

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

DOCKET

06-OII-1

DATE JAN 24 2007

RECD. JAN 24 2007

Development of Statewide Guidelines for)	Docket No. 06-OII-1
Reducing Wildlife Impacts from Wind)	Developing Statewide
Avian		
Energy Development)	Guidelines

**COMMENTS OF
OAK CREEK ENERGY SYSTEMS, INC.
ON STAFF DRAFT GUIDELINES
(Part 1)**

I. Introduction

As a developer and operator of wind energy in the State of California, Oak Creek Energy Systems, Inc. ("Oak Creek") hereby submits its comments on the December 2006 Draft Staff Report entitled "Statewide Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development" ("Staff Draft"). Oak Creek appreciates the opportunity to participate and provide comments during the development of the Staff Draft.

Oak Creek is committed to the responsible development of renewable energy, to the greenhouse-gas-reduction targets established by Governor Schwarzenegger (AB 32) and to help California meet its Renewables Portfolio Standard (SB 1078). This commitment is evidenced by the wind energy contract executed between Alta Windpower Development LLC, a subsidiary of Allco Financial Group Inc., and Southern California Edison on December 21, 2006, whereby Edison has agreed to purchase energy from at least 1500MW of wind energy projects to be constructed between 2008 and 2015. Oak Creek is a partner with Allco in the development, construction and operations of the projects covered by the contract. Therefore, Oak Creek will be playing a significant role in meeting these statewide targets.

However, Oak Creek must oppose the Staff Draft for the reasons outlined below.

II. General Comments

A. If Implemented as Drafted, the Staff Draft Will Not Be Voluntary

There are conflicting messages throughout the Staff Draft with respect to the voluntariness of the guidelines. For example, on the one hand:

“while the guidelines are intended for use throughout the state, they are voluntary and designed to be flexible to accommodate local and regional concerns.” [Staff Draft, page E-1]

On the other hand, however:

“The ‘Preliminary Site Screening’ chapter discusses methods used to assess the relative sensitivity of a potential wind energy project site and to determine the kinds of studies required to adequately evaluate impacts to birds and bats.” [Staff Draft, page E-2, emphasis added]

and

“Approval from the science advisory, CDFG, and USFWS is needed before deciding that existing data are adequate.” [Staff Draft, page 53, emphasis added]

Insisting that California agencies use the Staff Draft guidelines and apply them consistently is contrary to the purported voluntary nature of the guidelines. Also, setting requirements and dictating levels of data collection seems to indicate a creation of standards outside of CEQA. The effect of the Staff Draft as currently written is to either create a high potential for uneven implementation of the guidelines or to put major pressure on the Lead Agencies to agree to SAC recommendations.

B. If Implemented As Drafted, the Staff Draft will be Discriminatory and Unduly Burdensome

Certainly, it is a commendable goal to minimize adverse impacts of wind energy to birds and bats. However, the intensity of the data collection under the Staff Draft for even common species belies the fact that other causes of bird and bat mortality (e.g., collisions with buildings, reflective windows and motor vehicles) cause mortality far in excess of mortality related to wind energy projects. Consequently, the depth to which the guidelines require data collection is not proportionate or rational.

Large numbers of birds, protected by the Migratory Bird Treaty Act, are killed on our nation’s highways each year, yet even the most rudimentary mitigation measures are not imposed on new highway construction. The same is true for the construction of most new buildings. In fact, to our knowledge, no other industry in California is being similarly burdened by guidelines such as these. Most industries, including our competitors who generate energy from

fossil fuels, are working through such issues under CEQA and NEPA and other relevant processes already in place. Imposing a new set of vague and disproportionate requirements on the wind industry is unduly burdensome on the wind industry and will put the goals of AB-1038 and SB-32 at risk. (See also http://www.awea.org/pubs/factsheets/050629_Wind_Wildlife_FAQ.pdf and <http://www.awea.org/pubs/factsheets/wildlife.pdf>)

III. Specific Comments

A. The Science Advisory Committee (SAC) Will Not Facilitate Wind Energy Development within the State of California, Nor Will It Necessarily Facilitate Collaboration and Coordination among the Agencies

State and federal agencies have traditionally been understaffed. Adding another facilitated review process will further tax already overworked staff, increasing or delaying permitting or making permitting impossible. This is especially problematic for small developers because of unexpected costs and delayed revenues resulting from an extended permitting process. In addition, there is the issue of resolving disagreement amongst SAC members and between the SAC and the Lead Agency. All of these issues cause an increased risk of permitting delays and confusion.

