



**RMA**  
RURAL MUNICIPALITIES  
of ALBERTA

# RMA Written Submission

AUC Proceeding 28501

November 22, 2023



## Who is the RMA?

The Rural Municipalities of Alberta (RMA) advocates on behalf of Alberta's rural municipalities. RMA's members consist of 63 municipal districts and counties, five specialized municipalities, and the Special Areas Board. The RMA's 69 members have several common traits: large land masses, small populations, and a lack of a traditional "population center." RMA members provide municipal governance to approximately 85% of Alberta's land mass.

## Submission Purpose

The RMA views the inquiry as an important opportunity for the AUC and Government of Alberta to "reset" their approach to the planning and approval of renewable energy projects to ensure that the industry grows in a strategic and sustainable manner. Although the scope of the inquiry covers many important themes, there are several municipal issues that cannot be addressed through responses to questions in the comment matrix. This written submission is intended to supplement RMA's completion of the comment matrix by providing the municipal perspective on the current AUC approval processes and proposing recommendations which will contribute to the betterment of municipal and regulator collaboration. Improving how municipalities are involved in the approval process will lead to better decision-making related to reclamation, land use impacts, Crown land development, and viewscapes.

This submission includes the following recommendations, which are explained in more detail later in the document:

1. That the AUC adopt requirements related to aligning projects with municipal development plans, and that the requirements be expanded to include land use bylaws and intermunicipal development plans.
2. That municipalities have automatic status as directly affected parties and automatic standing at all hearings, and that all municipal costs to participate in the engagement and hearing process be covered.
3. That the Government of Alberta and the AUC work with stakeholders to develop an approach to integrating land use impact assessments and reclamation requirements into all project approvals.
4. That the Government of Alberta and AUC work with stakeholders to develop a public interest evaluation framework to assess their decision-making and engagement processes.
5. That both the AUC and applicants play a direct role in initial project engagement processes.
6. That agencies review and redevelop current notification systems to better engage with municipalities at the onset of projects.

## RMA Positions and Member Resolutions

The RMA has expressed concern with the lack of recognition that the Alberta Utilities Commission (AUC) has for municipal land use plans and input when approving renewable energy projects in rural municipalities. As municipalities are the approval authority for nearly all other developments, the AUC's decision making has led to cases of land use conflicts and unintended impacts after projects have been approved and built.

In recent years, Alberta has led the country in renewable energy sector growth, which results in benefits and challenges for rural municipalities. While wind and solar developments provide property tax revenue and rural employment opportunities, they also cause local challenges and risks related to land use planning, infrastructure strain, environmental risks, sterilization of agricultural land, reclamation, and others. While nearly any development will include benefits and challenges, the AUC's approval process for renewable energy projects does not adequately consider municipal plans and perspectives, which results in projects being approved without the application of a municipal lens. As Alberta's renewable energy "boom" intensifies, municipalities are



faced with increasing instances of land use conflicts and developments that do not align with municipal planning priorities.

Concern with the AUC approval process is reflected in several RMA member resolutions, including:

- ◆ [Resolution 9-22F](#): Renewable Energy Project Reclamation Requirements
- ◆ [Resolution 21-22F](#): Loss of Agricultural Land to Renewable Energy Projects
- ◆ [Resolution 6-22S](#): Responsiveness of Service Delivery by Quasi-independent Agencies in Alberta
- ◆ [Resolution 7-20F](#): Amendments to Municipal Government Act Section 619
- ◆ [Resolution 20-18F](#): Decommissioning Costs for Wind Energy Developments
- ◆ [Resolution 6-18S](#): Wind Energy Regulations Required at Provincial Level
- ◆ [Resolution 11-18S](#): Recycling of Solar Panels

Based on the resolutions above, RMA has advocated for over five years on the need for the AUC to apply a rural municipal lens on processes and approvals. The RMA recently formed a member committee to analyze if and how quasi-judicial agencies (including the AUC) consider municipal input and the public interest within their project approval processes. The RMA also worked with Brownlee LLP on a technical document which reviewed the legislative requirements of the AUC and two other agencies. Both reports identified gaps in the current approval processes used by the agencies and included several recommendations for process changes to better integrate municipal plans and perspectives into quasi-judicial approval process. The reports were initiated before the AUC inquiry into electricity generation developments began, which demonstrates how municipalities have been facing issues with the AUC's approval process for many years.

## Rural Municipalities and Local Land Use Planning

Land use planning is complex and challenging, and often balances the “science” of considering the direct and measurable impacts of various developments on land use, environment, infrastructure, and other factors with the “art” of considering what is best for the landowner, their neighbours, and the community, both presently and in the future.

