

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

In the Matter of:

Development of Statewide Guidelines for Reducing
Wildlife Impacts from Wind Energy Development

Docket No. 06-OII-1

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DATE	AUG 22 2007
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**ENXCO DEVELOPMENT CORPORATION
COMMENTS ON
VOLUNTARY STATEWIDE AVIAN GUIDELINES**

Dennis Scullion
Regional Director Business Development
enXco Development Corporation
5000 Executive Parkway, Suite 140
San Ramon CA, 94583
Telephone: (925) 242-0168
Facsimile: (925) 242-0355
E-mail: denniss@enxco.com

Greg Blue
Regional Manager External Affairs
enXco Development Corporation
5000 Executive Parkway, Suite 140
San Ramon CA, 94583
Telephone: (925) 323-3612
Facsimile: (925) 242-0355
E-mail: gblue@enxco.com

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Pursuant to the Notice of Committee Hearing issued for the August 13, 2007 hearing to accept public comment on the Committee Draft Guidelines, enXco Development Corporation¹ (enXco) is pleased to submit these comments on the ongoing process to develop voluntary Avian Guidelines that both encourage the development of wind energy and reduce impacts to birds and bats. enXco has been and will continue to be proactive on avian issues and we hope that the final guidelines will be something we can endorse and use.

Introduction

enXco has participated in this entire process and would like to commend Energy Commission Staff for adopting some of the suggestions we have presented. However, as currently drafted the goals of the guidelines are still not clear and they are still too prescriptive and they will add development cost which will increase the cost of renewable generation at the same time as the law requires an increase in procurement of renewable generation. enXco has strong concerns over the “Voluntary” nature of these guidelines as well as the potential delays that could be caused by these guidelines. Already, projects are being delayed by county siting agencies that want to wait for the final guidelines before they approve any new wind projects. enXco is also concerned that these

¹ California-based enXco is affiliated with EdF EN and develops, constructs, operates and manages wind energy projects in California and throughout the US.

guidelines give an increased role in the permitting process to CDFG. enXco remains skeptical that CDFG can take on more work without seriously delaying the permitting process which threatens the state's renewable energy and greenhouse gas reduction goals.

While enXco supports this process to date we cannot endorse this Committee Draft. Our comments are focused on the Committee Draft but also will offer some reactions to the oral comments and discussion we heard at the August 13, 2007 Committee Hearing. Also attached to these comments is the enXco Power Point presentation that was prepared for that hearing. enXco is a member of the California Wind Energy Association (CalWEA) and the Center for Energy Efficiency and Renewable Technology (CEERT) and endorses the comments filed by these organizations.

Previous enXco Comments

As stated previously, enXco has participated at every step of the way in this process. enXco's comments on the Staff Draft were presented at the February 5, 2007 Committee Hearing held in Livermore, CA. One of our comments was that improperly structured guidelines will become another barrier to wind energy development. The California Environmental Quality Act (CEQA) already makes California one of the toughest places in the country to permit a wind energy project and unfortunately, the prescriptive nature of this draft is yet another barrier to wind energy development. These guidelines should be providing more, not less, certainty for wind energy development. Another enXco comment was there does not appear to be any consideration given to balancing between avian impacts and promoting wind development to minimize impacts from global warming. There is still no language in these guidelines discussing this topic.

One of our previous comments was that the "One Size Fits All" approach does not work. While the Committee Draft attempted to fix that problem by creating a framework that calls for different categories, enXco questions the process for categorizing the projects using so many different stakeholders. enXco also opposed formal role for Science Advisory Committee (SAC). This draft made a substantial positive change by eliminating all approvals and decision making for the SAC and maintains their role in an advisory capacity only. We also commented that the avian monitoring protocols need boundaries. The Committee Draft still contains language on long-term post operational monitoring beyond two years and discusses having 52-week bird counts and acoustical bat monitoring on every single project.

Problems with Committee Draft

After review of the Committee Draft enXco is still not clear on goals of guidelines. Are they really voluntary or are they designed to become the standard default approach of lead agencies regardless of circumstances? Or are they only a resource for agencies that issue permits for wind facilities? Is the purpose to “provide recommendations” or to “design”, “develop” and “implement” monitoring plans, impact avoidance, minimization, and mitigation measures? Is their intent to provide the information needed to determine significant biological impacts or is their intent to create broad prescriptions regardless of potential impact? In order to not discourage wind energy development in California these voluntary guidelines should be a set of recommendations to the lead agencies that are implementing the CEQA process. The section titled “Step-by-Step Approach to Implementing the Guidelines” would be appropriate as a set of recommendations.

