

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment portfolio

Question No: 122

Hearing: Supplementary Budget Estimates

Outcome: Agency

Programme: Clean Energy Regulator

Topic: Waubra Wind Farm

Hansard Page: N/A

Question Date: 27 November 2013

Question Type: Written

Senator Madigan asked:

- a) The *Renewable Energy (Electricity) Act 2000* provides that eligible power stations must be operated in accordance with all local, state/territory and Commonwealth government laws and requirements. Regulation 4 of the Regulations states that renewable or eligible energy power stations must operate in accordance with Commonwealth, state, territory and local government planning and approval requirements (emphasis added). To provide even further clarity, 'Explanatory Notes' are available on the Clean Energy Regulator's (CER) website at the following link, advising operators how to apply for accreditation: <http://ret.cleanenergyregulator.gov.au/Forms-and-Publications/Forms/Power-Stations/Power-Station-Forms>

Section H of the Explanatory Notes specifies that in regards to parts 23) and 24) applicants must comply with all environmental and planning requirements at a Commonwealth, State, Territory and local government level to be eligible to participate in the LRET. It says: 'power stations must operate in accordance with any Commonwealth, State, Territory or local government regulations. The application must demonstrate that the power station complies with all relevant approval processes. This may include a licence to generate electricity, local council, State or Territory and Commonwealth approvals, including clearance from an Environmental Impact Assessment. Applicants should provide the following types of information:

- conditions of approval;
- proof of compliance;
- authority for any actions; and
- contact officer details etc.'

On the basis that the CER instructs applicants to attach relevant copies of each approval to their application in order to be assessed, why was Waubra wind farm accredited as an eligible power station without having submitted proof of compliance with its conditional planning approval, a requirement of a state law?

- b) The CER's Explanatory Notes continue: 'Where power stations have been operating for some time and records of these approvals were not required or cannot be located, the applicant should contact the Regulator and discuss the circumstances. Applicants may be requested to provide a letter from the local/jurisdictional Government stating that the power station is approved for operation'.

Has the operator of Waubra wind farm contacted the CER to discuss the circumstances both of the missing documentation and its compliance failure? What steps has the CER taken to ensure that Waubra wind farm is compliant given the evidence I have submitted in the form of the 2006 MDA preconstruction noise impact assessment report and the 2011 Ministerial briefing note to Minister Matthew Guy which show that it can never achieve compliance unless almost half the power station is not operating?

- c) If the operator failed to supply proof of compliance resulting in accreditation being wrongly granted in 2009, has the CER since received advice from the Victorian Minister for Planning to the effect that the Waubra wind farm is operating in compliance with noise regulations attached to the state issued planning permit?
- d) Has the CER been advised by the Victorian Minister for Planning, his office or his Department that the Waubra wind farm should not be suspended from accreditation and that the power station is 'approved for operation'?
- e) Has the Victorian Minister for Planning advised the CER that the Waubra wind farm is not determined compliant but should continue to operate and create RECs/LGCs?
- f) Under the guiding legislation of the Renewable Energy (Electricity) Act 2000, does the CER generally "approve" of the operation of non-compliant Victorian wind farms?
- g) Under the guidance of the RE Act, does the CER accept that the Victorian Minister for Planning has condoned the continued operation of Waubra when it has never demonstrated compliance with state planning permit conditions?
- h) The failure of Waubra wind farm to operate in compliance with planning permits issued under the Victorian Planning and Environment Act 1987 does not preclude the CER from exercising powers available under the RE Act to suspend accreditation until such time as state law has been met. Does the CER consider the failure of a power station to meet conditions under state law to be somewhat inconsequential to the CER's regulatory responsibilities under the RE Act?
- i) Does the CER accept that ongoing unresolved complaints from noise affected local residents are the direct result of regulatory failure at both State and Commonwealth levels?
- j) Victorian Ministerial enforcement of the Waubra wind farm's state planning permit would trigger the suspension of the power station's accreditation. In so doing, it would prohibit the power station's creation of RECs. Has the Minister, by failing to enforce permit conditions, facilitated the continuing breach of a state law he is responsible for enforcing and, by failing to alert the CER of the correct status of compliance, therefore enabled the contravention of Commonwealth law?
- k) A local council in Victoria that had previously issued a planning permit for a wind farm and who retained statutory responsibility for that permit recently contacted the office of the CER seeking advice about reporting a noise related breach of the planning permit by the operator. After speaking to a senior CER officer they wrote to my office advising that: "The advice that I have received is that Council has no statutory reporting requirements, that these obligations lie with the wind energy facility when seeking certification". Why is the CER advising a statutory planning authority that they don't have to report a planning permit breach? On this basis, if the Victorian Department of Planning reported a wind farm breaching a planning permit condition, would the CER give it the same advice?

