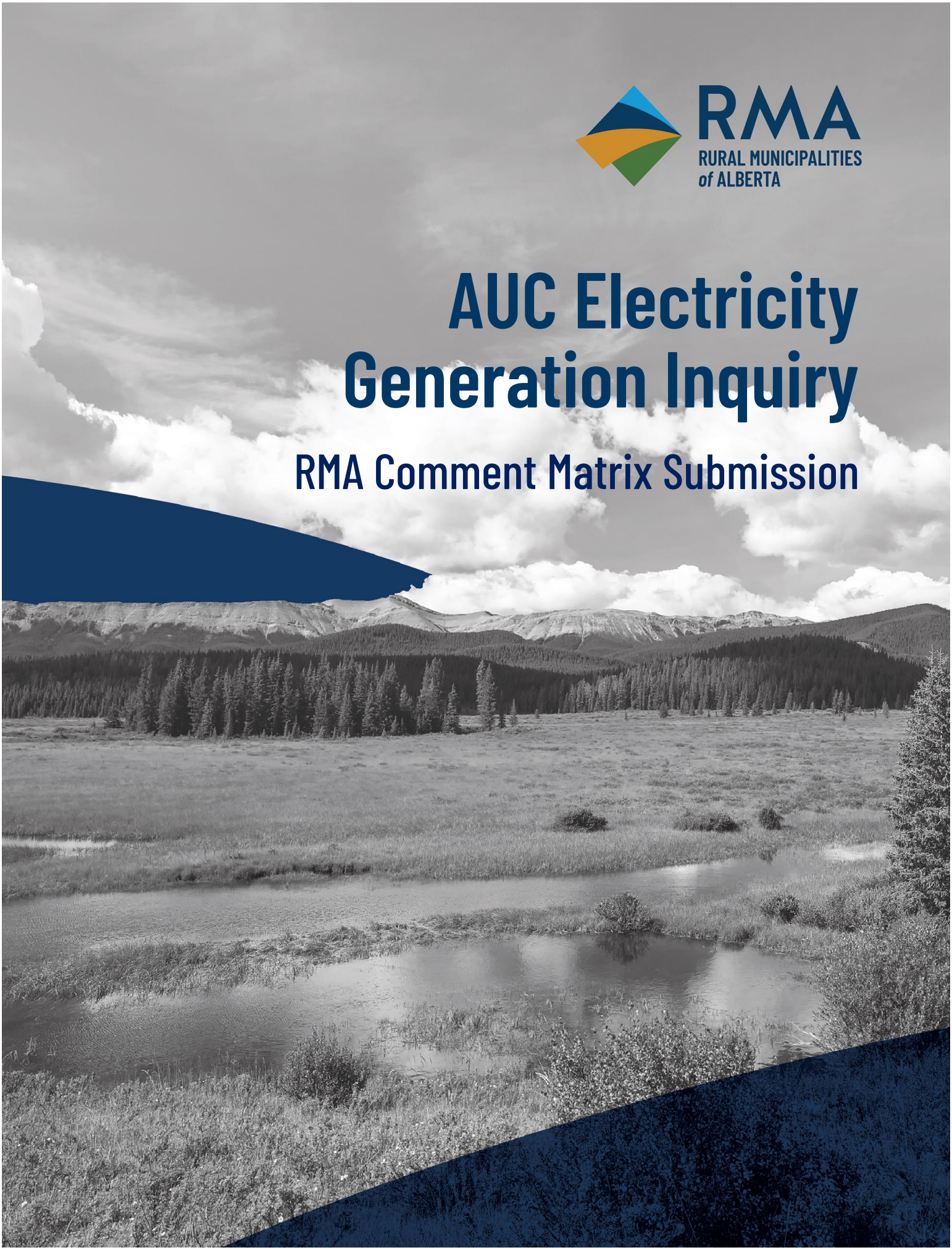
RMA
RURAL MUNICIPALITIES *of* ALBERTA

AUC Electricity Generation Inquiry

RMA Comment Matrix Submission



Topic 1: Reclamation Security

1.1 Should Alberta impose mandatory reclamation security requirements on all types of power plants?

Yes. In fall 2022, RMA members passed resolution 9-22F: Renewable Energy Project Reclamation Requirements, which calls on the Government of Alberta to "implement a mandated collection of adequate securities for future reclamation of renewable energy projects on private lands." This resolution was supported in part due to concerns from municipalities that under the current process in which reclamation security is a negotiated component of private agreements among individual companies and landowners, some landowners have agreed to contracts with little or no reclamation security expectations on the part of the company, not realizing that they would ultimately be responsible for reclamation in the event that the company refused to or was unable to meet their reclamation obligations.

