Change and consistency: The AUC in the six months since the Alberta renewables inquiry and related pause

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On Feb. 28, 2024, the Alberta Government lifted its pause on renewable generation project approvals, and concurrently announced policy guidance (the Policy Guidance) to the Alberta Utilities Commission (AUC). The Policy Guidance reflected recommendations set out in the AUC's "Module A Report" that it prepared at the Government's direction.[1]

Six months on, how has the AUC's approach to renewable projects changed? In this article, we provide a review of the AUC's decisions since the Policy Guidance was issued, showing an increased focus on agricultural impact, reclamation security, visual impact, and municipal participation.

Agricultural impacts

The Policy Guidance emphasized an "agriculture first" approach, discouraging development on lands with high agricultural value except where demonstrably compatible with agricultural uses. Since the Policy Guidance, the AUC has expanded its agricultural analysis in several directions.

First, the AUC expects projects on agriculturally valuable land to include an agrivoltaics program. "Agrivoltaics" refers to preserving an agricultural use alongside electricity production.[2] Since receiving the Policy Guidance, the AUC has approved one solar project on marginal "Class 4" land to be co-located with sheep grazing and haying.[3] It has also approved one solar project on top-quality "Class 2" land where agricultural impact would be mitigated through an agrivoltaics plan featuring perennial seeding, sheep grazing, and beekeeping.[4]

Since receiving the Policy Guidance, the AUC has also:

- Accepted agricultural impact where both agriculture and electricity generation would be an interim use pending future planned commercial/industrial development;[5]

- Approved one solar project to be sited on irrigated land, where the irrigation rights were transferrable to other irrigable lands in the district;[6] and,
- Required a solar project to include a proactive weed management plan, noting that the AUC will not accept reactive-only practices.[7]

These decisions indicate that while the AUC will respect landowner choice, it appears willing to impose conditions to mitigate agricultural impact in accordance with the Policy Guidance.[8]

Reclamation security issues

The Policy Guidance required project proponents to fund end-of-life reclamation costs. Alberta has stated its intention to require proponents of projects approved following March 1, 2024, to post bonds or other security in an amount to be determined by the Crown. Alberta has not yet issued this requirement, leaving the matter to the AUC's discretion for the time being.

The AUC therefore asks proponents to explain how they will ensure that sufficient funds are available at a project's end of life to cover the cost of decommissioning and reclamation. Project proponents' reclamation security plans have varied, as has the AUC's reception of them A few points have emerged from the AUC's treatment of reclamation security plans so far:

- *The AUC encourages reclamation commitments to lessors.* The AUC has favoured reclamation security plans that are included in the lease of the project lands. This allows reclamation security to be held by the lessor,[9] whereas the AUC has been against holding security itself.[10] Reclamation security and obligations set out in a lease can bind contractual successors if either the property or project are sold.[11]The AUC has not been receptive to the suggestion that the landowner might not put the reclamation security to use in the event of project failure.[12]

Where proponents do not have reclamation security terms in an existing lease, the AUC has placed conditions on projects requiring the proponent make a proposal setting out the form and timing of security, including how the secured party will be able to realize on the reclamation security should the proponent default.[13]

- *The AUC prefers proponents to begin contributing to reclamation funds from the outset.* The AUC has not been satisfied with proposals to post security towards the end of a project's lifespan.[14] It has preferred security to be posted prior to construction,[15] at commencement of operation,[16] or in conjunction with lease execution.[17]
- *The AUC is skeptical of corporate parent guarantees as a form of security.* The AUC questioned whether parental company guarantees provide sufficient protection against insolvency, abandonment or ownership changes in the Module A Report. Since the Policy Guidance, the AUC has not been willing to accept parental guarantee as acceptable reclamation security.[18]

The AUC's directions provide an indication of the AUC's views of appropriate reclamation security in the absence of legislated requirements but may or may not reflect Alberta's eventual requirements.

Viewscapes impacts

The Policy Guidance provided that Alberta would establish buffer zones around protected areas and other pristine viewscapes. Alberta has not formally established these buffer zones. It has published draft guidance suggesting a buffer zone around the Rocky Mountains, and "visual impact assessment zones" around certain natural features elsewhere.

While the AUC analyzes viewscape impacts for both solar and wind projects, this analysis so far has been more pertinent to wind projects. For solar projects, the visual impact of concern is more often glare.