- l) The CER also referred the local Council to Mr. Paul Jarman of the Victorian Department of Planning who advised that the Council would need to have an enforcement order or a magistrate's direction before they could report a planning permit breach to the CER. Where does the RE Act require ('must' rather than 'may') a legal direction before the CER will 'hear' a breach of a planning permit?
- m) In its Annual General Report 2012-13, the CER nominates 'education' as being one of its principal activities. However, until approximately six weeks ago, the local Council I have just referred to had never heard of the CER or the Office of the Renewable Energy Regulator and only became aware of their existence when my office staff told them. This particular local council has within its municipal area one of the earliest wind energy facilities built in Australia, operating since 2002. Over the last eleven years, I understand they have experienced great difficulties dealing with the complexities and expense associated with regulating an industrial wind farm. What percentage of the CER's education activities is devoted to the various stake holders in the large scale wind industry and how much of the CER's education budget is being deployed to educate the various stakeholders about their rights and responsibilities?
- n) If a statutory planning authority, being either a local Council or the Victorian Planning Minister, is aware of a breach and not reporting it to the CER and if the operator is concealing the breach, by what process would the CER learn about it?
- o) Is the CER aware that Victoria has approved a number of planning permits that allow the building of non-compliant wind energy power stations, facilities that cannot achieve compliance with the Victorian noise standard?
- p) At the Senate Committee hearing on 18th November, 2013 the CER's Ms. Munro said "There are a number of steps we would take before necessarily going to what is the most extreme action, if you like, that we can take under our powers". Would the CER provide a detailed explanation of each of these steps, including where they are referenced in the RE Act and an example of the problem or breach each step is designed to address? Further, could the CER document instances where they have taken any of those steps with respect to wind energy developments which are known to have compliance issues (i.e. they are operating and receiving LGCs while non compliant) eg Waubra, Toora, Windy Hill (QLD), Cape Bridgewater, Macarthur?
- q) At the Senate Committee hearing on 18th November, 2013 in response to my third question and its preamble the CER's Ms. Munro said: "I do not accept any of the premises on which your question—or, rather, statement—is based." Was Ms. Munro stating her disagreement with the fundamental premise asserted in my question - that it is the responsibility of the CER to protect the integrity of the large-scale Renewable Energy Target from fraudulent misuse? If protecting the LRET from fraud is not the core business of the CER, what is the CER's core business? If it is not the CER's core business to protect the LRET from non compliant wind energy facilities fraudulently creating LGCs, whose responsibility is it?
- r) In order to protect the LRET from fraudulent misuse, the CER is required to accredit eligible power stations only. Does Ms. Munro disagree with this premise and, if so, what does she think is the appropriate position of the CER when presented by ineligible wind energy facilities desirous of accessing the LRET scheme and seeking accreditation?

- s) The Waubra wind energy facility has been operating for four years yet during that period it has not achieved compliance with its planning permits. According to the comments of Ms. Munro on the 18th November, 2013 “we are the regulator and we have properly formed the view, according to our legislation, that the Waubra wind farm was eligible to be accredited at the time which they applied for accreditation and we have formed the view that they continue to be eligible.” What evidence was before the CER that would persuade them that it was acceptable to continue issuing LGCs to a non compliant power station, contrary to the provisions of the RE Act?
- t) Has the CER’s Ms. Munro considered the probability that the intention of the Renewable Energy (Electricity) Act 2000 is not being honoured, that the occurrence of serious ongoing systemic breaches may require the legislation to be amended, and has she and/or her regulatory board formally raised the problems with the responsible Commonwealth Minister?
- u) In his letter dated 17th October 2013 to me, the CER’s Mr Andrew Livingston stated: “the risk of claiming ineligible certificates is in itself a major disincentive for non compliance due to both the reputation damage and high cost of surrendering ineligible certificates”. Given that the CER uses a ‘light handed, self regulatory’ approach toward the large scale wind industry which is obviously failing to deter non-compliance, will the CER initiate a more active, hands on approach to regulating the sector or will it only change its approach if compelled to do so?

Answer:

- a) The Waubra wind farm was assessed and found to be compliant with the *Renewable Energy (Electricity) Act 2000* (the Act) and *Renewable Energy (Electricity) Regulations 2001* (the Regulations) including Commonwealth, state, territory and local government regulations at the time its accreditation was granted. The Clean Energy Regulator is aware of a list of conditions included in the planning approvals and at the time of accreditation the approvals issued were valid.
- b) Waubra wind farm was commissioned on 5 March 2009 and the accreditation took effect on 10 March 2009. At the time of accreditation, Waubra wind farm was found to be compliant with relevant planning and approval requirements.

The Clean Energy Regulator has conducted a compliance investigation and has contacted the Department of Planning and Community Development (DPCD) and Acciona Energy – the proponents of the Waubra wind farm. The Clean Energy Regulator is satisfied with the response from both entities that the wind farm is operating in accordance with the state legislation.

