RMA
RURAL MUNICIPALITIES of ALBERTA

Reclamation Securities for Renewable Energy Projects

RMA Submission

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Introduction

Alberta Environment and Protected Areas (EPA) is consulting on how to design reclamation securities for the renewable energy industry. The Rural Municipalities of Alberta (RMA) represents Alberta's 69 municipal districts, counties, specialized municipalities, and the Special Areas Board. RMA members provide local services to 85% of Alberta's land base, and as a result the majority of large-scale renewable energy projects occur within RMA member municipalities.

In general, RMA views reclamation security as a public interest issue, for which the Government of Alberta should be accountable to determine, collect, and backstop in the event that collected securities are inadequate to reclaim a specific site. While many aspects of a renewable energy project should be open to negotiation between individual landowners and companies, the impacts of an un-reclaimed site spill beyond an individual property, and therefore must be approached through a public interest lens that mitigates site-specific, local, and regional risks associated with inadequate reclamation securities.

This submission will respond to the questions posed in EPA's consultation guide.

What are some challenges and opportunities related to implementing mandatory security, including your thoughts on the option for landowners to choose either negotiating security directly with developers, or taking part in a new program for government-held security?

The reclamation security must be funded appropriately to ensure that the site can be fully reclaimed in the event that the company who owns the renewable energy assets becomes insolvent. This is necessary to protect landowners and municipalities in the event a renewable energy company fails to fulfil its contractual obligations.

As RMA understands, the EPA engagement team has been given direction that the future reclamation security program will allow for security amounts and methods to be negotiated as a component of private contracts between landowners and developers, or through a provincially-administered system. It is unclear to RMA why this dual stream of securities is being considered, or why the decision to allow the current practice to continue was made before the consultation began. While RMA certainly supports the rights of individual landowners to negotiate with renewable energy project proponents, there are significant risks to including reclamation securities as a component of negotiations.

Firstly, private contracts between landowners and the developer may not provide a sufficient level of reclamation security as they are not standardized. It is unclear why an industry that is regulated by a provincial quasi-judicial agency, the Alberta Utilities Commission (AUC), 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 renewable energy companies, 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. The intent of a well-developed reclamation security program should be to hold all developers to a common standard based on a data-driven methodology with clearly defined parameters to ensure that sufficient funds are held for reclamation purposes. While many aspects of a potential renewable energy project are subject to negotiation between landowners and proponents, the standard to fully reclaim

land and the costs to do so should not be one of them. This approach should be accompanied by a commitment from the government of Alberta that if actual costs to reclaim the land to the appropriate standard exceeds the amount of securities collected, the company and/or province is responsible for making up any shortfall. RMA recognizes that if landowners are not involved in determining reclamation security amounts, they should assume no risk related to actual reclamation costs. The RMA supports the requirements for security cost estimate to be prepared by a duly-qualified, independent third-party.

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. For example, a landowner may wish to have additional security beyond the provincial standard if they think their property has a unique characteristic that was not captured by the provincial process. This could include elements such as the remote location of a property of a unique environmental feature.

Applying Securities to Existing Developments

As RMA understands, the intent of this new reclamation engagement is to develop a policy to apply to projects initiated after April 1, 2025. However, RMA holds the position that reclamation securities 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. However, all existing companies should be in compliance with new security requirements within three years of the requirements coming into force.

What should government consider when implementing a government-held program for wind and solar reclamation security?

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 through a site-specific analysis. 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, with input or sign-off from the property owner.

Other jurisdictions require the project proponent 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. Assuming the Government of Alberta invests in proper capacity to stringently verify

industry-submitted costs, this could be a viable approach in Alberta. Another option may be to develop a government-vetted list of certified reclamation cost estimators, which could then be assigned to projects by region, type, or other methods.

The specific financial mechanism that is used for reclamation securities is of the utmost importance to ensure those funds are available in the event they are required to reclaim a site. In general terms, the securities must be held in a way that ensures they are available when required, and cannot be accessed by other creditors in the event that a company becomes insolvent. Examples that would meet these purposes are an irrevocable letter of credit provided by a chartered bank or approved credit union or cash held by the GOA that is secured specifically for reclamation, and will not be considered a general asset available to other creditors in the event of a bankruptcy.

Security should be required at a point in the project's lifespan that presents the least risk to project owners, landowners, and the province as the holder of the security. This point may vary depending on the project type, size, location, etc. A schedule for securities should be established for each development through consultation with stakeholders and subject matter experts. Regardless of project, a significant portion of securities must be paid prior to the completion of project construction, with the remainder paid, at maximum, 10 years into the project's lifespan. As mentioned, this would vary based on projected economics of the specific project, the company's financial and risk profile, track record building and operating similar projects, etc.

The schedule should not inhibit investment in new projects because a project owner may be concerned about up front capital costs and the costs of security requirements, but it should not be so late in the project that the project owner no longer has the financial means to submit the security. From RMA's perspective, if meeting security requirements presents enough of a barrier to a proponent that they may not be able to move forward with the project, this is a good indication that the project is not financially viable, at risk of failing for other reasons, and is likely not in the public interest.

Other jurisdictions with security requirements in place establish specific time periods for payment of the security. For example, Texas requires solar project owners to deliver financial assurance on the project by the 20th anniversary of the commercial operation date, while Montana requires a bond to be submitted prior to the end of the 15th year of operation.

How should security be calculated and when should it be required by Environment and Protected Areas (EPA) for wind and solar renewable energy operations? Specifically:

> *Should the value of any scrap or salvage value be considered in the cost estimate for wind and solar reclamation security? If so, should there be a maximum amount, for example, should it be limited to a percentage of the estimated value or estimated reclamation costs?*

While renewable energy projects may generate scrap value during their reclamation, this should not be assumed to be of sufficient value to fund the reclamation on its own. The value of scrap materials at the time of reclamation is unknown as this value is dependent on the market pricing when and where reclamation takes place. As many renewable energy projects are located in remote areas, there may be significant costs to move the material during reclamation. If the buyer pays for transportation directly this will be captured in their valuation of the scrap, and therefore must be considered in designing the security regime. It is also very difficult or impossible to "secure" scrap value, as this would require literal monitoring of the deconstruction process to ensure all available scrap is tracked and the value is used for reclamation. This may result in significant

government capacity requirements. A simpler method is to require companies to utilize the security methods outlined above and allow them to use scrap value as an input into their own internal project accounting.

Therefore, the only certainty that can be provided is a secured financial tool such as an irrevocable letter of credit or secured cash as described above. To this end, scrap value should not play a role in determining the reclamation security amount, and instead the value of the scrap materials should be left to the company that owns the asset to claim at the end of the project.

> *Should there be alignment between types of renewable energy development, for example, should the amount of security required at time of application for solar and wind projects be aligned with geothermal?*

The amount of reclamation security required should be based on formulas that capture the actual cost to reclaim a site. This is called for in RMA resolution 9-22F: Renewable Energy Project Reclamation Requirements. Reclamation costs are site specific and therefore will be unique to each project. The reclamation of geothermal, solar, and wind projects are unique, and it is unreasonable to seek alignment between the security required for each type of project.

The security amount must also consider the size of the project, the location, and any other factors that are likely to change reclamation costs such as soil type and what the end land use is (i.e. grazing, cropland, etc.). These factors vary significantly across the province, and therefore establishing a standard security amount is impractical, rather, a standard methodology should be employed that takes these factors into account.