



<b>DOCKET</b>	
<b>06-OII-1</b>	
<b>DATE</b>	JAN 24 2007
<b>RECD.</b>	JAN 24 2007

January 24, 2007

The Honorable Jackalyne Pfannenstiel, Chair  
The Honorable John L. Geesman, Commissioner  
The California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Re: Draft – Statewide Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development**

Dear Commissioners Pfannenstiel and Geesman:

It has been one year since the California Energy Commission (CEC) jointly sponsored a conference in Pasadena to better understand wind energy's impact on avian and bat species. Since that time, thanks in no small part to the Commission's leadership on this issue, great strides have been made toward addressing wildlife impact concerns while increasing wind development in California.

Commission staff has engaged in an open and collaborative effort to develop statewide guidelines with constructive input from all stakeholders. This has been part of a much broader shift in what was a very negative and combative dialogue between conservation groups and wind energy developers. Again, it is to the credit of the Commission that these groups have been able to come together and work constructively towards their common goals. The clearest sign of this progress occurred recently when wind energy companies operating in the Altamont Pass reached a settlement in their lawsuit with several Bay Area Audubon chapters and Californians for Renewable Energy. This ongoing and once bitter dispute had slowed the development of wind energy across the state and elsewhere and now has offered hope that this debate can move forward with a positive dialogue.

The first draft of the CEC and California Department of Fish and Game (CDFG) voluntary Statewide Guidelines document is another positive indicator of progress. Each stakeholder involved in the workshop process has contributed constructively and the debate has been forward thinking. The result is a very comprehensive draft document that may very well be a step forward in the understanding of avian and bat impacts from wind turbines and the broad array of measures available to address those impacts. However, without changes to the current draft which (1) offer more certainty on pre-construction development schedule and post-construction costs, and (2) better link study requirements to

actual risk at each site, the guidelines may very well serve to discourage new wind development in California.

CEERT has narrowed the list of primary concerns down to five topics listed below. In addressing these concerns it is important to keep in mind that a balance must be struck between offering developers a level of certainty for their costs in developing a project while at the same time allowing for flexibility in determining what steps will be most effective for a given project to avoid, minimize and mitigate significant impacts to bird and bat populations. It is also crucial for the guidelines to provide for creativity in resolving environmental issues at each project with solutions not included in the guidelines document.

### **1. Boundaries on mitigation costs**

The guidelines should set boundaries on impact mitigation which will allow a developer to anticipate this cost in project planning. These boundaries would be in effect so long as impacts from post-construction monitoring are within a reasonable range of anticipated impacts determined in pre-construction studies and mitigated for in the project permit. The range of acceptable impacts should be outlined in the project permit.

### **2. Science Advisory Committee structure**

A formal Science Advisory Committee (SAC) should not be a requirement of guidelines compliance. Rather early consultation with pertinent agencies and conservation groups should be strongly recommended. If the lead permitting agency and the project developer mutually determine that the formation of an SAC would be beneficial then one may be formed. In their current form, the guidelines rely too heavily on the input of SACs when the formation of such a body would likely encounter many hurdles including: a lack of agency staffing, increased costs to the project developer, disagreements among SAC members and limited availability of scientific input from local conservation organizations.

### **3. Long-term operations monitoring regimes**

Continued periodic monitoring is not the sole responsibility of the project developer/owner operator nor is it necessary at every site. In determining the need for continued periodic monitoring, probable cause must be shown. The argument has been made that continued periodic mortality monitoring (five year cycles were used as an example) for the life of a wind project might be justified. The draft guidelines state that this decision would be up to a SAC. The primary reason for this monitoring would be the effects of global warming which could alter bird behavior and bring new species into a wind resource which previously had little impact on birds. This was compared to the idea of continued pollution emissions monitoring for power plants. However, if impacts from a wind farm increase due to a new species moving into the area because of climate change,

the wind farm operators should in no way be accountable for this. Wind energy by the very nature of the technology, is fighting climate change. Therefore the impacts from the new species in the area could not be attributed to the wind farm at all but to the consumption of fossil fuels. To impose additional cost to monitor the effects of global warming on a technology that is fighting global warming simply does not make sense. Additionally, pollution monitoring presumes that the way in which a power plant is operated can increase impacts (i.e. if pollution scrubbers are not maintained on a natural gas power plant, pollution may exceed permitted levels). Periodic monitoring for wind farms would presumably not be to ensure that the farm was being operated properly, but that factors outside of the project manager's control (climate) were not increasing (or decreasing) impacts. Alternative funding sources should be sought if this kind of monitoring and research is determined to be necessary. Some possible sources include utility public benefits charges, Public Interest Energy Research (PIER) funds, or depending on the implementation of the California Global Warming Solutions Act, money may be generated from taxes or other fees on climate polluters to investigate climate impacts from global warming pollution.

