

AUC Rule 033: Standardized post-approval monitoring requirements for wind and solar power plants

Alberta Utilities Commission responses to stakeholder comments

Stakeholders: *ATCO Electric (ATCO), Canadian Wind Energy Association (CanWEA), Capital Power Corporation (Capital Power), ENMAX Power Corporation (ENMAX), and TransCanada Energy (TCE)*

Stakeholder	Section	Stakeholder comments	AUC responses
ATCO Electric (ATCO)	General comment	<p>Comment 1.1</p> <p>It is ATCO's opinion that implementing a set of standardized wildlife-related requirements for all wind and solar projects is redundant to the referenced <i>Wildlife Directive for Alberta Wind Energy Projects</i> and the <i>Wildlife Directive for Alberta Solar Energy Projects</i> that has been issued by Alberta Environment and Parks. AEP, as a resource manager, is better suited to consider potential project impacts on wildlife and maintain discretion on what degree of monitoring and mitigation is required based on the project location and scope. Furthermore, it is assumed that irrespective of what requirements are standardized by the Commission through the approval process, the Commission will ultimately defer to the recommendations put forth by AEP. Given that the Wildlife Directives are new, and AEP is still working through implementation, it is reasonable to expect that alterations or updates to the Directives may be coming, creating a situation where the requirements through AEP and the Commission may no longer align.</p>	<p>Response 1.1</p> <p>The Alberta Utilities Commission acknowledges stakeholder concerns about standardized wildlife-related requirements for all wind and solar projects being seen as redundant to Alberta Environment and Parks' (AEP) <i>Wildlife Directive for Alberta Wind Energy Projects</i> and the <i>Wildlife Directive for Alberta Solar Energy Projects</i>. The Commission's approval process includes considering the potential impacts on wildlife and wildlife habitat. The conditions contained in AUC decisions, including any related to post-approval monitoring, are established by the AUC during its consideration of the application, which includes reviewing any advice provided by AEP. While the goal of this rule is to implement effective, consistent operational mitigation measures in accordance with AEP directives, the Commission also retains the discretion to supplement, omit or modify these requirements on a case-by-case basis to ensure the project is in the public interest. Action taken as a result of approval condition contraventions is the sole responsibility of the AUC and this rule will be referenced if compliance issues arise.</p>
	Standardized post-approval requirement Point 3	<p>Comment 1.2</p> <p>The Commission is proposing that "the approval holder shall carry out site-specific post-construction monitoring surveys for a minimum of three years after the project is operational, or for such further period recommended by AEP..." which aligns with</p>	<p>Response 1.2</p> <p>The AUC will revise Point 3 as follows: "After a project is operational, an approval holder shall carry out site-specific post-construction monitoring surveys in the manner and for the period recommended by AEP in the project's referral report. The approval holder shall submit to the</p>

		<p>the current wording of AEP's Wildlife Directives. However, should the minimum monitoring requirements alter within AEP's Wildlife Directives this will require the Commission to also make a concurrent revision or the proponent will have two different monitoring and reporting periods. Additionally, this requirement is already captured by the first bullet that reads "the approval holder shall abide by all of AEP's requirements, recommendations and directions pertaining to post-construction mitigation and monitoring, outlined in its project-specific referral report." The bullet then goes on to state that "a report summarizing the results of these surveys is to be submitted annually to AEP and to the Commission along with any correspondence from AEP summarizing its views on the report." It is ATCO's opinion that submitting this report to the Commission does not provide any additional value as ultimately AEP will determine if they are satisfied with the findings or if additional monitoring is required. ATCO recommends that it would be more effective for the Commission to require the proponent to notify the Commission if additional monitoring or other works are recommended by AEP based on the findings of post-construction monitoring.</p>	<p>Commission and AEP an annual report summarizing the results of these surveys and all related correspondence from AEP."</p> <p>While AEP would review these reports, advise the AUC of its conclusions and indicate if corrective actions are required, it is the responsibility of the AUC to take enforcement actions as a result of approval condition contraventions. The report summarizing the results of these surveys may be beneficial in determining project compliance.</p>
	<p>General comment</p>	<p>Comment 1.3</p> <p>The remainder of the proposed standardized post-approval requirements are reasonable but are already asked for in the Wildlife Directive and therefore are a duplication of AEP's Wildlife Directive. Duplication rather than the requirement to abide by the Wildlife Directive has the potential to cause unnecessary costs that would be passed on to the ratepayers. Should AEP update the Directive or interpret pieces a certain way, the Commission's requirements will no longer align, and proponents will be left with two similar but different requirements to try to interpret and follow. ATCO recommends that, rather than re-iterating the requirements of the Wildlife Directives, a more effective mechanism to ensure compliance and environmental stewardship is to continue to direct</p>	<p>Response 1.3</p> <p>Updates to AEP's wildlife directives will be reviewed by the Commission and if the Commission considers that changes to the rule are necessary, it may amend the rule to reflect updates to AEP's wildlife directives.</p>

