

Order of the Minister of Economic Affairs dated ..., No. WJZ/..., concerning regulations on the subsidisation of the production of renewable electricity using innovative offshore wind energy (Ministerial Order for Innovative Offshore Wind Energy)

Draft 14 December 2016

The Minister of Economic Affairs, following consultation with the Minister of Finance;

In view of Articles 6, fourth paragraph, 7, 8, first paragraph, 19, second paragraph, 20, first paragraph, 23, third to fifth paragraph, 24a, second paragraph, 24b, 24c, second and third paragraphs, 56, seventh paragraph, 59, third paragraph, 60, second and seventh paragraphs and 61, first and third paragraphs, of the Stimulation of Sustainable Energy Production Decision;

Decision:

Article 1

The following definitions apply in this Ministerial Order:

General Block Exemption Regulation: Commission Regulation (EU) No. 651/2014, dated 17 June 2014, in which certain categories of support are declared compatible with the Single Market on the basis of Articles 107 and 108 of the Treaty (OJEU 2014, L187);

Decision: Stimulation of Sustainable Energy Production Decision;

Wind Farm Site V: Wind Farm Site V at the Borssele Wind Farm Zone, as designated in Wind Farm Site Decision V Borssele Wind Farm Zone (Government Gazette 2016, No. 14551);

Wind Farm Site Decision: the Wind Farm Site Decision as referred to in Article 1 of the Offshore Wind Energy Act;

Minister: the Minister of Economic Affairs;

Net P50 value of full load hours: the number of full load hours, whereby the expected annual energy production for a particular combination of location and production installation for the production of renewable electricity using wind energy should be determined with a probability of 50%;

Nominal capacity: maximum capacity of the production installation, which can be used for the production of renewable electricity under nominal conditions;

Borssele Wind Farm Zone: the Borssele Wind Farm Zone, designated in the National Water Plan, as referred to in Article 4.1 of the Water Act, as determined for the 2016-2021 period.

Article 2

The Minister can grant a subsidy upon application for the production of renewable electricity using offshore wind energy with the extraordinary and high-risk operation of an innovative production installation located at Wind Farm Site V, consisting of:

- a. subsidy as referred to in Article 2, first paragraph, under a, of the Decision;
- b. subsidy as referred to in Article 24a, first paragraph, of the Decision.

Article 3

The nominal capacity of the production installation referred to in Article 2, amounts to at least 12 MW and at most 20 MW.

Article 4

Applications for subsidy will be received in the period from 1 October 2017 to 18 January 2018 at 17:00.

Article 5

An application for subsidy must include as a minimum the details referred to in Article 6, second paragraph, of the General Block Exemption Regulation (GBER).

Article 6

1. The Minister will in any event reject an application if:
 - a. following application of Article 8, second paragraph, fewer than three points were awarded per criterion;
 - b. it is apparent from the financial supporting documentation referred to in Article 56, second paragraph, under e, of the Decision, that the level of the applicant's own assets is lower than 10% of the total investment cost for the relevant production installation;
 - c. an application is not submitted within the time period referred to in Article 20, first paragraph, of the Offshore Wind Energy Act;
 - d. the application does not comply with the criteria set by or under Article 14, first paragraph, under d or f, or second paragraph, of the Offshore Wind Energy Act;
 - e. if there is an outstanding recovery order against the applicant as referred to in Article 1, sixth paragraph, under a, of the GBER;
 - f. the applicant is an enterprise as referred to in Article 1, fourth paragraph, under c, of the GBER.
2. To determine the level of the own assets referred to in the first paragraph, under b, at the applicant's request the following shall be included:
 - a. if the applicant is a joint venture, the own assets of each of the participants in the joint venture;
 - b. if the applicant or a participant in a joint venture is a subsidiary, the additional own assets of the parent enterprise may be included, provided the parent enterprise assents to such in writing.
3. In the case of an application for subsidy as established in Article 2, the level of own assets, as referred to in Article 3, third paragraph, under c of the General Implementing Regulation for Stimulation of Sustainable Energy Production (hereinafter: General Implementing Regulation), is equal to the level of own assets determined in accordance with this Article.

Article 7

1. The subsidy cap is €54,000,000.
2. Subsidy as determined in Article 2, under a, amounts to a maximum of €41,000,000.
3. Subsidy as established in Article 2, under b, amounts to a maximum of €13,000,000.

