



October 30, 2012

Our File: 5000-510-5120

Minister of Environment and Sustainable Resource Development
204 Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6

Attention: Honourable Diana McQueen at esrd.minister@gov.ab.ca

RE: Wind Power Regulatory Process Review

Dear Minister McQueen,

The Environmental Law Centre (ELC) is an Edmonton-based charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. The ELC's vision is an Alberta where the environment is a priority, guiding society's choices. It is the ELC's mission to ensure that Alberta's laws, policies and legal processes sustain a healthy environment for future generations.

We have enclosed a copy of the ELC's comments in response to the wind power regulatory process review discussion paper prepared by the Alberta Utilities Commission (AUC). We bring these comments to your attention because the ELC is concerned with the regulatory gap surrounding the discontinuance and reclamation of wind power facilities.

A Regulatory Gap: Decommissioning of Wind-power Projects

A person who holds an approval for a power plant is required to provide notice of discontinuance of operations in accordance with s. 22 of the *Hydro and Electric Energy Act*, R.S.A. 2000, c.H-16 (the "HEAA"). However, the HEAA does not require anything beyond mere notice to discontinue.

It also appears that the AUC has not set additional requirements for discontinuance of a wind power facility. For example, *Rule 007: Applications for Power Plants, Substations, Transmission Lines and Industrial Systems Designations* does not discuss the procedures for discontinuance of a wind power facility. No other AUC Rules discuss procedures for discontinuance of a wind power facility. There appears to be no generally applicable process for the submission and review of a decommissioning plan for wind power facilities.

Given that wind power facilities typically fall outside the jurisdiction of Alberta Environment and Sustainable Resource Development (no approval issued or reclamation certificate is required pursuant to the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12), the lack of AUC or AESRD requirements in this regard is concerning. Essentially, there is no regulatory review of a decommissioning plan proposed by wind power facility owners/ operators.



It is the ELC's view that this is a regulatory gap that needs to be filled. Discontinuance and decommissioning of a wind power facility may raise numerous environmental concerns such as, soil contamination, erosion/drainage problems with abandoned access roads, habitat fragmentation associated with abandoned access roads, potential problems with electrical cables being left *in situ* and loss of native prairie and other habitat.

Conclusion

The ELC thanks you for taking your time to consider our comments on this matter. Please note that the ELC would be happy to engage with the AESRD on any initiatives regarding the decommissioning of wind power facilities that may arise.

Please feel free to contact the undersigned with any questions or comments.

Yours truly,

Brenda Heelan Powell
Staff Counsel
bhpowell@elc.ab.ca



October 30, 2012

Our File: 5000-510-5120

Alberta Utilities Commission
Fifth Avenue Place
Fourth Floor, 425 First Street S.W.
Calgary, AB T2P 3L8

Attention: Raymond Lee at Raymond.lee@auc.ab.ca

RE: Wind Power Regulatory Process Review

Dear Sirs,

The Environmental Law Centre (ELC) is an Edmonton-based charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. The ELC's vision is an Alberta where the environment is a priority, guiding society's choices. It is the ELC's mission to ensure that Alberta's laws, policies and legal processes sustain a healthy environment for future generations.

Introduction

The ELC participated in the wind-power generation regulatory permitting consultation held by the Alberta Utilities Commission (AUC) on December 12 and 13, 2011. The ELC provided written comments (dated December 19, 2011) as a follow-up to comments made during the course of the two day consultation. In March, 2012, the ELC provided comments on the Notice of Discontinuance of the Taylor Wind Farm Facility because that particular discontinuance highlighted the regulatory gap surrounding discontinuance and reclamation of wind power facilities.

As mentioned in our previous comments, as a general proposition, the ELC supports the development of wind energy because it is a source of renewable energy which does not require the use of water and which does not create emissions. However, there are some negative environmental impacts created by the development of wind power projects which need to be addressed by AUC and other regulators of the wind energy industry. It is well recognized that wind power developments may have negative impacts on bats, birds and other animals. As well, wind power projects may have negative impacts on environmentally sensitive areas, such as, native prairie grasslands and wetlands.

Comments on the Wind Power Generation Regulatory Process Review Discussion Paper

The ELC has reviewed the wind power generation regulatory process review discussion paper. While the ELC will not be providing comments on each question posed in the discussion paper, our comments on select questions follow.

1. Please comment on the merits of the [turbine selection flexibility] approaches identified above. Are there additional approaches that should be considered?

A key concern for the ELC in the wind power facility application process is ensuring that there is opportunity for meaningful and effective public participation. This requires a transparent process and public access to information.

