

# Regulatory Shifts In Alberta's Energy Sector



On December 6, 2024, the Government of Alberta announced several highly anticipated regulatory amendments and policy changes<sup>1</sup> intended to support the “ongoing economic, orderly and efficient development of electricity generation in Alberta.”<sup>2</sup>

As part of these changes, the government introduced new requirements affecting renewable power projects, including the suspension of certain monitoring obligations under Rule 033 and amendments to key environmental regulations. These updates follow the expiration of the *Generation Approvals Pause Regulation* and signal a shift in how Alberta approaches renewable energy development.

These regulatory changes indicate a shift in the Government of Alberta's approach towards the increased regulation of renewable energy development in Alberta. However, these changes may also indicate a possible reassessment by the Government of Alberta and the regulating bodies in respect of post-construction monitoring obligations applicable to certain operational wind and solar facilities that are not sited within environmentally-sensitive areas.

## Updates following the *Generation Approvals Pause Regulation*

These changes follow the expiry of the *Generation Approvals*

*Pause Regulation*,<sup>3</sup> which was in effect from August 8, 2023 to February 29, 2024 and temporarily halted the Alberta Utilities Commission (the “AUC”) from issuing approvals for renewable power projects.<sup>4</sup> The Government of Alberta implemented several requirements for renewable power projects following the end of this pause however it noted that the legislative changes would be issued by the end of 2024.<sup>5</sup> Our [summary of the pause can be found here](#).

Separately, the AUC released Bulletin 2024-24 (“Bulletin 2024-24”)<sup>6</sup> on December 3, 2024, announcing a one-year suspension of Section 3 of AUC Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants* (“Rule 033”) for select solar power plants (the “Suspension”).<sup>7</sup>

### **Rule 033 Suspension**

The Suspension came into effect on January 1, 2025 and will expire on December 31, 2025. It temporarily pauses certain post-construction monitoring obligations for approval holders of operational solar power plants (“Affected Facilities”) that are not located within 1,000 meters of a wetland-based Important Bird Area (an “IBA”) or a named lake. This 1,000-meter setback-distance (the “Excluded Areas”) is consistent with the standards set out in the *Wildlife Directive for Alberta Solar Energy Projects* (the “Wildlife Directive”).<sup>8</sup>

Alberta Environment and Protected Areas (“AEPA”) requested that the AUC issue the Suspension in order to “allow [AEPA] to conduct a review of the province-wide post-construction wildlife mortality data” pertaining to solar power plants.<sup>9</sup> The Suspension will function to avoid duplicative monitoring in areas surrounding Affected Facilities throughout the 2025 season, as AEPA will carry out these monitoring obligations. This will also alleviate certain financial burdens associated with monitoring and reporting obligations that are normally

borne by approval holders.

Affected Facility approval holders will, however, remain subject to reporting requirements relating to “unusual mortality events” and discoveries of “Threatened” or “Endangered” species mortalities.<sup>10</sup> Further, the Suspension does not relieve Affected Facility approval holders from completing mortality surveys for the full time period specified in their conditioned approvals, and only defers the obligation to conduct post-construction surveys by one year.

Solar power plants within any Excluded Area, as well as all wind power plants (irrespective of the location) are not impacted by the Suspension and remain subject to all Rule 033 monitoring requirements during the Suspension. While it is not explicitly stated why monitoring obligations at these facilities remain unaffected, previous AUC decisions indicate that solar projects situated within Excluded Areas may be held to different reporting standards than projects sited elsewhere.<sup>11</sup>

The AUC’s issuance of the Suspension following AEPA’s request may indicate a potential reassessment of certain monitoring obligations for project proponents and approval holders.

## Regulatory amendments

As part of its December 6 announcement, the Government of Alberta discussed pending amendments to the *Conservation and Reclamation Regulation*<sup>12</sup> and the *Activities Designation Regulation*,<sup>13</sup> all of which are intended to provide clarity on the new and existing environmental protections that impact renewable energy development in Alberta. Amendments to the *Conservation and Reclamation Regulation* include:<sup>14</sup>

- The adoption of the *Code of Practice for Solar and Wind Renewable Energy Operations* (the “Code for Solar and

*Wind Operations*") into the regulation.<sup>15</sup>

- The addition of an exemption from security requirements for wind and solar operators who provide security to a registered owner of the land under a surface lease.<sup>16</sup>
- The creation of consistent reclamation requirements across all forms of renewable energy operations, including a mandatory reclamation security requirement.<sup>17</sup>

All wind and solar power plant operators who provide security to the registered landowner under a surface lease are exempt from these security obligations. This addition is notable, as it will require renewable energy project operators to comply with the security obligations that were, previously, only applicable to non-renewable energy projects.

