On Ignoring the Legal Requirement to Evaluate Alternatives

Objection to the Proposed Jupiter Wind Farm

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February 8th 2017

The EIS does not conform with the requirements of the EARS or the *Environmental Planning and Assessment Regulation 2000* in the very major matter of providing:

> "an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure" [Schedule 2, s7(1)(c)]

which the EARS and the Regulation say it ***must*** do.

The EIS does not explicitly articulate the objectives for the project, but they appear to be:

> *To provide a facility capable of generating 350MW of intermittent and unpredictable electric power with low local CO_2 emissions, without concern for any consequent degradation of NSW electricity security.*

There are quite clearly multiple feasible alternatives for doing so, including wind farms at locations other than chosen for Jupiter, and solar farms either at the Jupiter location or another.

It is also apparent that the objective will not be imperilled if Jupiter is not built. Consequently:

1. ***The EIS must be rejected until it includes an analysis of all feasible alternatives to the project, including not carrying out the project.***
2. ***Burnes and Curtis must be sanctioned in whatever way the law allows for providing a false certification for the EIS.***

The Legal Requirement to Provide an Analysis of Alternatives

The EARS require the EIS to include:

> "an analysis of feasible alternatives to the carrying out of the development, having regard to its objectives, including an assessment of the environmental costs and benefits of the development relative to alternatives and the consequences of not carrying out the development, the suitability of the chosen option and whether or not the development is in the public interest." [1]

including

> "description of the alternatives considered (location and/or design) for all project components" [2]

s7(1)(c) of Schedule 2 of the *Environmental Planning and Assessment Regulation 2000* states that an environmental impact statement must include:

> "an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure"

Note that the s7(1)(c) is even more stringent than the EARS, in that it requires an analysis of "***any*** *(emphasis added)* feasible alternative", not just whatever ones the developer chooses to mention and reject. The EARS can elaborate on the requirement of the Regulation but not weaken those requirements unless the Regulation specifically allows for it – and it does not.

s7(1) itemises all those things which ***must*** be part of an EIS for a SSD. It has six subsections (a-f) listing that content. The requirement for an analysis of any feasible alternatives is ***one*** of only ***six*** subsections. Therefore it is not a minor part of the whole, nor in any way an optional matter.

Note also that what is required are feasible alternatives to "the carrying out of the development" – not simply a description of alternative configurations (e.g. shuffling of turbine placement or different height/power of turbines) for the development. Further, the EARS require this analysis to include "an assessment of the environmental costs and benefits of the development relative to alternatives"

Note also that the Regulation calls for an analysis of the option of "not carrying out the development". This is a significant part of the description of one sixth of the subsections describing what ***must*** be part of the EIS.

EPYC's Response to the Legal Requirement

In fact the EIS spends less than one page[3] discussing and rejecting the possibility of alternatives other than Jupiter. That is not an analysis of the alternatives. It is a simple refusal to do what the Regulations require.

Most of the supposed examination of alternatives is discussion of some minor variations of configuration for the Jupiter wind farm. It is not in any form an analysis of:

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[1] *Jupiter EARS*, 2 March 2016, p. 2.
[2] *Jupiter EARS*, 2 March 2016, p. 2.
[3] *Jupiter Wind Farm EIS*, p. 5.1.

> "any feasible alternatives to the carrying out of ***the development***"

as required by the Regulation since it does not specify any alternatives in even the flimsiest of detail.

Failure to Define Project Objectives

Part of the problem is the EIS never explicitly states what the objectives of the proposed development are. This is despite Table 1.3 claiming that Chapter 2 "Outlines the Project objectives" [4]

If the objectives are unclear, as they certainly are in the document, then it is impossible to accurately identify feasible alternatives "***having regards to its objectives***".

Much of Chapter 2 is actually a regurgitation of boilerplate about the wonders of wind farms and hypotheses about CO_2 emissions. It also lists a number of alleged benefits of the project. Many of those benefits can be disputed, and it is noticeable the document does not provide a comparable list of all the disbenefits from the project.

A list of alleged benefits is not seriously a statement of objectives for the project. For instance:

- One of the alleged benefits is providing a certain amount of employment during construction. But of course there are an almost unlimited number of alternative ways to provide employment, the majority of which have nothing to do with wind farms or even other means of power generation.
- Another claimed benefit is to provide a direct investment to the local economy. Again there are alternative ways of doing that, including further sub-development of land and residential development.
- Another alleged benefit is that it will "recycle and reuse materials where practically and economically feasible". Well, our local councils already have bins out for that purpose, which hardly seems to amount to project objectives as required by the Regulation.