The current system not only places unreasonable risks on private landowners, it also undermines public interest-focused regulation of electricity generation projects by allowing an inconsistent patchwork of reclamation accountability across the province, and even within municipalities.

1.2 Do private contracts between project owners and landowners provide a sufficient level of reclamation security? Should private contracts between project owners and landowners regarding reclamation security be standardized?

Private contracts do not provide a sufficient level of reclamation security. It is unclear why an industry that is regulated by a provincial quasi-judicial agency due to its importance to Alberta society and the risks associated with individual projects would not be required to have reclamation security regulated and managed at the provincial level. Reclamation is a crucial aspect of ensuring the industry operates in the public interest (much like initial project siting, etc.) and should be treated as such by regulators.

The current system allows reclamation security to be part of a negotiation between landowners and property owners, rather than a mandatory requirement of operating responsibly. While this may work well in some individual cases, on a broad scale it results in a power and capacity mismatch in which companies have significant legal resources and experience to propose reclamation requirements that may not be in the best interests of landowners.

Addressing reclamation through private contracts also presents broader risks to the public interest. Many private contracts are subject to non-disclosure agreements, which suggests that there is no way for the Government of Alberta or the AUC to determine what portion of existing projects are subject to reclamation securities and whether those securities are adequate.

While baseline reclamation requirements should be standardized and not subject to private negotiation, there may still be an opportunity for landowners to negotiate enhanced reclamation requirements for individual projects within contracts, as long as those requirements exceed those developed provincially.

1.3 If new security requirements are imposed, should they only apply on a go-forward basis to new projects, or should they also apply to existing and approved projects?

They should apply to existing and approved projects. The Conservation and Reclamation Regulation already requires companies to obtain a reclamation certificate at the end of the project's life. To meet this requirement, effectively managed and accountable companies should have the financial resources to meet reclamation requirements and should not have an issue meeting enhanced security requirements. Not requiring securities on existing projects also presents significant risks of creating an "unlevel playing field" within the industry.

To limit the risk of penalizing companies that may have a reclamation plan in place but do not currently have the assets available to meet conditions of a security requirement, the Government of Alberta should consider addressing security requirements for existing projects on a case-by-case basis and allowing owners of existing projects with modified timelines to meet security requirements.

1.4 What type of security should be required (e.g., cash, letter of credit, surety bond, insurance, etc.)?

While RMA does not have a strong preference for a specific security type, the method used should meet the following:

- Ensures accountability for end of life without disincentivizing investment or preventing small or new companies from investing in projects.
- Is easily transferable to ensure accountability remains with the project owner if the project is sold.
- Ensures that adequate assets are available to the province to reclaim the land in the event the project owner becomes insolvent or is otherwise unable to meet reclamation requirements.

1.5 How should the amount of security be determined?

To serve the public interest, security amounts should be based on the full estimated cost of reclaiming the land to as close to its original state as possible. Due to the different risks and reclamation costs based on project size, soil type, vegetation impacts, etc., reclamation costs are likely required to be determined on a case-by-case basis. While costs should be case-specific, it is crucial that the Government of Alberta or AUC prescribe specific expectations as to the state that the land be returned to.

Other jurisdictions require the project owner to submit reclamation costs, along with supporting evidence and methodology, to the regulatory authority as part of the project application. The regulatory authority is empowered to verify and if needed, modify the estimated costs based on their own methodology and analysis of the project proposal.

1.6 When in the project lifespan should the security be required?

The timing of security requirements should balance ensuring the project owner is held adequately accountable for end-of-life obligations with recognizing that construction of a new project has significant up-front costs that may impact short-term cash flow for project owners. While a common approach in other jurisdictions is to require an up-front commitment to meeting security requirements while actually collecting securities at a point midway or later in the project's life, RMA believes that a progressive security approach will better ensure accountability on the part of the original project owner without impeding industry investment.

