

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

Question No: 80
Hearing: Additional Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: Waubra Wind Farm
Hansard Page: N/A
Question Date: 04 March 2014
Question Type: Written

Senator Back asked:

I refer to answers to QoNs Additional Estimates 11 February 2013 – 98, 99, 100, 103 and 104. And answers to QoNs Supplementary Budget Estimates 27 November 2013 - 122 I refer to part g) of this question:

1. How do you reconcile your Additional Estimates, 11 February 2013 answers and your Supplementary Estimates, 27 November 2013 answers with part g) above?
2. When did the CER first become aware of the non-compliance issue with the Waubra Wind Farm?

Answer:

1. The Clean Energy Regulator is an economic regulator. With respect to the Renewable Energy Target, the Clean Energy Regulator regulates both the supply of certificates (by ensuring the integrity of their creation by accredited power stations) and the demand and surrender of those certificates (by ensuring liable electricity retailers surrender the correct number of certificates).

Prior to the accreditation of an eligible power station, the Clean Energy Regulator must ensure that the power station has met the requirements set out in the *Renewable Energy (Electricity) Act 2000* (the REE Act) and the Renewable Energy (Electricity) Regulations 2001 (the Regulations). Particularly, the Clean Energy Regulator must determine which components of the electricity generation system in question are to be taken to be a power station for the purposes of the REE Act and whether the power station is eligible for accreditation (see section 14 of the REE Act).

As part of the accreditation process, the Clean Energy Regulator obtains information from the relevant state/territory authority to ensure that all necessary state/territory approvals for the power station have been issued and are being met. However, according to the division of powers in the Australian Constitution, it is a matter for the relevant state/territory to oversee and enforce its own laws, such as planning permits and noise limits. The Clean Energy Regulator is only empowered to administer relevant Commonwealth laws (that is, to ensure that a wind farm operator complies with its responsibilities under the REE Act). It cannot interfere in state-based activities. If a wind farm is not complying with state/territory laws, it is a matter for the relevant state/territory authority to address.

The Clean Energy Regulator relies on each wind farm operator to undertake a self-assessment and declare in writing to the Clean Energy Regulator that it is compliant with its obligations under state/territory laws. Wind farm operators are also required to provide documents showing approvals provided by state/territory regulators. Giving false

or misleading information or documents to the Commonwealth are serious offences under the Criminal Code (which is the Schedule to the *Criminal Code Act 1995* (Cth)). There are also other sanctions available to the Clean Energy Regulator under the clean energy legislation.

The Clean Energy Regulator's assessment of Waubra wind farm's application for accreditation was carried out in January 2009. During the accreditation process, the Clean Energy Regulator sought advice from the Victorian Department of Planning and Community Development (the DPCD) about whether the necessary approvals had been issued to the wind farm and were being met. There were no allegations that the Waubra wind farm was not complying with state legislation/requirements at the time of accreditation. The accreditation was issued on 10 March 2009.

Following its accreditation, an eligible power station remains accredited unless the Clean Energy Regulator suspends the accreditation under Division 11 of Part 2 of the REE Act (being sections 30D and 30E and the circumstances prescribed for the purposes of subsection 30E(5) in Regulation 20D of the Regulations). One ground for suspension is "if the Regulator believes on reasonable grounds that the power station is being operated in contravention of a law of the Commonwealth, a State or a Territory" (subsection 30E(3)). To date, the Clean Energy Regulator has not had reasonable grounds to believe the Waubra wind farm is being operated in contravention of Commonwealth, state or territory laws.

As mentioned above, the Clean Energy Regulator is not responsible for the ongoing monitoring or enforcement of compliance with state or territory laws, including planning requirements. The DPCD is the relevant authority for investigating allegations of non-compliance with Victoria's planning permits and laws. Neither the DPCD, nor the Victorian Minister for Planning, has determined that the Waubra wind farm is being operated in contravention of the relevant planning permits. In this regard, the Clean Energy Regulator refers specifically to a letter from the Secretary of the DPCD to Senator John Madigan which states in part:

"The Minister for Planning has not determined whether the wind farm is or is not compliant with the relevant planning permit. The Minister or the department [the DPCD] have never stated that the Waubra wind farm is not compliant with the current planning permit.

It cannot be assumed or inferred from the departmental advice that Waubra wind farm is not compliant with the relevant planning permit and I seek your cooperation in correcting the public record."

To date, there has been no finding or judgment from any court or tribunal to the effect that the Waubra wind farm is being operated in contravention of a law of the Commonwealth, or a state or territory.

In coming to the conclusion that there are as yet no reasonable grounds to believe the Waubra wind farm is being operated in contravention of Commonwealth, state or territory laws, the Clean Energy Regulator has considered:

- a. Ongoing advice from the DCPD and the Victorian Planning Minister that the Waubra wind farm is not being operated in contravention of Victorian laws.

- b. The absence of any finding or judgment of non-compliance by the wind farm by any court or tribunal.
- c. Signed statements from the operator of the Waubra wind farm (such as Standing Notices that have been provided to the Clean Energy Regulator when creating Large-scale Generation Certificates and submitting power generation data for approval) that the wind farm is operated in compliance with all relevant Commonwealth, state, territory or local government planning and approval requirements. The person signing the notice is made aware on the face of the form that giving false or misleading information is a serious offence punishable by up to 12 months imprisonment.
- d. Allegations of non-compliance with state laws from Senator John Madigan and other persons concerned about the operation of the Waubra wind farm.

The Clean Energy Regulator will reconsider whether reasonable grounds exist to suspend Waubra wind farm's accreditation under section 30E of the REE Act, on receipt of advice from DPCD and the Victorian Planning Minister. A court or tribunal would not necessarily be required to make a finding that the wind farm is being operated in contravention of a relevant law before the Clean Energy Regulator would consider if there were reasonable grounds to believe that the power station is being operated in contravention of a law of the Commonwealth, a state or territory.

A subsequent finding by a court or a tribunal that the power station is not being operated in contravention of the law would provide a reasonable ground for the Clean Energy Regulator to lift the suspension under subsection 30E(4) of the REE Act. The Clean Energy Regulator would, however, seek advice from the relevant state/territory department or authority and would accord significant weight to that advice in determining whether or not there are grounds to suspend the accreditation.

Should the Clean Energy Regulator conclude that there are reasonable grounds to suggest that a power station is being operated in contravention of a state law; the REE Act still provides the Clean Energy Regulator discretion on whether or not to suspend accreditation. Suspension is a serious decision with financial consequences and the Clean Energy Regulator would consider the seriousness of the contravention in deciding whether or not to suspend.

- 2. The Clean Energy Regulator first became aware of the specific allegations of non-compliance related to this question for the Waubra wind farm following questions posed by the Senate Environment and Communications Legislation Committee during Additional Estimates on 11 February 2013.