

**Docket Optical System - FPLE comments on July 2007 draft Guidelines for reducing impacts to birds and bats from wind energy development**

**From:**  
**To:** , "Susan Sanders" , , "Misa Ward" , , "Rick York"  
**Date:** 8/23/2007 6:02 AM  
**Subject:** FPLE comments on July 2007 draft Guidelines for reducing impacts to birds and bats from wind energy development  
**CC:** "Paul Vercruyssen" , "Linehan, Andrew" ,  
**Attachments:** "Paul Vercruyssen" , "Linehan, Andrew" ,

Please accept these comments from FPL Energy Project Management Inc. (FPLE) on the July 2007 draft Guidelines for reducing impacts to birds and bats from wind energy development.

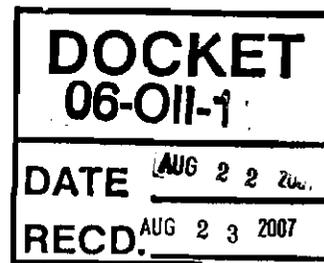
Susan/Rick: I assume that by copying this e-mail to "docket@energy.state.ca.us" this will, in fact, be formally docketed. Please let me know if I need to handle this differently.

Thanks as always to the CEC/CDFG staff for all the hard work.

Kenny

*(See attached file: FPL Energy Comments Aug 2007.doc)*

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**Additional Comments From FPL Energy Project Management, Inc. on  
July 2007 Draft of CEC/CDFG “Statewide Guidelines for Reducing  
Impacts to Birds and Bats from Wind Energy Development”  
(August 22, 2007)**

FPL Energy Project Management, Inc. (FPLE) continues to support the development of statewide guidelines that serve to promote wind energy development while minimizing impacts to birds and bats. However, due to several critical problems with the current draft, FPLE cannot support the guidelines in their current form.

FPLE, along with several other wind energy companies, continues to work through CEERT to communicate its comments on key aspects of the guidelines. Accordingly, FPLE’s comments on the July draft should be read in conjunction with CEERT’s comments on the July draft (and previous drafts).

FPLE has been an active participant the guidelines development process and commends the CEC and CDFG staff for their hard work in attempting to tackle complicated issues through a multi-stakeholder process. Up until the second major draft of the guidelines issued in April of this year, that process involved an open, productive exchange of ideas and opinions among the various stakeholders. However, that dialogue essentially ceased after the April draft was issued. CEERT/FPLE made several comments on the April draft, and while we were happy to see that many of them were accepted, many were not. We were informed at the public hearing on August 13 that we would not receive an explanation as to why those comments were not accepted until September when the final guidelines are issued. This is inconsistent with the consensus-building process the CEC/CDFG has been promoting. Therefore, we respectfully request, either in writing or via a more informal verbal exchange, an explanation as to why those comments were not accepted and an opportunity to provide more data and information in the event that our comments may have been misunderstood. This exchange should take place *before* the CEC/CDFG staff generate what we understand will be the final draft to be adopted by the Commission.

FPLE’s comments on the July draft are presented below. None of them are new – they are for the most part a reiteration of comments that were submitted on previous drafts. Again, these comments should be read in conjunction with CEERT’s comments since FPLE contributed to that effort.

## **CEQA, Wildlife Protection Laws, and the Permitting Process (Chapter 2)**

- **Line 1041** states that “permit conditions may have to include mitigation measures that address the other wildlife laws discussed below, in addition to those required by CEQA, to avoid, minimize, and *fully mitigate* impacts to birds and bats” (emphasis added). While FPLE agrees that measures should be taken to minimize impacts, we do not agree that wind project should be required to mitigate or compensate for impacts that are less than significant under CEQA. The guidelines as written essentially require mitigation in cases where the law currently does not require it. For example, while certain strict liability wildlife laws prohibit any “take” of certain birds, they do not necessarily require that any and all take be mitigated. And there is no law requiring that all impacts to bats be mitigated. CEQA was intended to define those impacts for which the state requires mitigation. It is not appropriate for these guidelines to recommend a mitigation threshold higher for renewable wind energy projects than what the current law prescribes for all other projects. See also lines 528, 975, 2400 which indicate that “impacts”, as opposed to “significant” impacts, should be mitigated. We request the word “significant” be added before the word “impacts.”
- **Lines 1030 and 306** state that “following the CEQA Guidelines alone may not highlight all of the species and issues that need evaluation.” Because CEQA requires the evaluation of all environmental impacts, whether they are “significant” or not, we are not aware of any case where an evaluation of a wind project’s potential impacts to birds and bats under CEQA would not be sufficient. This phrase should be deleted.

