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Rules applying to the RD&D programmes ForskEL, ForschNG and ForschVE

(Rules for the enterprises/institutions responsible for projects with regard to project description, contract, conditions for the disbursement of funding, reporting etc.)

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1. Introduction

Energinet.dk is under an obligation to ensure that research, development and demonstration (RD&D) of environmentally-friendly electricity generation technologies are carried out. Such activities are performed under the auspices of the ForskEL programme, which is financed by PSO funds. Moreover, Energinet.dk must promote the use of small RE technologies; a task which takes place under the auspices of the ForskVE programme, which also receives PSO funding. Furthermore, Energinet.dk must ensure that natural gas is transmitted with a high degree of security of supply and in a technically and environmentally acceptable manner. This is ensured, among other things, through the ForskNG programme. The relevant legislation governing these programmes is described in section 12.

Energinet.dk must adhere to the EU's state-aid rules, cf. section 11.

This memorandum sets out the general principles governing the implementation of projects under the ForskEL, ForskVE and ForskNG funding programmes, ie the administrative requirements as regards project description, budget and realisation, conditions for disbursement of funding, reporting etc.

1.1 Application

Potential applicants must first obtain a username and password and then submit their application using the online application form at www.forskel.dk. Please note the "guidelines for application". By submitting the electronic application, the enterprise/institution managing the project and the other project participants confirm that they are willing to undertake the project. As a general rule, the application form must be completed in English, although Danish is acceptable if necessary.

If a project is divided into several phases – on the initiative of the applicant or following consultation with Energinet.dk, the funding of one phase and its successful completion will not, in itself, ensure the funding of subsequent phases.

During the online application procedure the applicant must fill in a short description of the project in the application form. The description must be in Danish and English and no longer than 300 characters.

1.2 Contract and appendices

A contract is drawn up for all approved projects. The contract is based on the legislation and executive orders specified in section 11, and on the approved application with any appendices.

Obligatory appendices to the contract are the approved application, financial enclosures to the application, Appendix A, audit instructions and the present rules. For ForskVE contracts, Appendix C 'Template for short business plan' is also obligatory. Furthermore, a distribution strategy for the technology must be described.

Any deviations from the present rules must be stated explicitly in the contract or in its appendices.

Any subsequent amendments to the contract basis must be made in writing in the form of an addendum to the original contract.

For the contract to take effect, the project must complete and submit a project information form to the 'Danish Energy R&D Projects' database, which is administered by Risø DTU.

2. Project start

The enterprise/institution managing the project is responsible for drawing up and concluding the necessary agreements with the other project partners and subcontractors to ensure that they are also bound by Energinet.dk's project participation requirements. Energinet.dk is entitled to familiarise itself with these agreements. Consortia's are obligated to incur an agreement on Cooperation.

Energinet.dk recommends the templates developed by the Johan Schlüter Committee, see <http://www.fi.dk/innovation/modelaftaler> .

Project costs can be incurred as from the date on which the contract is signed by both parties and until the final report is submitted, within two months of project completion at the latest. In special cases, Energinet.dk may allow a project to start before the signing of the contract. Such permission must be given in writing, stating the conditions on which such earlier project start is allowed.

2.1 Project participants

All significant project participants must be listed on the application form and in the contract: The person authorised to sign for the enterprise/institution responsible for the project, the technical project manager, key staff and project partners. Moreover, subcontractors and external consultants may be affiliated to the project.

If a project subcontractor is responsible for more than 10 per cent (min. DKK 500,000, however) of the total budget, Energinet.dk will require special documentation specifying why the subcontractor is not to be a project partner on an equal footing with the other project partners.

Enterprises, institutions or persons named in the application form and the contract can be replaced only after consultation with Energinet.dk. To implement such replacement, Energinet.dk must be notified in writing of the reasons for the replacement and issue a written approval.

Energinet.dk may:

- demand that key staff and partners be replaced if their contributions to the project are not satisfactory. Such replacement must take place as soon as possible after a request to this effect has been made.
- demand that a steering group and/or a reference group be appointed for the project. Energinet.dk is also entitled to appoint a representative to act as an observer on the steering group or to sit as a member of the reference group.
- participate in the project reference group at any time. The enterprise/institution responsible for the project will be asked to propose members for the reference group before their appointment.

