

AUC inquiry update: Alberta to declare no-build zones and mandatory reclamation security requirements for renewable energy projects



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Authors: [Deirdre A. Sheehan](#), [Paula Olexiuk](#), [Simon C. Baines](#), [Jacob A. Sadikman](#), [Bryce Kustra](#)

On February 28, 2024, Alberta Premier Danielle Smith and Minister of Affordability and Utilities Nathan Neudorf announced the intended policy, legislative and regulatory changes following the conclusion of Module A of the Alberta Utilities Commission's (AUC) inquiry into the ongoing economic, orderly and efficient development of electricity generation in the province.

We have previously reported on the AUC's inquiry regarding electricity generation in prior Updates on [August 3](#), [September 8](#), [September 13, 2023](#), and [January 30, 2024](#).

The AUC established two separate modules for its consideration of the issues identified by the Alberta government in their Order in Council: [Module A](#) and [Module B](#).

Module A considered the following factors:

1. the development of power plants on specific types or classes of agricultural or environmental land
 2. the impact of power plant development on Alberta's viewsapes
 3. the implementation of mandatory reclamation security requirements for power plants
 4. the development of power plants on lands held by the Crown in right of Alberta
- This culminated with the AUC delivering its Module A Report to the Minister of Affordability and Utilities on January 31, 2024.

Module B is ongoing. In this proceeding, the AUC is considering the impact that increasing growth of renewables has on both the generation supply mix and electric system reliability. The AUC will deliver the Module B Report to the Minister of Affordability and Utilities no later than March 29, 2024.

The AUC has [continued to process applications](#) [PDF] up to the decision stage for new power plants that produce renewable electricity while the approval pause period has been in effect.

With the pause lifting as the *Generation Approvals Pause Regulation* expired on February 29, 2024, the Minister of Affordability and Utilities issued a letter to the AUC [PDF] to provide policy guidance regarding the issues considered in Module A along with the following policy, legislative and regulatory changes.

1. An ‘agriculture first’ approach

The Alberta government will direct the AUC to take an “agriculture first” approach to the approval of future renewable electricity generation projects with the goal of ensuring Alberta’s that native grasslands, irrigable and productive lands continue to be available for agricultural production. Enhanced standards will be introduced for project development on Class 1 and Class 2 agricultural lands, as classified by the Alberta Land Suitability Rating System (LSRS). Alberta does not have any LSRS Class 1 agricultural lands, but LSRS Class 2 agricultural lands account for approximately 25% of the land in what is known as the White Area^[1] of Alberta.

If a project is proposed to be located on Class 1 or Class 2 agricultural lands, proponents must demonstrate the ability for both crops and/or livestock to coexist with the renewable generation project. Examples could include a demonstrated plan for agrivoltaics or sheep grazing alongside solar projects, or clearly demonstrating that continuing crop growth and livestock grazing is possible following the implementation of a wind project. The scope and scale of any such required agricultural integration and coexistence is currently unspecified.

The AUC will begin taking into consideration this “agriculture first” approach on March 1, 2024, and has indicated that this approach will not be applied retroactively.

2. Reclamation securities for future development

The Government of Alberta will develop and implement the necessary policy and legislative tools to ensure that developers are responsible for reclamation costs through bond or security requirements, with appropriate security amounts and timing to be determined by Environment and Protected Areas in consultation with Affordability and Utilities. Developers will be responsible for reclamation costs, which will be either paid directly to the Government of Alberta or negotiated with landowners if sufficient evidence is provided to the AUC.

In addition, the AUC will require more details in terms of reclamation commitments as part of the application process and will also be actively engaging in a process to determine the appropriate level of reclamation security on a project-by-project basis. In the government’s press conference on February 28, 2024, Premier Smith suggested that a reclamation trust structure where developers contributed amounts over time could be a sensible outcome. A gradual contribution to the reclamation security would be a better outcome for renewables developers than some alternatives, such as a requirement to post 100% of the reclamation security prior to the commencement of construction (which has associated costs).

The new requirements will apply to all AUC approvals issued on or after March 1, 2024.

3. Buffer zones surrounding protected areas and ‘pristine viewsapes’

The Government of Alberta will develop and implement the necessary policy and legislative tools to establish buffer zones, of a minimum of 35 kilometres, around protected areas or

other “pristine viewscales.” The scope of this exclusion zone is not clear, but has the potential to be extensive as there are 464 protected areas within Alberta that amount to 4,551,912.39 hectares of land.^[2]

New wind projects will no longer be permitted within these exclusion zones and other proposed developments located within such buffer zones may be subject to a visual impact assessment before approval.

The AUC will also be required to perform site visits in order to determine impacts on viewscales as part of the approval process. The province has yet to provide a definition for the term “pristine viewscales” and has indicated that it will work alongside the Ministry of Environment and Protected Areas, Ministry of Forestry and Parks and Ministry of Tourism and Sport to identify areas that would be considered “pristine viewscales.”

