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It Ain't Over 'Til It's Over: Legal Considerations in Repowering or Decommissioning Wind Farms

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Presentation Outline

1. Introduction
2. Decommissioning vs. Repowering vs. Extending Life of Plant
3. Regulatory Restrictions
4. Permitting Considerations
5. Landowner Agreements
6. Conclusion



How did we get here?

- End of Power Purchase Agreement (PPA)
- At or near end of life of critical equipment
- Legal and practical restrictions on paths forward
- Responsibility to shareholders to maximize profit (in many cases)
- Opportunity to extract additional value from an existing permitted project

Limiting Factors

- End of life of equipment
- End of lease period
- End of permit term
- Legal restrictions on changing equipment
- Agreements restricting equipment and activities necessary to repower
- Decommissioning obligations
- Disputes

Paths Forward

- Decommissioning of Project
- Repowering with new equipment
- Extending life of existing equipment
- Extension of PPA
- New revenue model for Project

Regulatory Restrictions

- Decommissioning obligations in legislation, regulations, codes or guidelines
- Changes in regulatory environment since initial permitting
- Additional or alternative regulatory requirements for sales to private parties or into grid

Regulatory Restrictions cont'd

- Alberta Confirmation & Reclamation Directive for Renewable Energy Operations includes decommissioning requirements, process
- Virtually all requirements/processes have changed since the early industrial wind farms went up in Pincher Creek, Gaspé, Lion's Head, and they will change again
- Ontario projects may be required to go through additional processes relating to repowering, such as new Leave to Construct, new CIA/SIA, etc.

Permitting Considerations

- Duration of existing authorizations
- Limitation on extensions and renewals
- Decommissioning obligations in approvals
- Changes in legal environment since initial permitting
- Additional or alternative permitting requirements for post-PPA power sales
- Permits often very specific, limiting

Permitting Considerations cont'd

- OEB Electricity Generation Licence, example of an approval that ends at the PPA term, but can be extended upon application to the Board
- Authorizations can have decommissioning obligations built in, including by reference to consultant reports or other application materials
- Ontario Renewable Energy Approval – with repeal of *Green Energy Act* and associated changes, REAs will no longer be available
- Additional approvals may be required depending on different manners of sale, whether that is to an on-site purchaser, off-site through a virtual sale under contract (e.g. Bullfrog or to a load customer) or into the grid as merchant power. Highly dependent on legislation, regulations and relevant codes.
- Repowering with new equipment could be very limited by terms of critical permits, as to number of WTGs, size, location, even model

Landowner Agreements

- Term tied to end of PPA or to set period from Commercial Operation
- Limited or no extension or renewal rights
- Set period of extension right may not match with requirements for repowering
- Compensation may not be set for renewal period
- Right to access lands for construction may be limited to initial pre-operation period

Landowner Agreements cont'd

- Lease or easement may be restricted to particular sites for turbines and other equipment that does not allow for repowering
- Decommissioning requirements may not fit with current legal requirements or existing practices, and keeping to the strict letter of the agreement may not be best for either party
- Landowners may have changed several times since original documentation – and they may be counting on decommissioning of the facility to enable future plans for the property
- Party that obtained lease rights may have made promises relating to end of term, decommissioning, possibility of extension of lease or repowering – or these unwritten promises may have been made by a predecessor tenant
- Tough to repower or extend without a willing landowner

Conclusion

- Opportunities and challenges
- Not every Project will merit the expense of repowering, in both time and money, but some will
- None of the longer term options will be simple
- Owners need to treat these processes as seriously as initial development in order to be successful

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