3. Interim reporting and deviations

The enterprise/institution responsible for the project must submit an interim report, providing a status of finances and activities twice a year (see form for interim reporting on www.energinet.dk). The deadlines for submission of the interim reports are **9 January** and **9 August**. If interim reporting takes place in the last quarter of the project period, reporting may be made in the final report. As a **general** rule, interim reports must be completed **in English**, although Danish is acceptable if necessary.

The interim reports must describe the technical results achieved by the project in the last six-month period. Also, a status must be provided of the project phases and milestones, as well as a description of the work to be performed in the coming period. Any deviations or difficulties encountered **must** be described. The interim report must state the extent to which the results achieved match the defined targets.

Through daily management routines, the enterprise/institution responsible for the project must intensively endeavour to identify and correct any deviations so that the project follows the original time schedule.

If the project manager becomes aware of any deviations from the original time schedule, or it is likely that such deviations will arise, the project manager must inform Energinet.dk immediately. If such deviations lead to expected changes to the time schedule, a new time schedule must be negotiated. In such a situation, the project manager must document that the deviations were unavoidable and describe how compliance with the time schedule will be ensured in future.

The financial aspects of the period must be described and documented in Appendix P to the interim report, and copies of invoices pertaining to material costs and expenses must be enclosed. If there are single expenses exceeding 100.000 dkk, these must be described in the interim report. Energinet.dk can at any time request more in-depth information about costs and expenses (see the sections **Costs and expenses** and **Disbursement of funding**). Appendix P is a rolling document meaning that it must be updated at each interim reporting at www.forskel.dk.

The **interim report** must be submitted by the enterprise/institution responsible for the project also at www.forskel.dk.

Any material changes to the technical content of the project, the time schedule or financing and budget must always be approved in writing. For any changes to the financing or time schedule to take effect, an addendum must be made to the contract.

Any request for a short extension of the project period must be received by Energinet.dk not later than three months before the end of the project period. An email is accepted as a written request.

If the interim report is not approved, the enterprise/institution responsible for the project is obliged to write a new report.

Energinet.dk is entitled at any time to request further information and, on its own account, to have a third party conduct a technical/financial assessment of the project.

3.1 Costs and expenses

Under the contract, the approved budgeted project costs are covered. The amount of funding is not adjusted to reflect changes in pay levels and prices during the project period.

Project costs must be itemised as follows (see the application form):

Pay, travel and accommodation, external services, acquisition of machinery, equipment and materials and other. (The item 'Other' must be specified). For ForskVE projects, the cost type 'funding for electricity generation' can also be used.

Private enterprises/institutions may add overheads to the actual payroll costs, constituting a maximum of 50 per cent of the payroll costs, to cover part of the indirect costs, while the rest must be covered by internal funding.

Public enterprises/institutions may add overheads to all costs and expenses, constituting a maximum of 35 per cent of costs and expenses. The overhead rate has been increased from the original 20 per cent. A 35 per cent overhead rate is only possible for new projects launched in accordance with the present rules. These rules apply from 1 June 2008. The 35 per cent overhead rate does **not** apply to disbursements for projects in progress, or to additional funding for projects in progress.

Funding for **payroll costs** is granted on the basis of the actual pay disbursed to the persons involved. The budget, which forms the basis for the funding granted, may allow for reasonable pay increases during the project period. Annual pay and hourly rates must be documented on request.

Within the framework of the funding granted, funding may be granted for the education of researchers. In connection with PhD programmes, an annual educational fee, the so-called '**taximeter contribution**', of DKK 80,000 must be paid to the institution. The sum must be taken from the funding granted, and the funding is not adjusted during the funding period. If the educational fee is transferred from the project account to another of the institution's accounts, statements of account must be presented to document such transfer.

Funding is provided for **travelling expenses** on the basis of the actual travel expenses incurred by the persons involved.

Funding for **electricity production** in connection with ForskVE projects is granted on the basis of the documented export of electricity to the grid.

VAT is not included in the funding (cf. decisions by the Danish VAT Tribunal (*Momsnævnet*) Mn. 905/85 and Mn. 962/87). All costs and expenses must therefore be calculated and reimbursed exclusive of VAT. For some ForskVE projects, it may be necessary to include VAT, but only if so requested by Energinet.dk.

Funding is not provided for costs and expenses the nature of which is similar to that of current operating costs, eg **standard IT equipment, rent and accounting expenses** in connection with the project.

