

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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California Guidelines for Reducing Impacts) Docket No. 06-OII-1
Impacts to Birds and Bats from Wind) Developing Statewide Avian
Energy Development) Guidelines

COMMENTS OF
OAK CREEK ENERGY SYSTEMS, INC.
ON SEPTEMBER 2007 FINAL COMMITTEE REPORT

Oak Creek Energy Systems, Inc. ("Oak Creek") hereby submits its written comments on the September 2007 Final Committee Report entitled "California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development" ("Final Report" or "Guidelines").

I. General Comments

A. Guidelines In General

First, Oak Creek would like to emphasize that it appreciates the effort and dedication of the Science Advisory Committee, the California Energy Commission Staff, the California Department of Fish and Game Staff as well as Audubon, Sierra Club, wind industry representatives and all other organizations and individuals who have participated in the Guidelines process. Although these stakeholders have not always seen eye to eye on how best to reduce impacts to birds and bats from wind energy development, all of the stakeholders have been working toward the common goal of responsible wind energy development. Oak Creek acknowledges that the process for development of the Guidelines has been a forum which brought valuable expertise and perspectives to the table.

B. Wind Industry Perspective

There is a constructive and rational basis for Oak Creek pushing back and holding its ground against many of the protocols contained in the Guidelines. Oak Creek is concerned that overly burdensome state requirements will result in less wind energy and more non-renewable electricity sources being built in the state of California, which will have a negative effect on the environment, people and wildlife.

Oak Creek estimates the additional costs of the bird and bat studies contemplated under the Guidelines are likely to add to the cost of energy as much as \$1 Million or more

for every 100 MW of new capacity developed using the study protocol within the Guidelines. The Guidelines would also lead to other significant costs. For example, the Guidelines introduce an element of risk uncertainty into California's wind energy industry that either does not exist or is significantly lower in other regions. These added costs and uncertainties will encourage wind project developers and investors to focus their limited development resources outside of California where the cost of doing business is lower. This is especially true if this cost and uncertainty is not absorbed by the utilities and, ultimately, the ratepayers, in the form of higher energy prices.

There are several reasons for this. Unlike in the early days of the wind energy industry, wind turbine manufacturers and developers are no longer dependent upon the California market, which is no longer the dominant market. The demand for wind energy is growing at unprecedented rates worldwide, principally in Asia, Europe and North America. Wind turbine manufacturers are all global players and are not able to satisfy this demand. Although manufacturing capacity is being added, the supply of critical components, including large castings, is expected to be constrained for years into the future. This has led to a situation where most major manufacturers have sold out their production capacity for about two years into the future. Meanwhile, wind energy projects are increasingly financed and developed by national and international players rather than small players as in the early days of the industry.

This combination creates a situation where investors have no reason to accept the lower return on their investment and higher development risk implied by the Guidelines. Therefore, if sufficient cost is not absorbed by the utilities and ratepayers (indeed, prices are already approaching the RPS cost cap), the industry developers and investors will simply look elsewhere to install scarce wind turbines where returns and risk are more attractive. This will result in less clean wind energy being produced in California than would otherwise be possible, putting at risk California's RPS goals for 20% of energy from renewable sources by 2010 and 33% by 2020. Wind projects needed to supply the California load will be forced to develop out of state to compete, depriving California of important long term economic and environmental benefits

In the Notice of Availability to the Final Committee Report, the CEC states in response to concerns from the wind industry about the cost of the Guidelines: "We do not believe the Guidelines pose any new regulatory hurdles because they are not regulations, only recommendations to help comply with existing state and federal laws." This statement may be true; however, the reality is that the Guidelines do impose new, additional studies and costs on wind energy projects in California. For example, bird and bat studies implemented by Oak Creek in the past, in conjunction with the County, local environmental groups and local certified biologists, designed to comply with existing local, state and federal laws, are more cost effective than what the Guidelines currently require. In reality, wind developers, including Oak Creek, will have to go back and adjust all of their project economic models to include the additional costs of the studies included in the Guidelines.

The basic point is that, while the proposed Guidelines can certainly be implemented in California, there is a price to be paid. That price will be higher energy rates to California consumers, less green energy, and therefore less environmentally sensitive energy than would be possible with smarter Guidelines that recognize and address potential local issues and thus balance the costs and benefits of such policies.

II. Specific Comments

Because of the realities of wind energy development outlined above, Oak Creek respectfully requests and encourages that the following clarifications be made prior to adopting the Final Report.