		proponents to engage AEP and abide by all of AEP's requirements, recommendations and directions pertaining to post-construction monitoring.	
Canadian Wind Energy Association (CanWEA)	Standardized post-approval requirement Point 5	<p>Comment 2.1</p> <p>We note that the inclusion of such infrastructure as access roads, meteorological towers and substations cited in standardized condition point 5 is inconsistent with the Directive, which refers only to mortality related to wind turbines and associated infrastructure, such as power lines. We recommend that any AUC conditions refer directly to relevant sections in the Directive as opposed to quoting from the Directive, specifying new requirements or adding further interpretation. This will ensure consistency and result in predictable expectations for developers.</p> <p>CanWEA recommends revising Point 5 as follows: "Following completion of the post-construction wildlife monitoring program, the approval holder shall communicate to AEP the corrected mortality rates for birds and bats (using an AEP approved "fatality estimator"), the discovery of any carcasses of species at risk as per the Wildlife Directive for Wind Energy Projects and, if required, implement any new mitigation measures that AEP may recommend to prevent or reduce further mortalities."</p>	<p>Response 2.1</p> <p>The Commission believes that CanWEA is misinterpreting the AUC's condition and the directive. AEP typically states in its referral reports that all species-at-risk mortalities associated with the wind energy project must be reported to AEP, including those mortalities that may occur from project infrastructure (e.g., access roads, meteorological towers and substations) that are not factored into the calculation of a corrected mortality rate for the project. Additionally, Standard 100.4.7 of the September 17, 2018 version of the <i>Wildlife Directive for Alberta Wind Energy Projects</i> states that:</p> <p>"At any time of operation, proponents shall notify the local AEP Wildlife Biologist of species at risk mortality..."</p> <p>Nevertheless, the Commission will revise point 5 as follows: "In conducting its post-construction wildlife monitoring program, an approval holder shall use an AEP-approved fatality estimator to calculate the corrected mortality rates for birds and bats. The approval holder must notify AEP of any carcasses of species of management concern upon discovery and must abide by any AEP requirements to implement new mitigation measures to prevent or reduce further mortalities."</p>
	General comment	<p>Comment 2.2</p> <p>Overall, there is support for the statement that the AUC would require approval holders to "abide by any requirements and commitments made in the final version of its post-construction wildlife monitoring and mitigation plan." However, CanWEA emphasizes that each project may have unique ways to mitigate in a way that is most efficient, which may be influenced by facility location and wind profile, the species of concern,</p>	<p>Response 2.2</p> <p>The Commission acknowledges that each project may have unique requirements for post-approval monitoring and may propose unique mitigation measures. The Commission confirms that Rule 033 has been drafted to preserve the Commission's discretion to supplement, omit, or modify any post-approval monitoring requirements on a case-by-case basis and any determinations by the Commission would be communicated in a decision report.</p>