The *Code for Solar and Wind Operations* has not yet been published, but it will have the same authority as existing legislation governing financial security obligations of non-renewable energy projects. Operators can expect the *Code for Solar and Wind Operations* to include specifics on the required form, timelines and amount of security that must be posted by project approval holders.

These legislative changes standardize the security requirements for reclamation obligations across all energy projects. However, the exemption for certain wind and solar power plants indicates the Government's intention to reduce the burdens of security requirements for certain renewable energy facility operators.

## **The new *Electric Energy Land Use and Visual Assessment Regulation***

On December 6, 2024, the Government of Alberta also released the new *Electric Energy Land Use and Visual Assessment Regulation* (the "*EELUVA Regulation*").<sup>18</sup> The issuance of

the *EELUVA Regulation* is consistent with the Government's "agriculture first" approach, which informed the AUC's Module A and Module B inquiries that were conducted in 2024.<sup>19</sup>

The *EELUVA Regulation* applies to applications for the construction or operation of power plants (including solar and wind power plants)<sup>20</sup> under AUC Rule 007 ("Rule 007").<sup>21</sup> However, section 2(2) sets out limited exemptions, whereby the *EELUVA Regulation* does not apply to applications for the construction or operation of small power plants, isolated generating units, micro-generation units, power plants situated on a reserve, or applications for alterations to an existing power plant approval issued by the AUC.<sup>22</sup>

In connection with the release of the *EELUVA Regulation*, on December 18, 2024 the AUC released Bulletin 2024-25 (the "Bulletin 2024-25"),<sup>23</sup> announcing changes to the interim information requirements for power plant applications. The Government of Alberta also released a map identifying the visual impact assessment zones, buffer zones, LSRS Class 2 and Class 3H lands, white areas and unimpacted areas (the "Zoning Map")<sup>24</sup> that are referenced in the *EELUVA Regulation*.

### **Application requirements codified by the *EELUVA Regulation***

The *EELUVA Regulation* codifies certain requirements for the construction and operation of power plants in alignment with the Government of Alberta's commitment to balancing Alberta's long-term economic prosperity with responsible energy development.<sup>25</sup> These new requirements are intended to enhance protections for "conserving the environment, agricultural lands and beautiful viewsapes"<sup>26</sup> and fall within the following categories of enhancing, protecting and preserving:

1. Agricultural lands
2. Agricultural productivity

### 3. Irrigability

### 4. Pristine viewscales

The requirements of the *EELUVA Regulation* generally apply to new power plant applications filed after December 6, 2024. However, in some cases, the AUC may seek related information with regard to existing applications. In other words, parties to proceedings before the AUC as at December 6<sup>th</sup>, 2024 for which a decision has not been issued, may be required by the AUC to furnish further information to satisfy the new requirements.

However, Bulletin 2024-25 is explicit in that requirements relating to pristine viewscales will be applied to all applications for which a decision has not yet been issued, irrespective of the date in which the application was filed. The following sections provide further details on the new requirements, as well as information on how these changes may impact power plant project proponents, developers and operators.

### **Agricultural impact assessments**

The *EELUVA Regulation* is intended to enhance protections for high-quality agricultural land by “establishing the need to consider potential irrigability and whether projects can coexist with agricultural operations.”<sup>27</sup> “High-quality agricultural land” is defined as Class 1 or 2 LSRS land, or Class 3 land in one of the designated municipalities.<sup>28</sup>

Pursuant to section 6, “a person applying for the construction or operation of a wind power plant or solar power plant on privately owned, high-quality agricultural land is required to submit an agricultural impact assessment as part of their AUC application,” which includes: “(i) details of the expected effect of the wind power plant or solar power plant on agricultural productivity and (ii) measures demonstrating that

the wind power plant or solar power plant is designed to achieve coexistence with agricultural land use.”<sup>29</sup>

This requirement only applies to new applications for wind and solar power plants on high-quality agricultural land, filed after December 6, 2024. However, Bulletin 2024-25 notes that the AUC will consider whether further information or process is required with regard to existing applications, whereby the AUC may solicit further information from parties in order to satisfy the *EELUVA Regulation* requirements pertaining to agricultural impact assessments.