The ELC endorses an approach that will minimize confusion for members of the public. In the ELC's view, the "amendment after approval" approach seems the most likely to reduce potential confusion because a turbine layout plan is presented, approved and then, if necessary, specific amendments are sought.

It is the view of the ELC that a process which allows changes throughout the initial application process may ultimately lead to confusion about the nature of the application with the result of less meaningful and effective public participation.

3. Comment on the opportunities for landowners who object to the buildable area and second stage application to trigger an AUC hearing.

It is the ELC's view that landowners, as well as those persons representing a genuine public interest, ought to have an opportunity to trigger a hearing based on objections to the buildable area (which would include environmental concerns) and on the second stage application (which would include determination of whether conditions had actually been met).

The ELC recommends that the AUC expand public participation in the regulatory process to include those with a genuine public interest in wind-power facilities. Even if wind power projects occur on private lands, there are broader public interests at stake including the protection of bat/bird populations, species at risk and environmentally sensitive areas. By expanding its standing rules to include those parties with genuine public interest, AUC would be able to incorporate the knowledge and expertise of individuals and groups that have significant, meaningful contributions to the regulatory process (even though they may not be directly and adversely affected).

4. Can stakeholders identify any other buildable-area requirements?

It is the ELC's recommendation that environmental constraints be clearly identified and addressed as part of the buildable-area requirements. These constraints include environmentally sensitive areas (such as native prairie and wetlands) and proximity to sensitive species (such as bats and birds).

6. Are 36-month and 48-month time periods for buildable-area approvals to remain in effect reasonable?

The ELC notes that the wildlife surveys and rare plant surveys required by Alberta Environment and Sustainable Resource Development (AESRD) are generally valid for a 24 month period. The ELC would strongly oppose extending the validity of such surveys beyond a 24 month period to accommodate development or other commercial purposes.

8. Are there other agency overlap and coordination issues that have not been identified?

9. How might the AUC and other government agencies effectively address overlap and streamlining opportunities?

In the ELC's view, there is overlap between AESRD and the AUC in terms of environmental concerns associated with wind power facilities.

The ELC recommends that the AUC issue facility approvals subject to conditions designed to eliminate or mitigate negative environmental impacts caused by wind power facilities (rather than relying upon voluntary commitments to undertake such steps). It is the ELC's view that such conditions are especially necessary when AESRD has reviewed a proposed wind power facility and has recognized there are negative environmental impacts associated with the facility. By issuing approvals subject to conditions, the AUC would create enforceable and transparent regulation of the wind power industry. Further, the ELC recommends that, where monitoring of bat/bird activities forms part of the operating conditions for a wind-power facility, the information generated by such monitoring be made publically available by posting to the AUC website.

The ELC notes that unique circumstances of each wind power application must be considered and important issues should not be overlooked for the sake of efficiency. The ELC would object to regulatory changes which sacrifice consideration of important environmental issues for the sake of efficiency (such as extending the validity of rare plant and wildlife surveys beyond an appropriate timeline).

10. Should wind farm developers advise the municipality of the status of approvals or should the AUC develop a specific process to advise the municipality of receipt of an application?

It is the view of the ELC that municipalities are well positioned to gather local public input and have important knowledge of local issues. Accordingly, municipalities should play an important role in wind power facility approvals.

In the ELC's view, the approaches mentioned in the question above are not an "either or" proposition. The ELC considers both approaches to be appropriate and complementary. The developers of proposed wind power facilities ought to be in direct contact with affected municipalities at an early stage of the project development. In addition, there should be a formal AUC process that incorporates the participation of the municipalities into the AUC's regulatory process.

11. Should municipalities have enhanced regulatory authority for small-scale wind generation projects?

It is the view of the ELC that **all** wind power facilities, regardless of scale, should be regulated by the AUC. This will ensure regulatory and process consistency on a project by project basis. As well, the consistent involvement of the AUC will facilitate regional planning.

As an alternative to this approach, the ELC recommends that municipalities be given a larger role in the AUC regulatory process for all wind power facility applications. Municipalities should be involved in the planning and development of wind power facilities at an early stage and be granted a greater role in the regulatory process.

12. Is the current cost regime effective given the experience of participants to date?
13. Should the public policy or statute be amended regarding cost recovery?

The ELC supports the provision of cost recovery to intervenors. This is consistent with the environmental principle of polluter pays. As well, it is necessary for effective and meaningful public participation.

Just as the ELC recommends that the AUC expand public participation in the regulatory process to include those with a genuine public interest in wind power facilities, the ELC recommends that cost recovery be provided to those with a genuine public interest. The extension of standing and funding to those with a genuine public interest will allow the AUC to incorporate the knowledge and expertise of individuals and groups that have significant, meaningful contributions to the regulatory process.