Article 8

1. Contrary to Article 60, first paragraph, of the Decision, the Minister ranks the applications not rejected when Article 59 of the Decision or Article 6 are applied, higher to the degree they have received more points in total.
2. The Minister will award a higher number of points to an application, given:
 - a. the more the project contributes to cost-price reduction of offshore wind energy;
 - b. the greater the project's potential contribution to the Dutch economy;
 - c. the more innovative the project is relative to current international research and technology and the more the project boosts the Dutch knowledge position;
 - d. the better the project quality is, as evidenced by the detailing of the approach and methodology, risk management, feasibility, the participating parties and the degree to which the available resources can be deployed more effectively and efficiently.
3. The Minister awards a minimum of 1 and maximum of 5 points per ranking criterion.
4. A subsidy will be refused if providing it would mean that more than one operator per wind farm site would receive the subsidy.
5. If multiple applications are ranked equally, the Minister will determine the final ranking of these applications on the basis of the level of the subsidy requested by the relevant applicants for the costs, as referred to in Article 2, under b, with an application being ranked higher to the degree the requested subsidy for these costs is lower, excluding an increase as determined in Article 19, sixth or seventh paragraph. If several applications are ranked equally the Minister will determine the final ranking of these applications by drawing lots.

Article 9

The subsidy recipient will put the production installation into operation no later than four years after the date of the Decision to award the subsidy.

Article 10

1. The subsidy will be awarded under the condition that within two weeks after the date of the Decision to award the subsidy, an Implementation Agreement is entered into between the State and the subsidy recipient in accordance with the agreement included in the appendix.

2. The subsidy will be awarded under the condition that within four weeks after the date of the Decision to award the subsidy, the subsidy recipient provides proof that a bank guarantee has been issued, as referred to in Article 2, first paragraph, of the agreement included in the appendix.

3. If the condition referred to in the first or second paragraph is not met within the deadline, the subsidy for the relevant wind farm site will be awarded to the next applicant in the ranking.

Article 11

In the Decision to award the subsidy, the obligation can be imposed that a maximum of one report per year be submitted on the progress and results of the project, which the Minister considers of sufficient quality and in which the subsidy recipient publishes the non-business-sensitive knowledge and information obtained through the project.

Section 2 Operating subsidy

Article 12

The section applies to subsidies as referred to in Article 2, under a.

Article 13

The tender amount is a maximum of €0.05449/kWh.

Article 14

1. The subsidy will be provided for a period of 15 years.

2. At the request of the subsidy recipient, the Minister can determine that the start time of the period, as referred to in the first paragraph, is different for two elements of the Decision to provide subsidy. There must be a period of at least two months between the start dates.

3. A production installation as referred to in Article 2 will be designated as a production installation as referred to in Article 23, third and fourth paragraph, of the Decision.

Article 15

1. The base electricity price, referred to in Article 20, first paragraph, of the Decision is €0.025/kWh.

2. The maximum number of full load hours, as referred to in Article 23, fifth paragraph, of the Decision is equal to the net P50-value of full load hours included in the application.

Article 16

The subsidy consists of state support and is justified by Article 42 of the GBER.

Section 3 Investment subsidy

Article 17

This section applies to subsidies as referred to in Article 2, under b.

Article 18

1. The subsidy is a maximum of 45% of the eligible costs.

2. The eligible costs are calculated in accordance with Article 41, sixth paragraph, under a, of the GBER.

3. The costs are taken into account including turnover tax, if the subsidy recipient who has incurred these costs cannot deduct turnover tax.

4. The percentage referred to in the first paragraph is increased by 20 percentage points if the applicant is a small enterprise and the eligible costs are incurred and paid for by the small enterprise in the context of the GBER.

5. The percentage referred to in the first paragraph is increased by 10 percentage points if the applicant is a medium-sized enterprise and the eligible costs are incurred and paid by the medium-sized enterprise in the context of the GBER.

Article 19

1. The subsidy consists of state support and is justified by Article 41 of the GBER.

2. The subsidy is provided in accordance with Article 41, fifth paragraph, of the GBER.

Article 20

1. The costs eligible for the subsidy are calculated and corroborated with supporting documentation, in accordance with Article 7, first paragraph, of the GBER.

2. If the subsidy is paid out in multiple tranches, the eligible costs will be discounted in accordance with Article 7, third paragraph, of the GBER.

Article 21

1. The Minister will provide advances ex officio for subsidies that have not yet been determined.

2. The Minister will provide the first advance within two weeks after the start of the activities.

3. The following advances will be provided within two weeks after 1 January, 1 April, 1 July and 1 October for the costs to be incurred in the related quarter.

4. The day after the Decision has been sent to provide the subsidy will apply as the start date for the activities or, if this is later, the date indicated for the start of the activities in the plan.

