wind farm as a whole.

3.4. To conduct at least the following studies on the encumbered sea area:

- 1) Impact on sea surveillance and ESTER communication systems;
- 2) Impact on the distinguishing of navigation signs or lights by participants in water traffic;
- 3) Underwater archaeological studies;
- 4) Study specifying the bathymetry of the surroundings of structures and cable lines;
- 5) Geotechnical study of seabed;
- 6) Visualisation from different mainland points;
- 7) Detailed study of wind conditions, waves and ice conditions;
- 8) Seawater quality studies in the area of wind farm and in the estimated impact sphere of construction activities on the sea area;
- 9) Description of plankton communities;
- 10) Seabed biota – ascertaining the qualitative and quantitative parameters of phytobenthos and zoobenthos in the development area and potential impact area;
- 11) Study on potential impact of wind farm and submarine cable electromagnetic field on the fish fauna;
- 12) Study on the migration and feeding of wild birds and bats;
- 13) Study on fish fauna and spawning areas;
- 14) Impact on seals on local level, including potential impacts of breaking ice, and to determine necessary mitigating environmental measures regarding the impact of the wind farm and cable connections on fisheries;
- 15) Socioeconomic analysis preceding the establishment of the need to assess and improve the quality of electricity;
- 16) Study of social and cultural impacts, including the impact on local governments and coastal communities;
- 17) In cooperation with the Ministry of Defence to ascertain the probability of finding historical explosives and other dangerous objects;
- 18) Other studies determined in the environmental impact assessment programme.

The studies shall be conducted within five years as of approval of the environmental impact assessment programme.

3.5. To develop the organisation concept of logistics and works during construction.

3.6. To involve at least the Ministry of Finance, the Ministry of Economic Affairs and Communications, Ministry of the Environment, Environmental Board, Ministry of Defence, Ministry of the Interior, Maritime Administration, Civil Aviation Administration, National Heritage Board and local governments of the region in the preparation of the environmental impact assessment programme and report.

3.7. In choosing the specific locations of wind turbines to cooperate with the Police and Border Guard Board, Ministry of the Interior, Ministry of Defence, Maritime Administration and the Environmental Board.

3.8. To proceed from the prescribed height restrictions in the design of wind turbines.

3.9. To cooperate with other developers of wind farms planned in the same area in the environmental impact assessment, conduct of studies and choosing the transmission line.

3.10. Due to potential transboundary environmental impact, the environmental impact assessment must be additionally based on the Convention on Environmental Impact Assessment in Transboundary Context (Espoo convention) and the agreement between the Government of the Republic of Estonia and the Government of the Republic of Latvia on environmental impact assessment in a transboundary context.

3.11. In the procedure of the superficies licence and environmental impact assessment, the conditions of the spatial plan of marine areas bordering Pärnu County must be taken into account as well as the conditions of national spatial plan of Estonian marine areas initiated by the Government of the Republic on 25 May 2017.

3.12. To revoke order No 99 by the Government of the Republic as of 5 April 2019 „Refusal from commencing the procedure for the issue of a superficies licence“.

4. Contestation of the order

The order may be contested pursuant to the procedure provided for in the Code of Administrative Court Procedure within 30 days after publication of the order in *Riigi Teataja*.

5. Communication of the order

The Consumer Protection and Technical Regulatory Authority shall communicate the order to Saare Wind Energy OÜ, notify of the commencement of environmental impact assessment in the official publication *Ametlikud Teadaanded* within 14 days as of making this decision and notify the persons concerned and other participants in proceeding with a separate letter.

Jüri Ratas
Prime Minister

Taimar Peterkop
State Secretary