When municipalities undertake land use planning, they look at both the immediate site impacts of various developments, as well as their impacts on the municipality as a whole. Land use documents such as municipal development plans (MDPs) allow for municipalities to create balance between preserving land for agricultural or environmental purposes and allowing other types of industrial or residential growth. Municipalities consider the ways in which land will be used for generations and how they will continue to ensure a sustainable community when drafting long-term strategies for land use.

While private property owners have the right to use their property as they see fit, land use must align with a municipality's land use bylaw. This means that while a landowner could apply to a municipality to convert their property zoned for residential use into a commercial establishment, the municipality is ultimately empowered to decide whether this is within the public interest of the community and whether it will pose unreasonable impacts on infrastructure, the environment, the ability of neighbouring property owners to use their land as intended, and other factors. While municipalities will work with landowners to educate them on how land-use bylaws may impact their plans for use, project proponents are not responsible for providing any education on the potential impacts of the project on the land in the long term. It is key that land-owners are provided all the information needed to make informed decisions about which projects they allow on their land, and the project proponent should be required to provide education.

The current AUC approval process does not adequately require or allow for the consideration of the “local” side of the decision-making equation. While the development of an industrial solar or wind project in a residential or

agricultural area will have major land use impacts, it is completely at the discretion of the AUC to consider them, often without consulting municipal planning documents. This lack of recognition of local project risks and mitigation requirements has resulted in cases where municipalities have been forced to respond to local impacts of projects because the decision-maker did not consider project risks that were well-known to municipalities and local landowners, specifically in terms of protecting the prime agricultural land in their area. It has also led to many instances in which municipalities have been left to face anger and frustration from residents for the impacts of a project that they had no role in approving.

### *Agricultural lands as an example of municipal considerations:*

Balancing development with the preservation of agricultural land is an example of how municipalities consider local land use planning in ways which the AUC does not within its current process. For rural municipalities, balancing protection of agricultural land with development is a priority for several reasons:

1. Agriculture is a key economic sector across rural Alberta, and reducing the land available for crop generation can have spin-off local and provincial economic impacts.
2. Agricultural land plays a crucial but often under-appreciated role in supporting adaptation to climate change. As new challenges emerge in food production, all levels of government have a public interest responsibility to properly manage land that is proven to produce food at a high rate.
3. Agricultural land has usually served this purpose for many decades and is central to not only the identity of a community but is also the land use for which municipal infrastructure and services have been designed. Abruptly replacing an agricultural land use with an industrial development may impact the ability of surrounding residents and businesses to connect with their land as they intend, as well as the use of municipal infrastructure that was designed for agricultural use.

It is important to note that rural municipalities do not preserve agricultural lands at all costs. In fact, there are many examples of agricultural lands being developed for industrial or residential purposes in rural municipalities. However, this only occurs if the council determines that the economic, social and community value of development outweighs the importance of the land in its agricultural form. Municipalities have a vested interest in the protection of these lands and use many tools, including land use development plans, to ensure that there are minimal impacts to land in the area, and that only locally beneficial development takes place. As these plans are not a mandatory consideration of an AUC proponent, a disconnect develops between what municipalities are trying to balance, and the work the AUC is approving. This topic is discussed in more detail in the comment matrix, however it is key to emphasize the municipal role in land use planning decisions.

## **Municipal Role in the AUC Approval Process**

The current AUC approval processes do not adequately include municipalities. While the approval process does include municipalities within the “notify” category for some gas utility pipelines installations under the AUC’s jurisdiction, municipalities are not included in either engagement category for renewable energy projects. Rule 007 does reference municipalities as important stakeholders in electricity development approvals, but does not provide clear expectations for if and how they are engaged by project proponents:

Local authorities and various provincial departments have a role in ensuring orderly land use and development. Applicants should **consider whether it is appropriate** to involve these groups at an early stage in the planning of the electric facility or gas utility pipeline project (AUC Rule 007, Appendix A1, s. 3).

This statement shows that there is recognition of the land use planning role of municipalities, but this is not reflected in the mandatory engagement requirements placed on applicants. It is unclear on what basis applicants are expected to “consider whether it is appropriate” to involve municipalities in project planning if they are not required to even notify municipalities.

Municipalities are also not referenced within the legislated AUC hearing process requirements. Although municipalities are permitted to respond to an AUC notice of an upcoming hearing, the lack of pre-application notification requirements means that municipalities are entirely responsible for becoming aware of the pending project, determining the impacts to land use plans and other issues, and making an argument as to why they are directly and adversely affected.

