

APWRA REPOWERING AGREEMENT

Next Era Wind, California Attorney
General, Audubon Society Chapters,
Californians for Renewable Energy

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Key Provisions of Agreement

- Repowering Schedule
- Repowering Meet and Confer Provisions
- New Turbine Siting Requirements
- Siting Meet and Confer Provisions
- Monitoring Requirements
- Mitigation Fees
- Enforcement



Effect of Agreement

- Next Era's compliance satisfies its obligations to reduce raptor fatalities by 50% under 2007 Settlement Agreement



Repowering

- Repowering of existing old-generation turbines in up to three phases by Dec. 31, 2014.
- If not repowered, all existing turbines must be shut down by Nov. 1, 2015 and removed by Mar. 15, 2016.
- Meet and confer requirements if repowering schedule cannot be met using reasonable due diligence.



Repowering (Cont')

- Phase I:
 - Vasco Winds Project, Contra Costa County
 - To be completed by Dec. 31, 2011 or Dec. 31, 2012, depending upon when approvals are obtained
- Phase 2:
 - Portion of Next Era turbines in Alameda County
 - To be described in programmatic or project-specific EIR
 - To be completed by Dec. 31, 2012 or Dec. 31, 2013, depending upon when approvals are obtained



Repowering (Cont')

- Phase 3:
 - Remainder of Next Era turbines in Alameda County
 - Will be described in focused EIR tiered off of programmatic EIR, or separate EIR
 - To be completed by Dec. 31, 2013 or Dec. 31, 2014, depending upon when approvals are obtained
- Phases 2 and 3 may be repowered simultaneously
- Phases 2 and 3 may proceed prior to completion of Phase 1



Repowering Meet and Confer Requirements

- Next Era must use all reasonable and good faith efforts and exercise all reasonable due diligence to repower by the specified dates.
- If Next Era cannot repower due to circumstances beyond its control, Next Era must notify the parties within 30 days.
- Parties must meet and confer within 30 days and try to agree on alternative dates for repowering.



Repowering Meet and Confer Requirements (Cont')

- Next Era must provide written documentation as to why the repowering schedule(s) cannot be met.
- If parties cannot reach agreement, then the requirements of the existing CUPs, including any adaptive mgmt requirements, go back into effect.
- Next Era may apply to SRC for credit for removal of any high risk turbines due to repowering already completed or in process.
- Notwithstanding the foregoing, Next Era must shut down and remove all existing turbines by Nov. 1, 2015 and Mar. 31, 2016, respectively.



New Turbine Siting

- In general: siting must be based on best scientific and commercial data available at the time the draft EIR is circulated for the applicable phase of repowering
- Best available data includes “studies that rely on methods in peer-reviewed scientific journals”



New Turbine Siting (Cont')

- Siting must be based on:
 - Pre-construction studies and models
 - Post-construction monitoring data (Phases 2-3)



New Turbine Siting (Cont')

- Pre-construction siting data:
 - Pre-construction field surveys of bird and bat behavior, utilization and distribution patterns
 - Pre-construction computer models “that predict the most dangerous locations for birds and bats based on site geography and topography.”

See e.g., Smallwood and Neher, *Siting Repowered Turbines to Minimize Raptor Collisions at Vasco Winds*, June 2010.



New Turbine Siting (Cont')

- Post-construction siting data:
 - Post-construction monitoring data from each applicable earlier phase
 - Post-construction monitoring data to include:
 - Bird and bat fatalities
 - Bird and bat behavior and utilization data
 - Monitoring data, reports and studies from other repowering projects



New Turbine Siting (Cont')

Post construction monitoring data

“shall be used to evaluate the validity of the previous pre-construction siting evaluations and to update and improve the siting evaluations for each subsequent repowering phase”



Siting Meet and Confer Requirements

- Parties must meet and confer to discuss siting for each repowering phase prior to Next Era's submission of the final siting plan to Alameda County for environmental review
- Next Era must provide the other Parties with a siting plan and written explanation of the siting
- Explanation must include justification for deviations, if any, from map-based predictive models
- Consultant who prepared models shall make a technical presentation at the meeting



Siting Meet and Confer Requirements (Cont')

- Parties must work to resolve any disagreements re turbine siting
- If disagreements cannot be resolved, AG, Audubon and/or CARE may submit comments to SRC
- Next Era agrees to consult with SRC during preparation of EIRs for Phases 2 and 3
 - SRC may assist in evaluating scope and content of EIRs
 - SRC must be given adequate opportunity to review and comment on draft EIRs



Monitoring Requirements

- 3 years of post-construction monitoring for each phase
- Plus an additional 2 years of post-construction monitoring after 10 years
- Qualified third parties may conduct monitoring in interim period (years 4-10) and after year 12
- Monitoring and seasonal shutdown requirements for existing old-generation turbines in CUPs continue in effect until such turbines are removed



Monitoring Requirements

- Monitoring program must be enforceable
- Program must be developed in consultation with Contra Costa County TAC and Alameda County SRC
- Monitoring must be conducted by qualified consultant
- Minimum requirements for program (see next slide)



Monitoring Requirements (Cont')

Minimum Monitoring Program Requirements:

- Use of 4 focal raptor species and bats as benchmarks for evaluating effectiveness
- Fatality monitoring and behavior and utilization studies for focal raptors and bats:
 - All turbines at least once per month
 - 30% of turbines twice per month
- Fatalities of all other bird species
 - All turbines at least once per month



Monitoring Requirements (Cont')

- Monitoring costs not to exceed \$300,000 per year per phase, as adjusted for inflation
- Monitor must prepare annual reports and a final 3-year and a final 2-year monitoring report
- Annual reports must be completed within 3 months
- Final report must be completed within 6 months



Monitoring Requirements (Cont')

- Content of monitoring reports:
 - Must include unadjusted and adjusted fatalities on a per-turbine and per-megawatt basis
 - Must summarize results of bird and bat behavior and utilization studies
- All monitoring reports and raw data must be made publically available no later than 30 days after report is produced



Fatality Reduction Measures

- SRC and TAC to review final 3-year monitoring report for each phase and determine whether any turbine(s) is/are causing “significantly disproportionate” focal raptor or bat fatalities
- If so, SRC or TAC may recommend fatality reduction measures (not incl. permanent turbine shut down or relocation) and/or additional monitoring
- Next Era may implement such additional measures and/or monitoring in its discretion



Mitigation Fee

- Compensation for ongoing bird and bat fatalities
- \$10,500 per MW of installed capacity for each phase
- Approx. \$2.5 million for all three phases
- Paid in three annual installments within three months of completion of each phase
- 50% of fee to PIER program for scientific research in APWRA
- 50% of fee to EBPRD or LARPD for conservation of birds and bats in the greater area surrounding APWRA



Enforcement

- AG, Audubon and CARE may enforce the terms of the agreement
- Meet and confer process prior to bringing an enforcement action