		turbine type, turbine siting location, and wind profile. It is recommended that any AUC rule resulting from this consultation reflect this flexibility.	
Capital Power Corporation (Capital Power)	Standardized post-approval requirement Point 5	<p>Comment 3.1</p> <p>Capital Power recommends revising proposed standardized condition Point 5 as follows: "Following completion of the post-construction wildlife monitoring program, the approval holder shall communicate to AEP the corrected mortality rates for birds and bats (using an AEP approved "fatality estimator"), the discovery of any carcasses of species at risk (as per defined in the Wildlife Directive for Wind Energy Projects) near turbines or associated project infrastructure (including access roads, overhead collector lines, meteorological towers, and substations) during operation or maintenance and, if required, implement any new mitigation measures that AEP may recommend to prevent or reduce further mortalities."</p> <p>The proposed revision is to ensure consistency with AEP's Wildlife Directive and allow for greater rule longevity by limiting the need for updates to the rule any time amendments or modifications are made to the Directive. Broadly, it is Capital Power's preference that any AUC conditions directly reference the Directive as opposed to specifying requirements or adding further interpretation. This ensures consistency with AEP-assigned monitoring requirements and creates more predictable expectations for developers.</p>	<p>Response 3.1</p> <p>The Commission retains discretion to adopt modifications to the wildlife directives with consideration of the public interest. The Commission will revise point 5 as follows:</p> <p>"In conducting its post-construction wildlife monitoring program, an approval holder shall use an AEP-approved fatality estimator to calculate the corrected mortality rates for birds and bats. The approval holder must notify AEP of any carcasses of species of management concern upon discovery and must abide by any AEP requirements to implement new mitigation measures to prevent or reduce further mortalities."</p>
		Comment 4.1	Response 4.1

<p>ENMAX Power Corporation (ENMAX)</p>		<p>ENMAX agrees that an approval holder should be required to abide by AEP’s requirements as outlined in its:</p> <ul style="list-style-type: none"> • Project-specific referral report, • Final post-construction wildlife monitoring and mitigation plan, • Environmental protection plan, and • Renewable Energy Project Submission template. <p>However, given the extensive set of requirements and commitments contained in these reports, plans and templates, ENMAX does not support also including these requirements in an AUC Rule. Specifically, ENMAX recommends that the AUC refrain from including provisions that are similar or duplicative in nature from those already contained in the AEP’s Wildlife directive for Alberta Wind Energy Projects and Wildlife Directive for Alberta Solar Energy Projects (the Directives) but rather simply refer to the relevant Directive as necessary. This approach will add certainty to the regulatory process by eliminating the need for the AUC to make changes to its Rules each time AEP makes a change to its Directives, and it will avoid the potential for a conflict between provisions that are intended to mean the same thing but are worded differently.</p>	<p>The Commission’s approval process includes considering the potential impacts on wildlife and wildlife habitat. The conditions contained in the AUC approvals, including any related to post-approval monitoring, are established by the AUC during its consideration of the application, which includes reviewing any advice provided by AEP. While the goal of this rule is to implement effective, consistent operational mitigation measures in accordance with AEP directives, the Commission also retains the discretion to supplement, omit or modify these requirements on a case-by-case basis to ensure the project is in the public interest. Action taken as a result of approval condition contraventions is the sole responsibility of the AUC.</p>
	<p>General comment</p>	<p>Comment 4.2</p> <p>ENMAX plans to participate in any stakeholder consultations related to the development of a new proposed rule or amendment to an existing rule. As per normal Commission process, ENMAX understands that stakeholders will be given an opportunity to provide written feedback on the draft rule prior to it being finalized.</p>	<p>Response 4.2</p> <p>The Commission concurs that material rule modifications warrant the provision for feedback. In this circumstance, the Commission will not be conducting another stakeholder consultation prior to finalizing the rule.</p>
	<p>Standardized post-approval requirement Point 1</p>	<p>Comment 5.1</p>	<p>Response 5.1</p>