Since the project is for an electricity generating facility, one might impute that the objective is something like:

> *To provide a facility capable of generating 350MW of electric power* [5]

Of course electricity consumers, and hopefully the State Government, would prefer a more constructive objective, such as

> *To provide a facility capable of generating 350MW of secure and continuous electric power at the lowest cost to consumers*

Historically it was never necessary to include the qualification "*secure and continuous*", since until the last twenty years no one in their right mind would have proposed building a power generator which did not provide secure and continuous power.

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[4] *Jupiter Wind Farm EIS*, p. 1.5.

[5] Power capacity mentioned on *Jupiter Wind Farm EIS*, p. 2.2.

EPYC's consultants are forced to admit that the proposed development will provide only intermittent power and that it will not support grid stability or security. They say:

> "The report states that the availability of plant to supply energy when needed, and capability to provide ancillary services, are both key factors to consider when assessing opportunities related to secure operations and supply adequacy in the NEM (AEMO 2016)." [6]

and

> "The 2016 report outlines that under a neutral economic and consumer outlook, and in the absence of new generation, coal-fired generation withdrawals at the levels assumed (including a planned 2,000 MW withdrawal in March 2022) may lead to reliability standard breaches, particularly in NSW by 2025-26" [7]

They neglect to mention that those "ancillary services", together with the ability to "supply energy when needed", are only provided by thermal or hydro power stations and not by wind farms[8].

Those innocuous sounding "ancillary services" are in fact the system critical functions of Frequency Control Ancillary Services (FCAS) and System Restart Ancillary Services (SRAS)[9], without which the electricity system will collapse.

And they neglect to mention that the "coal-fired generation withdrawals" which AEMO has warned "may lead to reliability standard breaches, particularly in NSW by 2025-26", are actually being driven by the addition of more subsidised wind farms into the electricity system.

Thus, it is pretty clear that the projects objectives cannot be

> *To provide a facility capable of generating 350MW of secure and continuous electric power at the lowest cost to consumers*

since even EPYC's consultants are forced to admit that not only ***will output from Jupiter not be secure or continuous*** but that by displacing thermal generators from the system it will actually make the whole system less secure and ***increase the likelihood of "reliability standard breaches" in NSW electricity supply***.

Given those facts and the amount of time chapter 2 spends on CO_2 emissions, it appears the objective is more like:

> *To provide a facility capable of generating 350MW of intermittent and unpredictable electric power with low local* CO_2 *emissions, without concern for any consequent degradation of NSW electricity security*

In principle there are multiple feasible alternatives to Jupiter to achieve this objective, including:

- a wind farm at other location, particularly one with less adverse community impact;
- a solar farm within the proposed Jupiter project area;

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[6] *Jupiter Wind Farm EIS*, p. 2.2.
[7] *Jupiter Wind Farm EIS*, p. 2.2.
[8] AEMO NEFR 2016, p.26.
[9] AEMO ESOO 2016, p.4.

- a solar farm at some other location

Wind Farm at Another Location

The NSW Government has approved wind farms at a number of other locations within NSW, and there are a number of others proposed by various parties. So EPYC can hardly claim that commercial wind farms are not feasible anywhere other than the Jupiter site.

It is therefore incumbent on the developer to identify other sites they had scouted out and on which they had done some preliminary investigation, with enough real analysis to show that, on a reasonable merit basis (i.e. including both benefits and impact on community) they would be less justifiable than the Jupiter location. None of that information is provided in the EIS.

Solar Farm at Jupiter or Another Location

A quick review of DPE's major projects site shows at least 8 solar farms approved in NSW, with SEARS issued for another dozen or so, with a couple of those now progressed to later stages of the process. So it can hardly be claimed that, as a generality, solar farms in NSW are not a feasible alternative to meet the apparent objective of the Jupiter project.

So what does the EIS provide as an analysis of those alternatives. It says:

> "Other forms of large-scale renewable energy accounted for in the LRET include hydro, biomass, solar and tidal energy." [10]

So EPYC and its consultants actually know about the possibility of solar farms. The EIS then says:

> "With the exception of solar energy, the other alternative sources are in the early stages of development and are generally not 'market ready'." [11]

So they admit that solar is **NOT** "in the early stages of development" and ***they admit solar is "'market ready'"***.

