

Will the Flurry of New Wind Energy Projects Face a Storm of Opposition?

By: Jeremy Barretto

Decision Commented On: AUC Decision 3329-D01-2016, E.ON Climate & Renewables Canada Ltd., Applications for the Construction and Operation of the Grizzly Bear Creek Wind Power Project, May 19, 2016.

According to Alberta's [Climate Leadership Plan](#), renewable sources are expected to account for up to 30% of the province's electricity generation by 2030—[approximately triple](#) today's renewable generation. The provincial government is developing a competitive process to bring new renewable generation capacity to the grid, based on reports from an [expert panel](#) and the [Alberta Electric System Operator](#). The first competition will be in Q4 2016.

As I've previously [written](#), wind projects will likely obtain most government financial incentives, provided that such incentives are offered through a competitive auction for utility-scale renewable energy projects. That's because upfront costs for wind energy projects are typically lower than other forms of renewable energy. The rapid development of wind energy in Ontario and recent Alberta decisions foreshadow potential vigorous opposition, and key process differences, for the anticipated flurry of new wind energy projects.

Seven years ago Ontario's *Green Energy Act*, [SO 2009 c 12](#) was introduced to increase renewable energy production, encourage energy efficiency and create green jobs. In Ontario most renewable energy projects must apply for and receive a Renewable Energy Approval (REA) from the Director, Ministry of the Environment and Climate Change (Ontario Regulation [359/09](#)). Certain concerns can be raised by members of the general public in relation to a REA by appealing to the independent and quasi-judicial Environmental Review Tribunal (ERT). Before the ERT, appellants must establish that engaging in the renewable energy project, as approved, would result in serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment (see section 142.1 of the *Environmental Protection Act*, [RSO 1990 c E.19](#)). If the ERT makes such a determination it may revoke or alter the decision of the Director.

The *Green Energy Act* led to the rapid development of wind projects in populated rural areas. Residents in the vicinity of proposed wind projects in Ontario raised noise, health or environmental-related objections to some projects. For example, among the first ERT appeals of a wind project was *Erickson v. Director, Ministry of the Environment*, ERT Decision [10-121/10-122](#) (July 18, 2011). The appellants sought to have the REA for the Kent Breeze Project revoked on the basis that the project would cause serious harm to human health. The appellants raised numerous health concerns related to noise emitted from the proposed wind turbines, including noise annoyance and purported related symptoms such as insomnia, headache and dizziness. The ERT stated that, while there were legitimate concerns and uncertainties about the effects of wind turbines on human health, it could not conclude that the project as approved would cause serious harm to human health.

Alberta has decades of experience with wind energy, Canada's first commercial wind farm was installed at Cowley Ridge in southern Alberta in 1993. The Alberta Utilities Commission (AUC or Commission) is the province's independent, quasi-judicial electricity regulator. The Commission more recently considered a variety of health and related objections to proposed wind projects that previously appeared Ontario. The primary trigger for an AUC hearing occurs when a landowner, or other rights-holder, within close proximity to a proposed project objects to its AUC application. A number of Alberta wind projects have been approved by the AUC but are not yet built, awaiting details such as certainty regarding government policies or [interconnections](#).

In Alberta, the AUC conducts the initial regulatory review of applications for new power generation plants and issues approvals. Under its legislation, the Commission must consider whether construction or operation of the proposed power plant is in the public interest, having regard to the social and economic effects of the plant and the effect of the plant on the environment (see section 17 of the *Alberta Utilities Commission Act*, [SA 2007, c A-37.2](#)). The Commission's public interest determination involves a broad consideration of potential burdens and benefits of the project. This stands in contrast to the ERT's narrower review of a REA based on serious health or environmental harms. Appeals of AUC decisions to the Alberta Court of Appeal are limited to issues of law or jurisdiction (see section 29 of the *Alberta Utilities Commission Act*, [SA 2007, c A-37.2](#)). This means that the initial AUC approval will typically involve a robust regulatory review of various project-related issues with limited avenues of appeal.