While the exact timelines could be determined through further consultation, RMA would recommend a progressive security payment system in which the project owner would be responsible for providing the full security amount within the first ten years of the project's life, with a mandatory contribution of at least 10% each year.

This approach will prevent instances in which companies seek to offload a project to another company shortly before securities become due. A common issue in the oil and gas industry is established companies selling older, high-risk or low-producing wells to more junior companies to avoid the end-of-life obligations. The junior companies "gamble" that higher commodity prices will make the wells profitable. If this does not occur the new owners are often unable or unwilling to meet end-of-life obligations, resulting in the reclamation burden falling on the public. While the situation would differ slightly for a renewables project, a similar pattern could emerge in which an established company would sell a renewables project to a junior company a few years before securities are required. The junior company would gamble that the project would be profitable enough to allow them to meet security requirements. If not, the company would enter bankruptcy and leave the security responsibilities to another buyer, or, failing that, to the public.

1.7 Should the security be independently reviewed and updated during the life of a project to ensure it is adequate, and if so, how often should that be done?

The project owner should be required to periodically update expected decommissioning and reclamation costs and timelines. This will ensure that the security amount is still adequate, and, in some cases, could even reduce security requirements if new technologies emerge to allow for a more efficient reclamation process. Updates should be conducted by qualified independent contractors approved by the AUC. The exact frequency may vary by project type and size and should be determined through a more detailed engagement.

If an updated review completed after the ten-year progressive security payment requirement (see question above) results in an increased security requirement, the project owner should be required to meet the enhanced security requirement in a period of time that allows them to pay the same annual amount that they paid during the initial ten-year period. For example, if a project's original reclamation cost was $1 million, they would have paid $100,000 per year for ten years. If, in year 15, an updated assessment showed reclamation would cost $1.3 million, they should be required to provide a minimum of $100,000 in security for the next three years, until their updated obligation is met.

1.8 How should the power plant owner demonstrate security is in place?

Similar to question 1.4, the exact method of security and corresponding proof should be determined through a more detailed and specific engagement process.

1.9 How should the security be structured to address the risk of bankruptcy or default by the power plant owner?

As explained in question 1.6, a progressive reclamation security requirement will ensure that a portion of securities are collected immediately, and that all securities are collected by year 10 of a project. This will be crucial to lowering the risk of bankruptcy prior to the collection of securities, as the viability of both companies and individual projects should be much more likely within the first ten years of a project as opposed to the second ten years and beyond.

The approach recommended in question 1.11 also relates to this issue. The AUC should undertake financial risk monitoring of companies operating power plants to ensure that they maintain the ability to meet reclamation security requirements throughout the first ten years of a project's lifespan. If a company reaches a certain risk threshold, they should be required to provide a higher portion of security annually to complete their obligation sooner than the standard ten years.

If a company becomes insolvent, the new owner of the project should assume the same security requirements based on the project's age.

1.10 Who should hold and have oversight of the reclamation security program and the disbursement of funds in the event of a default (e.g., Alberta government, municipality, landowner, AUC, other)?

The Government of Alberta has the expertise and fiscal capacity to manage the reclamation process, including disbursement of funds. This responsibility could likely be assigned to the regulator itself or the relevant government ministry.

This should not be the responsibility of individual landowners who may not have the knowledge to make informed decisions related to security requirements, or of municipalities, which have limited input into project approvals.

1.11 Are there Alberta reclamation security programs in place for other sectors that could be adopted for power plants?

Some aspects of existing processes in place for other development types such as sand and gravel operations and oil sands mines may be suitable for electricity generation projects. Given that most renewable energy projects have relatively limited risks to land while in operation, some of the deposit requirements related to operational risks in place for oil sands mines may not be necessary.

To avoid a repeat of the abandoned oil and gas well crisis currently occurring in Alberta, there is value in the AUC adopting a process similar to the Licensee Liability Rating (LLR) program currently used by the AER to monitor company performance and financial risk on an ongoing basis. While there are serious flaws in the LLR process related to the metrics used to measure company risk and the point at which the AER intervenes and requires a company to post securities, the concept of ongoing monitoring of company risk and performance and proactive intervention on the part of the AUC in cases of elevated risk is worth exploring.

