



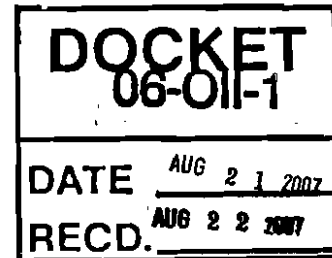
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August 21, 2007

California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 06-OII-1  
1516 Ninth Street  
Sacramento, CA 95814-5512



RE: Docket # 06-OII-1 Draft Avian Guidelines

To whom it may concern:

RES America Developments, Inc. would like to comment on the California Energy Commission's recent document entitled *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development: Committee Draft Report*. Our company alone spends hundreds of thousands of dollars each year studying the impact of wind energy on avian species. The protocols used in these studies have become an industry standard. Hundreds of papers have been written and a specialized industry of environmental consulting has grown from this need. Developers, such as RES, are currently conducting all the necessary studies in advance of siting wind farms and post-construction to minimize impacts to avian species. Adopting the guidelines (as proposed) will only further complicate the permitting process in the state of California, and is unlikely to have any positive effect on the resource of concern. By the issuance of the draft guidelines, the wind industry has been singled out for what constitutes relatively minor impacts on the environment when compared to most other energy development in the United States. RES strongly suggests revising the guidelines; and has provided both general and specific comments with recommended changes. We appreciate your time and effort in incorporating our suggestions into the draft document.

### General Comments

- The guidelines are overly prescriptive, inflexible and do not allow for creative site-specific mitigation and variance in study protocol that is often needed in order to identify and avoid potential impacts.
- The guidelines elevate CDFG's role in the permitting process. RES is concerned that the guidelines will be accepted as "policy" by local CDFG offices and any level of work conducted outside the parameters suggested in the guidelines will be considered inadequate. RES is also concerned with the availability of CDFG staff. Existing delays of several months will be exacerbated with additional review and approvals by CDFG suggested in this document.
- The guidelines contain requirements for compensatory mitigation that is based on estimated impacts instead of measurable impacts.
- There are no limitations of the retroactive use of the guidelines for projects in development which have already conducted significant avian studies. Likewise, existing post-construction monitoring and mitigation plans for permitted projects should be exempt from changes resulting from the adoption of the guidelines.
- The guidelines also contain additional and unnecessary requirements that will hamper the ability of the State of California to meet its RPS and AB 32 Goals.

**Specific Comments / Recommended Changes** (recommended insertions are underlined):

Pg. E-1 Line 12 . Following the Guidelines is voluntary; the CLC recognizes that the protocols suggested in this document may need to be adjusted to accommodate unique site-specific conditions. This document is available as a resource for agencies that issue permits for wind facilities and for other parties involved in the permitting process.

Pg. 7 Line 310: Wind energy developers ~~who should~~ use the methods described in the Guidelines will ~~secure information on impact assessment and mitigation that would apply to CEQA and to the other wildlife protection laws and will demonstrate a good faith effort to develop and operate their projects in a fashion consistent with the intent of local, state, and federal laws.~~

**Comment:** This change is needed because the language implies that developers who do not follow the guidelines (even though they are voluntary), but do demonstrate good faith efforts, would still be at risk for prosecution.

Pg. 13 Line 524: Compensation

**Comment:** see comment below regarding compensation.

Pg. 16 Line 622: Operations monitoring, also referred to as post-construction monitoring, involves searching for bird and bat carcasses under turbines to determine fatality rates and ~~continuing~~ may involve the collection of bird and bat use data, consistent with pre-permitting study methods ~~conditions of the approved permit.~~

Pg. 15 Line 602: **Remove:** In extreme cases, additional compensatory mitigation may need to consider operational and facility changes such as habitat modifications, seasonal changes to cut-in speed, limited and periodic feathering of wind turbines during low-wind nights, seasonal shutdowns, or removal of problem turbines.

**Comment:** See comment below regarding compensation. Suggesting untested mitigation measures such as shut-downs or removal of turbines in “extreme cases” (which are undefined at this point) will have impacts on project financing.