Of the announcements, this likely creates the most uncertainty and is likely to be the most challenging for wind developers. Given the significant upfront time and cost for wind project development, it is important that developers know on day one whether the options to lease or other land agreements they are entering into are or are not in an area with pristine viewscales. It will be important that the Government of Alberta provide additional certainty over this rule sooner rather than later so that development of new wind projects can continue.

The government indicated that this policy change will not be applied retroactively to approved projects and will only impact project approvals issued on or after March 1, 2024.

4. Crown land

The Government of Alberta will develop and implement the necessary policy and legislative tools to enable the development of renewable generation on Crown lands on a case-by-case basis. Development on Crown lands will be supported by a new policy that will require meaningful engagement, including with Indigenous communities, before any policy changes are implemented. Overall this is a positive development for renewables developers, as to date there was no policy in place permitting the granting of land rights for renewable energy projects on Alberta Crown Lands, and this opens up to an additional 60% of Alberta to renewables development.^[3]

This government’s intention is to have such policy and legislative changes developed and implemented by late 2025.

5. Consideration of appropriate setbacks

The Minister’s letter to the AUC states that the AUC will conduct a proceeding or other process to consider appropriate setbacks of renewable infrastructure from neighbouring residences and other important infrastructure.

No timeline is provided for this policy change.

6. Municipal participation

The AUC will automatically grant municipalities the right to participate in AUC hearings and the permitting process. This will include the opportunity for municipalities to seek participant

funding to engage in the AUC processes and expanding eligibility for cost recovery to municipalities to reduce barriers for participation in circumstances where they intend to file expert evidence or arguments that will assist the AUC.

The AUC has also committed to allowing municipalities to review rules related to municipal submission requirements while clarifying consultation requirements. No timeline is provided for this policy change.

7. Upcoming Transmission Regulation changes

The Minister of Affordability and Utilities advised that future changes would occur to Alberta's *Transmission Regulation* (Alta. Reg. 86/2007) originating from the *Transmission Green Paper* [PDF]. These changes are expected in the coming months and renewable projects should expect changes to the allocation of transmission costs.

We summarized the recommendations in the Green Paper in our Update in late January. Whether and to what extent any such changes could allocate these costs to existing (or in-construction) renewable projects was not specified in the Minister's announcement and remains a key concern for industry.

Impact to projects

The Minister stated that these new policies will only be applied to renewable project approvals going forward, not retroactively to existing projects, though their application to amendments to existing approvals is unconfirmed. Nonetheless, considerable uncertainty remains for renewable energy developers in the province.

While the details of these policy changes have not yet been developed, the Minister's announcement introduces potentially significant siting restrictions on renewable generation facilities. Furthermore, with the quantum and framework for reclamation security still under development and uncertainty as to the allocation of transmission costs, the implications for the economics of proposed renewable generation projects remains unclear.

Following the government's announcement, the AUC issued Bulletin 2024-03, providing an update on its application review process to facilitate the March 1, 2024, commencement of approvals being issued. Power plants' applications affected by the pause will be assessed based on their individual merits. Depending on the circumstances of each application and the adequacy of the existing evidence, additional steps may be necessary for applications that are currently under review by the AUC. The AUC will communicate with the parties involved in each existing application to provide details on the next actions to be taken in the process.

Bulletin 2024-03 also indicates that the AUC will initiate a stakeholder consultation to discuss specific subjects within Rule 007.^[4] These topics will include matters that were addressed during Module A of the inquiry, as well as topics that are the focus of the Alberta government's proposed policy, legislative and regulatory changes, among other items. In September 2023, the AUC issued interim Rule 007 information requirements [PDF] for new power plant applications related to agricultural land, views, reclamation security and land use planning. These interim information requirements will continue to be in effect for all current and prospective applications following the end of the pause, and the AUC will evaluate whether these interim information requirements should be permanently incorporated into Rule 007 through its consultation. The AUC will provide additional details regarding the Rule 007 consultation process in due course.

Osler will continue to monitor these developments closely. Our firm has extensive experience providing advice to utilities and generators both in Alberta and in jurisdictions across Canada. If you have any questions regarding the implications these ongoing policy developments, please contact a member of the Osler Regulatory or Energy groups or the authors of this article.

[1] The White Area (settled portion) consists of the populated central, southern and Peace River areas of the province. The Green Area (forested portion) includes most of northern Alberta as well as the mountain and foothills areas along the province's western boundary. Source: Government of Alberta, "[Sustainable Forest Management: 2015 Facts & Statistics](#)," 2017.

[2] See the registry of protected areas compiled in the [Land Reference Manual](#). Source: Alberta Parks, "[Land Reference Manual](#)," May 25, 2023.

[3] Government of Alberta, "[Alberta Crown Land Vision](#)" January 15, 2021.

[4] Alberta Utilities Commission, "[Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines](#)," March 18, 2022.