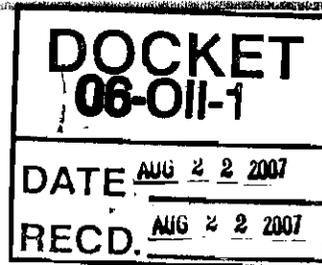


Docket Optical System - Comments for Docket No. 06-OII-1

From: "Stu Webster"
To:
Date: 8/22/2007 4:54 PM
Subject: Comments for Docket No. 06-OII-1
Attachments:



Good Afternoon,

Please find attached comments regarding the July 2007 draft "California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development". Clipper wishes to thank all the CEC Commissioners and staff and all other vested parties for efforts to date to generate what we are confident will evolve to a useful and meaningful resource tool in assessing wind energy development's impact to wildlife. An executed hardcopy will be mailed to the CEC tomorrow.

Best Regards,

Stu S. Webster
Manager, Permitting

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22 Aug 07

California Energy Commission
Dockets Office, MS-4
1516 Ninth St
Sacramento, CA 95814-5512

RE: [Docket No. 06-OII-1] - Comments on the CA CEC July 07 draft *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* (Guidelines) Clipper Windpower Development, Inc.

In General

Review of the guidelines has noted that CEC staff has made a considerable effort to address Clipper's concerns regarding the mixed use of prescriptive language that complicates the voluntary nature of the Guidelines. Reflecting upon comments made orally and in writing the following concerns remain without response or dialog. It is due to this that Clipper must maintain a position of opposition to the Guidelines as they are currently drafted. However, Clipper also recognizes the need for a concise and robust resource tool for discretionary agencies, developers, and other stakeholders to turn to when contemplating what efforts are available to assess the impacts of a proposed wind energy project. It is with that understanding that Clipper remains hopeful and wishes to support and engage within a public and transparent process to develop and finalize the Guidelines so that:

- 1) Assessment resources and methods presented are contextually understandable and robust enough so that there can be consistent application of the Guidelines as a resource tool "...*designed to be flexible to accommodate local and regional concerns*". [Executive Summary of the Guidelines]. This is expounded on in Section 1.0 of these comments;
- 2) Language that may be construed to be implementing an arduous interjurisdictional review process is eliminated such that the exclusively consultative role of the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) is maintained. This is expounded on in Section 2.0 of these comments; and
- 3) Suggested frequency and intensity of various resources and methods be eliminated as there has been no agreed upon basis for their representation as a 'standard' or 'industry practice'. Additionally, some of these suggestions are scientifically lacking and therefore violate the stated intention of the Guidelines to provide "...*science-based approach for assessing the potential impacts that a wind energy project may have on bird and bat species...*" [Executive Summary of the Guidelines]. This is expounded on in Section 3.0 of these comments.

Section 1.0 – Harmonizing text to reflect intent of the Guidelines

Specific concerns provided to CEC staff in Apr 07 were largely addressed with this latest draft. However, there remains a need to further refine the document in the following areas in order to reflect the robust nature of the Guidelines and minimize the uncertainty that the Guidelines introduce for project planning purposes:

Section 2.0 – Clarifying the role of non-CEQA lead agencies and other stakeholders

As alluded to in comments made at the 13 Aug 07 hearing, Clipper is concerned with how the draft Guidelines imply what level of engagement is expected of CDFG and USFWS with the discretionary processes of the CEQA lead agency. Consultation with these agencies should be to the discretion of the lead agency and on matters that these agencies are charged with overseeing. Clipper wishes to make clear that as a matter of sound due diligence these agencies are consulted with but not necessarily to the degree implied by the Guidelines. From a practical standpoint of resource availability, review of CDFG's Supplemental Reports of the 2006 Budget Act (<http://www.dfg.ca.gov/dfgbudget/06-07/sup-rpt/2-4-CEQA-CESA-1600-Report.pdf>) notes that augmented funds will allow for 23 positions (statewide) to concentrate on the CEQA Review Program (an increase of 15% from the previous year). Further, the report notes that of the 5,000 CEQA documents received annually, the intent is to identify those that "have the greatest potential effect on fish, wildlife, and habitat resources" and that only 28% of those high-impact projects will have a detailed review and follow up completed. CDFG has requested funding for an additional seven (7) positions for the subsequent fiscal year (http://www.dfg.ca.gov/dfgbudget/07-08/DFG_BFB_FY0708v3_1.pdf). Given the volume of CEQA reviews that can be anticipated by wind energy development alone, it is completely unreasonable and over-ambitious to imply the need to engage with CDFG and USFWS for every discretionary action taken for assessing a given project's environmental impact. Clipper feels that the following paragraph inserted into the Executive Summary can fully disclose the availability of these agencies to the lead agency for consultation on an as-needed basis:

Decisions on siting issues, developing level of effort of environmental surveys and assessments, and assistance with data interpretation can be made in consultation with CDFG, USFWS, and scientific experts as deemed necessary or desirable by the CEQA lead agency.