The AUC has considered one wind project since the Policy Guidance. In that decision the AUC considered viewscape impact from several perspectives:

- *The subjective perspective of specific intervenors*. The AUC rejected two turbines at approximately half a kilometre from a rural church, finding the visual effect of the turbines likely to impact the church's ability to meet the spiritual needs of the community.[19]
- *The literal perspective from different vantage points*. The project was within the draft "visual impact assessment zone" surrounding Cypress Hills Provincial Park. The AUC considered the viewscape impact of a project from several locations within the Park, with the Panel visiting those lookout spots. In doing so the AUC identified a particular field of vision as a viewscape of high sensitivity, where industrial development would cause a high magnitude of change (and thus where wind development may be against the public interest).[20]
- *The perspective of cumulative impact*. The AUC struggled with this perspective. The AUC identified an additional viewpoint that would have been pristine, and that the project would have impacted, but for the fact that a wind project already existed in that viewscape.[21] The AUC criticized the lack of a planned approach to determine the capacity of communities to absorb multiple projects—a "more glaring deficiency as time goes by and project developments proliferate."[22]

The AUC's discussion may invite further policy development on cumulative viewscape impact.

Municipal involvement

The Policy Guidance also required the AUC to grant municipalities participation rights in hearings. While the AUC already respected the input offered by municipalities, it has now explicitly recognized that municipalities have expertise in land use within their boundaries.[23] It also recently relied on a development permit to establish a major solar project's alignment with a municipality's land use plan and population growth projections.[24] That said, the AUC will not abdicate its jurisdiction over project approval, which prevails over municipal planning.[25]

What comes next

The AUC considers a project's conformity with the Policy Guidance as a factor in weighing the public interest.[26] It is beginning to develop consistency in its treatment of the Policy Guidance issues. But proponents must remember that Alberta has not yet made legislation or regulations to implement the Policy Guidance. Eventual legislation, proposed for the end of 2024, may diverge from the AUC's approach to the Policy Guidance as summarized in this update. It is essential that project proponents and potentially impacted parties receive legal advice when considering renewable project approval.

BLG is recognized as a leading advisor on all aspects of Alberta's regulated electricity industry and has secured approval of many renewable and conventional generation and transmission projects. The authors were counsel for a project approved since the Policy Guidance and referenced in this article.[27]

For more information on renewable energy projects, please reach out to the key contacts below.

Footnotes

[1] AUC inquiry into the ongoing economic, orderly and efficient development of electricity generation in Alberta, Module A Report (January 31, 2024) [*Module A Report*].

[2] *Module A Report* at paras 96-97.

[3] AUC Decision 28302-D01-2024, Acestes Power ULC Camrose Solar Project (March 25, 2024) at para 24 [*Camrose*].

[4] AUC Decision 28086-D01-2024, Three Hills Solar Power Corp., Three Hills Solar Project (June 12, 2024) at paras 37, 42, and 44 [*Three Hills*].

[5] AUC Decision 27885-D01-2024, Airport City Solar East Ltd., Airport City Solar Project Airport City (March 20, 2024) at paras 65-68 [*Airport City*].

[6] AUC Decision 27769-D01-2024, PR Development GP Inc., Prominence Solar Project (May 23, 2024) at paras 34-37 [*Prominence*].

[7] *Three Hills* at paras 50-52.

[8] *Prominence* at para 37.

[9] *Camrose* at para 18.

[10] *Camrose* at para 22.

[11] AUC Decision 28325-D01-2024, Proteus Alberta Solar 1 Ltd., Proteus Alberta Solar Projects (June 18, 2024) at para 52 [*Proteus*]; AUC Decision 27906-D01-2024, Kiwetinohk Energy Corp., Granum Solar Energy Project (May 29, 2024) at para 31 [*Granum*]; *Three Hills* at para 76.

[12] *Airport City* at paras 120-121.

[13] AUC Decision 27788-D01-2024, Saamis Solar Park Limited, Saamis Solar Park (July 18, 2024) at paras 115 and 119 [*Saamis*]; *Prominence* at paras 76 and 78.

[14] *Prominence* at paras 78; *Saamis* at para 118; AUC Decision 27729-D01-2024, WR2 Wind GP Corp. and Wild Rose 2 Wind Inc., Wild Rose 2 Wind Power Project Amendment (July 5, 2024) at para 157 [*Wild Rose 2*].

[15] *Three Hills* at para 76.

[16] *Granum* at para 28.

[17] *Proteus* at para 48.

[18] *Proteus* at para 52; *Prominence* at para 78.

[19] *Wild Rose 2* at paras 125-126.

[20] *Wild Rose 2* at para 148.

[21] *Wild Rose 2* at paras 142-146.

[22] *Wild Rose 2* at paras 128 and 146.

[23] *Proteus* at para 60; *Three Hills* at para 23.

[24] *Saamis* at paras 27, 46, and 96-97.

[25] *Prominence* at para 50.

[26] *Prominence* at para 27.

[27] Being the Saamis Solar Park, a 325-megawatt capacity solar power plant and substation.

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