Pg. 18 Line 724: **Remove:** Bird Use Counts

Pg. 18 Line 730: **Remove:** Bat Acoustic Monitoring

**Comment:** It should not be assumed that all projects will require these activities as a part of post-construction monitoring. Bird and Bat use studies post-construction do not measure fatality rates.

Pg. 23 Line 859. A site visit ~~is also essential~~ may also be warranted to determine if biological conditions at the proposed site are similar to those described at the existing project or projects.

**Comment:** This information can be obtained from literature, photos, GIS data and topographic maps, field visits to sites referenced in studies are not necessary.

Pg. 28 Line 975: ~~Compliance with the Guidelines~~ Consultation with the California Department of Fish and Wildlife and the US Fish and Wildlife Service during the permitting process will demonstrate a good faith effort to develop and operate projects in a fashion that is consistent with the intent of these state and federal wildlife protection laws. Such good faith efforts will be considered by CDFG before taking enforcement actions for violation of a California wildlife protection law.

**Comment:** Here as in Chapter 1 it is implied that “compliance” with the guidelines is required to avoid prosecution. The term “compliance” should be reserved for use when discussing regulations, not voluntary guidelines. The guidelines are “voluntary,” all inferences to enforcement of compliance or risk of non-compliance should be removed from the document.

Pg. 28 Line 1007 **Remove:** Finding suitable habitat for compensatory mitigation, if necessary, can be time consuming; early and thorough data collection and analysis will aid this process. Inadequate data acquisition may prompt a lead agency to apply more stringent impact avoidance, minimization, or mitigation measures to ensure species protection and may result in increased levels of operations monitoring.

**Comment:** see comment below regarding compensation.

Pg 32 Line 1144: When CDFG is required to make a discretionary decision to permit a project under its regulatory authority, CDFG must also comply with CEQA in the issuance of these permits and other project approvals, including following CEQA timelines for comments and approvals.

Pg. 41 Line 1438: The study methods recommended below offer a standard set of protocols for collecting data about birds and bats at project sites defined as Category 2 or 3 sites. Category 1 sites may require a reduced pre-permitting study effort; however, consultation with appropriate agencies is recommended to determine the level of study appropriate at all sites.

**Comment:** Further delineation of recommended level of study per category is needed.

Pg. 58 Line 2067: Repowering may requires pre-permitting studies using the same similar methods as those described above for new projects. The level of study required in advance of repowering will be determined in part by results of post-construction monitoring studies.

Pg. 66 Compensation:

**Comment:** RES is concerned over the use of compensatory mitigation for “estimated impacts.” It is preferable to link compensatory mitigation with “actual impacts.” The *possibility* that a bird is impacted cannot be reasonably mitigated through habitat enhancement or other suggested forms of mitigation. Mitigation should be built into permit conditions, but should be done in a way that links compensation with actual impacts. For example, a wind energy project in Oregon permitted by the Oregon Energy Facility Siting Council prepared a mitigation plan which included “thresholds of concern” whereby fatality thresholds were set for individual species. If during fatality monitoring, it is determined that fatality numbers are nearing the “threshold of concern” the operator and the appropriate agencies meet to discuss the results and determine an appropriate level of compensatory, or other appropriate mitigation measures. If the CEC recommends compensatory mitigation for estimated impacts, RES suggests that the CEC include thresholds in this document. RES would like to know what the recommended levels of estimated impacts which will require compensatory mitigation would be.

P. 73 Determining Bird and Bat Abundance and Behaviour during Operations

**Comment:** The same level of bird abundance and behaviour studies conducted pre-permitting is not necessary for post-construction monitoring and will add considerable costs. Post-construction monitoring should be focused on collection of actual impact data (fatality data).

RES thanks you for taking the time to consider our concerns with the draft guidelines. I assure you that RES and others in the industry have taken responsibility to address the issue of avian mortality associated with wind energy development and will continue to do so.

Sincerely,



Fuz:

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Permitting Specialist, NW