## **Pre- and Post-Construction Bat Studies (Chapters 3 and 5)**

The protocols for pre- and post-construction acoustic monitoring for bats in the July draft remain essentially unchanged from the April draft. CEERT, with input from FPLE, other wind companies and certain environmental organizations, provided comments on the April draft which included a collaborative research funding alternative to the prescribed protocols and a rationale for why the protocols in the draft guidelines are problematic. However, those comments were not accepted. FPLE continues to support the comments submitted on the April draft and will not repeat them here.

We heard at the public hearing on August 13 that the requirement for two years of post-construction acoustic bat monitoring was eliminated. However, the July draft does not reflect this. At line 2649 (see also line 730), the draft guidelines state:

“For operations monitoring of bats, evaluate the pre-permitting data and consult with CDFG, USFWS, and other knowledgeable scientists and appropriate stakeholders to determine whether information about the ambient level of bat activity is a necessary adjunct to the bat fatality data. If bat use data is considered a necessary component of operations monitoring, collect data on environmental and weather variables concurrently with the bat activity [acoustic] data collection so that these variable can be correlated with daily carcass counts.”

Because the CDFG had already indicated that they believe post-construction acoustic monitoring data IS a necessary adjunct to bat fatality data, the wind industry has to assume that such monitoring will be required and plan for that cost accordingly.

FPLE continues to believe that it is inappropriate for the guidelines to recommend such extensive and expensive pre-and post-construction acoustic monitoring when there remains such a great deal of uncertainty as to whether such monitoring is effective at predicting or helping to mitigate risk. The draft guidelines themselves acknowledge the limitations of acoustic monitoring:

Line 1957: “[A] fundamental gap exists regarding links between pre-permitting assessment and operations fatalities.”

Line 2004: “Acoustic monitoring for bats . . . has yet to be shown to be strongly associated with estimates of collision risk or impacts. The correlation of pre-permitting acoustic data with collision risk is an area of active research and a topic worthy of further investigation by the collaborative, public-private research partnership being considered by the Energy Commission, CDFG, wind energy developers and non-governmental organizations interested in wind-wildlife interactions.”

Yet despite this acknowledgement that acoustic monitoring for bats is still in the research stage, the draft guidelines continue to recommend a full year of pre-construction acoustic monitoring and, we expect in most cases, two full years of post-construction acoustic monitoring at most sites. Assuming that wind companies rely on outside experts to provide and install the acoustic monitors and analyze the data collected, FPLE estimates it could cost up to \$600,000 per year or \$1,800,000 for all three years of acoustic monitoring for a typical 200 MW wind project; an expense that may very well contribute very little to predicting and mitigating risk to bats or better understanding the extent to which impacts could be biologically significant.

Until there is greater consensus on the extent to which acoustic monitoring is a good indicator of biologically significant risk, FPLE suggests removing the acoustic monitoring protocols from the guidelines. In the meantime, FPLE remains committed to working with the various stakeholders to define appropriate pre-construction risk assessment measures on a case-by-case basis in addition to conducting post-construction bat mortality monitoring as the draft guidelines recommend. Such case-by-case measures could include installing acoustic monitors on future met towers for projects in areas where a lack of post-construction bat mortality data and the presence of certain bat habitat indicators contribute to risk uncertainty. FPLE also remains open to supporting/funding a regional approach by a collaborative effort to conduct the kind of research on wind turbine-bat interactions that these guidelines appear to recommend for every project and would support language in the guidelines that encourages such support/funding.

