

January 26, 2018

Decision 23241-D01-2018

Oldman 2 Wind Farm Ltd.
3500, 855 Second Street S.W.
Calgary, Alta. T2P 4J8

Attention: Willem Malda
Operations Manager, Renewable Energy

John Harris
Portfolio Manager, Renewable Energy Investments

**Oldman 2 Wind Power Project Environmental Compliance
Proceeding 23241
Application 23241-A001**

Letter of enquiry approval

1. Oldman 2 Wind Farm Limited (Oldman 2) filed a letter of enquiry on December 28, 2017, with the Alberta Utilities Commission seeking approval of certain amendments to address issues of environmental compliance for the Oldman 2 wind power plant.¹ The amendments to the power plant approval relate to facilities previously constructed and operating in accordance with Approval U2013-260.² Approval is required for these amendments under Section 11 of the *Hydro and Electric Energy Regulation*.

Background

2. The Oldman 2 project is a 46-megawatt (MW) wind power plant consisting of 20 2.3-MW wind turbines, located approximately 10 kilometres northeast of Pincher Creek. The project was approved on September 24, 2010, and construction of the project was completed in October 2014. The Ikea Group purchased the Oldman 2 project from its initial owners, Mainstream Renewables and Alberta Wind Energy Corporation, after the project had been constructed.

3. When Oldman 2 made its application it was aware that a ferruginous hawk nest (endangered species), and a prairie falcon nest (species of special concern) were located within the project area. The standard setback for construction near a ferruginous hawk or prairie falcon nest is 1,000 metres. However, Oldman 2 requested a reduced setback of 750 metres, and agreed to apply specific mitigation measures during construction and operation to minimize any potential for disturbance to the birds and their nests during the nesting period. Oldman 2 also

¹ The letter of enquiry was filed by Apex Clean Energy on behalf of Oldman 2.

² Power Plant Approval U2013-260, Application 1609509, Proceeding 2572, May 15, 2013.

committed to implementing various monitoring and mitigation measures to ensure ongoing environmental protection.

4. On November 15, 2016, the Commission received two letters from Alberta Environment and Parks in which it raised concerns related to the Oldman 2 wind farm. The Commission's enforcement staff commenced an investigation and concluded that Oldman 2 had (1) failed to meet its environmental commitments of hiring an environmental monitor during construction, (2) failed to prevent disturbances to the ferruginous hawk and prairie falcon nest locations, and (3) failed to implement its post-construction mitigation plan during the three-month fall migration period in 2016. Oldman 2 self-reported this third issue to Alberta Environment and Parks and explained that the failure was due to technical difficulties with operation software. Oldman 2 confirmed that it took immediate steps to correct the issue.

5. Oldman 2 and the Ikea Group co-operated fully with the AUC's investigation by providing information and exploring solutions to address its non-compliance. To address the identified non-compliance, Oldman 2, on behalf of its new owner, proposed to add the following conditions to its approval:

1. Implementation of the Construction Mitigation Plan, including establishment of nest platforms (ferruginous hawks) and nest site and habitat conservation (prairie falcon and grassland birds).
2. Oldman 2 will donate \$280,275 for habitat conservation in southern Alberta. A portion of this amount will be used as described for ferruginous hawk nesting habitat, and the remainder will be donated to a habitat protection organisation in southern Alberta (e.g., SALTS [Southern Alberta Land Trust Society]) to provide direct benefit to the species affected during construction of the Oldman 2 Project.
3. Maintenance of a project-wide Corporate Compliance Plan to maintain adherence to regulatory commitments and conditions, including the Operational Bat Mitigation Implementation Plan, and to report on the progress of each of the actions described in this Letter of Enquiry and appendix (Construction Mitigation Plan).³

Commission findings

6. The Commission finds that the conditions proposed by Oldman 2 effectively address the identified non-compliance and that their implementation is in the public interest. Oldman 2 has provided information respecting the need, nature, extent, land affected and the timing of the terms and conditions it is proposing, in accordance with the requirements of Section 12 of the *Hydro and Electric Energy Regulation*.

7. Given Oldman 2's identified non-compliance, it was open to the Commission to pursue an enforcement remedy, including a significant administrative penalty under Section 63 of the *Alberta Utilities Commission Act*.

³ Exhibit 23241-X0002, PDF page 7.

8. In Decision 3110-D03-2015,⁴ the Commission explained that the purpose of its sanctioning authority is to achieve general and specific deterrence, encourage compliance and protect the public. In the Commission's view, the measures proposed by Oldman 2 to address the non-compliance, as an alternative to a formal sanction, achieve these purposes. The Commission observes that the costs of the mitigation measures proposed by Oldman 2 are consistent with the amount that would be required to be paid as an administrative monetary penalty for such conduct. Further, the mitigation measures proposed by Oldman 2 are protective of both the public and of the environment, in that they are establishing protected conservation habitat for those species affected by its non-compliance.

9. The Commission recognizes that the Ikea Group was not involved during construction of the wind farm and that it inherited the construction related non-compliance issues when it purchased the Oldman 2 project. The Commission commends the Ikea Group for its co-operation and proactive mitigation of the concerns raised by the Commission and Alberta Environment and Parks.

10. Based upon the information provided, the Commission is satisfied that the amendments proposed by Oldman 2 are consistent with the requirements of Section 11 of the *Hydro and Electric Energy Regulation* and that approval of the letter of enquiry is in the public interest.

11. The Commission approves the application, and directs the following conditions:

- a. Oldman 2 is to implement its Construction Mitigation Plan, including establishment of nest platforms (ferruginous hawks) and nest site and habitat conservation (prairie falcon and grassland birds).
 - i. Oldman 2 is to make material efforts to erect the nest platforms by **March 1, 2018** (prior to the 2018 nesting season) as per the Construction Mitigation Plan, however all nest platforms must be in place by **March 1, 2019**.
- b. Oldman 2 is to donate \$280,275 for habitat conservation in southern Alberta. A portion of this amount will be used, as described, for ferruginous hawk nesting habitat, and the remainder will be donated to a habitat protection organization in southern Alberta (e.g., SALTS) to provide direct benefit to the species affected during construction of the Oldman 2 project.
 - i. The total donation amount is to be paid, and all conservation easements registered, by no later than **March 1, 2020**.
- c. Oldman 2 is to implement a project-wide Corporate Compliance Plan to maintain adherence to regulatory commitments and conditions, including the Operational Bat Mitigation Implementation Plan, and to report on the progress of each of the actions described in this letter of enquiry and its appendix (Construction Mitigation Plan).

⁴ Decision 3110-D03-2015: Market Surveillance Administrator – Market Surveillance Administrator allegations against TransAlta Corporation et al. Phase 2 – request for consent order, Proceeding 3110, Application 1610350-1, October 29, 2015.

- i. Oldman 2 is to submit its Operational Bat Mitigation Implementation Plan to Alberta Environment and Parks by **September 1, 2018**, or as further directed by Alberta Environment and Parks.
 - ii. Oldman 2 is to submit its Corporate Compliance Plan, and an interim report on the progress of its mitigation actions (including an account of the \$280,275 donation and progress to date regarding the purchase of conservation easements) to the Commission by **September 1, 2018**.
 - iii. Oldman 2 is to submit a final report regarding its mitigation actions, the donation amount and easement purchases to the Commission by **March 1, 2020**.
12. Approval 23241-D02-2018 will be distributed separately.

Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair