

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

Question No: 112
Hearing: Additional Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: Gullen Range Wind Farm
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Senator BACK: I will ask you to take this on notice or answer when you appear before the select committee. I am now referring to the New South Wales Planning and Assessment Commission's refusal to modify the existing approval from GRWF, which is dated in October last year. I note that that refusal was made according to section 75W of the Environmental Planning and Assessment Act in New South Wales, and that they had applied for a modification to their planning consent retrospectively, accepting that the turbines were built and are generating in breach of their planning permit. Once constructed in the wrong locations, I put to you that they could not operate in accordance with their planning permit, and, therefore, that the farm was improperly accredited by you, and that the Clean Energy Regulator is validating LGCs on behalf the federal government effectively against its own laws. I will invite you either now or, if time does not permit, on notice to respond.

CHAIR: We really are running out of time, so if you wanted to quickly make reference to the answer and if you could take the rest on notice that would be very helpful.

Ms Munro: There are a couple of points, because in the course of that long question there were a number of assertions that were made that were not correct. In particular, it is my understanding that Gullen Range Wind Farm, in seeking the amendments, has never accepted that it was in breach—these words are important in a legal term—but it did want to have the conditions rectified. For legal reasons, which I think that we have rehearsed a number of times, we do not accept that we have been improperly validating certificates or that we are acting in a way which does not fulfil, to the letter, the law which we are obliged to administer. So I just want to put that on record for the committee. I am certainly very happy to answer that question more extensively through questions on notice and, indeed, at the select committee.

Answer:

In deciding whether to accredit a power station for the purposes of participating in the Large-scale Renewable Energy Target (LRET), the Clean Energy Regulator carries out a rigorous accreditation process which includes examining the evidence that shows a power station has the necessary planning approvals, environmental permits and construction certificates issued by the relevant Commonwealth, State/Territory and local government authorities.

The Clean Energy Regulator assessed Gullen Range Wind Farm's accreditation application in October 2013. As part of the application assessment process, the Clean Energy Regulator performed extensive checks and found that all required approvals were in place. These approvals included:

- project approval and final determination that was granted on 26 June 2009 by the then NSW Department of Planning and Industry (now the Department of Planning and Environment) (the NSW Planning Department); and
- a Major Project Assessment completed by the NSW Planning Department in March 2009 .

All environmental management plans for the Gullen Range Wind Farm project, as well as a copy of the project approval, are available for download from NSW Planning and Environment website (http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=1310).

On the information available at the time, the Clean Energy Regulator determined that the power station was eligible for accreditation for the purposes of the LRET. At the time of accreditation, there were no allegations of non-compliance.

Like any large project, power stations such as wind farms receive planning approvals before construction begins. Wind farms are typically built over a period of six months to two years. The decision to accredit a power station for the purposes of the *Renewable Energy (Electricity) Act 2000* is taken when a power station first begins to generate electricity. For wind farms, this may occur when only part of the power station starts to generate electricity, depending on its commissioning schedule. Additional wind turbines may be constructed and commissioned well after the accreditation date. As a matter of practice, the relevant Commonwealth, State or Territory authority may only be able to assess compliance with planning approvals or conditions after the wind farm is fully operational.

On 28 February 2014, the Clean Energy Regulator was made aware that the NSW Planning Department had formed a view that a number of the 73 proposed wind turbines at the Gullen Range Wind Farm were constructed in locations different to those originally approved.

The Clean Energy Regulator immediately commenced an investigation into this matter. This investigation was temporarily placed on hold following advice from the NSW Planning Department and the proponent for the Gullen Range Wind Farm (GoldWind Australia Pty Ltd) that there was an agreed amendment process in place to resolve the issues in dispute. The status of the case was reviewed at each stage of the process outlined below.

On 2 October 2014, the NSW Planning Assessment Commission (the PAC) made a decision refusing the application by GoldWind Australia Pty Ltd to modify the initial approval of the Gullen Range Wind Farm on the grounds that the application was inconsistent with the intent and spirit of the *Draft NSW Planning Guidelines: Wind Farms*. The refusal of the modification application is not in itself a determination that any laws have been breached.

On 10 October 2014, the NSW Planning Department issued draft orders to the operators of the Gullen Range Wind Farm in relation to nine wind turbines. The operators had 21 days to justify why a full order should not be made and in the meanwhile filed an application for judicial review with the NSW Land and Environment Court.

On 6 March 2015, the NSW Land and Environment Court ordered that the decision of the PAC should be set aside. The Chair of the PAC has now written to the Secretary of the NSW Planning Department requesting an update of the assessment report of the modification application, given the time lapse and the additional information available to the Department since the PAC's decision on 2 October 2014. Following receipt of the updated assessment report, the PAC will consider the modification application afresh, seeking submissions from the public in due course.

In summary, the Clean Energy Regulator has not had reasonable grounds at any time to date to find the Gullen Range Wind Farm is being operated in contravention of Commonwealth, State or Territory laws, such as would permit the Regulator to suspend the accreditation of the power station for the purposes of the LRET. There has never been a finding by the NSW Planning Department, or any court or tribunal that there has been a breach of a relevant law (particularly NSW planning law); nor has the Regulator found or been provided with credible evidence that the power station is being operated in contravention of a relevant law. For these reasons, the Clean Energy Regulator is acting entirely in accordance with the *Renewable Energy (Electricity) Act 2000* by continuing to validate and register Large-scale Generation Certificates created by the Gullen Range Wind Farm.