### **Pre-Construction Avian Studies (Chapter 3)**

- **Line 1344** states that “Proposed projects that involve developing multiple groups of turbines over large geographical areas . . . may need additional specialized, multi-year studies.” Because most future wind projects in CA could arguably meet this criterion, this is inconsistent with other provisions in the guidelines which suggest that most pre-permitting surveys should last a minimum of one year. We request removing the size of a project as a single criterion that, alone, could justify more than a year of pre-construction monitoring.
- **Line 1538** still suggests that establishing “reference sites” is required in all cases for bird use counts even though there seemed to be a consensus in the guideline workshops that this would only be appropriate for BACI studies where displacement is a concern. Use of the term “reference sites” should be limited to the BACI discussion starting on line 1659 which would apply only in cases where displacement is a concern.
- **Line 1589** recommends nest searches out to 3 miles for certain raptors. This is an expensive endeavor and no justification is provided to support the recommendation. Nests located that far away from a project boundary would not be impacted by construction activities and any birds nesting outside the boundaries of the wind project that are at risk of collision would be identified during the pre-construction bird use counts. FPLE recommends nest surveys out to one mile as sufficient to locate nesting birds that could be impacted by construction activities.

### **Post-Construction Avian Monitoring (Chapter 5)**

- Chapter 5 still requires, at most sites, two years of post-construction avian use monitoring in addition to two years of post-construction mortality monitoring despite CEERT’s previous comments explaining why such monitoring has limited value except in cases where displacement is an issue. FPLE does not believe such rigorous “use” data is particularly helpful given the cost (at least \$100,000 per year – significantly more in remote areas). Line 2644 suggests that the additional bird use data “provides a context for interpreting fatality data” but does not provide any further technical justification for such studies that would justify the cost. FPLE requests that the recommendation for two years of post-construction avian use monitoring be removed from the guidelines.
- **Line 2613** states that if agencies and other stakeholders deem fatality levels to be “high”, wind projects should conduct post-construction mortality monitoring every five years for the life of the project. This provision should be removed. First, “high” is not defined, so the trigger for such long term monitoring is not clear. More importantly, the guidelines do not provide an adequate justification for such monitoring. If impacts are, in fact, higher than expected, the adaptive management provisions in the guidelines recommend additional compensation or other potential

mitigation measures. Conducting monitoring every 5 years for the life of the project serves more to establish how bird use/migration behavior might shift over time than to help mitigate site-specific impacts. As CEERT has stated in previous comments on the guidelines, wind energy projects should not be required to fund studies on changing bird migration patterns especially when such changes could very well be the result of global warming, the very problem wind energy is trying to help solve.

#### **A Step-By-Step Approach to Implementing the Guidelines**

- **Line 331** states that “[p]rojects potentially falling into Category 1 would include infill development and those near *low impact* wind facilities (emphasis added). This should be changed as follows to reflect the language at Line 1282 addressing the same issue: “. . . and those near wind facilities where there is little uncertainty as to the level of impact.” As we have stated in previous comments, the level of impact associated with an existing, nearby project should not have to be “low” in order for data to be effectively extrapolated to a new project to support less monitoring. What’s important is that the risk/impacts of the existing, nearby site be sufficiently *defined* (whether they are low, moderate or high) such that defining them again at the new nearby site is not an efficient use of resources, especially if the project proponent is willing to assume a conservative level of risk/mortality (based on the monitoring results from the nearby site) and accepted correspondingly conservative mitigation measures.

#### **Assessing Impacts and Selecting measures for Mitigation (Chapter 4)**

- **Line 2437** states that “[t]he purchased land or easements should have high biological value for the targeted species . . .” We request that this be Changed to read: “The purchased land or easements should have a *biological value equal to or higher* for the targeted species . . .”

#### **Other/General**

To reiterate a comment previously submitted by CEERT, the Guidelines should state that they are not meant to apply to projects which have already begun detailed scientific pre-construction studies. For these projects the Guidelines would remain an important resource to lead agencies and developers and developers should be encouraged to follow them where feasible.