And that's it! They effectively admit that a solar farm is a feasible alternative and then provide no analysis of establishing such a power plant, at either the Jupiter location or any other.

Wilful Failure to Consider and Analyse Feasible Alternatives

It is clearly evident in terms of DPE's own portfolio of electricity generation projects approved and being considered that a wind farm in another location than Jupiter and a solar farm at either the Jupiter site or some other are:

> *feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives*

The Regulation requires that "an analysis" be provided of those alternatives, with the clear intent that such analysis contain sufficient detail that an approving authority can readily see

[10] *Jupiter Wind Farm EIS*, p. 5.1.
[11] *Jupiter Wind Farm EIS*, p. 5.1.

the alternatives are likely to be inferior on their merits. EPYC has wilfully disregarded this major requirement of the Regulation and the EARS.

Wilful Disregard of Requirement to Analyse the "Do Nothing" Option

The Regulation and EARS require the developer to analyse "the consequences of not carrying out the development".

EPYC provides zero analysis on this point but simply claims:

> "The 'Do Nothing' Approach instead of proceeding with the Project will lead to a missed opportunity in terms of reducing Australia's dependency on fossil fuels for energy generation and the consequential emissions of GHGs." [12]

That sweeping claim might have some *prima facie* validity if it appeared there were few other wind or solar farms in contemplation in Australia. But that is certainly not the case.

Indeed the National Wind Farm Commissioner (NWFC) has said[13] that the number of "renewable energy" projects in "the pipeline" is actually four times as much capacity as is needed to achieve Australia's RET.

"Renewable energy" power generators are commercially viable only with the benefit of the subsidy which all electricity consumers are forced to pay in the form of RECs. Consequently, any projects beyond the requirements of the RET will not be viable and will not be built.

Thus, according to the NWFC, Jupiter is simply one of many alternative projects which may provide the subsidised power to be produced under the RET. Consequently, if Jupiter is not built, there will be no difference in the amount of electricity supplied under the RET. There will be no difference in the amount of "green house gases" supposedly saved.

There will be simply a difference in the location and the intrusiveness of the projects which actually produce the power. If it is from solar farms it will almost certainly be less intrusive than the Jupiter proposal. If it is from other wind farms, it will also very likely be less intrusive than the Jupiter proposal. This is because, as DPE officials have stated, "in terms of the number of people impacted, Jupiter is at the highest end".

Whether the figures stated by the NWFC are exact, it is obvious to everyone that there are already a large number of approved but not yet built wind and solar farms throughout Australia and in NSW, let alone the many more now seeking approval, including multiple new solar farms in NSW.

If EPYC wants to claim that its proposed objective will not be met in the absence of approving Jupiter, it needs to identify all of the approved projects and those now seeking approval, total up their combined potential capacity and show that capacity is insufficient to meet the RET.

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[12] *Jupiter Wind Farm EIS*, p. 5.1.

[13] Meeting of National Wind Farm Commissioner with community representatives on the Jupiter Community Consultative Committee, Tarago Hall, May 3, 2016.

If there is a gap, EPYC would have an argument that Jupiter is needed in order to meet the objective. If instead there is an excess, as the NWFC indicated, then there is no argument for Jupiter.

It is quite straightforward to do this analysis. EPYC has chosen not to do so. That suggests a deliberate intention to conceal the truth. It certainly shows a wilful intention to disregard the very explicit requirements of both the EARS and the Regulation.

False Certification

So the EIS very deliberately ignores major requirements imposed by the EARS and the Regulation.

It follows that Burnes and Curtis made a false certification when they declared, at the front of the EIS, that:

> "The EIS has been prepared in accordance with Schedule 2 of the Environmental Planning and Assessment Regulation 2000 and contains all available information that is relevant to the environmental assessment of the development. The EIS draws on the work undertaken by a number of technical specialists engaged as part of the Project Team with the information contained in the EIS neither false nor misleading."

Burnes and Curtis apparently have been involved with the production of EISs for other projects. They surely cannot be ignorant of the exact requirements of either the EARS or the Regulation – especially when they explicitly claim the EIS is in accordance with that Regulation.

Conclusion

The EIS does not conform with the requirements of the EARS or the Regulation in the very major matter of providing:

> "an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure"

which the EARS and the Regulation say it ***must*** do. Consequently,

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