5. The advance will amount to 90% of the maximum eligible amount for subsidy in the relevant quarter.

6. The Minister calculates the level of the maximum eligible amount for subsidy in one of the following ways:

a. in cases with a budget per milestone, by multiplying the eligible costs to be incurred between two milestones by the subsidy percentage referred to in Article 19 and dividing this by the number of advance times in the period, or

b. in cases without a budget per milestone, by multiplying the eligible costs to be incurred across the entire subsidy period according to the plan by the subsidy percentage referred to in Article 19 and dividing this by the number of advance times in the period.

7. The total advances may not amount to more than the advance percentage multiplied by the maximum level of the subsidy.

Article 22

Contrary to Article 70, first paragraph, of the Decision, the subsidy recipient can submit an application for interim determination of a subsidy after the production installation has been commissioned.

Section 4 Transitional and Final Provisions

Article 23

The General Implementing Regulation will be amended as follows:

1. The fifth to seventh paragraphs of Article 2 will be renumbered as the fourth to sixth paragraphs and the (former) fourth paragraph will be deleted.

2. Article 14d, included straight after 14c, will be deleted.

3. In Section 6, the following article will be inserted following Article 14d:

Article 14e

The subsidy as referred to in Article 2 of the Ministerial Order for Offshore Wind Energy 2015 or Article 2 of the Ministerial Order for Offshore Wind Energy 2016 will continue to be subject to Article 2 of this Ministerial Order, as it was worded at the time the application was submitted.

Article 24

This Ministerial Order will enter effect from 1 October 2017 and expires with effect from 1 October 2022, with the understanding that it will remain applicable for subsidies awarded before this date.

Article 25

This Ministerial Order will be cited as: The Ministerial Order for Innovative Offshore Wind Energy.

This Ministerial Order with explanatory notes will be published in the Government Gazette.

The Minister of Economic Affairs,

Appendix to Article 10

Implementation Agreement for certainty in the commencement of the activities in relation to which the subsidy grant is provided on the basis of the Ministerial Order for Innovative Offshore Wind Energy

1. The State of the Netherlands (hereinafter referred to as: the State), legally represented in this matter by the Minister of Economic Affairs;

and

2., established in (hereinafter referred to as: The Company);

.....

(hereinafter also jointly referred to as: the Parties);

whereas:

a. The Minister of Economic Affairs has awarded, in accordance with a decision with reference number, hereinafter referred to as the Decision, a copy of which is attached to this agreement as Appendix A, to the Company a subsidy as referred to in Article 2 of the Ministerial Order for Innovative Offshore Wind Energy, hereinafter referred to as the Ministerial Order.

b. The Decision contains the condition that within two weeks after issuance of the Decision the implementation agreement under consideration, hereinafter referred to as the Implementation Agreement, has been entered into between the State and the subsidy recipient.

c. By means of this Implementation Agreement, the Minister of Economic Affairs intends to ensure that the Company will put the production installation, as referred to in the Decision, into operation in good time.

To that end, the Parties have agreed as follows:

Article 1. Putting the production installation into operation in good time

The Company accepts responsibility in respect of the State to put the production installation, as referred to in the Decision, into operation in good time and at least within the period referred to in Article 9 of the Ministerial Order or, if an exemption has been granted pursuant to Article 62, third paragraph, of the Stimulation of Sustainable Energy Production Decision, within the period cited in that exemption.

Article 2. Contents and level of the guarantee

1. The Company accepts responsibility to ensure compliance with the obligation referred to in Article 1, as well as the penalties owing in case of non-compliance within good time, within four weeks after the date of the Decision to provide financial security for the benefit of the State and to maintain that security for an amount of €600,000 (six hundred thousand euros) by means of issuance of a bank guarantee (issued by a bank established within the European Union) to the State, which has been drawn up using the model included in the appendix.

2. The Company accepts responsibility to ensure compliance with the obligation referred to in Article 1, as well as the penalties owing in case of non-compliance within good time, within 12 months after

the date of the Decision to provide financial security for the benefit of the State and to maintain that security for an amount of €2,200,000 (two million two hundred thousand euros) by means of issuance of a bank guarantee (issued by a bank established within the European Union) to the State, which has been drawn up using the model included in the appendix.

3. The obligation referred to in the second paragraph will no longer apply if the State withdraws the Decision within 12 months after it has been issued.

Article 3. Release of the guarantee

1. The obligation to maintain the bank guarantees referred to in Article 2 will no longer apply only if a written notification has been sent from the State to the Bank confirming that the obligation has lapsed wholly or in part. The Company will receive a copy of the statement concerning the lapse.