Funding is not provided for expenses incidental to the **taking-out of patents** under the project.

4. Disbursement of funding

In order for funding to be disbursed, the enterprise/institution responsible for the project must submit an interim report outlining the progress of the project and containing a statement of the costs and expenses incurred during the period as well as accumulated costs and expenses. An electronic invoice covering the costs and expenses of the period must be submitted together with the interim report. The purchase order number assigned by Energinet.dk at the start of the project must be stated on the invoice.

Prior to disbursing the funding, Energinet.dk will subject the interim report to a technical and financial assessment with a view to approval.

If the material submitted is not sufficient to assess the project, Energinet.dk may request further information or ask a third party with no commercial interests in the particular field to conduct a technical and financial assessment of the project.

The last 10 per cent of the funding agreed is withheld until Energinet.dk has approved the final report, a project completion form has been filled in and the financial statements have been submitted (see the relevant section).

Special deadlines or conditions for disbursement may be agreed in the contract.

Disbursement is via the NemKonto system, meaning that the enterprise/institution responsible for the project must possess a NemKonto.

5. Project completion

At the project completion, the following documents must be submitted:

Final financial statements for the entire project and the final report. As a **general rule**, the documentation must be written **in English**, although Danish is acceptable if necessary.

Also the applicant must describe the project results by filling in the online form on www.forskel.dk. The description must be in Danish and English and no longer than 600 characters

Within two months of project completion an endorsement of the final financial statement must be submitted

As the final report and the endorsement to the final financial statement is approved by Energinet.dk the final payment to the project can be effected and the project is completed. Energinet.dk will take care of publishing the final report when the project is completed as noted in 5.2.

5.1 Audited final financial statements

The final financial statements must be drawn up with reference to the budget on which the contract for project funding was based. The financial statements must therefore be drawn up for the entire project and not for each partner. Appendix P updated with the economy for the last project period is to be used at the final financial statement.

Where *private enterprises* are concerned, the financial statements must be audited by a state-authorized public accountant or a registered accountant. The audit must be carried out in compliance with 'Instructions for the auditing of financial statements regarding research, development and demonstration projects to which PSO funding has been granted (Appendix to the contract)'. Auditing expenses must be paid by the enterprise/institution responsible for the project.

Where *public institutions* are concerned, the financial statements must be signed by the director or a signatory authorized by the director.

Energinet.dk is entitled, on its own account, to have a state-authorized public accountant or another authorized person review the project costs incurred in connection with the project

(also in the form of an unannounced audit visit to the enterprise/institution responsible for the project or to other enterprises or persons named in the approved application).

5.2 Final report

The report on the completed project must comprise the following:

- a) Project number, project title, name and address and CVR no. (of the enterprise/institution responsible for the project).
- b) A brief summary of the project and its results (2-5 pages).
- c) An actual final report describing the conditions, objectives, implementation and results of the project (approx. 20-40 pages).
- d) Statement of annual and total export of electricity to the grid (only ForskVE).

As regards ForskVE projects, the final report need not to be quite as comprehensive (item c) as most of these project activities have already been initiated. In some cases, the broad dissemination of results in the form of brochures, information material etc. can take the place of a final report as such.

Energinet.dk will publish the final report at www.energinet.dk. The final report will also be sent by Energinet.dk to the library at Risø DTU for registration in the Danish Energy R&D Projects database (www.energyprojects.dk).

5.3 Dissemination of results

The project participants undertake to make the results of projects having received funding available to the public.

When publishing project-related material, it must appear from the text that the project is or was funded by the ForskEL, ForskNG or ForskVE programmes, stating the project number and the sum of funding granted.

In special cases, the Danish Energy Authority may accept that the results are not made available to the public, or that only a summary of the results is published, cf. section 20(2) of Executive Order no. 1463 of 19 December 2005. If the applicant knows at the time of submitting the application that he/she wants restricted publication of the results, the reasons for wanting this must be given. Applications for restricted publication must be submitted to Energinet.dk, and Energinet.dk will then forward the request to the Danish Energy Authority where a decision will be made as to whether the request can be granted.

5.4 Marketing and patent protection

The final report must state how the enterprise/institution responsible for the project intends to market the results and perhaps take out patents.

