

**Re: Department of Climate Change, Energy, the Environment and Water - application for authorisation AA1000662**

10 April 2024

[exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)

David Hatfield, Director  
Ms Sophie Magliano, Senior Analyst  
Competition Exemptions  
Australian Competition and Consumer Commission

**Electronic**

Dear Mr Hatfield and Ms Magliano

**Department of Climate Change, Energy, the Environment and Water - application for authorisation AA1000662**

We refer to the Commission's letter dated 20 March 2024 in relation to the above application.

Greater Gippsland 2 OWP Project Pty Ltd (**BlueFloat Energy**) is an applicant in respect of the feasibility licences the subject of the application and the Commission's interim authorisation decision dated 20 March 2024 (**Interim Authorisation**). BlueFloat Energy supports the application for the reasons given in this letter.

#### **Efficiencies associated with proposed conduct**

BlueFloat Energy agrees that the application is likely to result in the efficiencies and public benefits described in the application. BlueFloat Energy does not consider that an authorisation in the same terms as the Interim Authorisation would give rise to any public detriments for the following reasons.

- 1 First, the Interim Authorisation is expressly limited to the exchange of geographical information concerning the licence areas, such as maps, coordinates, area size in square kilometres, distances between external boundaries, and geographic features. It does not permit applicants to discuss other (commercial) matters.
- 2 Second, the Interim Authorisation provides clear guardrails for discussions between applicants (by expressly limiting the scope of the matters able to be discussed pursuant to the authorisation), limiting the scope of any competition risk arising from the proposed conduct. The corollary of this position is that, in the absence of the Interim Authorisation, individual applicants would need to determine for themselves the information to be exchanged, increasing the risk of potential anticompetitive exchanges of information.
- 3 Third, if an authorisation is granted in the terms of the Interim Authorisation, it is unlikely that any further collaboration of a similar nature will be required in the future (for example, in relation to any commercial licences). This is because the scope of any such commercial

licences will necessarily be limited by the scope of the feasibility licences (that is, the geographic area covered by each commercial licence will, at most, match the geographic area of the relevant feasibility licence, and will likely cover a smaller area), such that there will be no need for further collaboration of a similar nature in relation to any such commercial licences.

### **Conduct contemplated (and potentially authorised) by Regulations**

Separate to the above, the *Offshore Electricity Infrastructure Regulations 2022* (Cth) (**OEI Regulations**) expressly contemplate that parties will engage in conduct of the kind contemplated by the application and Interim Authorisation.

Regulation 12 of the OEI Regulations provides that, if the Minister determines that a group of two or more applications for feasibility licences, the Registrar must notify the applicants that the determination has been made and invite the applicants to revise and resubmit their applications to remove the overlap. The notice and invitation must set out: the areas of overlap; the name of the other applicant; and the kind of project that the other applicant proposes to carry out.

The explanatory statement to the OEI Regulations expressly notes that the purpose of the notice issued by the Registrar is to encourage collaboration of the kind now proposed in the application:

*The aim of subsection 12(3) is to ensure that members of overlapping application groups are provided with all the information they need to be able to revise their applications to remove existing overlaps without creating new ones. Applicants in this situation are strongly encouraged to collaborate with each other to resolve overlaps and avoid the need to use the financial offer process outlined in sections 14-16 of the OEI Regulations.*

In the circumstances, the proposed conduct may be authorised pursuant to section 51(1)(a) of the *Competition and Consumer Act 2010* (Cth) in any event (although BlueFloat Energy does not advance a concluded view on this in this submission).

Please let us know if you have any questions.

Yours faithfully

**Greater Gippsland 2 OWP Project Pty Ltd**

*Carlos Martin*

Carlos Martin (Apr 10, 2024 13:12 GMT+2)

Carlos Martin

Director