2. As soon as the obligation has lapsed completely the State will return the bank guarantee to the Bank.

3. The State will send a written notification as referred to in the first paragraph in respect of the whole bank guarantee, as referred to in Article 2, first paragraph, at the time that the bank guarantee, as referred to in Article 2, second paragraph, has been issued.

Article 4. Penalties

1. If the Company has not put the production installation into operation within the period referred to in Article 1, then the Company will pay the State €200,000 (two hundred thousand euros) by way of a penalty.

2. If the Company remains in default by failing to put the production installation into operation thereafter, then the Company will be obliged to pay a monthly penalty of €200,000 (two hundred thousand euros) as long as it has not put the production installation into operation by the first of every following month.

3. If the State revokes the Decision at the request of the Company within 12 months after it has been issued, then the first and second paragraphs do not apply and the Company will pay a one-off penalty of €600,000 (six hundred thousand euros) to the State without any notice of default being required.

4. If the Company has not provided the bank guarantee, as referred to in Article 2, second paragraph, within 12 months of the date of the Decision, then the Company will pay a one-off penalty of €600,000 (six hundred thousand euros) to the State. The penalty will be owed by the mere expiry of the time limit and without any notice of default being required.

5. The penalties, as referred to in the first and second paragraphs, and of which no more than ten will be issued, are due through the mere expiry of the time limit and without any notice of default being required.

6. The Company hereby authorises the State irrevocably to collect the penalties by invoking the bank guarantee for the amount of the penalty, each time that a penalty has become due and payable.

7. If the relevant Wind Farm Site Decision (WFSD) is amended after the date of the Decision as a result of an appeal procedure, then the Company can apply for a repeal of the Decision within six weeks after that amendment without becoming liable for a penalty charge on the grounds of the third paragraph or for not putting the production installation into operation in good time in the following period.

Article 5. Indemnification

1. The Company cannot derive any rights in respect of the State from the contents of the investigation reports made available by the State concerning the Borssele Wind Farm Zone (BWFZ).
2. Starting construction work on the production installation before the relevant WFSD has become irrevocable is at the risk and expense of the Company.

Article 6. Commencement and end of the Implementation Agreement

1. This Implementation Agreement comes into force through its signing by the Parties.
2. This Implementation Agreement will end by operation of the law through the return of both bank guarantees by the State to the Bank.

Article 7. Choice of an address for service and notification

1. As choice of address for service for the implementation of this Implementation Agreement, the State chooses the offices of the Netherlands Enterprise Agency, which forms part of the Ministry of Economic Affairs, Hanzelaan 310, 8017 JK Zwolle.
2. Without prejudice to that which is set out in the Code of Civil Procedure, all announcements, notices, requests, permissions and other messages under this Implementation Agreement should be provided in writing.
3. Announcements, notices, requests, permissions and other messages that are not provided in accordance with the second paragraph will have no legal effect.
4. The State is authorised to deviate unilaterally from that which is determined in the first paragraph.

Article 8. Choice of law

1. Dutch law applies exclusively to this Implementation Agreement.
2. All disputes in connection with this Implementation Agreement or with agreements associated thereby will be resolved by the competent court in The Hague.

Article 9. Short title

This Implementation Agreement will be cited between the parties as 'Implementation Agreement for Offshore Wind between the State and Wind Farm Site V Borssele'.

Agreed and signed in duplicate

in

Company

in The Hague on

The Minister of Economic Affairs.

Appendix to the Implementation Agreement for Offshore Wind between the state and

Model for bank guarantee

THE UNDERSIGNED,

....., established in, hereinafter referred to as the Bank,

CONSIDERING THAT:

A., established in, (hereinafter referred to as the 'Company') and the STATE of the NETHERLANDS, (hereinafter referred to as: The State), the seat of which is located in The Hague, represented here by, represented here by Minister of Economic Affairs on have signed the 'Implementation Agreement for Offshore Wind' between the State and Wind Farm Site V Borssele (hereinafter: the Implementation Agreement);

B. According to Article 2 of the Implementation Agreement, the Company is required to provide and maintain financial security for the benefit of the State totalling €600,000 within four weeks of the date of the decision to provide a grant and, within 12 months of the date of the decision to provide a grant, is required to provide and maintain security for the benefit of the State totalling €2,200,000, both of which should be provided to the State by way of a bank guarantee issued by a bank in accordance with the model that is attached as an appendix to that agreement;

C. The Bank is prepared to provide the relevant bank guarantee for the benefit of the State under the conditions set out below;