The enterprise/institution responsible for the project is urged to protect the innovative progress of the project against copying, eg by taking out patents. It is a precondition that the project results are marketed in a manner benefiting Danish electricity consumers. A further protective measure is introduced which ensures that a patent cannot be transferred directly to other countries, thus depriving the Danish energy sector of the financial and technical benefits. The rules governing this aspect are detailed in the section 'Commercial aspects' below.

5.5 Definition of Project completion

A project is not completed until the final report is evaluated and approved by Energinet.dk. and an audited final financial statement has been issued.

6. Commercial aspects

It is a requirement for all projects that those parts of a project which are funded by the ForskEL and ForskNG programmes do not present a short-term commercial interest for the project participants unless they provide significant co-funding and internal funding. This rule does not apply to the ForskVE programme as projects under this programme are, generally speaking, near-commercial.

If the project participants decide not to commercialise project results which, in the opinion of Energinet.dk, are commercial, Energinet.dk may, after a reasonable time, grant access to the project results to a third party with a view to commercialisation. The project participants are under an obligation to loyally make the results available to the third party in so far as Energinet.dk is not itself in possession of such results. If internal funding was provided by the original project participants, an agreement must be made between the project participants, the third party and Energinet.dk on the distribution of any profit from the commercialisation.

7. Taking out/transferring patents and transferring rights, inventions etc. resulting from the project

Projects may apply for patents, should the opportunity arise, also if no steps have been agreed for this aspect in connection with the application or the drafting of the contract.

Project funding is granted on the condition that the enterprise/institution responsible for the project notifies Energinet.dk without undue delay that patenting of all or part of the project is applied for, or if the sale to a third party of rights, inventions, etc. stemming from the project is being planned.

Patents cannot be transferred to acquirors residing outside Denmark within the five-year period. However, a licence may be utilised abroad if any income generated as a result is paid to the Danish patent owner. In the event of the transfer of such rights to a Danish subsidiary of a foreign parent, the seller must make the transfer conditional on the patent remaining in the Danish subsidiary during the five-year period. The seller is responsible for ensuring that this condition is included in the transfer documents.

The condition lapses five years after project completion to expire at the end of a calendar year.

8. International projects and partners

8.1 Participation in EU projects

The ForskEL programme is in a position to co-fund EU projects. If a project is planning to apply for co-funding under the ForskEL programme, Energinet.dk recommends a dialogue with the ForskEL programme administrators before applying for EU funds. This will ensure that there is the necessary alignment from the beginning.

8.2 Foreign partner participation

It is possible for foreign partners to participate in ForskEL projects provided the project is of benefit to Danish society. Foreign applicants/project managers are not accepted.

As a starting point, public research institutions, universities, etc., in other countries budget actual payroll costs, possibly with the addition of a modest overhead. The 'overhead' budget item is not used. Foreign enterprises observe the same rules as Danish enterprises, but adjusted to the cost level of the country concerned. Appendix A should comprise a brief account of how the costs have been determined.

9. Liability and rights

Energinet.dk can under no circumstances incur any liability if the project infringes the rights of others, including patents, or if the project in any other way incurs liability vis-à-vis any third party.

Energinet.dk may discontinue the funding and withdraw from a project if:

1. The project does not meet the targets and budget.
2. Developments (be they technical or political) render the continuation of the project meaningless.
3. The legal basis for funding is revoked.
4. The project has been started under false pretences on the part of the enterprise/institution responsible for the project.
5. The enterprise/institution responsible for the project, its organisation or partners do not comply with agreements made or act grossly negligently or fraudulently.

Re 2

If the termination of a project is requested because of technical or political developments rendering the continuation of the project meaningless, any direct and documented costs incurred by the enterprise/institution responsible for the project in connection with the termination of the project will be covered. Prior to this, an agreement must be made as to the extent to which the enterprise/institution responsible for the project must submit a report and as to the manner in which the results achieved should be made available.

Alternatively, Energinet.dk and the enterprise/institution responsible for the project may elect to redefine the project.

Re 4 and 5

If the project is terminated for the reasons set out in items 4 and 5, Energinet.dk is entitled to demand that the funding already disbursed be repaid. In such situations, no claims for compensation may be made against Energinet.dk.

The enterprise/institution responsible for the project is entitled to terminate the contract by giving three months' notice. Unless the contract is terminated by mutual agreement, Energinet.dk will in such a situation be entitled to demand that the funding disbursed be repaid.

