



California Wind Energy Association

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September 24, 2007

Chair Jackalyne Pfannenstiel
Vice Chair James D. Boyd
Commissioner Arthur H. Rosenfeld, Ph.D.
Commissioner John L. Geesman, J.D.
Commissioner Jeffrey Byron
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: September 26 Business Meeting -- California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development

Dear Chair Pfannenstiel, Vice Chair Boyd, and Commissioners:

On Wednesday, you will be voting on whether to adopt the above-referenced guidelines for wind energy projects. For the reasons below, CalWEA strongly encourages you to postpone the adoption of this document until its serious flaws are adequately addressed. Adoption of this document will directly threaten achievement of the state's 2010 Renewables Portfolio Standard (RPS) goals. Indeed, even if the Commission postpones adoption of the document, further Commission action is needed to discourage application and retroactive application of the draft document that is now occurring and threatening several wind projects that otherwise would be on line by 2010.

CalWEA acknowledges that, by most measures, the process has been sufficient. There have been many workshops, hearings, and pages of comments. We also acknowledge that numerous changes have been made in response to our stated concerns, and we appreciate those changes. But there remains a fundamental disagreement between the authors of the draft guidelines and CalWEA regarding the appropriate focus of the guidelines that more time alone would do little to address. Rather, the Commission needs to provide clear direction to staff. That direction must include these points:

- **The guidelines should not hold the wind industry to standards higher than those required by the California Environmental Quality Act (CEQA).** The draft guidelines require the wind industry to determine and fully mitigate "impacts" irrespective of whether they rise to the level of "significant impacts" as required under CEQA.
- **The guidelines should not specify unproven research requirements on the wind industry.** The draft guidelines require one year of very expensive pre-construction bat acoustical monitoring for every project, despite the fact that such monitoring has not been shown to be effective in predicting risk, lowering risk, or identifying appropriate mitigation measures. The draft requires bat monitors to be placed at both ground and hub height, for example, because there is no scientific consensus on which location is more effective. It is unfair to impose research requirements on every wind project without regard to the utility of the study and its appropriateness.

- **The guidelines should clearly discourage their retroactive application.** The guidelines (even in their draft form) are already being retroactively applied to projects that have substantially completed their environmental studies. Retroactive application is unfair and will substantially delay – if not kill -- projects that could otherwise come on line prior to 2010. The Commission has an obligation to advise only proactive application of the guidelines.
- **The guidelines should encourage CEQA-streamlining for low-impact projects, such as repowering existing projects where impacts have been shown to be low.** CEQA already provides streamlining for a variety of energy and industrial projects, and the Commission enables CEQA streamlining for repowered fossil fuel plants. The Draft Guidelines should provide similar treatment for wind projects that meet appropriate criteria.
- **The guidelines should recognize that site circumstances vary considerably and that there are various appropriate methods and techniques for obtaining the needed data at a particular site.** The Draft Guidelines prescribe “one size fits all” methods and techniques for all sites. For example: 52-week studies are prescribed when more concentrated seasonal studies for species of concern may be more appropriate.
- **The guidelines should not elevate the authority of CDFG in the CEQA process.** The document repeatedly refers to consultation with CDFG and implies that CDFG’s advance sign-off is required before deviating from the prescribed approaches. CEQA requires the lead agency only to consult with CDFG, thus, these requirements take away authority that CEQA grants to the lead agency. Further, the experience of CalWEA members is that CDFG is already unable to respond within the timeframes required under CEQA, and the additional burden of analyzing and advising every wind energy project multiple times would tax this already overburdened agency beyond its capacity, resulting in substantial and chronic delays.
- **The guidelines should not propose adaptive management techniques that threaten project financing.** The draft guidelines suggest that operations curtailment and shutdown be included among possible adaptive management techniques included in the conditions of a permit. The potential of such actions introduces a level of financial uncertainty that threatens project financing because of its substantial and open-ended nature.
- **The guidelines should not rely upon reports that it has determined to be not credible.** The draft guidelines rely upon reports that the Commission’s own independent reviews have shown to be so flawed as to cast serious doubt on the reports’ findings and conclusions.

While the draft guidelines are characterized as “voluntary,” the prescriptive approaches that it advocates will undoubtedly become the default approach of lead agencies regardless of their merit in specific cases, including projects in low-impact areas. Lead agencies that wish to deviate from the standard approach will risk being sued by project opponents who will use the CEC document, and the authoritative weight of the State that it carries, as evidence of insufficient study of potential environmental impacts under CEQA. Thus, the draft guidelines will support litigation against wind projects. Local agencies that choose not to adopt the guidelines’ rigid requirements will nevertheless have to justify in detail any deviations, which will raise costs and impose delays; if these justifications are not made, it would create further opportunities for opponents to sue on procedural grounds.

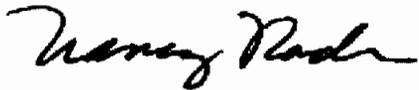
Indeed, the disclaimer language contained in the front of the document suggests that deviating from these guidelines implies a violation of CEQA. (“Adherence to these guidelines does not ensure compliance with any local, state, or federal statute or regulation nor does failure to follow these guidelines necessarily imply a

violation of CEQA.” Emphasis added. Rather, it should say “... nor does deviating from these guidelines imply a violation of CEQA.”)

Conducting studies in a particular fashion as required by the draft guidelines is very unlikely to reduce avian and bat mortality. But the draft guidelines will undoubtedly raise project development costs in a state that is already very expensive to do business in. In so doing, the draft guidelines threaten otherwise viable projects and may well drive developers out of California at a time when the state is striving to address the critically important issue of global warming. To meet its larger environmental goals, the state needs to encourage – not discourage -- the development of clean energy resources.

We thank you for your attention to these concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Rader".

Nancy Rader
Executive Director

cc: The Honorable Arnold Schwarzenegger, Governor