#### **4. Goal of guidelines should be further clarified**

The question has continued to surface as to whether compliance with these guidelines are aimed at avoiding significant impacts as defined by California Environmental Quality Act (CEQA) or whether the goal is also to attempt to address strict liability laws such as the Migratory Bird Treaty Act (MBTA). Though the point has been made by some in the process that compliance with all state and federal laws is required under CEQA, clearly there is always the possibility that some incidental take of protected species may occur despite a developer's best efforts to avoid that situation. CEERT believes that the guidelines should represent a substantive measure of best management practices and all practical efforts to comply with the spirit of all laws protecting avian and bat species and should be explicitly recognized as such. Additionally, these guidelines will necessarily guide the use of prosecutorial discretion for regulatory agencies. Language to this effect should be inserted into the document's abstract, the executive summary as well as chapter 4: Impact Analysis and Conformance with Laws.

#### **5. Improve context for guidelines application**

In place of the required use of an SAC, the guidelines must offer stronger context in all sections for how the guidelines should be applied in the real world on actual projects. Under the proposed guidelines, each survey method or site condition appears to be given equal weight or priority. The types of studies required seem to be driving at scientific certainty rather than assessing the risk of a proposed project. In most, if not all cases, the cost of additional study beyond what is necessary to assess risk could be better spent on mitigation to the benefit of

avian species and project developers. In order to give the guidelines more utility, they must include a description of what survey and study methods are most useful as well as clearly defined objectives for each of the field methods that are described. Also, many of the techniques discussed in the document (i.e. bird acoustic surveys and nocturnal surveys) have not been shown to be associated with predicting impacts or risk and this should be explicitly recognized. At the request of the CEC and CDFG staff, CEERT, with the help of our member organizations, is working to formulate hypothetical project scenarios which will illustrate how the guidelines can be used in practice. These scenarios will be included in our second and more detailed round of comments.

Additionally, the guidelines should encourage cooperative, jointly funded mitigation and research efforts. Because questions still exist around the ways that birds and bats interact with wind turbines, comprehensive research and mitigation projects whose cost is infeasible for a single developer could instead be funded by multiple developers in combination with federal, state or local agencies. There would be enormous public benefit in the development of this knowledge in addition to the benefit that the wind industry would gain towards understanding better ways to reduce their impact on wildlife. Such research could also help to understand the impacts of climate change on avian and bat species as well as increasing knowledge of species population levels and fluctuations. The idea of an experimental mitigation fund has been discussed in past workshops. We encourage continued investigation of this idea either for inclusion in the guidelines or as a next step after the guidelines have been finalized.

With the help of a biological consultant and our member companies, CEERT is currently working on a second, more detailed round of comments on the draft guidelines. These comments will be submitted before the Committee Workshop on February 5, 2007. However, to ensure you have sufficient time to review our comments before that workshop I have compiled here our organization's primary concerns and suggestions for ways these concerns can best be addressed. CEERT appreciates the Commission's consideration of our views. We look forward to further collaboration with you and your staff as this process moves forward.

Sincerely,

  
Paul Verduyssen  
Development Coordinator

**Docket Optical System - CEERT comments on Wind/Avian Guidelines**

---

**From:** "Paul Vercruyssen" <paul@ceert.org>  
**To:** <docket@energy.state.ca.us>  
**Date:** 1/24/2007 12:03 PM  
**Subject:** CEERT comments on Wind/Avian Guidelines  
**CC:** <mward@energy.state.ca.us>, <ryork@energy.state.ca.us>, "Susan Sanders" <Ssanders@energy.state.ca.us>

Please find attached CEERT's letter regarding the Draft Wind/Avian Development Guidelines.

Paul Vercruyssen  
CEERT  
1100 11<sup>th</sup> Street, Suite 311  
Sacramento, CA 95814  
916.442.7785