A. Disclaimer

Clarify two issues in the Disclaimer: 1) because the Guidelines are voluntary, the disclaimer should state that failure to follow the Guidelines does not imply that the project is not CEQA-compliant and 2) the disclaimer should state that, to the extent that projects have completed significant amounts of pre-construction bird and bat studies already, the lead agency should not delay the project to redo studies solely in order to meet the protocols set forth in the Guidelines.

In the responses contained in the Notice of Availability to the Final Committee Report, the CEC states that “We believe that decisions about whether or how to apply the Guidelines to projects that have already begun studies or the permitting process are best left to the local permitting agency.” Oak Creek appreciates that these decisions ultimately rest with the local permitting agency; however, further clarification in the Guidelines is needed on this issue because at least two other wind energy developers are reporting requests by the California Department of Fish and Game (CDFG) to the local permitting agency to retroactively apply the Guidelines to their projects. This is evidence that it is not clear whether the decision ultimately rests with the local permitting agency or with the CDFG.

Oak Creek understands that because the Guidelines are technically voluntary, no implementation date need be provided; however, a general statement discouraging retroactive compliance requests for projects that have already completed significant CEQA-compliant pre-construction bird and bat studies can and should be made in fairness to developers who have already invested substantial sums in good faith study efforts. The project developer will be working with the lead agency under the framework of local, state and federal law; if retroactive compliance of the Guidelines is not discouraged, it will foster the idea that the developer is out of compliance with the law, which is definitely not the case.

B. Potential Future Revisions of the Guidelines

In previous filed comments and workshops during development of the Guidelines, Oak Creek has identified certain roles, scopes and other issues that go to the reality and

functioning of these Guidelines. Oak Creek understands that these issues will not be addressed at this time, but Oak Creek encourages the CEC to deal with them near term in appropriate ways, especially after further evidence of how the Guidelines are implemented and function over time. As the Notice of Availability to the Final Committee Report notes, future revisions of the Guidelines are contemplated by the Introduction, page 4, to the Guidelines themselves.

Oak Creek respectfully requests that issues raised to date, especially those related to delay of wind project development, should be revisited to make the Guidelines feasible in the near term. Such issues including lack of adequate CDFG staff and funding, lack of adequately trained bat specialists in the state and lack of evidence that certain protocols are effective, should be on the table for future discussion.

C. Acoustical Monitoring for Bats: Step-By-Step and Chapter 3

One year of pre-permitting bat acoustical monitoring remains for all projects. Oak Creek is already experiencing difficulties in the implementation of this requirement. In consultation with a bat specialist, it is estimated that it will take over 1000 man hours per year just to interpret data from 7 different Anabat units. Furthermore, the only automated review system for bat data that Oak Creek is aware of is not based on the Anabat system, which is the recommended monitoring device by the Guidelines. In addition, Oak Creek is only aware of six different people in California who are permitted to work directly with bats directly, and only a couple more known bat experts in the state who can interpret acoustic data. In Oak Creek's estimation, meeting the bat protocol outlined in the Guidelines will require hundreds of thousands of man hours per year to interpret the recordings, without enough qualified bat experts to do the work required. It is difficult to understand how the wind industry can strive to meet the 2010 RPS goal in light of the acoustical monitoring protocols.

Therefore, the Guidelines should clarify that while one-year of pre-construction bat acoustical monitoring may be desired, the shortage of qualified professionals may make the studies difficult and that the project should not be delayed if the bat acoustical monitoring studies are not feasible.

D. Operational Monitoring: Chapter 5

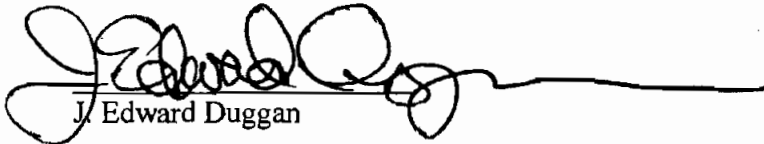
In the Notice of Availability to the Final Committee Report, the CEC's response to industry comments that the Guidelines should only focus on impacts considered significant under CEQA states that "We do not agree that the wind industry is being held to a higher standard because all industries are expected to obey state and federal wildlife laws."

Oak Creek would like to reiterate its full intention to be in compliance with all local, state and federal laws and its intention to be a good steward of the environment. However, the Guidelines should accurately state what is required by law. The Guidelines should be clarified that under CEQA, mitigation is not required unless there are

significant impacts. Monitoring impacts to non-species of concern and non-listed species is not required by law. Monitoring for such species exceeds legal requirements. If the first year's monitoring shows that no species of concern are impacted, regardless of the class of project, a second year cannot be legally justified.

For these reasons, Oak Creek respectfully requests that the Commission reconsider and further revise its Final Report.

Respectfully submitted,



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