DECLARE AS FOLLOWS

1. The Bank hereby provides a guarantee as independent obligation irrevocably and unconditionally in respect of the State for all that the State can claim from the Company on the grounds of the Implementation Agreement up to a maximum amount of € ... (€600,000 or €2,200,000).
2. This bank guarantee is an abstract standby guarantee. Under no circumstances does the Bank have any claim to the underlying legal relationship between the State and the Company as expressed in the Implementation Agreement.
3. At the first request from the State, without requiring the provision of reasons or requesting further evidence, the Bank will go ahead with payment of all that the Company, according to the statement from the State, owes under the Implementation Agreement.
4. This bank guarantee will cease to be valid solely after written notification from the State to the Bank stating that the obligation has lapsed wholly or in part.
5. The Minister of Economic Affairs will return the bank guarantee to the Bank as soon as possible after this has lapsed completely.
6. Dutch law applies to this bank guarantee. Any and all disputes that may arise concerning or in relation to this bank guarantee will be resolved by the competent court in The Hague.
7. If this bank guarantee should be returned, this will take place by sending it to the following address:

Signed in

on

The Bank.

Explanatory notes

I. GENERAL

1. Objective and reasoning

This Ministerial Order regulates the subsidisation of innovative offshore wind energy at Wind Farm Site V (WFS V) at the Borssele Wind Farm Zone (BWFZ).

The stimulation of sustainable energy production (Stimuleren Duurzame Energieproductie, hereinafter: SDE+) is focused on the first instance on stimulation of sustainable energy at the lowest possible costs. This means that, in general, the basic principle is the application of what are referred to as proven technologies. However, the stimulation of more innovative techniques could also be valuable. This applies in particular to the category of offshore wind energy. Both nationally and internationally, more and more experience is being gained with offshore wind energy. In this category specifically, innovation takes place in such areas as the development of turbine technology, foundations and installation methods. The application of these innovative techniques can lead to acceleration of the so-called learning curve being completed, meaning that in time the costs will be lower and more capacity can be achieved. This is important in order to achieve ambitions in the area of offshore wind energy. However, application of innovative technology is often associated with extra costs, for example due to the smaller scale and additional risks, so such technology will not necessarily always be implemented.

The entering into effect of the Offshore Wind Energy Act on 1 July 2015 provides for an integrated statutory framework for the large-scale generation of offshore wind energy. A central notion in the Act is that wind farms can only be built at locations (wind farm sites) designated for that purpose in a Wind Farm Site Decision (WFS D) and only after a permit has been issued.

In the Energy Agreement (appendix to Parliamentary Papers II 2012/13, 30196, No. 202) the sector is invited to present a plan for application of innovations. At the end of 2014, the Top Consortium for Knowledge and Innovation (TKI) on Offshore Wind Energy submitted a proposal for test and demonstration facilities for offshore wind energy in the period 2019-2023. The proposal was based on a market consultation that the TKI held in the period 2013-2014. Following on from this, the decision was taken to guarantee space for innovation by designating an innovation site for two wind turbines with a total nominal capacity of a maximum of 20 MW at Borssele and organising a separate subsidy tender for this, with different criteria than for the other sites. This resulted in the designation of WFS V at the BWFZ as the first site that is specifically intended for the production of electricity from wind energy using innovative techniques in the relevant WFS D.

The objectives for the innovation site are to:

- create an opportunity for companies established in the Netherlands to test or demonstrate already highly-developed technology before actual market introduction (showcase). This mainly relates to innovations that lend themselves less well to experimentation at the regular wind farm sites.
- contribute to reducing the cost for offshore wind energy.
- contribute to the Dutch economy through expansion of the market and (export) potential for Dutch companies.
- contribute to building knowledge in the Netherlands by involving Dutch SMEs and Dutch knowledge institutions.

The design of the innovation site will mirror as much as possible how regular Borssele sites are operated, deviating from this where necessary. At WFS V there is space for one production installation, consisting of two turbines, so the tender will have one winner. Where in the regular tenders the lowest offer wins, for the innovation site, the application that contributes most to the objectives will win. A number of qualitative ranking criteria have been formulated in this Ministerial

Order for this purpose. The winner of the tender will receive a single subsidy, which can include both an investment component and an operation component. For the investment component, in contrast to the operation component, finance can be provided before the operation phase, independent of the amount of energy eventually produced. The operation phase will commence as soon as the installation enters into operation.

In the article-by-article part of the explanation, the provisions that deviate from those concerning subsidies for regular sites at the BWFZ will be considered in more detail. For further information, please see the article-by-article explanation in the Ministerial Order for Offshore Wind Energy 2016 and the Ministerial Order for Offshore Wind Energy 2015.