To further illustrate how this simplified approach would assist in calibrating the text to the underlying intent of the Guidelines, compare it with the following 15 excerpts from the 5-step *Step-by-Step Approach* summary chapter provided below to illustrate the volume of intended engagement with non-lead agencies. It should be noted that similar direction is written throughout the document:

[line 233] – USFWS & CDFG and other "appropriate" stakeholders consultation is "an important step" during the preliminary information gathering stage.

[line 318] – Contacting USFWS & CDFG and other stakeholders to "secure critical information...to base site development decisions...assess...necessary surveys".

[lines 401 and 407] – "...lead agency should consult with CDFG, USFWS, and other experts to assess whether [existing data for repowering projects] are credible, scientifically defensible, and applicable to the repowering site."

[line 428] – “Early consultation with the lead agency, CDFG, USFWS, and local environmental groups is a crucial step in designing pre-permitting studies and deciding whether or not modifications to the standardized methods are warranted.”

[line 459] – “Consult with the USFWS, CDFG,...and appropriate stakeholders to establish which species to search for and to develop the site-specific survey protocol.”

[line 484] – “Consult with bat experts, CDFG, and USFWS before reducing acoustic monitoring...”

[line 497] – “Consult with...and with CDFG and USFWS before making decisions on the level of effort needed...”

[line 546] – “Consult with CDFG, USFWS...in development of site-specific ratios and fees to use in establishing compensation formulae.”

[line 637] – “Consult the CDFG, USFWS...and appropriate stakeholders regarding study protocol and the duration of an operations monitoring program.”

[line 665] – “[Carcass search plot selection process]...must be scientifically defensible and should be developed in consultation with CDFG, USFWS,...and appropriate stakeholders.”

[line 675] – “Consult CDFG, USFWS,...and appropriate stakeholders before modifying search plot size”

[line 690] – “[to establish frequency of carcass searches]...analyzing the results of pilot scavenging trials and in consultation with USFWS, CDFG,...and appropriate stakeholders”

[line 724] – “Conduct two years of BUCs,...unless more or fewer years are determined to be satisfactory by the lead agency, CDFG, USFWS,...and appropriate stakeholders.”

[line 730] – “conduct bat acoustic monitoring nightly for two years...if CDFG, USFWS,...and appropriate stakeholders consider this information a necessary adjunct to the bat fatality data.”

[line 735] – “Upon completion of two years of operations monitoring, CDFG, USFWS, and other scientists and stakeholders who may have been involved...should assess whether continued, long-term monitoring of fatalities is warranted.”

An additional comment to the intent versus implied direction of the current draft is that throughout it is suggested that consultation be undertaken by the CEQA lead agency with “other appropriate stakeholders” in addition to other agencies and scientific expertise. Conservation and local environmental organizations are participants in the public process that CEQA represents. Any direction that further engagement is necessary or appropriate should be eliminated from the final version of the Guidelines. These organizations have legitimate concerns and have opportunity to voice them within the public comment process. However, to imply that these organizations should be further consulted with by the lead agency is a disservice to the sundry other entities that

would wish to have equal consultation time (in support or opposition to a given project) and thereby further complicate and delay the CEQA review process.

Section 3.0 – Qualify the scientific uncertainty and eliminate excessive frequencies and intensities of assessments

The stated intent of the Guidelines is to provide “...*science-based approach for assessing the potential impacts that a wind energy project may have on bird and bat species...*” In seeming contradiction to this intent, there are disclosures made with respect to certain assessment techniques that qualify or caveat their scientific validity and the value of data derived. For example:

[Line 1801] – “...considerable variation and uncertainty exist on the optimal protocols for using acoustic monitoring devices, radar, and other techniques to evaluate species composition, relative abundance, flight height, and trajectory of nocturnal migrating birds. The use of radar for determining passage rates, flight heights and flight directions of nocturnal migrating animals has yet to be shown as a good indicator of risk of collision...”

[Line 1844] – “Radar surveys are expensive and cannot identify birds to the species level or reliably distinguish birds from bats but can help identify use of a site by nocturnal migrants.”

There needs to be two bifurcated efforts undertaken with respect to wildlife impacts by wind energy in California:

- Firstly, on a project-specific basis, there needs to be a series of assessments accomplished that establish relatively predictable impacts by a given project’s development and post-construction assessments to validate predictions. These Guidelines are intended to navigate a lead agency and other stakeholders through the various options one has to conduct such assessments.
- Secondly, for those uncertainties that transcend any one project (e.g., assessment technique, migration patterns of a species, and diurnal versus nocturnal activities), Clipper agrees with the comment on [Line 145] that wider research efforts should be undertaken to increase the level of certainty with certain methods and metrics in assessing and mitigating potential impacts. Therefore, as stated in previous comments, Clipper advocates that recommendations of excessive frequencies and intensities of assessments be removed from the Guidelines. For example:

[Line 1987] – acoustic monitoring is a statistical-based assessment tool whereby limited search areas can be assessed and an inference made as to bat activity for the project area. There is no statistical significance gained by suggesting that monitoring should occur 365 days a year but does suggest a significant cost increase to the point of being prohibitive.