<p>TransCanada Energy (TCE)</p>		<p>Point 1: TCE respectfully requests clarification on the Commission's definitions of "requirements", "recommendations" and "directions" in this context, to better understand the differences between them. Each of the three words suggest different weighting, with "requirements" suggesting the highest weighting (e.g., legislative requirements), "directions" suggesting moderate weighting (e.g., guidance in the absence of alternative agreed-to measures) and "recommendations" suggesting the lightest weighting (e.g., best practices). TCE encourages the Commission to ensure their definition of these terms aligns with AEP's definitions, to ensure it's clear to the Commission and the proponent which items in AEP's project-specific referral report are strict requirements under law, and which may be recommendations open to further discussion based on site-specific conditions at the time of post-construction monitoring.</p> <p>TCE recommends the inclusion of a clause that allows for changes to post-construction requirements, in the event alternate measures are identified in consultation with AEP following issuance of the original project-specific referral report. This would prevent the need for amendments to AUC approvals should AEP and a proponent identify alternative measures following project approval.</p>	<p>The intention was for the definition of the terms "requirements", "recommendations" and "directions" to be consistent with those used by AEP in the project-specific AEP Wildlife Renewable Energy Referral Report but the Commission acknowledges that these exact terms are not necessarily used by AEP in its referral report or other correspondence. The Commission will revise point 1 as follows:</p> <p>"An approval holder must abide by the project specific recommendations pertaining to post-construction mitigation and monitoring, as outlined in the project's referral report."</p>
	<p>Standardized post-approval requirement Point 2</p>	<p>Comment 5.2</p> <p>Point 2: TCE acknowledges the benefit of including a clear requirement to adhere to commitments made to AEP through the submission and review of project-specific plans. TCE notes that "environmental protection plan" is not a term used in AEP's <i>Wildlife Directive for Alberta Wind Energy Projects</i>, AEP's <i>Wildlife Directive for Alberta Solar Energy Projects</i> or AUC Rule 007. In addition, the post-construction wildlife monitoring and mitigation is a sub-section of AEP's Renewable Energy Project Submission Template. As such, we recommend adjusting this proposed requirement to read "the approval holder shall</p>	<p>Response 5.2</p> <p>The Commission's approval process includes considering the potential impacts on wildlife and wildlife habitat. The conditions contained in the AUC's approvals are established by the AUC during its consideration of the application, which includes but does not restrict itself to adopting advice provided by AEP. While the goal of this rule is to implement effective, consistent operational mitigation measures in accordance with AEP directives, the Commission also retains the discretion to supplement, omit or modify these requirements on a case-by-case basis to ensure the project is in the public interest. Action taken as a result of approval condition contraventions is the sole responsibility of the AUC.</p>

		<i>implement its post-construction wildlife monitoring and mitigation plan, as per the project's final Renewable Energy Project Submission Template as reviewed and accepted by AEP."</i>	For clarity the term "environmental protection plan" refers to a plan which itemizes and describes the mitigation measures and monitoring activities that will be implemented during construction and operation to minimize any adverse effects of the project on the environment.
	Standardized post-approval requirement Point 4	Comment 5.3 Point 4: Given this is an item addressed in AEP's Renewable Energy Project Submission Template, it is TCE's opinion that this requirement is sufficiently addressed in items #1 and #2 above. As such, TCE recommends removing this item as a stand-alone requirement.	Response 5.3 Having standardized post-approval requirements for wind and solar power plants contained in a rule helps to support the enforcement of approval conditions. This includes the requirement to employ an experienced wildlife biologist as defined in the wildlife directives for Alberta wind and solar projects.
	Standardized post-approval requirement Point 5	Comment 5.4 Point 5: This item is included in AEP's Renewable Energy Project Submission Template, including AEP's reporting requirements and mitigation requirements in the event mortality rates are determined to be higher than acceptable (as determined by AEP). It is TCE's opinion that conformance with this AEP requirement is sufficiently covered by items #1 and #2 above. As such, TCE recommends removing this item as a stand-alone requirement.	Response 5.4 The Commission will revise point 5 as follows: "In conducting its post-construction wildlife monitoring program, an approval holder shall use an AEP-approved fatality estimator to calculate the corrected mortality rates for birds and bats. The approval holder must notify AEP of any carcasses of species of management concern upon discovery and must abide by any AEP requirements to implement new mitigation measures to prevent or reduce further mortalities."