In Kern County, the CDFG and other stakeholders already has a voice in the process by being consulted by the lead agency during the early consultation period of the environmental review process. Elevating CDFG to the SAC as proposed would usurp the lead agency's authority in the process and, in essence, give CDFG an unfair veto power over wind projects.

And though we agree that collaborating with conservation groups during pre-permitting and permitting phases is a valuable and vital part of the development process that should be encouraged; however, requiring local conservation group representatives sit on the SAC gives power to such groups to withhold approval of a project outside of the legislatively prescribed process. Many conservation groups do not retain qualified scientists and are not necessarily unbiased in their viewpoints. Moreover, conservation groups have standing to sue developers whether or not they sit on the SAC.

Also, having a SAC in addition to the guidelines weights the environmental assessment process heavier in the area of bird and bat issues. This creates a danger of applying the guidelines to birds and bats in a vacuum, when other environmental concerns may deserve greater focus and resources. It is important that the CEQA process of evaluating all of the project's impacts on the environment not be circumvented.

Finally, the guideline language with respect to the purview of the SAC is not reflective of a voluntary or advisory process, nor does it appear to facilitate collaboration with the Lead Agency:

“The intended purview of a science advisory committee will dictate its range of tasks and frequency of activities.”

B. Chapter 4 Misinterprets What Impacts are Considered Significant under CEQA Guidelines

For example, the third paragraph of the Staff Draft, under the section titled “California Environmental Quality Act”, incorrectly lists three bulleted items as mandatory findings of significance. These bulleted items are actually items to be rated during the environmental assessment process using ranges: impact, less than significant impact, less than significant impact with mitigation incorporation to significant impact. Under Section 15065 of the CEQA Guidelines, Mandatory Findings of Significance relative to wildlife are where the project has the potential to: “substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.”

This confusion in the guidelines demonstrates why it is important that the guidelines not paraphrase CEQA. It is also important that determinations of impact be made under the CEQA process, which has clear definitions and guidelines for determining impacts. For example, under Section 15043 of the CEQA Guidelines:

“A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that: (a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and (b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project.”

Continued assessment of a project’s environmental impacts should be made under CEQA and the guidelines should be constructed in a manner that will not create a conflict with this established process.

C. Chapter 4’s Attempt to Compare Mortality Based on Rotor-Swept Areas and Megawatts (MW) is Not Necessarily Based on Good Science

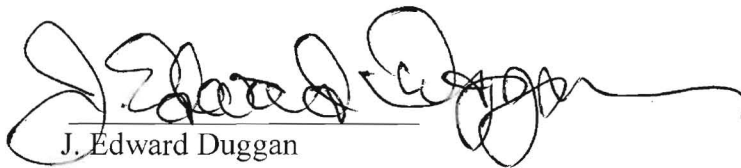
Mortality as it relates to rotor swept area can vary depending not only on the area of the rotors, but also on turbine layout and positioning relative to the terrain. For example, a number of large turbines may have the same rotor swept area as a combination of small and large turbines alternated or in parallel rows, and such a combination may in fact, depending on the situation, have a higher rate of mortality than the same rotor swept area encompassed by a different layout. Therefore, expressing mortality through either one of the methods does not necessarily ensure comparable data that can be interpreted in the same manner. Although larger, state-of-the-art turbines may operate at variable speeds, increasing overall operating time, fewer would likely need to be installed such that increased operating time does not necessarily translate into a larger impact.

It is critical that good science prevail and that the guidelines not be based on bird and bat mortality preconceptions.

IV. Conclusion

For these reasons, Oak Creek respectfully requests that the Commission reconsider and revise its Staff Draft.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Edward Duggan', with a long horizontal flourish extending to the right.

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January 24, 2007