Municipalities need to be included in the approval processes as they are in the best position to determine if a project will align with future community plans. There are several ways in which the AUC could better include municipalities in approval processes.

### *Lack of direct notification and engagement*

Municipalities are not directly notified when a project is initiated in their community. As a result, municipalities must monitor the AUC website for new projects in their area. Some municipal governments do not have the capacity to monitor for new projects frequently which creates barriers to participation. To provide input into new projects and analyse potential impacts, municipalities need to be notified in a timely manner.

Direct notification and engagement go hand in hand. Project proponents and the AUC should be responsible for holding meaningful engagement sessions with landowners, local authorities and the broader community. While Rule 007 requires one-on-one engagement with some parties, a broader engagement process should be developed to ensure that municipalities are properly and consistently consulted ahead of a project and meaningful conversations are had at a local level. This type of engagement should not be left in the hands of industry to determine, but should be consistent across all AUC-regulated projects.

Further, the AUC is hands-off in their involvement with the engagement process. The AUC does not facilitate any engagement between municipalities and the project proponent. As engagement is left to the discretion of the proponent, there is a risk that some stakeholders may not be identified by the proponent. The AUC should be more directly involved in the process to ensure there is consistency and meaningful engagement occurring between the proponent and stakeholders. As well, by facilitating engagement, the AUC will be better positioned to understand concerns and ensure that proponents have solutions within their proposal.

Proponents are also not required to hold broader community engagement and there are no accessible mechanisms for residents to voice concerns and hear one another’s perspectives. Including broader engagement activities within the approval process may reduce the need for costly and time-consuming hearings, as the proponent and the complainant can discuss issues prior to a hearing being triggered. The AUC should include community engagement requirements into the applications which are being sent for approval to the AUC.

### *Lack of consideration of municipal plans*

Municipalities are responsible for developing municipal development plans under the *Municipal Government Act* (MGA). MDPs are often linked to land use bylaws, which provide specific guidance as to where various types of land uses, and development can occur. MDPs and land use bylaws are vital to ensuring communities can balance growth and sustainability. As mentioned above, private landowners must abide by these documents and ensure any of their projects are in alignment with them to receive necessary permitting.

Currently, the AUC has no requirements for the proponent to review and consult municipalities on their MDPs or land use bylaws. The proponent may not be aware of how their project conflicts with these documents and therefore are unable to mitigate risks. Other agencies, including the Natural Resource Conservation Board, have included this as a requirement; all projects must align with municipal planning documents or a hearing is triggered.

Given the important role that municipalities play in land use planning, and the impacts that projects approved provincially can have on local land uses, it is inexcusable that there is no requirement within the AUC approval processes for applicants to align projects with MDPs, or for the agency itself to consider MDPs when evaluating projects in the hearing stage. Applicants should be required to confirm alignment with municipal plans, ideally through confirmation from the municipality itself, and a lack of alignment should trigger a hearing or other dispute resolution mechanism.

As different municipalities place different levels of importance on how MDPs and land use bylaws are used to inform planning decisions and how they interact with one another, all approval processes should require proposals to be consistent with both. Additionally, municipalities are now able to complete intermunicipal development plans (IDPs) with municipal neighbours to collaboratively plan for growth in boundary areas. Approval processes should also include a requirement that projects adhere to IDPs as they are considered statutory plans as well.

### *Project details subject to NDAs*

When entering contract negotiations with renewable energy companies, landowners are often required to sign non-disclosure agreements which prevent details of their contract, such as reclamation requirements and security amounts, to be publicly available. This process creates a barrier to transparency related to project reclamation and decommissioning processes, despite the fact that both are very much part of ensuring that projects are in the public interest. Proponents should have some level of accountability to a body which is more knowledgeable in renewable energy contracts and can ensure that land is being reclaimed in a safe, fair manner.

The province should establish standard reclamation requirements and determine security requirements for each project, as individual private contractors between landowners and companies are not the appropriate method to address reclamation, which is a crucial public interest-related aspect of regulation. Private contracts should only be allowed to address reclamation requirements beyond what is standardized at the provincial level. The AUC or Government of Alberta should also consider developing more intensive and accessible educational resources for landowners to ensure they understand the benefits and risks of entering into contracts for a renewable energy development, as well as their rights as property owners.

## **Recommendations for Enhanced Municipal Involvement in the Approval Process**

There are several ways in which municipalities can participate in the AUC approval process meaningfully. Based on the information provided above and in conjunction with the comment matrix submitted, these recommendations aim to address the gaps that exist within current processes. It is important to note that some of the recommendations require action on the part of the Government of Alberta. RMA recognizes that as a quasi-judicial agency, the AUC only has so much latitude in adapting its own processes, and that larger strategic changes must come through provincial direction.

