

DOCUMENT "A"

MINISTER'S DETERMINATION CONDITIONS OF APPROVAL

Pursuant to Regulation 87-83 under the Clean Environment Act

January 26, 2010

File Number: 4561-3-1179

1. In accordance with section 6(6) of the Regulation, it has been determined that the undertaking may proceed following approval under all other applicable acts and regulations.
2. Commencement of this undertaking must occur within three years of the date of this Determination. Should commencement not be possible within this time period, the undertaking must be registered under the *Environmental Impact Assessment Regulation* (87-83) – Clean Environment Act again, unless otherwise stated by the Minister of Environment.
3. The proponent shall adhere to all obligations, commitments, monitoring and mitigation measures presented in the EIA registration document dated October 3, 2009, the revised EIA addendum and to those in all correspondence during the registration review. Additionally, the proponent shall submit a summary table detailing the status of each Condition listed in this Determination to the Manager of the Environmental Assessment Section every 6 months from the date of this Determination until such a time as the construction is complete and the Department of Environment (ENV) is satisfied that all conditions have been addressed.
4. The proponent must obtain a *Watercourse and Wetland Alteration Permit* from the Surface Water Protection Section, ENV, for any activities that are carried out within 30 meters of a watercourse or wetland before any construction activities commence. It is recommended that submission of this application occur at least 90 days prior to the commencement of construction activity. Please contact the Manager, Watercourse Alteration and Wetlands Program (506) 444-5149 for further information.
5. Monitoring of all wetlands directly or indirectly impacted by project activities will be required for years 1, 3, and 5 to measure whether the wetland function has changed. Reports shall be submitted to the Manager of the Environmental Assessment Section ENV, after each monitoring period. Compensation or additional mitigation may be required if the results of the monitoring program demonstrate that there has been a loss of wetland function. Restoration will be required if there are impacts to the function of any of the wetlands located within the project area.
6. If any rock that could produce acid rock drainage is encountered during construction, the Environmental Assessment Section, ENV must be notified immediately.
7. If blasting is required, a pre-blast survey must be conducted for water wells located within 500 m of the right of way, including microbiological and inorganic sampling for water quality and construction details of the wells including, but not limited to, well depth, well age, casing length, estimated yield, and well photos; All well data collected must be submitted to the Director of Environmental Evaluation and Reporting Branch of ENV.

8. Water testing must be carried out for any private drinking water supply well located within 200 m of any construction activities. Sampling should include testing for general chemistry, metals and bacteria. All well data collected must be submitted to the Director of Environmental Evaluation and Reporting Branch of ENV.
9. The proponent shall ensure that post-construction bat and raptor surveys are conducted for a minimum of two years (within the first-year and second-year of operation). Depending on those results, a third-year of monitoring may be required. A post-construction monitoring protocol shall be submitted to DNR for review and approval prior to operation. For more information, please contact the Habitat Program, Fish and Wildlife Branch, DNR at (506) 453-2440. The proponent must also submit mitigation measures that will be followed by them and/or their representatives if bat mortality is experienced after the site is operational, which will include triggers (number of bats killed per turbine), suggested mitigation measure, frequency of site monitoring and any relevant additional information.
10. A formal complaint resolution procedure is required for noise, shadow flicker and other complaints from surrounding landowners. The proponents' contact information must be available to area residents and records of any complaints must be kept by the proponent with identification of resolution or additional action taken for each complaint. The protocol for this procedure must be submitted to the Manager, Environmental Assessment Section for approval prior to the onset of operation.
11. Within 5 months of operation start-up the proponent must submit to the Manager, Environmental Assessment, a noise monitoring plan that is to be undertaken in order to validate the predictions made in the noise impact analysis. The plan must be implemented and the results submitted to the Manager within 1 year of the date of commissioning of the wind farm.
12. Signs must be posted in the vicinity of the turbines to warn snowmobilers, etc to the site of the potential risks including ice throw.
13. The proponent must notify Ms. Colleen Smith, Habitat Management Biologist, Department of Fisheries and Oceans, Dartmouth, at (902) 426-6027) at least 10 days before starting work on any watercourse crossing. A copy of the letter from Ms. Smith to Ms. Sheila Goucher, dated January 12, 2009, must be kept on site while the work is in progress.
14. The proponent must contact Susan Andrews-Caron, Director of Transportation Policy Branch at (506) 453-2802 to discuss the proposed transportation route for the wind turbine components and any other possible restrictions regarding transportation of equipment on highway infrastructure. The proponent will be required to obtain a special permit from the Transportation Policy Branch if the loads are oversized and/or overweight and submit a detailed engineering traffic management plan for review at the time.
15. The proponent must contact Mr. Marc Martin, the District Transportation Engineer in Moncton at (506) 856-2000 to review the project. The location of the proposed access off Route 16, any points off NB highways and local roads inside the project area must be acceptable to NBDOT and the proponent may be required to apply for an access road permit(s) from the District Engineer before the construction begins. The District Engineer is to be consulted throughout the project.