### **Reporting on agricultural productivity**

The *EELUVA Regulation* requires the owner or operator of a wind power plant or solar power plant situated on privately owned high-quality agricultural land to submit a report to the AUC within 36 months of the start of operations that confirms the agricultural productivity of the land.<sup>30</sup> The AUC has stated that it will work with stakeholders to develop these reporting requirements for inclusion in AUC Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants* (“Rule 033”).<sup>31</sup>

In the meantime, the AUC will “solicit information from applicants in the form of an interim information requirement on how they will evaluate and improve the performance of any co-location agricultural proposal.”<sup>32</sup>

### **Irrigability assessment**

The *EELUVA Regulation* requires a person applying for the construction or operation of a power plant within the White Area of the Green and White Map <sup>33</sup> to submit an irrigability assessment as part of their AUC application, but only if required by the AUC.<sup>34</sup> This requirement only applies to applications filed after December 6, 2024.

The AUC will be soliciting information on the current irrigation status of land for all proposed power plants within the White Area, and will determine if more details relating to irrigability assessments are required on a case-by-case basis.

### **Visual impact assessment**

The *EELUVA Regulation* is intended to prevent projects from impacting viewscales, by establishing buffer zones and visual impact assessment zones. Lands described in Schedule 2 of the *EELUVA Regulation* are designated as “buffer zones” and lands described in Schedule 3 are designated as “visual impact assessment zones.”<sup>35</sup>

A “person applying for the construction or operation of a power plant within a buffer zone or visual impact assessment zone must submit a visual impact assessment as part of the application”, including:

- “An evaluation of the anticipated visual impacts on the buffer zone or visual impact assessment zone.
- Visual simulations from key vantage points illustrating the potential visual impact of the proposed power plant.
- proposed mitigation measures to minimize or offset any adverse visual effects on the buffer zone or visual impact assessment zone.”<sup>36</sup>

Notably, the AUC will not accept any applications under Rule 007 for the construction or operation of a wind power plant in a buffer zone, unless the project falls under an exemption, pursuant to section 2(2).

The requirement for a visual impact assessment only applies to new applications filed after December 6, 2024 for power plants in applicable buffer and visual impact assessment zones identified in the Zoning Map.<sup>37</sup> However, Bulletin 2024-25 notes that the AUC will apply the requirement for a visual impact assessment to all proceedings currently before it for power



plants within the zones defined in the *EELUVA Regulation*.

### **AUC interim information requirements**

Bulletin 2024-25 provides initial direction on how the AUC will apply the *EELUVA Regulation*, and attaches [this Appendix](#) further detailing information requirements for applications filed after December 6, 2024 regarding high-quality agricultural land, irrigation potential, professional expertise, and agricultural impact assessments. The AUC will be inviting parties to comment on new information requirements in early 2025 as part of the consultation process for Rule 007.

Bulletin 2024-25 notes that the AUC will assess all proceedings currently before it, for which a decision has not yet been issued, and that are for projects sited on high-quality agricultural land, and correspond with parties on the public record of those proceedings if further information or process is required to satisfy the requirements in the *EELUVA Regulation*.

## **Key takeaways**

The purpose of Rule 033 is to ensure “effective, consistent operational mitigation measures to minimize the potential for negative effects on Alberta’s wildlife and wildlife habitat” are implemented.<sup>38</sup> The AUC reviews AEPA’s advice in respect of the potential impacts of a project to wildlife and wildlife habitat as part of its facility approval process.<sup>39</sup> The Government of Alberta’s announcement of the Suspension and subsequent release of the regulatory amendments may indicate that further changes to the regulation of renewable energy projects are forthcoming.

In sum, the changes will result in post-construction monitoring obligations of project proponents and approval holders of certain operational wind and solar facilities being

reduced, albeit minimally and for the 2025 season only. There are more significant changes for projects that are pending approvals, including additional information requirements on applicants throughout the approval process and for all approvals issued after December 6, 2024. Renewable energy project proponents should pay close attention to the large number of detailed changes.

