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

RE: [Docket No. 06-OII-1] - Comments on the CA CEC September 2007 Final Committee Report *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* ("Guidelines") Clipper Windpower Development Company, Inc.

In General

Upon review of the latest draft of the Guidelines as well as the response to comments document (Attachment A of the "Notice of Availability"), it is noteworthy and valued that CEC staff has made the level of effort it has to address many of the concerns Clipper and other stakeholders have expressed to date. The development of a guidance document that effectively describes the technical framework by which wind energy can be assess wildlife impacts while not encumbering the ability of companies to respond to demands of the renewable energy market is a complicated task at best. Be assured that the efforts to balance often times conflicting stakeholder interests without compromising the dual intent of the Guidelines is greatly appreciated and we at Clipper trust our participation is more of a help than hindrance of this process.
Reflecting upon our comments made orally and in writing it is Clipper's opinion that the latest draft is an improvement over preceding versions but still remains a document that confounds rather than supplements the efforts to permit and comply with existing state and federal wildlife and environmental review (specifically, CEQA) laws. At the risk of seeming to glass over the advancements made to date the following issues remain a significant concern. In considering the merit of these issues Clipper asks the CEC Commission to consider delaying adoption of the Guidelines in order to allow CEC staff to refine and clearly describe the intent and function of this resource tool. In lieu of such an allowance for stakeholder engagement, Clipper respectfully asks that the suggestions made herein be considered for the final version of the document, thereby mitigating our concerns.
Additionally, Clipper concurs with CalWEA's comments dated 24 Sep 07 that reasonably advocate other, equally important issues such as retroactive application of the Guidelines, clearer streamlining of repowering and low-impact projects, and concerns of the uncertainty introduced by open-ended adaptive management.

<u>CEC's Intent with establishing voluntary siting *Guidelines* [excerpts from the Executive Summary] states that</u>:

1) "...provides a science-based approach for assessing the potential impacts that a wind energy project may have on bird and bat species and includes suggested measures to avoid, minimize, and mitigate identified impacts."
2) "...following these *Guidelines* will support efforts to comply with CEQA and other local, state, and federal wildlife laws and will facilitate the issuance of required permits for a project, providing a measure of regulatory certainty for wind energy developers."

Summary Concern: The *Guidelines* do not meet this dual intent. As drafted, the *Guidelines* imply burdensome, undefined, and therefore uncertain interjurisdictional processes when developing impact assessment protocols. Additionally, it suggests a baseline assessment standard that is above and beyond the needs of assessing a project with typically average siting uncertainties, therefore suggesting above average costs and permit process delays. In short, it is structured in such as way as to suggestively change the intent from a resource document to a baseline standard.

1) Issue: Interjurisdictional roles proposed for non-permitting agencies and nature conservancy groups during the permitting process and development of impact assessment protocols are above and beyond the public comment opportunities within the CEQA process and likely problematic to accurately plan project development. As illustrated in the Executive Summary, "Decisions on the level of survey effort *need* to be made in consultation with the CEQA lead agency, CDFG, USFWS, and local conservation groups" [italics added for emphasis]. This directive is redundant to the consultative role and public comment opportunities agencies and conservation groups, respectively, have for input on project development and permitting under CEQA. This direction is reinforced throughout the Guidelines to such an extent that the technical merits of the Guidelines as written are easily questioned (i.e., if so much consultation is necessary to develop project protocols, what is the technical value of the "standardized monitoring level"?). The following components of development/permitting process that the Guidelines provide technical resources on also "require" or "recommend" CDFG and USFWS, and, at times "other experts", consultation:

> Level of survey effort in general (pg. E-2 and 8); consultation as a first step (pg. 5); review of existing data and studies for validity (pg. 10); design of pre-permitting studies (pg. 10); designing raptor nest searches (pg. 11); raptor nest survey areas (pg. 11); pre-permitting bat monitoring (pg. 12); bat data analysis (pg. 12); impact compensation (pg. 13); study durations (pg. 16); carcass searches (pg. 17); search plot sizes (pg. 17); frequency of carcass searches (pg. 17); bird use survey (pg. 18); long-term monitoring considerations (pg. 18); early coordination (pg. 22); developing a study plan (pg. 25); nocturnal bird assessments (pg. 25); as part of public outreach (pg. 28); permit conditions (pg. 29); consultation as a condition of CEQA (pg. 32); impacts to listed versus non-listed species (pg. 32); deviations from the Guidelines "standardized monitoring level" (pg. 37); consideration of Category 1 applicability (pg. 38); pre-permitting consultation (pg. 39); raptor nest searches (pg. 46); nocturnal surveys (pg. 52); bat monitoring (pg. 55); pre-permitting assessments for repowering projects (pg. 58); buffer zone determination (pg. 63); operations monitoring (pg. 72); categorical determinations for operations monitoring (pg. 72); evaluation of initial operations' monitoring data (pg. 73); operations' monitoring for bird use (pg. 73); operations' monitoring for bat use (pg. 74); carcass searches (pg. 74); scavenger efficiency protocol development (pg. 76); and modified sampling protocol development (pg. 76).