2. European aspects

The subsidisation of producers of offshore wind energy constitutes state support. The tender for the innovation site does not fall under the scope of the approval of the European Commission of the SDE+ scheme, as competition will be based not on price but on other criteria. In the General Block Exemption Regulation (hereinafter: GBER) certain support categories are declared compatible with the Single Market. On the basis of Articles 41 and 42, fourth paragraph, of the GBER, the subsidisation of innovative offshore wind energy is permitted under this regulation. On the basis of Article 11 GBER, this scheme should be reported to the Commission for notification within 20 days of entering into effect.

Investment support

Article 41 GBER states that investment support to stimulate energy from renewable sources is consistent with the Single Market under certain conditions. Innovative offshore wind energy constitutes a renewable energy source as referred to in the GBER. The GBER sets the following conditions. The subsidy will only be awarded for new installations. In addition, the subsidy will amount to a maximum of 45% of the eligible costs. In the event that the subsidy is awarded to a medium-sized or small enterprise, this percentage can be increased by 10% or 20% respectively. The eligible costs will be calculated in accordance with Article 41, sixth paragraph, under a, of the GBER. In short, this comes down to the fact that only the additional investment costs can be subsidised. For WFS V, the investment costs of the regular WFS III at the BWFZ act as a reference. On top of this, for an innovative production installation, a maximum of €20 million in extra investment can be expected. The investment subsidy constitutes a maximum of 45% of the additional costs, hence a maximum subsidy amount of €9 million. For medium-sized enterprises, this translates to €11 million and for small enterprises €13 million. This means that the maximum subsidy amount is below the registration threshold of €15 million per business per investment project that the GBER sets for investment support for protection of the environment.

Operation support

On the basis of Article 42, fourth paragraph, GBER, operation support can be awarded to new and innovative technologies for renewable energy, provided that this support is awarded via a competitive bidding process and concerns a maximum of 5% of the total planned new electrical capacity from renewable energy sources per year.

The process through which the operation support (SDE+) will be awarded qualifies as a competitive bidding process. The applicant with the highest score on the ranking criteria wins. For WFS V, there is a nominal capacity of a maximum of 20 MW. In the Netherlands, in the period 2018-2033, around 27 GW of extra capacity from renewable energy will be installed. This is an average of 1,800 MW per year and 5% of this is 90 MW. So the innovation site remains well under the limit of 5%. The GBER also determines that the maximum amount for operation support is €150 million per year, taking into account the combined budget of all schemes falling under Article 42. The operation subsidy amounts to a maximum of €41 million over the entire course of the subsidy. The actual amount will depend on the development of the non-renewable energy price (the adjustment amount), the capacity to be installed and the actual full-load hours achieved. The number of full-load hours actually achieved will probably be

lower than at the regular wind farm sites, as more failure may occur at an innovative production installation.

Combination of investment support and operation support

The GBER faces obstacles for the provision of both investment support and operation support (SDE+) for the same project. The total government support amounting to more than the GBER allows must be avoided. This is regulated in Article 4, first paragraph, of the Decision on the stimulation of sustainable energy production, which states that the excess government support received can be deducted from the operation subsidy.

3. Regulatory burden

To determine the regulatory burden for the producers of innovative offshore wind energy, the Decision, the General Implementing Regulation for Stimulation of Sustainable Energy Production (hereinafter: General Implementing Regulation) and the Ministerial Order under consideration with associated Implementation Agreement are relevant. When the General Implementing Regulation was changed in 2008 (Government Gazette 2009, 60), an extensive explanation was provided on the regulatory burden resulting from the SDE+. To determine the regulatory burden of the present Ministerial Order, where possible and applicable, use is made of the calculation of the administrative costs for an average application, as represented in this explanation. Given the strong similarity with the Ministerial Order for the regular wind farm sites, to a significant extent the calculation of the administrative costs in the Ministerial Order for Offshore Wind Energy 2015 is also used. The regulatory burden mainly relates to the following activities carried out by applicants for a subsidy and permit.