16. The proponent shall fund an Environmental Monitoring and Compliance Officer position for the period of construction and commissioning of the facility to work out of an ENV office. The duties of the Environmental Monitoring and Compliance Officer shall include but not be limited to, monitoring compliance of commitments made, coordinating reviews of plans among different levels of government and ensuring that the public is adequately informed. Specific Terms of Reference shall be developed by the Department of Environment.
17. As the project area holds very high potential for the presence of significant archaeological resources of both pre and post-contact origin, the following must be adhered to:
 - a. The final locations for sites 28, 29 and 39-43 will be determined based on the results of archaeological testing conducted by a licensed archaeologist in consultation with Archaeological Services **prior** to any construction or ground disturbance activities. Based on the results of the archaeological testing supplemental archaeological monitoring may be required, but no construction will be approved for turbines 39-43 until a field testing assessment is completed by a licensed archaeologist in consultation with Archaeological Services. The rationale for the final footprint locations will be clearly defined as part of the final report submitted to Archaeological Services as a partial fulfillment of the archaeologist's license. Consultation with the Tantrammar Heritage Trust Foundation is required prior to finalizing the locations of turbines 39 to 43.
 - b. All artifacts recovered by the archaeologist under license will be conserved (if required) analyzed and deposited with Archaeological Services at the completion of the project.
 - c. When an area is cleared of archaeological remains for the footprint of a tower and construction begins, a licensed archaeologist will be present to monitor and document all ground disturbing activities.
 - d. Monitoring by a licensed archaeologist of any area of roadbed where subsurface disturbance is occurring.
 - e. Fill for the roadbeds should be brought in from existing quarries.
 - f. Archaeological testing of the location of the proposed Substation prior to the onset of construction activities if any subsurface disturbance is required during construction.
 - g. Mitigation of any significant archaeological resources encountered during archaeological testing or construction activities (unless the footprint can be shifted and the resource avoided).
 - h. Archaeological monitoring during construction of areas which are deemed to have a persistent potential for intact heritage resources based on the results of Archaeological testing.

- i. A protocol must be established whereby construction workers are informed about the type of material they should be conscious of while excavating or during construction. If anything of archaeological import is encountered during the construction the area around the find will be assessed by a professional archaeologist holding a current AFRL for this particular project.
 - j. Work in the area of the find should cease in the event that heritage resources are encountered during construction until the find is reported to Archaeological Services, Heritage Branch, at (506) 453-3014 and a plan of action is agreed upon with the Archaeological Consultant
18. As parts of the project site are under the administration and control of the New Brunswick Department of Agriculture and Aquaculture (DAA), the proponent must submit a Wind Farm Lease application to the Land Use Application Service Centre (LUASC) as the New Brunswick Department of Natural Resources (DNR) is the single entry point for wind power projects on all provincial Crown lands. Information and application packages can be obtained at www.gnb.ca/0263 or by calling the LUASC at 1-888-312-5600. The issuance of any wind farm lease will be subject to successful negotiations between DAA and DNR for the transfer of lands. Wind energy activities on any provincial Crown lands must also follow the guidelines set out in DNR's policy entitled "Allocation of Crown Lands for Wind Power Projects". The proponent should note that DNR has rehabilitation requirements and any infrastructure? on Crown lands must be removed as part of the decommissioning process.
19. Please contact the Tantramar Planning District Commission prior to construction to discuss requirements for building permits at (506) 364-4701.
20. During decommissioning, the project area will be restored as close to pre-project conditions as possible, in consultation with ENV and DNR.
21. Concrete used for the construction phase must come from an ENV approved site. Batch or mobile plants require an *Approval to Operate* from ENV. Please contact the ENV office in Moncton at (506) 856-2374.
22. No in-stream work shall be permitted until the Navigability Inquiry Assessment (NIA) has been completed and requirements of the Navigable Waters Protection Program have been met.
23. A site-specific Environmental Management Plan (EMP) must be submitted to the Manager, Environmental Assessment Section, ENV for review/approval prior to the start of construction. The EMP must include: environmental protection measures linking mitigation to locations (EPP), monitoring plans (compliance and environmental effects monitoring), and contingency plans. A progressive work schedule, including an outline of when each aspect of the project will take place, shall be part of the EMP. The EMP shall also address, but not be limited to, an emergency response plans, contingency, safety, fire and emergency standard operating procedures and protocols to be adopted at the facility. The EMP may be submitted for approval in phases in consultation with ENV.