One important aspect of the LLR process that must be avoided is that companies are only responsible for posting security when they reach a certain risk level. The AUC system must require all project owners to post a portion of securities immediately with the full payment complete by year 10 (see question 1.6). If a company exceeds certain risk levels, an LLR-style system could require them to post security earlier in a project's life or reconfirm security more frequently, etc.

1.12 Are there other jurisdictions that have reclamation security in place for power plants that should be considered in Alberta?

Elements of approaches used in other jurisdictions found in the expert reports commissioned by both the AUC and RMA/CanREA should be considered in more detail as time allows.

Topic 2: Development and agricultural and environmental lands

2.1 Are there certain categories of agricultural land or environmentally sensitive lands where power plant development should not be permitted?

Restricting or limiting development on specific land types on a provincewide basis is extremely likely to have unintended consequences and diverse impacts across the province. The value of various land types for both agriculture and development will vary by municipality, and even within municipalities. For this reason, issuing a blanket restriction of development on certain land types is likely impractical.

Rural municipalities play an important role in balancing land preservation with the need for economic development within a local context and are well-suited to inform the AUC's consideration of if and to what extent a proposed project would impact agricultural land. The AUC should specifically include a consideration of the land and soil type of the proposed project, as well as other considerations such as current and historical land use, climate and weather trends, drought and flood risk, etc. within their project review process. Land category and level of environmental sensitivity should be a factor within this process but should be weighed against other land-specific and broader public interest considerations when reviewing projects.

2.2 Are there land or soil classifications/classes where power plant development should not be permitted?

As mentioned above, the impacts of projects on agricultural land should be weighed on a project-specific basis. Issuing a banket restriction for development on certain soil types runs counter to a public interest focus, as it excludes a local lens on the comparative quality of the soil, the economic and social value of development versus preservation, etc. When making a decision on individual project applications, the AUC should be expected to place a high weighting on the impact of the project on agricultural land and Alberta's food production capacity. Projects proposed on higher quality soil should face more stringent requirements for addressing reclamation, mitigation of impacts on the soil during the project's operations, and possible co-use of the land with agriculture production.

For projects on high-value lands, proponents should also be required to justify why the project is best-suited on the land and whether alternatives were considered.

2.3 Should certain lands be set aside in Alberta for only agriculture uses now and in the future? If so, how should these lands be identified?

Setting aside lands at a provincial level is likely not necessary if regulators were required to properly consider municipal land use plans and bylaws. As rural municipalities have a long history of balancing preservation of agricultural land with development, weighing their input in combination with an approval process that requires the AUC to place a high weighting on a project's impact on high value agricultural land would likely be sufficient to balance development with preservation.

Other western Canadian provinces have provincial bodies in place that have some level of control over the preservation of prime agricultural land, so there is a precedent for this approach. However, there are several risks of applying such an approach to Alberta:

- Alberta's rural and agricultural land is exclusively within municipal control, while rural and agricultural land in other provinces is often under the authority of a provincial body that provides local services and decision-making. In an Alberta context, municipalities are already well-qualified to make decisions related to agricultural land preservation, which is not always the case elsewhere.
- Alberta's agriculture industry is extremely widespread across the province, from the far north to the US border, and the Rocky Mountains to the Saskatchewan border. While the quality of soil and productive capacity of the land varies by region, the local importance of the industry is consistent. Designating some land as "off-limits" to agriculture may result in an influx of power plant development projects on agricultural land in other areas not given this protection.

A well-designed approval process guided by clear provincial direction on how different potential land uses can be weighed and harmonized should prevent a need for blanket provincewide prohibitions.

2.4 Should there be a streamlined and/or prioritized approval process for power plant development on certain types of lands, provided there are no outstanding concerns related to reclamation security, viewscapes, valued environmental features, compliance with existing rules, etc.? For example: a) Lands owned or controlled by a government or government agency (provincial or municipal). b) Land zoned by a municipality for commercial or industrial development. c) Land already disturbed or with development already in place.