One-off:

- The applicant must submit a project plan including a project budget per application. This plan and budget forms the supporting evidence for the tender amount requested. The production estimates (per subsidy year) also form part of this.
- The applicant must also provide insight into the innovative character and economic effects of the project proposal. The contribution of the project plan to the various criteria must also be explained for each assessment criterion included in the Ministerial Order.
- The General Implementing Regulation states that during the construction of the production installation, an annual report should be submitted on the progress of the project in relation to the planning schedule. This should be a short description of the progress of the project in relation to a number of evaluation moments. In this way, whether and when the production installation will enter use can be evaluated. This information is necessary for financial management and monitoring of the objectives of the Ministerial Order.
- Within a year after the production installation comes into operation, an overview of the actual investment costs and the subsidy (to be) received should be presented. As the total subsidy to be received will probably be more than €125,000, this overview should be accompanied by an auditor's report (Article 3, third paragraph, of the General Implementing Regulation).
- The subsidy is awarded under the condition that an Implementation Agreement is drawn up. This Implementation Agreement establishes that the subsidy recipient must provide the State with financial security. This financial security is provided in the form of two successive bank guarantees. As a standard Implementation Agreement and standard bank guarantee are attached in the appendix to this Ministerial Order, this should entail relatively low administrative costs for the applicant.
- The investment component of the subsidy is established once and paid according to the investment rate during the construction period.
- Each applicant has the option to submit an objection and then an appeal against the subsidy decisions or the decision on the objection. To determine the administrative costs of this part of the subsidy award process, a total of three objection and appeal procedures are assumed.

Annually:

- Characteristic for the operation component of the subsidy is the fact that the subsidy is awarded for a long period. In the years following the completion of the production installation, an advance will be paid automatically every month, based on an annual application. To determine the advance amount, the applicant should apply for a subsidy advance (for the relevant year), indicating the production estimate for the relevant calendar year.

The above results in the following overall picture of the regulatory burden. In the calculation of the administrative costs, an internal rate of €60 per hour is taken as a basis. This results in around €100,000 in administrative costs to submit some 12 subsidy applications. The administrative costs during the operation and for the final report on the project amount together to a total of around €20,000. The administrative costs of objection and appeal procedures amount to around €10,000. The total administrative costs for all applications under this Ministerial Order therefore amount to €150,000. The percentage of administrative costs, offset against the subsidy cap offered therefore amounts to 0.278%.

II. ARTICLES

Article 2

This Ministerial Order regulates the subsidy provision for WFS V at the BWFZ. WFS V is designated in the relevant WFSD as an innovation site. In accordance with the Decision on Stimulation of Sustainable Energy Production (hereinafter: Decision), the subsidy for an innovation site can consist of an operation subsidy as well as an investment subsidy. On the basis of Article 2, a subsidy can be awarded for both or one of the two components. In the case of subsidy for both components, the applicant will also receive a single subsidy decision.

Article 3

The maximum capacity of the production installation amounts to 20 MW. Pursuant to the WFSD, this capacity will be divided between two turbines. The minimum capacity of the production installation is set at 12 MW, in accordance with the environment impact assessment report that was performed.

Article 4

Applications for a subsidy can be submitted between 1 October 2017 and 18 January 2018 at 17:00. A single subsidy is awarded for the investment and operation component together, so therefore there is a single application.

Article 6

Complementary to Article 60 of the Decision, Article 6 establishes in which cases an application will always result in a negative decision. In order to ensure that a project contributes sufficiently to the objective of the subsidisation of the innovation site, the first paragraph establishes that applications will be rejected if fewer than three points are awarded per criterion. In order to meet the conditions of the GBER, it is also established that applications will be rejected if a recovery order is outstanding against the applicant and if the applicant is an ailing company. The provisions of the third paragraph in Article 6 also already applied for the Ministerial Order on Offshore Wind Energy 2016, but for legal reasons are also included in the present Ministerial Order, instead of in the General Implementing Regulation.

Article 7

On the basis of Article 24b of the Decision, a subsidy cap is set per innovation site. The cap for the operation and investment element of the subsidy together amounts to €54 million. A maximum of €41 million will be awarded for the operation costs and a maximum of €13 million for the investment costs.

Article 8

Article 8 establishes the way in which the applications are ranked. Per application, a number of points are awarded for the criteria listed in Article 8, first paragraph. Applications are ranked on the basis of

the number of points awarded. As there is only one site available, the subsidy will only be awarded to the highest ranking applicant. This could mean that the subsidy cap is not reached. If the same number of points are awarded to multiple applications, the amount requested for the investment component of the subsidy will be the deciding factor. The lower the investment subsidy requested by an applicant, the higher they will be ranked against applicants with the same number of points. This is excluding any increase for a small or medium-sized enterprise, as established in Article 19, sixth or seventh paragraph.

Article 9

On the basis of Article 14 of the Offshore Wind Energy Act, a permit for a production installation can only be granted if a sufficiently plausible case has been made that the construction and operation of the wind farm can commence within four years after the permit becomes irrevocable. In line with this, a period of four years also applies for the subsidy, in which the production installation must enter use. It is assumed that for a production installation on the innovation site, considering the limited scope of this, a completion deadline of four years is easily sufficiently feasible.