- 1. That the AUC adopt requirements related to aligning projects with municipal development plans, and that the requirements be expanded to include land use bylaws and intermunicipal development plans.*

Given the important role that municipalities play in land use planning, and the impacts that projects approved provincially can have on local land uses, it is inexcusable that there is no requirement within the AUC approval processes for applicants to align projects with MDPs, or for the agency to consider MDPs when evaluating projects in the hearing stage. Applicants should be required to confirm alignment with municipal plans, ideally through confirmation from the municipality itself, and a lack of alignment should trigger a hearing or other dispute resolution mechanism.

- 2. That municipalities have automatic status as directly affected parties and automatic standing at all hearings, and that all municipal costs to participate in the engagement and hearing process be covered.*

Given the time and costs municipalities incur to understand the impacts of new developments, there is no reason that they should be required to apply for recognition in relation to project applications. In most cases, municipalities are unlikely to have a significant objection to projects, so any concerns that allowing them automatic directly affected party status or standing will reduce the speed of the approval process are unfounded. This change may result in municipalities more actively lending their formal support to projects that are well-planned and in alignment with municipal plans.

- 3. That the Government of Alberta and the AUC work with stakeholders to develop an approach to integrating land use impact assessments and reclamation requirements into all project approvals.*

Before the AUC integrates both considerations into their individual approval process, the Government of Alberta should lead the development of a broader approach to establishing principles and methods for balancing industrial development with agricultural land preservation and other land uses, as well as expectations for end-of-life management for various development types. This could be applied to the AUC as well as to other quasi-judicial agencies with development approval responsibilities. Following the development of this approach, the AUC should integrate the approach into all project processes and work with industry to ensure that they understand the requirements.

- 4. That the Government of Alberta and AUC work with stakeholders to develop a public interest evaluation framework to assess their decision-making and engagement processes.*

Although the AUC has spoken to the alignment between their decision-making processes and acting in the public interest, a clear disconnect exists between municipalities, industry and the AUC about what is within the scope of public interest and how to weigh different perspectives when making decisions on project approvals. Additionally, the current processes used by the AUC present significant barriers to participation for many stakeholders outside of the industry, meaning that agencies are often making public interest-based decisions without adequate input from those that are impacted.

While there is no question that public interest is a subjective concept and different perspectives and considerations will be relevant for different projects, the AUC should be expected to at least consider a common set of public interest questions when making decisions on projects, and these questions should be publicly available. Each decision should be accompanied by a written statement from the AUC which outlines the various impacts, such as environmental, social, land use, and others which were used to come to a decision which reflects public interest. Reporting on these categories and their impact on the decision create consistency for municipalities and other stakeholders and allow for industry to gain a better understanding of what they must consider when planning projects.

As a first step in transitioning to a more consistent and transparent public interest-based decision-making lens, the Government of Alberta should lead the development of a quasi-judicial agency public interest evaluation framework in conjunction with the impacted agencies, industry representatives, municipalities, and other stakeholders. The framework would allow the AUC to critically evaluate their own systems and implement improvements to final decision-making and the accessibility of engagement processes to ensure they are truly balancing multiple perspectives when making public interest-based decisions.

*5. That both the AUC and applicants play a direct role in initial project engagement processes.*

The AUC approval process does not require both the applicant and regulator play a meaningful role in initial project engagement; it is not until a hearing or review takes place that both the AUC and applicant are actively involved. Leaving engagement to applicants poses a risk of stakeholder concerns being misrepresented or under-reported and places the regulator in a position of reliance on the applicant to summarize engagement and any concerns or objections shared by stakeholders.

For this reason, both the AUC and the applicant should have a role in the initial stakeholder engagement process. In the case of large-scale or high impact projects, one option may be to have the agency organize an initial townhall meeting to bring together the applicant and directly affected parties. This would ensure that all parties in attendance receive baseline information about the project and engagement process from the agency itself, which greatly reduces the risk of actual or perceived bias. For smaller scale projects, an option may be to have the agency send a letter directly to affected parties before the applicant-led engagement process begins. The letter could outline the process and provide affected parties with information on their rights as well as how they can share concerns with the applicant or agency.

*6. That AUC review and redevelop current notification systems to better engage with municipalities at the onset of projects.*

The AUC process only require applicants to notify municipalities for certain project types. Based on their unique status as land use planners and infrastructure managers, municipalities should be directly notified by quasi-judicial agencies any time a new project application is submitted within their municipal boundaries.