Therefore, the interpretation of this reoccurring statement is that there is a greater role anticipated for these entities in developing a wind energy project. Industry is concerned with the burden and uncertainties associated with such a level of engagement and authority and questions the applicability of comments such as these in a resource

document. [problem may also be that there is no practical definition of what "consulation" means or requires of developers.]

Recommendation: Remove redundant statements that imply such engagements are necessary, keeping this component of the environmental assessment and review process within the context of CEQA. The CEQA process has a well-defined and understood process for agency consultation and public involvement. The *Guidelines* as currently drafted encourage a position that wind energy requires a higher degree of such consultation. A general statement such as *"...lead agencies may deem it desirable or necessary for additional consultation with wildlife agencies, technical experts, and conservation groups when developing environmental assessment protocols, reviewing assessment data, or when considering the significance of environmental impacts of a given project"* in the Executive Summary or Abstract of the Guidelines clearly indicates that supplemental inputs are anticipated as likely, given the variable nature of one project to another. It is the fact that the next issue needs to be addressed.

2) Issue: The suggested "standardized monitoring level" of environmental assessments recommended by the *Guidelines* represents a level of effort that is burdensome in both timing and cost of project development and does not necessarily provide any additional statistical significance to derived data. For example, as discussed at the 13 August CEC Public Hearing, recommended assessments for bat impacts are based on a moment of scientific knowledge and are currently being debated as a viable means for predicting bat mortality. Additionally, recommendations for 52-week avian surveys are the exception to the rule rather than rule of thumb of what is typically done for project assessments. Given the wide variety of circumstances that represent the variability of CA's ecosystems, it is prudent that rather than a baseline protocol there should be a recommended methodology by which project stakeholders develop project-specific protocols that have commonality with how they were derived, thereby eliminating/reducing the need to "justify" deviations of a baseline standard.

Recommendation: It is clear throughout the development process of the Guidelines that the technical understanding of wildlife impacts by wind energy development and viable assessment techniques remains debatable. The stated intent of the Guidelines is to provide a synthesis of where the knowledge is to date and what methods and metrics are typically done for assessment purposes. However, the Guidelines' intent does not translate with the content of the document, which effectively prescribes a standard with caveats that any deviations from the standard need to be fully vetted and agreed upon by all stakeholders of a given project. It is the debate of what constitutes a reasonable deviation that will encumber the ability of a project's development, to say nothing of a lack of structure to what constitutes sufficient "consultation". It is therefore recommended that the CEC remove either the standardized monitoring level, thus focusing the document as a resource document or remove the over-reaching language that deviations from this standard need concurrence from all stakeholders.

Conclusion

Clipper recognizes and has been a continued supporter and participant in addressing the need for a concise and robust resource tool for discretionary agencies, developers, and other stakeholders to turn to when contemplating an appropriate level of effort to assess the impacts of a proposed wind energy project. Unlike our experiences in Texas, Pennsylvania, and the national level to develop similar guidance resources, the experience to date is one characterized by Clipper as relatively balanced and thorough.

However, we do not agree with the CEC staff that the residual issues are not resolvable. Rather, Clipper views, to illustrate the point, that CEC staff's response to comments, issued on 14 Sep 07, is an effective reference document where all stakeholders are able to concisely understand and respond to each others concerns and CEC's interpretations of concerns. It is arguably the lack of such transparent dialog for the past 1.5 years of this process that necessitates the need to continue this process rather than adopt the Guidelines today. As a final matter and in lieu of the CEC not incorporating these recommendations or requests, Clipper respectfully asks that the Commission, at the very least, revise the proposed review process of the Guidelines from five years to two so that any realized stakeholder concerns can be ameliorated.