To determine whether a project is in the public interest, the Commission considers and balances the adverse and beneficial impacts of the project. In its previous Bull Creek Wind Project decision (AUC Decision [2014-040](#)), the Commission said that a project will largely be in the public interest if the applications are in compliance with existing provincial health, environmental and other regulatory standards, in addition to the public benefits outweighing negative impacts.

The AUC hearing for the Grizzly Bear Creek Project, proposed by E.ON Climate & Renewables Canada Ltd., was conducted over two weeks in April 2016. It involved several interveners, including approximately 30 landowners who formed the Grizzly Bear Coulee Protection Group (GBCPG) to object to the project. On May 19, 2016, the AUC approved the project, with conditions, pursuant to the *Hydro and Electric Energy Act*, [RSA 2000 c H-6](#).

The Commission deferred to environmental standards in its Grizzly Bear decision. The AUC stated that sign-off by Alberta Environment and Parks (AEP), which was previously obtained by the applicant, indicates that the impact to the environment, and specifically to wetlands, was acceptable to AEP. The Commission stated that it considers sign-off from AEP to be strong evidence that the project's environmental effects will be acceptable.

In response to intervener concerns regarding noise related to the Grizzly Bear project, the Commission concluded that the results of the applicant's noise assessment were reasonable and consistent with the requirements set out in the AUC's own [Rule 012](#). This rule applies to construction and operation noise from wind turbine facilities and requires that noise be within a permissible cumulative level (rather than a project-level only), including existing and approved third-party facilities. In the AUC's view, the permissible sound level in Rule 012 is consistent with the World Health Organization guidelines.

The proponent and GBCPG's experts disagreed on whether the permissible sound levels under Rule 012 would be protective of health. The AUC found that the evidence presented did not support the proposition that audible, low-frequency noise and infrasound from the proposed project will result in health effects. Furthermore, the Commission was satisfied that adherence to Rule 012 and the project's nighttime permissible sound level will protect nearby residents from sleep disturbance and other potential health effects that could be related to turbine noise.

There are important differences between the ERT and AUC evidentiary processes. The Ontario ERT requires that experts be [qualified](#) by the Tribunal before their opinion evidence can be admitted. The ERT typically hears evidence from individual witnesses, with a focus on health, noise and environmental issues. The AUC assigns the appropriate weight to a witness' opinion evidence and has not qualified expert witnesses in several recent facility hearings. The AUC formalized its practice of forgoing expert witness qualification in Bulletin [2016-07](#).

In its Grizzly Bear decision, the AUC said that if a witness provides evidence in areas outside his or her area of expertise this evidence is given the weight of a lay witness rather than the weight of an expert (citing its Heartland Transmission Project, AUC Decision [2011-436](#)). Witnesses appear before the AUC as a panel, including representatives from the proponent, and these panels can cover a broad range of issues (e.g. health, noise, environmental, property valuation and public engagement, etc.). For the Grizzly Bear hearing, nine witnesses appeared for the proponent and the GBCPG put up eight landowners and five experts as witnesses.

The AUC's consideration of a broad range of issues under its statutory public interest mandate means that wind developers may need to hire numerous experts to address any concerns raised by interveners in the regulatory process. Proponents may also be responsible for the [reasonable costs of a local intervener's participation](#) (including legal counsel, expert witnesses and reasonable personal expenditures). The Grizzly Bear decision suggests that in response to objections to wind energy projects the AUC will: (i) give deference to existing standards (such as AEP sign-off); (ii) rely on its own Rule 012 as mitigation against noise and health-related concerns; (iii) consider a broad range of issues and evidence raised by intervenors; and (iv) potentially conduct multi-week hearings with large witness panels for both the applicant and intervenors.

It remains to be seen whether the AUC's vigorous hearing process will result in public confidence in its decisions and avoid a groundswell of opposition and appeals against new wind energy developments.

Cassandra Richards provided research assistance for this article.

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