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22 January, 2007

California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 06-OII-1  
1516 Ninth Street  
Sacramento, CA 95814-5512

<b>DOCKET</b>	
<b>06-OII-1</b>	
DATE	JAN 22 2007
RECD.	JAN 23 2007

Commissioners Geesman and Pfannenstiel:

Attached please find the Comments of Carl Zichella for the Sierra Club regarding Docket No. 06-OII-1, "Developing Statewide Avian Guidelines". We appreciate the opportunity to express our views on this matter. We reserve the right to revise, alter and extend these comments before at, or potentially after the February 5<sup>th</sup> workshop in Livermore. We support the need for dispatch in getting these guidelines completed. However the rapidity with which we are required to respond limits our normal review process. We are doing the best we can to respond in a timely way while honoring our commitment to citizen participation. Your understanding is appreciated.

Thank you for the outstanding efforts of your staff in both compiling the Guidelines and facilitating our participation.

Sincerely yours,

Carl A. Zichella  
Regional Staff Director

*PS also submitted via  
electronic mail.*



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**Comments of Carl Zichella  
Regional Staff Director  
Sierra Club**

**Before the California Energy Commission**

**RE: Draft Statewide Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Production**

**Docket number 06-OII-1**

**January 22, 2007**

**General Comments on the Draft:** The Sierra Club would like to thank the Commission and our fellow participants in this dialog for their efforts to come up with meaningful guidance for wildlife protection at wind energy developments in California. The staffs of the Commission and the California Department of Fish and Game have worked hard and well together to create this draft. Further, we appreciate the efforts of the representatives of the wind industry for their obvious willingness to work with these guidelines; and their interest in addressing the wildlife conservation concerns of the Sierra Club, Audubon and other organizations.

The Sierra Club's top priority is addressing the global challenge of global warming and climate change. We work at all levels of government to encourage sensible energy solutions that emphasize adopting the cleanest, cheapest, fastest and safest measures before others. Our preference is to meet this challenge using energy efficiency and renewable power supplies. Wind Energy is an important component of that.

The regrettable experience with large-scale raptor deaths experienced at the Altamont Pass wind resource area has emphasized to all involved the need for meaningful analysis of proposed sites before and during their development, and also during their operations. We recognize that this will necessitate significant investments from wind developers in original research and pre-construction monitoring as well as post construction and operational monitoring. In some cases this may require a lengthy and expensive commitment. We are grateful for this commitment. We believe that reasonable efforts to comply with the guidelines should aid developers with the permitting process, and expect that it will have the added benefit of discouraging litigation that could delay or prevent needed wind capacity enhancements by reassuring the public that meaningful and serious wildlife conservation will be incorporated into the design, maintenance and operations of wind facilities.

We also believe that a significant investment – both from enhanced agency budgets at the state and federal levels and perhaps with funding from the Public Benefits Fund administered by the California Public Utilities Commission – may be needed to integrate the research and monitoring being done by wind developers into a broader program of research measuring the effects of climate change on California resources, including wildlife. Significant research needs to be done on how climate change is affecting the migratory behavior of birds and bats over time. This could in turn influence mitigation procedures at wind energy developments across the state. While this is not a direct charge for this Draft, we believe the Commission could be a powerful advocate for this funding with the administration and the legislature. We encourage the Commissioners to consider this.

We also support a general adherence to the staff proposal that only current research be used in evaluating these projects, due to the rapidity of the habitat changes we are seeing as a result of global climate change. We generally support the five year rule-of-thumb time limit for research to be considered current, while recognizing that there may be instances where older research is still applicable. In any case we believe the best information should be used. Most often that will mean most recent, but in some occasions older data may provide a useful baseline for analysis. This judgment should be made in consultation with or by the proposed Science Advisory Committee.