In general, the AUC should evaluate all projects on the same suite of public interest-based factors regardless of their location. Pre-emptively "streamlining" certain applications based on assumptions that some considerations may not be relevant creates an unnecessary "gray area" and could lead to cases in which certain factors are not properly considered by the proponent or regulator until the project is built and issues arise. Despite this, there may be an opportunity to reduce analysis related to agricultural impacts for projects proposed on land that is clearly not suited to agriculture or already being used or is zoned for an industrial or commercial purpose.

The examples in the question (reclamation security, viewscapes, environmental features, compliance with rules) are not strictly related to agricultural land. They would be relevant for municipalities if a power plant is proposed on any type of land. For example, if a wind development were proposed to replace an existing industrial development, the viewscape impacts would be significant, even if there is no specific agricultural component to the project.

All of the factors listed in the question, as well as agricultural impacts, should be reported on by applicants for all projects, and considered by the AUC in all cases. If a given factor is obviously not relevant for a specific development, it is unlikely that requiring the project proponent to report on it and the AUC to consider it will impact application timelines in a significant way.

2.5 What municipal planning information should the AUC review when considering a power plant development?

The AUC process should require the project proponent to review and confirm alignment with municipal land use bylaws (LUBs), municipal development plans (MDPs), and intermunicipal development plans (IDPs). Project proponents should be required to explain how the project aligns with LUBs, MDPs and IDPs and receive written confirmation of alignment from the municipality during the initial project engagement and proposal development process.

If a project does not align with municipal planning documents, a hearing should be required. The AUC should not necessarily be bound by the plans but must justify why they would approve a project that does not align and how they will work with the proponent and municipality to mitigate land use impacts. There is a precedent for this approach in the NRCB approval process for confined feeding operations.

2.6 For power plants that do not align with approved municipal land use plans or zoning, how should the AUC consider this within its public interest determination?

Non-alignment with municipal planning documents should trigger an automatic hearing. This will allow the AUC to review the planning documents and hear directly from the project proponent and municipality with their positions on how the project will impact land use in a non-conforming zone. Understanding both the plans themselves and the various parties' positions on the risks and benefits of approving a project that is non-conforming with the plans will allow the AUC to confidently assess the project through a municipal land use planning lens.

The AUC should be empowered to approve projects that are non-conforming but to support public interest decision-making, should be required to explain their justification for doing so within a final decision summary, and such a decision should never proceed as "routine," without a hearing.

2.7 The AUC requires power plant developers to provide a summary of their consultation with local jurisdictions (e.g., municipal districts, counties). Should the requirement to consult with local jurisdictions be enhanced, and if so, how?

The current process (AUC Rule 007) requires different levels of engagement for different project types. The current process divides engagement into two categories: notification and personal consultation.

- Notification requires project owners to share basic project information through mail, email or by phone and does not require meaningful discussions between the project owner and the person or group being notified.
- Personal consultation requires project owners to meaningfully engage with persons or groups, including listening and responding to any objections to the project. Project owners must also gather confirmation of non-objection from those that they are required to engage in personal consultation with.

The current process does not classify municipalities in either engagement category for most projects. AUC Rule 007, which guides the current engagement process for new projects, states the following in relation to municipal involvement:

> 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 suggests that the current process places decision-making responsibility for if and how to engage with municipalities squarely on the project owner.

The question references that the AUC requires applicants to provide a summary of their consultation with municipalities. Because the requirements associated with municipal consultation are extremely vague, it is unclear what value the summary is intended to provide to the approval process. A summary can only be meaningfully evaluated if it can be compared to specific engagement requirements or thresholds. It is also

unclear whether, under the current process, the AUC is required to (or chooses to) engage with the municipality directly to confirm the information shared in the summary.

The current process should be enhanced to clarify that municipalities require “personal consultation” or a similar level of engagement, including confirmation of nonobjection, from project owners. A special municipal confirmation of nonobjection should be developed that includes municipal confirmation that the project aligns with existing land use plans and documents.

Despite the question’s focus on enhancing the responsibility of project owners to engage with municipalities, the AUC itself should also have a more direct and proactive responsibility to communicate directly with critical stakeholder such as municipalities. 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.