Article 10

Article 10 regulates the suspensive conditions associated with a subsidy for the innovation site. The suspensive conditions are associated with the subsidy award as a whole. These conditions therefore apply regardless of the type of subsidy (operation or investment subsidy) awarded.

Article 11

In order to be able to contribute to the cost reduction for offshore wind energy, it is important that the knowledge and learning experience obtained in the project is disseminated. So in the decision to award subsidy, the obligation can be included to submit a maximum of one report per year on the progress and results of the project. This could include a response to the question of whether the installation is working as expected, whether the intended cost-price reduction is indeed being achieved, what problems were encountered and how these were resolved, what has been learned about production, failure and maintenance and what the prospects are for further application and large-scale roll out.

Article 12

In relation to the operation subsidy, a subsidy is provided on the basis of the quantity of sustainable energy produced. In Section 2, a number of provisions are included that concern the specific character of this part of the subsidy.

Article 13

The maximum tender amount for WFS V amounts to €0.05449/kWh. This is based on the level of the tender amount for the winner of the tender for WFS III. This is the site that is most similar to WFS V. Any additional costs for WFS V will be largely attributable to the smaller scope of the site and the innovative character of the production installation. For these costs, an investment subsidy can be awarded.

Article 14

In line with the regulations for the regular wind farm sites, the second paragraph establishes that the Minister can determine at the request of the subsidy applicant that the start time of the period during which the operation subsidy is provided is different for two different parts of the Decision. If the moment of completion of both turbines at the innovation site is different, the subsidisation for both turbines can take place at different times.

Article 17

In relation to the investment subsidy, an amount of subsidy can be provided that is not dependent on the amount of sustainable energy produced. In Section 3, a number of provisions are included that concern the specific character of this part of the subsidy.

Articles 18 and 19

Article 41 of the General Implementing Regulation establishes which investment costs are eligible for subsidy and what the maximum support intensity is. Articles 18 and 19 aim to ensure that the subsidy provision meets the conditions of the GBER.

Article 20

In order to meet the conditions of the GBER, Article 20 regulates the way in which the costs eligible for subsidy are calculated and authenticated with supporting documents. In the subsidy application, a calculation will be made on the basis of the expected costs. The provision of supporting documents and the definitive calculation of the costs follows in the determination of the subsidy phase.

Article 21

This Article includes provisions about advances for the investment costs for as long as the subsidy is not determined. After the first advance at the start of the activities, the advances are paid automatically per quarter: the subsidy recipient does not need to submit an advance request or an overview of costs incurred and paid. Failure to meet obligations or an identified deviation from a project plan can lead to suspension under Article 4:56 of the Dutch General Administrative Law Act and subsequent withdrawal or adjustment of the Decision to award subsidy. The basic principle for the advance is that, after the first advance within two weeks of the start of the activities, an advance is provided every quarter. The starting point for determining the extent of the advances is the budgeted costs per milestone, or if this is not applicable, the costs per calendar year. So a budget does not need to be drawn up per milestone or per quarter. A milestone budget will mean that the budget is divided into relevant decision moments, such as whether or not to continue a project. There may also be a milestone budget if the budget is based on interim results achieved or important events. A combination of both types of milestone budget is of course also possible. This cost figure is multiplied by the subsidy percentage and then divided by the number of advance times in the relevant period. This advance system pays the actual costs incurred in this project period as accurately as possible. The level of the advance is 90% of the eligible costs to be incurred in that quarter.

Article 22

Contrary to Article 70, first paragraph, of the Decision, the subsidy recipient must submit an application for interim establishment of a subsidy after the production installation has been commissioned. The investment component of the subsidy can be established following completion of the production installation. In contrast to the operation component, for the investment component it is not necessary to wait a period of 15 years before this part of the subsidy can be determined.

Article 23

For legal reasons, the provisions in Article 2, fourth paragraph, of the General Implementing Regulation are included in Article 6, third paragraph of the present Ministerial Order. Article 23 therefore removes Article 2, fourth paragraph, of the General Implementing Regulation, and provides for transitional law through which this provision remains fully applicable to applications for a subsidy on the basis of the Ministerial Order for Offshore Wind Energy 2016. Furthermore, a legal correction will be implemented.

Article 24

The sunset clause in Article 24 provides application of Article 24a, second paragraph, of the Government Accounts Act. The duration of the operation subsidy is longer than the period of five years after which the present Ministerial Order expires. Of course the expiry of the Ministerial Order does not impact on the application of the provisions included in this Ministerial Order regarding the subsidy for the innovation wind farm site, which will be provided at that time and will become irrevocable.

The Minister of Economic Affairs,