16. Does the current process where the Commission establishes an end date for completion of construction and commencement adequate and allow flexibility for review and potential extension at the expiry date of the initially specified term? Should adjacent proponents be provided with an opportunity to comment on an extension request?

The ELC again repeats its objection to the possibility of extending the period of time for which rare plant and wildlife surveys are generally considered to be valid. If, at the time of the extension request, the rare plant and wildlife surveys are out of date, then such surveys need to be redone.

The ELC would agree that adjacent proponents should be given an opportunity to comment on extension request (especially if there are regional planning and coordination efforts in place). In addition to adjacent proponents, there should also be an opportunity for the AESRD and the public to comment on extension requests.

General Comments

In addition to our comments on the questions posed in the discussion paper, the ELC has additional comments on the potential for regional planning and the regulatory gap surrounding the discontinuance and reclamation of wind power facilities.

Regional Planning

As mentioned in our prior written comments, the ELC encourages the AUC to take the lead on developing regional planning for the wind power industry. The ELC recommends that the AUC develop a multi-stakeholder approach to regional planning that includes industry, community groups, environmental groups and appropriate government departments (such as AESRD).

It is the ELC's view that regional planning could assist in determining which geographical areas are and are not appropriate for wind power development considering factors such as bat/bird migratory paths and environmentally sensitive areas. Regional planning could also assist with the minimization of habitat destruction and disruption by requiring greater cooperation, coordination and planning amongst operators. The ELC also considers regional planning a useful tool for clarifying the roles and responsibilities of various regulatory bodies and for coordinating their efforts.

Discontinuance and Reclamation of Wind Power Facilities

As discussed in our prior written submissions, the ELC is concerned with the regulatory gap surrounding the discontinuance and reclamation of wind power facilities. Given that wind power facilities typically fall outside the jurisdiction of AESRD (no approval issued or reclamation certificate required pursuant to the *Environmental Protection and Enhancement Act*, R.S.A.

2000, c. E-12), the lack of AUC requirements in this regard is concerning. Essentially, there is no regulatory review of a decommissioning plan proposed by wind power facility owners/operators.

In the ELC's view, the AUC does indeed have the authority to deal with the decommissioning and reclamation of wind power facilities. Section 2 of the *Hydro and Electric Energy Act*, R.S.A. 2000, c.H-16 (the "HEAA") provides:

The purposes of this Act are

- (a) to provide for the economic, orderly and efficient development and operation, in the public interest, of hydro energy and the generation and transmission of electric energy in Alberta,
- (b) to secure the observance of **safe and efficient practices in the public interest** in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta,
- (c) to assist the Government in **controlling pollution and ensuring environment conservation** in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta, and
- (d) to provide for the collection, appraisal and dissemination of information regarding the demand for and supply of electric energy that is relevant to the electric industry in Alberta. [emphasis added]

It is the ELC's view that procedures need to be put into place to ensure that wind power facilities are properly decommissioned and that appropriate reclamation is performed at the expense of the wind power facility's owner/operator. This includes implementing procedures to deal with the future possibility of "abandoned facilities" that require reclamation (such as, requirements for security to cover potential costs of reclamation).

The ELC recommends, at the very least, that approvals issued by the AUC require the submission, review and approval of decommissioning plans for wind power facilities. In cases where particular environmental issues (such as, loss of native prairie, impacts on wildlife) have been raised in the application process, the approval issued by the AUC ought to address these issues for the life of the wind power facility including its discontinuance and decommissioning.

There have been two arguments advanced against imposing requirements for decommissioning and reclaiming wind power facilities. The first is that private, contractual arrangements can address the issue of decommissioning and reclaiming such facilities. It is the ELC's view that private, contractual arrangements between a landowner and a wind power facility owner/operator are not sufficient to address this concern. The practical reality is that contractual arrangements are meaningless and unenforceable if the wind power facility owner/operator is bankrupt or otherwise defunct.

The second argument is that wind power facilities will be "re-powered" rather than abandoned. While the ELC acknowledges that re-powering of wind power facilities is a possibility, there is no guarantee that this will happen with every facility. In the ELC's view, there is still a need to put procedures into place to ensure that wind power facilities are properly decommissioned and

that appropriate reclamation is performed at the expense of the wind power facility owner/operator.

Conclusion

The ELC thanks the AUC for the opportunity to participate in the wind power generation regulatory permitting consultation and to provide written comments. Please feel free to contact the undersigned with any questions or comments.

Yours truly,



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cc. Honourable Diana McQueen, Minister of Environment and Sustainable Resource Development