24. Prior to the onset of construction, the following is required for submission and approval to the Environmental Assessment Section ENV:
 - a) Addendums to the revised EIA Document; and
 - b) Site specific EPP's for all watercourse and wetland crossings. The plans must include, but not be limited to: proposed crossing methodology, measures to prevent sedimentation and bank destabilization, surface water management plans, monitoring plans, and plans to protect other sensitive features that may be present such as species at risk, etc.
25. The proponent shall establish a Community Environmental Liaison Committee for the construction and operation of the facility. Membership, terms of reference and mandate of the committee shall be determined in consultation with ENV. The committee shall be established by the commencement of construction. Please contact the Manager, Environmental Assessment Section ENV at (506) 444-5382 in this regard.
26. With respect to buried cables and/or distribution lines, the proponent must ensure that all affected landowners have a clear understanding of the location of the buried lines and their obligations regarding N.B. First Call, Acciona Wind Energy Canada Inc. and the circumstances under which they must call. The depths of excavation must be clearly specified to the landowners.
27. Cables must be buried 4 to 6 feet below depth or below the bottom of existing ditches on agricultural land. Public roads and watercourse crossings that are intersected by buried cables and/or distribution cables must be clearly marked.
28. Geotechnical studies must be undertaken every 500 m along road and at each turbine location. The results of the geotechnical study along with an interpretation of the results will be submitted to the Environmental Assessment Section, ENV well in advance of the construction activities.
29. The proponent must develop and fully implement a scientifically rigorous pre-construction monitoring program to determine and analyse bird use and current collision-related bird mortality occurring in the Tantramar Marsh area of New Brunswick. Data and information gathered from this project will then be used by the proponent and ENV to assess the impacts and cumulative impacts that this project will have on migratory birds and species at risk under federal jurisdiction that use this area during part of their life cycle. Some of the critical species which would be the focus of such an effort include migrating eider ducks, as well as grassland and wetland breeding birds such as bobolinks; snipe and rails. Given the size of the proposed project and sensitivity of the site, the monitoring program would be expected to take a minimum of two years to complete (*Wind Turbines and Birds: A Guidance Document for Environmental Assessment, Environment Canada, April 2007*). An appropriate overview committee must be put in place to determine and approve the scientific methodologies for the data collection. This committee would also review the results and subsequently recommend pre-construction changes to the project such as optimizing the location of turbines in order to minimize the potential mortalities.

30. The proponent is required to develop and fully implement a post-construction operational monitoring program. The program would focus on determining interaction specifically the associated mortality between migratory birds and each turbine and other associated structures of the project. Data and information gathered from this program would be used by the proponent and ENV to assess the impacts of each turbine and the wind farm as a whole, and using adaptive management principles, to make adjustments to the operation of the turbines to mitigate any impacts encountered. Given the size of the proposed project, the site sensitivity, and the potential for cumulative effects from the project, the operational monitoring program should be expected to involve extensive field work and take a minimum of four years to complete (*Wind Turbines and Birds: A Guidance Document for Environmental Assessment, Environment Canada, April 2007*). An appropriate overview committee should be put in place to determine and approve the scientific methodologies for the data collection to review the results and using an adaptive management regime, provide recommendations so that ENV may require changes to the operator of the wind farm to minimize impacts.
31. Decommissioning of the site is the responsibility of the proponent. Prior to decommissioning, a plan must be submitted to ENV for review and approval.
32. Decommissioning of individual turbines once they cease to operate must be undertaken within one year of the cessation of operation for that turbine. Decommissioning must be acceptable to ENV.
33. All of the above terms and conditions are an integral part of this approval and the approval, including all terms and conditions, apply to the undertaking notwithstanding the rights of any users, lessees, and or subsequent owners.
34. In the event of the sale, lease, or any other conveyance or change of control of the undertaking, or any portion thereof:
 - a. The proponent shall provide written notice of the conditions to the lessee, controller, or purchaser; and,
 - b. The proponent shall provide written notice of such lease, change of control, or conveyance to the Minister.