### Specific Comments

- 1. Document organization needs to emphasize consistency better.** We believe that the key chapters (currently three and eight) need to relate better to each other. One helpful change would be to ensure that mitigation measures mentioned in Chapter 3 be listed in priority order and matched with those detailed in Chapter 8. Another organizational change would be to better describe the need for Before-After-Control-Impact Study design (BACI) habitat usage and behavior research methodology by better emphasizing it in chapters succeeding Chapter 3. This technique is only valuable when applied in both pre and post construction phases of development. Its full utility is not therefore fully and adequately described, nor is there sufficient guidance for developers as to how and when to initiate this research practice.
- 2. Flexibility v. Certainty:** There has been considerable discussion by participants in the workshops about the desirability of both flexibility and certainty for wind developers. There is an obvious tension between the two, but we believe that these Draft guidelines strike a reasonable balance by taking into consideration the challenges of site-specific analysis within the context of a predictable and relatively consistent program of monitoring.
- 3. Clarification of terms:** There was considerable confusion about the meaning of some of the terminology in the Draft, including the terms “significant” and “severe”. The suggestion was made by some participants from both industry and conservation interests that we utilize legal definitions – perhaps as defined for the California Environmental Quality Act (CEQA) – to avoid confusion or inappropriately subjective interpretations. We believe this is a sound suggestion.
- 4. Science Advisory Committee issues:** There was considerable industry resistance to “approvals” of monitoring protocols or interpretations of results by the proposed Science Advisory Committee (SAC). We believe that the SAC will play a critical role in determining the adequacy of monitoring programs and providing advice to developers. While we favor the SAC making affirmative statements about the monitoring and research results, we realize these are voluntary guidelines. Nonetheless, such approval would help the public better understand that valid scientific opinions underlie potentially controversial decisions. This would also give substantial validation to the efforts of the developers, no small benefit when one considers this could provide the foundation of agency discretion in permitting, something that is often determinative in litigation. We favor keeping such language in the document, and ensuring that the document is consistent on this point throughout. We believe it might be beneficial to empanel a statewide standing SAC to provide continuity to local committees and an overview of developing research trends



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across our varied landscape. This could be especially important as the Commission staff indicated an interest in identifying a range of impacts and mitigations that work across generally homogenous landscapes to assist with project evaluation and local permitting. We believe ranges could provide a valuable suite of information, potentially useful for the long-term understanding of climate change on the state. Its collection would benefit from a standing statewide SAC to analyze and interpret the data. This could possibly be a function of the Public Interest Energy Research (PIER) program, but a standing SAC could provide overall perspective on the information. Finally, we believe that representation for conservation organizations should be institutionalized on local committees as recommended in the Draft.

**5. Duration for Monitoring Pre and Post-construction:** We agree with the staff Draft that a minimum of one year preconstruction monitoring be completed before projects are constructed in order to capture species' use of the proposed sites in all seasons and during migratory pulses. We also support the idea that two years of post-construction monitoring be required in all but specifically justified cases where very few mortality effects are observed and where operational data from adjacent sites provide insight into the effects of existing projects. We also believe it is necessary to limit this to closely adjacent sites as there can be a considerable variation of impacts based on seemingly minor variations of topography. We also agree that if legally-defined significant to severe impacts are observed that post-construction monitoring should be extended.

**6. Compliance with Guidelines:** Though voluntary, we believe there is a strong public interest in "certifying" whether applicants have complied with the terms of the Guidelines. We also believe there is a substantial industry benefit in doing so, as mentioned above as both an advantage in permitting and defense in possible litigation. One suggestion from the January 17 and 18, 2007 workshop was to produce a cover sheet that would provide a compliance checklist agency staff could sign off on to indicate compliance with each portion of the guidelines. A fully completed form could represent full compliance with the Guidelines. This provides certainty on the part of the public that a thorough and good faith effort is being made in the siting and operational decisions for wind farms, and it could be an indicator for both agencies and the public if there are problems with compliance. We naturally would like to see that companies that comply with the Guidelines be recognized and rewarded for their efforts, and the sums expended to comply. We also believe that companies that ignore the guidelines should not be allowed an unfair competitive advantage against those who have both complied and expended large amounts of capital to do so. Administrative avenues to provide recognition and perhaps guide enforcement discretion should be, as the law permits, provided for to maximize the incentive to comply with these voluntary Guidelines. If there is a widespread effort on the part of wind developers to ignore the guidelines the state should consider making them mandatory. We do not believe this will occur, but every effort should be made to emphasize the seriousness of making every effort to comply with them.

We thank you for this opportunity to comment.

Respectfully submitted,

Carl Zichella

**From:** "Carl Zichella" <Zichella@sierraclub-sac.org>  
**To:** <docket@energy.state.ca.us>  
**Date:** 1/22/2007 5:31:09 PM  
**Subject:** wind comments

Docket number 06-OII-1

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