The Clean Energy Regulator is not responsible for monitoring or enforcing compliance with state and territory planning requirements. This is the responsibility of the state and territory governments and regulators. However the Clean Energy Regulator collects a range of information about all accredited power stations to assist in carrying out its responsibilities under the Act and the Regulations. All wind farms that are accredited under the Act and Regulations were found to be compliant with the Commonwealth, state, territory and local government regulations at the time accreditation was granted.

The Clean Energy Regulator has not received any evidence from the Victorian DPCD to determine that the wind farm is being operated in contravention to the Commonwealth, state or territory laws.

- c) Please refer to part b).

- d) Please refer to part b). The Clean Energy Regulator has no reasonable grounds to suspend Waubra wind farm under Section 30E of the Act.
- e) Please refer to part b).
- f) All wind farms that are accredited under the Act and Regulations were found to be compliant with the Commonwealth, state, territory and local government regulations at the time accreditation was granted.
- g) The Clean Energy Regulator is satisfied that the DPCD is dealing with this issue. The Minister for Planning has not determined whether the wind farm is or is not compliant with the relevant planning permit. The DPCD and the Environment Protection Authority are investigating how to address the testing issues and what further steps may need to be taken.
- h) Please refer to part b).
- i) The Clean Energy Regulator is not responsible for monitoring or enforcing compliance with state and territory planning requirements including any wind farm noise related matters. This is the responsibility of the state and territory governments and regulators.
- j) Please refer to parts b) and g).
- k) The Clean Energy Regulator does not involve itself in dealings between state and local governments. The local council should liaise with the state planning authority on matters relating to possible breaches.
- l) Please refer to the Victorian DPCD regarding this matter.
- m) In 2012-13, the Clean Energy Regulator provided 15 presentations and seminars to stakeholder and industry groups, attended by, but not specific to the large-scale wind industry. The Clean Energy Regulator also participated in clean energy industry events including Clean Energy Week and Carbon Expo. The objective of these education activities is to encourage scheme participants to voluntarily comply with their legislative requirements to ensure the proper creation of large-scale generation certificates and small-scale technology certificates, in support of the Clean Energy Regulator's compliance, education and enforcement policy.

In 2013-14 the Clean Energy Regulator has budgeted approximately \$45,000 to participate in clean energy industry specific events to directly engage with scheme participants and stakeholders, including representatives from the large-scale wind industry. The Clean Energy Regulator's website also provides information about the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme, including participants' rights and responsibilities, reporting and compliance obligations.

- n) It is the responsibility of the operator of a wind farm to confirm their ongoing compliance. Giving false or misleading information to a Commonwealth officer is a serious offence. Please also refer to point b).
- o) The responsibility lies with DPCD to ensure all wind farms in Victoria operate within the approvals and permits they have been granted. Issuance of a permit by the State regulator indicates that the proposed wind farm is able to meet its requirements. If for example, the permit has conditions attached to it then it is the responsibility of the DCPD and/or State regulator to monitor them in conjunction with the proponents of the wind farm.

- p) The Clean Energy Regulator takes a number of steps when assessing possible breaches. These include, but are not limited to:
- liaising with state regulators;
 - preparing assessment reports;
 - requesting further information about a suspected or potential or alleged breach by an accredited power station where there is sufficient evidence to support the alleged breach; and
 - requesting information about what actions were taken by an accredited power station to rectify a breach.

Based on these steps a decision is made on whether further action is required to be taken by the Clean Energy Regulator. Due to the large number of accredited power stations currently participating in the LRET scheme, any reported breaches are dealt with on a case by case basis.

- q) All eligible power stations are accredited in accordance with the Act and Regulations and the accreditation process follows strict guidelines. Similarly all Large-scale Generation Certificates (LGCs) are created in accordance with the legislation and the Clean Energy Regulator follows specific guidelines when assessing the eligibility of these units. Furthermore all accredited power stations confirm their ongoing compliance via the submission of the Standing Notice each time they create the LGCs. The Standing Notice requests power stations to declare that they are operating in accordance with all relevant Commonwealth, state, territory or local government planning and approval requirements; and that the power stations do not have a breach of conditions or a conviction of an offence under any Commonwealth, state, territory, or local government law related to the operation of the power station. Also please refer to part n).
- r) All wind farms that are accredited under the Act and Regulations were found to be compliant with the commonwealth, state, territory and local government regulations at the time accreditation was granted. Therefore all power stations accredited with the Clean Energy Regulator are eligible to participate in the LRET scheme.
- s) Please refer to part b).
- t) The Renewable Energy Target has been in operation since 2001 and any eligible power stations willing to participate in the LRET scheme have been accredited in accordance with the Act and Regulations. As the suspected breaches are against the state legislation it is a state matter and state legislation. As a result this matter has not been raised by the Clean Energy Regulator to the responsible Commonwealth Minister.
- u) The Clean Energy Regulator administers the LRET based on the Act and the Regulations. The Clean Energy Regulator cannot make decisions that are outside of its jurisdiction. Please refer to parts b) and i).