In the case of large-scale or high impact projects, one option may be to have the AUC organize an initial townhall meeting to bring together the applicant and directly affected parties, including municipalities. 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 AUC 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.

Topic 3: Development on provincial Crown land

3.1 Should there be development of power plants on Crown land? Should there be limitations or special constraints on the amount or types of Crown land available for development?

Determination of limitations or special constraints on Crown land development requires a more detailed discussion beyond the scope of this inquiry. RMA's Quasi-Judicial Agencies Member Committee has recommended that the Government of Alberta develop a provincewide approach to properly integrate land use impact assessments into projects approved by all provincial quasi-judicial agencies, including but not limited to the AUC. This process would likely include a holistic strategy as to how different types of developments are suited for different types of Crown land and how to properly manage development, environmental preservation, recreation, and existing activities such as forestry and grazing on Crown land.

Projects on Crown land will still have local impacts. Municipalities should have the same level of involvement in approvals for Crown land projects as they would for projects on privately-owned land.

If projects are allowed on Crown land, project proponents should be required to lease Crown land at market value rates and be subject to the same reclamation security requirements as on private land.

3.2 What considerations should factor into the Commission's public interest determination? For example, how should impacts to existing Crown leaseholders, permit holders, or license holders etc. (e.g., grazing leaseholders, timber permit holders) be considered? How should impacts to recreational users be considered?

Existing leaseholders and other consistent documented users of the Crown land should be subject to "personal consultation" and confirmation of non-objection requirements. The AUC may have to consider whether the objections of a leaseholder should carry the same weight in their decision-making process as that of a private landowner. This would likely vary on a project-to-project basis.

If development on Crown land occurs, the AUC must develop a much broader public interest lens than that suggested in the question. Crown land is a provincial resource and developing it has both benefits and risks locally and on a provincewide basis. Developing a specific public interest framework for Crown land projects will ensure that the AUC properly evaluates local economic benefits of the project, impact on existing or possible future land uses, job creation, impact on municipal tax bases, etc. Development of such a framework likely requires an engagement process beyond the scope of this inquiry with the participation of various provincial ministries and stakeholders.

Topic 4: Pristine viewscapes

4.1 How should "pristine viewscape" be defined?

Defining "pristine viewscape" on a provincewide basis is very difficult and risks impacting development to different extents based on region. Any definition should emphasize the local variations in whether a viewscape is considered "pristine."

More important than a definition is a change to the AUC project approval process requiring project proponents and the AUC to consider impacts on viewscapes within a public interest evaluation of a project and evaluating those impacts based on local context rather than a provincewide definition or threshold. Local input will likely be the most important factor in determining whether a project will impact the ability of existing property owners, residents and visitors to enjoy a particular viewscape.

4.2 What criteria, if any, should be used to assess the impact of a power plant development on a "pristine viewscape"?

While the importance or quality of a viewscape should be determined locally on a project-by-project basis and through input from impacted landowners, municipalities, and other stakeholders, other factors could include the importance of the viewscape to the local or regional tourist economy, the uniqueness of the viewscape on a local, regional, and provincewide basis, the number of property owners that would have their viewscape obstructed, and whether other existing projects or developments of any type already exist that impact the viewscape.

4.3 How should the impact on viewscapes be balanced against other impacts (positive and negative) when assessing the public interest of a power plant? Does the response differ depending on the type or characteristics of the viewscape?

Weighing viewscapes with other public interest considerations is the responsibility of the AUC and should be addressed on a project-by-project basis.

The AUC process should change to require the AUC to consider viewscape impacts when reviewing a project proposal, but like any other public interest factor, determining a specific threshold on viewscape impact that can apply to projects of all types provincewide is likely impractical.

4.4 Do wind and solar power plants have the same impact on viewscapes? How do they compare to the impact on viewscapes from non-renewable power plants?

The impacts of projects are dependent on their location more so than project types. The AUC should be required to consider and report on viewscape impacts within their decision on all projects, regardless of whether it is a crucial and contentious issue, or a complete non-factor for a given project.

The goal in considering viewscapes and other public interest issues is not to apply them only to project types that have the highest likelihood of triggering concerns, but rather to consider and weigh a consistent suite of public interest issues regardless of project type, size and location.