

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

**Question No:** 313  
**Hearing:** Supplementary Budget Estimates  
**Outcome:** Agency  
**Program:** Clean Energy Regulator (CER)  
**Topic:** Lake Bonney Wind Farm Application  
**Hansard Page:** N/A  
**Question Date:** 28 October 2016  
**Question Type:** Written

**Senator Back, Chris asked:**

Referring to the letter addressed to the Chair of the Committee of 4 May 2016 from the Chair of the Clean Energy Regulator which revised the answer to QON 217 regarding the legal person/s who signed the application for the accreditation of the Lake Bonney Wind Farm stages 1, 2 and 3, I note that the signature of the applicant is illegible on the new application for registration of Lake Bonney stage 1 dated 7 July 2004. I also note that the Lake Bonney Wind Farm (stage 1) has since then been issued with approximately 2,219,233 Large-scale Generation Certificates. These certificates have a market price today of some \$89 each (approximately \$200m in total).

1. My office has received copies of documentation that would lead me to believe that the signatory on the application is either Mr Tim Flato, Mr Warren Murphy or Mr Miles George who are listed as directors of Lake Bonney Wind Power Pty Ltd at the time. These three gentlemen were responsible for, inter alia, producing and signing the confidential landowner contracts for the Lake Bonney Wind Farm. Mr Murphy and Mr George were acting as executive officers of Babcock and Brown and Mr Tim Flato as a director of National Power Projects LLC, both major shareholders of Lake Bonney Wind Power Pty Ltd. Since the time of writing the aforementioned letter, has the CER been able to ascertain who signed the new application for registration lodged by Babcock and Brown in 2004 with the ORER?
2. With reference to the aforementioned letter and the answer given to QON 223, the date given for the accreditation of Lake Bonney Wind Farm stage 1 is 24/07/2004. Will the CER please confirm that the ORER did not accredit the Lake Bonney Wind Farm stage 1 until the 24/07/2004?
3. The original application for accreditation from Babcock and Brown was dated 12 June 2002. If possible, will the CER please consult the ORER documentation to see if the delay in accrediting the Lake Bonney Wind Farm stage 1 was due in part to an order of the Environment Resources and Development Court on 24 January 2003?

Mr Flato recently created the company OneWind Australia and is currently a majority shareholder, owner and/or director of OneWind Australia. As a director of NP Power Pty Ltd, Mr Flato has recently transferred a number of development proposals for wind farms from NP Power Pty Ltd to OneWind Australia Pty Ltd. Within the letter referred to above, it was stated that the fit and proper person provisions in the Renewable Energy (Electricity) Regulations 2001 (Regulation 3L) came into effect on 12 December 2012. I would like the CER to note that after this regulation came into effect Mr Tim Flato has been corresponding with the Department of Environment in reference to his proposed wind farms and the EPBC Act. It is my belief that Mr Flato is a convicted criminal who was sentenced to six months home detention in 1996 in the USA for stealing money from his clients while acting as their lawyer and would not therefore meet the requirements of the fit and proper person provisions

(Regulation 3L). Mr Flato, acting as an executive officer of National Power LLC, National Power Australia, NPP Projects I LLC, NPP Projects II LLC, NPP Projects VII LLC, NPP Projects VIII LLC, NPP LB2 LLC, NPP Group, NP Wind Investments Pty Ltd and related subsidiaries and controlled bodies corporate, as a former director and shareholder of Lake Bonney Wind Power Pty Ltd and Flyers Creek Wind Farm Pty Ltd and as owner/executive officer/director/majority shareholder of OneWind Australia has continued to progress wind farm development applications in a number of states and territories.

4. Has the CER been corresponding with Mr Flato or executives officers and/or representatives of any of Mr Flato's companies and subsidiaries regarding any application(s) for accreditation of a power station with the CER?

5. Will you please confirm whether the CER has yet received or entered into any preliminary correspondence regarding accreditation of projects proposed by any of the aforementioned companies?

**Answer:**

The role of the Clean Energy Regulator (CER) is to administer relevant statutory schemes including the Renewable Energy Target under the *Renewable Energy (Electricity) Act 2000* (the Act). This includes assessing, at appropriate stages, the fit and proper person status of relevant entities and individuals. The CER undertakes these assessments at application stage, and may, if relevant information comes to the attention of the CER, at a later stage.

In relation to the individuals and companies noted above, their interactions with the then Office of the Renewable Energy Regulator (ORER) pre-dated the introduction of the fit and proper person legislation in 2012. The CER has not received any information since that time that would lead it to make an adverse fit and proper person assessment against any of the named individuals or companies.

The CER will undertake relevant inquiries as to a person or entity's fit and proper status if credible information is provided to the CER. The CER will pay particular attention to information relating to participation in the schemes administered by the CER. However, if information was received by the CER confirming that a person or entity has engaged in unlawful activity outside of the statutory schemes administered by the CER, the CER would have the power to make inquiries and to take that information into account in a fit and proper assessment.

1. Yes. The CER has made further inquiries and compared the signature to other documents. The document was an application to register a new company (Lake Bonney Wind Power Pty Ltd). The signature appears to be that of Mr Adrian Rizza.
2. The date of accreditation is 24 July 2004.
3. The gap between the date of application and date of accreditation is due to the application being lodged well before the power station had been commissioned.

There is nothing in the relevant file to suggest that any court proceedings caused a delay in the accreditation decision. The delay in making the accreditation related to the commissioning date; power stations are typically accredited shortly before the time of first generation.

4. No. The CER has not had any communication with Mr Flato in relation the accreditation of a power station since interactions between ORER and Mr Flato in 2004. That application for accreditation was withdrawn. Mr Flato is not, as far as the CER is aware, participating in any statutory scheme administered by the CER. Therefore, there is no statutory basis on which the CER could perform a fit and proper person assessment on Mr Flato.

The CER has made inquiries in relation to applications for accreditation of power stations and/or correspondence with the named entities. Other than Babcock and Brown Windpower Pty Ltd and Lake Bonney Wind Power Pty Ltd, the CER has no record of receiving applications for the accreditation of power stations owned or operated by any of the entities named in the question nor has there been any communications regarding potential applications for accreditation.

5. Refer to response to part 4.