[Line 1977] - Acoustic monitoring station densities of 1-1.5 for every 1 square mile is not providing for any more statistical significance than lesser, representative densities. Additionally, and as discussed in [Line 1978], there are logistical and economic constraints that may make such densities unrealistic. The Guidelines appropriately note resources to help design acoustic monitoring assessments beginning on [Line 1981].

Such references and summaries are the extent the Guidelines' purpose, not suggesting unrealistic study parameters.

It is important to understand that whether or not intended, many lead agencies will feel compelled to follow any recommendations made by the Guidelines. Unrealistic and costly study parameters of duration, frequency and use of unreliable or uncertain methods should be qualified as such and the Guidelines should consistently apply its own statement of customizing assessments for a given project throughout the document; [Line 1337] – *“Base the duration and focus of pre-permitting studies on the availability of site-specific baseline data needed to answer impact questions; the species potentially affected; and the magnitude of the anticipated effect.”*

It is Clipper's recommendation that the Executive Summary be used as a fully-applied statement that echoes this intent:

[Line 42] – Delete the sentence *“For most projects, one year of...data collection are recommended.”* Rather than suggest application of a 'standard' (as there is too much variability within CA's wind resource areas (WRAs)) the Guidelines should advocate that review of what is commonly done regionally be made and tailor assessments to fill data gaps and uncertainty. For example: *“It is suggested that stakeholders compile an understanding of what is typically done in the region (or, for lack of such information, a characteristically similar region) such that comparative data is generated for pre- and post-construction assessments. For those regions where impact concerns have been noted it may be appropriate to modify assessments to address these concerns to further scientific understanding.”*

Conclusion

First and foremost, Clipper acknowledges that the level of effort and need to address and accurately balance a wide variety of interests regarding wildlife impacts from wind energy is a daunting task. It is with this acknowledgement that we thank the CEC, CDFG, and other stakeholders who have attempted to marry the uncertainty around wildlife concerns with the need to develop renewable energy sources. Wind energy is a pivotal resource that without its development CA will not make the contribution to reducing the even greater uncertainty of wildlife impacts of climate change and other implications of a reliance on a rapidly diminishing resource, fossil fuels.

Clipper asks that consideration is made to the nature of regulatory regimes' reliance on this document. Unlike comparable state-level guidance documents CA has effectively captured the current status of scientific understanding and provided a good reference tool. The preceding comments are meant to suggest refinement to the Guidance such that a reference tool will not be misunderstood to be a stand alone protocol to apply to all projects. It is with that concern that Clipper supports the comments submitted by CalWEA and, to summarize, makes the following three comments:

- 1) Wildlife impact assessment resources and methods presented should be contextually understandable and robust enough so that the Guidelines will be used as a resource tool *“...designed to be flexible to accommodate local and regional concerns”* [Line 39]. For example, instances where further

assessment is alluded to introduce cost uncertainty. The cost profile of wind development is best characterized as strongly upfront, with returns on investment made over the course of a 30-year operation. The often times needed third party financing of a project necessitates that economic returns are well understood and uncertainties minimized. The Guidelines as drafted will limit entry into the CA wind energy market as little certainty can be forecasted for environmental assessment costs.

- 2) Non-CEQA lead agencies that provide a consultative role are represented in the draft Guidelines as having a greater than reasonable role in screening proposed projects and developing assessment criteria. These agencies should be engaged and their inputs tailored to developing environmental impact assessments by lead agencies. However, to rely so heavily on their resources will end up in unnecessary delays during critical development periods. Additionally, the implied roles of non-governmental organizations are inappropriate beyond the public review and comment period. To suggest further engagement by these entities in developing assessments precludes other stakeholders from being engaged. Put another way, at what point is an additional organization's input become superfluous and detrimental to accomplishing timely project review?
- 3) Careful and thoughtful environmental assessments need to be made for each wind energy development project. These assessments should strive to address project-specific impacts as well as address cumulative impacts to the environment. The Guidelines should reflect that goal but go beyond in many instances to suggest assessment methods, durations and frequencies that simply have no statistical or scientific bases or benefit to them. Instances where the Guidelines suggest frequency and intensity of various resources and methods should be eliminated as there is no agreed upon basis for their representation as a 'standard' or 'industry practice'. Additionally, some of these suggestions are scientifically lacking and therefore violate the stated intention of the Guidelines to provide "*...science-based approach for assessing the potential impacts that a wind energy project may have on bird and bat species...*"