## Footnotes

1. "[Restoring balance for Albertans](#)", Government of Alberta, December 6, 2024 [*Restoring Balance for Albertans*].
2. [AUC Inquiry Process for Module B](#).
3. [Generation Approvals Pause Regulation](#), Alta Reg 108/2023 (repealed).
4. Pursuant to sections 9 and 11 of the [Hydro and Electric Energy Act](#), RSA 2000, c H-16.
5. Summary of the changes following the Pause Regulation: "[Alberta hits "Go" again: Understanding recent announcements affecting renewables projects](#)", Gowling WLG (Canada) LLP, March 22, 2024.
6. AUC [Bulletin 2024-24](#), issued December 3, 2024 [*Bulletin 2024-24*].
7. AUC [Rule 033](#): *Post-approval Monitoring Requirements for Wind and Solar Power Plants* [*Rule 033*].
8. "[Wildlife Directive for Alberta Solar Energy Projects](#)", Alberta Environment and Parks [*Wildlife Directive*].
9. *Bulletin 2024-24* at p. 1, paras 3-4.
10. See *Bulletin 2024-24*: "An unusual mortality event means 10 or more deceased individuals (any combination of birds, mammals, amphibians or reptiles), found at any one time within an 800-metre radius of each other, within and immediately adjacent to the fenceline of a solar facility. If an unusual mortality event is discovered by any personnel, a qualified wildlife biologist should be contacted immediately to assist with data

collection, as set out under Section 2.2.2 of the *Post-Construction Survey Protocols for Wind and Solar Energy Projects*. Additionally, approval holders must also report any discovered mortalities of species listed as “Threatened” or “Endangered” under Schedule 6 of the [Wildlife Regulation](#).”

11. See AUC [Decision 27486-D01-2023](#) [PDF], April 20, 2023, AUC denies application by Foothills Solar GP Inc. for 150-megawatt solar power plant at paras 42-44: The AUC decided that a proposed solar power plant was not in the public interest due to, in part, the siting of the project’s infrastructure within the Frank Lake IBA and the potential risks this posed to birds, the high diversity of wildlife, abundance of species at risk, migratory bird activities and the various wildlife features in the area.

12. *Conservation and Reclamation Regulation*, Alta Reg 115/93 [*Conservation and Reclamation Regulation*].

13. *Activities Designation Regulation*, Alta Reg 276/2003.

14. [Order in Council 369/2024](#), *Conservation and Reclamation Amendment Regulation*, December 6, 2024.

15. To be added to the *Conservation and Reclamation Regulation* as Section 3.1(1)(c).

16. To be added to the *Conservation and Reclamation Regulation* as Section 17.1(e).

17. To be added to the Schedule to the *Conservation and Reclamation Regulation*.

18. [Order in Council 268/2024](#), *Electric Energy Land Use and Visual Assessment Regulation*, December 6, 2024 [*EELUVA Regulation*].

19. *Letter to the AUC*.

20. [AUC Rule 007](#): *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* at s. 1: “This rule applies to applications for the construction, alteration, operation and connection of power plants, hydro developments, substations, transmission lines, energy storage facilities and industrial

*system designations, pursuant to the Hydro and Electric Energy Act, and for approval of a needs identification document, pursuant to the Electric Utilities Act and the Transmission Regulation.” [Rule 007].*

21. *Rule 007.*

22. *EELUVA Regulation at s. 2.*

23. [AUC Bulletin 2024-25](#), issued December 18, 2024 [*Bulletin 2024-25*].

24. [“Pristine Viewscapes and Visual Impact Assessment Zones”](#) Map.

25. *Restoring Balance for Albertans.*

26. *Restoring Balance for Albertans.*

27. *Restoring Balance for Albertans.*

28. Designated Municipalities:

- Athabasca County
- Big Lakes County
- Clearwater County
- County of Forty Mile No. 8
- County of Newell
- Improvement District No. 4 (Waterton)
- Lac La Biche County
- Municipal District of Bonnyville No. 87
- Municipal District of Lesser Slave River No. 124
- Municipal District of Opportunity No. 17
- Municipal District of Ranchland No. 66
- Municipal District of Taber
- Special Areas 3
- Woodlands County

29. *EELUVA Regulation at s. 4.*

30. *EELUVA Regulation at s. 5.*

31. AUC [Rule 033](#): *Post-approval Monitoring Requirements for Wind and Solar Power Plants [Rule 033].*

32. *Bulletin 2024-25*.

33. *EELUA Regulation* at s. 1(m), [map online here](#) [Green and White Map].

34. *EELUVA Regulation* at s. 6.

35. *EELUVA Regulation* at s. 7.

36. *EELUVA Regulation* at s. 8.

37. "[Pristine Viewscapes and Visual Impact Assessment Zones](#)" Map.

38. AUC [Bulletin 2019-07](#), announcing the establishment of AUC Rule 033, July 19, 2019 at para 3.

39. See: "[Roles and Responsibilities of AEP and the AUC](#)", re: Applications to construct and operate wind and solar power plants, February 1, 2018.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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