The Committee Draft does not address “grandfathering” projects already in permitting process. The Guidelines should specifically state a start date and that projects who have filed permit documents should be exempt from these guidelines. Even though this draft suggest different categories for projects that might there is still no real streamlining of the permitting process the guidelines preference is one size fits all.

enXco Recommendations

In addition to supporting the specific recommendations of CEERT and CalWEA, enXco recommends the following:

- Title of Document: Should be changed to: “Voluntary California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development”.
- Executive Summary & Introduction: Needs an explicit statement regarding the start date for the program and a statement regarding grandfathered projects. Suggested grandfathering language: “Projects that have already filed their Development Permit Applications with their lead CEQA agency before the effective date of these guidelines are grandfathered and are not subject to these guidelines.”
- Chapter 2 CEQA, Wildlife Protection Laws, and the Permitting Process: enXco endorses the Sierra Club’s suggestion of adding a detailed description of the CEQA process to this chapter.
- Chapter 3 Pre-Permitting Assessment: The process for determining categories of projects it is too cumbersome and involves too many stakeholders. It is not practical to require consultation with CEQA lead agency, USFG, CDFG, biologists and other appropriate stakeholders.

Suggested edit: new Line 1273 – “In deciding how to categorize a proposed project and when proposing to deviate from the standardized monitoring level, consult with the CEQA lead agency and the CEC.

- Chapter 3 Pre-Permitting Assessment: Needs to be a separate category for Repowering projects that results in real streamlining permitting process. enXco agrees with CEERT and Commissioner Geesman on the importance of this topic.

- Chapter 3 Pre-Permitting Assessment & Chapter 5 Operations Monitoring & Reporting: Acoustical bat monitoring is not a mature technology and should not be required at every site. enXco would, however, support this experimental research at a variety of sites, funded by multiple parties. enXco would like to see language that justifies the three year bat acoustical monitoring studies.

Conclusion

In conclusion enXco is committed to continuing its practice of proactively addressing avian issues with or without voluntary guidelines. As currently drafted, these guidelines undermine the CEC’s stated goal: “The goal of the proceeding is to encourage the development of wind energy in the state (while minimizing impacts to wildlife).” These draft guidelines create new regulatory hurdles across the board without appropriate focus on streamlining. While enXco supports the intent of this process, absent significant changes, enXco cannot support these guidelines as currently drafted. It would be beneficial to see the formal explanation from staff on why many of the wind industry’s recommendations were not addressed by staff before the final draft is issued. California will not achieve it’s mandated 20% RPS by 2010, and 33% RPS to follow – in response to the growing climate crisis – without the environmental community, state and local agencies and wind industry all pulling together.

Respectfully submitted:

Greg Blue
Regional Manager External Affairs
enXco Development Corporation
5000 Executive Parkway, Suite 140
San Ramon, CA 94583
gblue@enXco.com

August 22, 2007



enXco Development Corp.

California Avian Guidelines
Committee Draft Report
CEC Docket No. 06-O11-1

Committee Workshop
Sacramento, CA
August 13, 2007





Previous enXco Comments

- Improperly structured guidelines will become another barrier to wind energy development
- No consideration given to balancing between avian impacts and promoting wind development to minimize avian impacts from global warming
- These guidelines should be providing more, not less, certainty for wind energy development
- “One size fits all” approach does not work
- Opposed formal role for Science Advisory Committee
- Avian monitoring protocols need boundaries
- Actual goals of guidelines are unclear



Problems with Committee Draft

- Still not clear on goals of guidelines:
 - Are they really voluntary or are they designed to become the standard default approach of lead agencies regardless of circumstances?
 - Or are they only a resource for agencies that issue permits for wind facilities?
 - Is the purpose to “provide recommendations” or to “design”, “develop” and “implement” monitoring plans, impact avoidance, minimization, and mitigation measures?
 - Is their intent to provide the information needed to determine significant biological impacts or is their intent to create broad prescriptions regardless of potential impact?
- Doesn't address “grandfathering” projects already in permitting process.
- Still no real streamlining of the permitting process – Guidelines preference is one size fits all.



enXco Recommendations

In addition to supporting the specific recommendations of CEERT and CalWEA, enXco recommends the following:

- **Title of Document:** Should be changed to: “Voluntary California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development”.
- **Executive Summary & Introduction:** Needs an explicit statement regarding the start date for the program and a statement regarding grandfathered projects.
- **Chapter 3 Pre-Permitting Assessment:** In determining categories of projects it is not practical to require consultation with CEQA lead agency, USFG, CDFG, biologists and other appropriate stakeholders.
- **Chapter 3 Pre-Permitting Assessment & Chapter 5 Operations Monitoring & Reporting:** Justify the three year bat acoustical monitoring studies.



Conclusion

- enXco is committed to continuing its practice of proactively addressing avian issues with or without voluntary guidelines.
- As currently drafted, these guidelines undermine the CEC's stated goal: "The goal of the proceeding is to encourage the development of wind energy in the state (while minimizing impacts to wildlife)."
- These draft guidelines create new regulatory hurdles across the board without appropriate focus on streamlining.
- Absent significant changes, enXco cannot support the guidelines as currently drafted.
- California will not achieve it's mandated 20% RPS by 2010, and 33% RPS to follow – in response to the growing climate crisis – without the environmental community, state and local agencies and wind industry all pulling together.