10. Disqualification

The provisions of the Danish Public Administration Act (*Forvaltningsloven*) concerning disqualification due to a conflict of interest apply to the funding programmes. The guidelines below apply to persons appointed to take part in the consideration of a project as well as to

members of Energinet.dk's Supervisory Board, which finally approves the projects. In the following, these individuals are referred to as 'members'.

A person who is disqualified in relation to any specific matter must not make decisions, take part in the decision-making process or in any other way be involved in the consideration of the matter in question. The person concerned must leave the meeting room during the consideration of the matter and must not in any way advise those participating in the consideration of the matter neither in full nor in part.

In very special cases, the conditions concerning disqualification set out below may be modified pursuant to section 4 of the Danish Public Administration Act. Close family ties to a person who would himself be disqualified under the rules set out below result in disqualification. Close family is: Parents, children, spouses, sisters-in-law, brothers-in-law, children of brothers/sisters, parents-in-law and children-in-law. Other family members are regarded as close family if a person regularly associates with such member.

Cohabiting on a permanent basis with a person who would himself/herself be disqualified also results in disqualification. For the purpose of these guidelines, the family of the cohabitant is regarded as the family of the member.

Pursuant to section 3(1) of the Danish Public Administration Act, a member is disqualified in the following instances:

1. If the member has a special personal or financial interest in the outcome of the matter, or is – or was previously – a representative of a person with such an interest.
2. If the spouse of the member, the member's close family or family-in-law (in the direct line of ascent/descent or collaterally related as close as the children of brothers/sisters) or other close relatives have a special personal or financial interest in the outcome of the matter or are representatives of a person with such interest.
3. If the member participates in the management or otherwise has a close affiliation with a company, an association or another private legal entity with a special interest in the outcome of the matter.
4. If the matter concerns complaints in respect of or the exercise of control or supervisory activities in relation to another public authority, and if the member has on previous occasions participated in the decision or the implementation of the measures to which the matter pertains.
5. If any other circumstances exist which raise doubts about the member's impartiality.

11. State-aid rules

The ForskEL, ForskNG and ForskVE programmes are governed by the EU rules in force from time to time concerning state aid for research, development and demonstration projects. These rules are aimed at preventing the distortion of competition between enterprises. As a result, there is an upper limit to the share of a project's total costs that may be covered by funding.

As a general rule, the following guidelines apply to the funding intensity for various types of project participants:

Universities and research institutions	Up to 100 per cent
Small and medium-sized enterprises (SME)	Up to 80 per cent

Other

Up to 65 per cent

However, funding intensities vary with the type of activities and it is recommended that applicants consult the detailed description of the funding intensities and other conditions found at the following link: http://eur-lex.europa.eu/LexUriServ/site/da/oj/2006/c_323/c_32320061230da00010026.pdf.

In case of derogations from the state-aid rules, the enterprise/institution responsible for the project must point this out in the interim and final reports.

12. Legislation

Pursuant to section 29 of the Danish Electricity Supply Act (*Lov om elforsyning*) (Executive Order no. 286 of 20 April 2005 on the Danish Electricity Supply Act as subsequently amended), Energinet.dk is obliged to ensure the implementation of such research, development and demonstration (RD&D) activities as may be necessary for the utilisation of environmentally-friendly electricity generation technologies, cf. Part 6 of Executive Order no. 1463 of 19 December 2005 on the activities of transmission system operators and the use of the electricity transmission grid, etc. The programme under which the funding is granted, which is financed by PSO funds, is called ForskEL.

Pursuant to the new section 57e of the Danish Electricity Supply Act (Bill L129 of 12 June 2008), Energinet.dk is obliged to grant funding for the promotion of electricity generation plants with a small electricity generation capacity which are of importance to the future development of RE electricity. The programme under which the funding is granted, which is financed by PSO funds, is called ForskVE.

Energinet.dk is obliged to ensure that natural gas is transmitted with a high degree of security of supply and in a technically and environmentally acceptable manner, cf. section 9(1) of the Danish Natural Gas Supply Act (*Lov om naturgasforsyning*). The funding programme that contributes to developing the natural gas system is called ForskNG.

These rules are usually revised once a year to adjust procedures and update them in relation to legislative changes, etc.

These rules replace the previous rules for obtaining funding from Energinet.dk and apply to all projects with contracts commencing after 1 January 2010.

For further information, please contact:

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www.forskel.dk