



**BEFORE THE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

***IN THE MATTER OF THE COMPLAINT AGAINST
DYOCORE, INC. BROUGHT BY
ENERGY COMMISSION STAFF***

Docket No. 11-CAI-03

**COMMITTEE-RECOMMENDED RESOLUTION OF OUTSTANDING APPLICATIONS
AND PAYMENT REQUESTS FOR SMALL WIND SYSTEMS THAT USE THE
DYOCORE TURBINE**

At the Prehearing Conference held on October 11, 2011 the Committee assigned to hear this matter ("Committee") directed Energy Commission Staff ("Staff") to submit a final version of Staff's proposal for resolution of outstanding applications, or R1 Forms, and payment requests, or R2 Forms, for small wind systems that use the DyoCore SolAir wind turbine ("DyoCore turbine") for the Committee's review. The Committee recommends adoption of Staff's proposal as follows.

A. R1 Forms

i. All Incomplete Applications should be Rejected

The ERP Guidebook, 10th Edition, provides that "[f]unding reservations are made only for complete applications on a first-come, first-served basis. Applications that are missing application forms or have omissions or discrepancies will not be approved or processed." Thus, the Committee recommends that applications, or R1 Forms, for small wind systems that use DyoCore turbines which lack information necessary for processing, or reviewing, and thus, are incomplete, should be rejected.

There are currently 1,086 pending applications for small wind systems that use DyoCore turbines. Staff has determined that 631 of these applications are incomplete. The other 455 applications have been deemed complete. The Committee recommends that the 631 incomplete applications be rejected.

**ii. All Complete Applications That Identify Small Wind Systems
with DyoCore Turbines Should Retain Their Current Place In
the Queue For Consideration Under the Eleventh Edition of the
ERP Guidebook**

The Committee recommends that the 455 applications determined to be

complete which identify small wind systems that use DyoCore turbines should be given preferential treatment by retaining their current place in the queue when the program restarts provided that the applicants comply with the requirements of the Eleventh Edition of the ERP Guidebook. These R1 Forms would be valid for up to one year after the program restarts.

B. R2 Forms

Once the R1 Form is reviewed and approved, the Commission sends the applicant a Payment Claim Form, CEC-1038 R2 ("R2 Form") that identifies the amount of funds reserved and the date upon which the reservation expires. Once an R2 Form is issued by the Energy Commission, applicants typically move forward and complete their installations. The Energy Commission issued 249 R2 Forms for small wind systems that use the DyoCore turbine. Some of these R2 Forms were issued to distributors and retailers; others were issued to consumers.

i. Recommendation for Resolution of R2 Forms for Distributors/Retailers

With regard to R2 Forms issued to distributors/retailers, the Committee recommends that the following categories of actual and provable costs incurred as of October 11, 2011 be reimbursed by the ERP:

- Equipment/turbine component costs
- Installation and other related costs, *e.g.*, engineering, permitting, financing, electrical component assembly, general administrative costs, sales tax and shipping.
- Staff compensation, *e.g.* management sales staff, legal, accounting, and administrative personnel. Management costs and salaries should be capped at 50% of all other costs.
- 15 % overhead based on the expected rebate level of the R2 Forms (as if rebates for R2 Forms were paid in full).
- 5 % profit based on the expected rebate level of the R2 Forms.
- A cap on the total payment so that it cannot exceed what the Energy Commission would have paid at the expected rebate level of 1.6 kW at 18 mph winds.

Further, any actual and provable unavoidable costs incurred between October 11, 2011 and submission of the request for payment by the Energy Commission to the State Controller's Office ("SCO"), *e.g.*, accrual of reasonable interest or finance charges, would also be reimbursed under the proposed formula.

In the case of distributors/retailers who were issued an R2 Form and assigned a rebate payment for a small wind system that uses the DyoCore turbine, yet ultimately decided to install a different system and incurred costs toward the installation prior to October 11, 2011, the Committee recommends that these applications be processed, or reviewed, under the Tenth Edition of the ERP Guidebook.

ii. Recommendation for Resolution of R2 Forms for End-Use Consumers

The Committee recommends that the ERP reimburse applicants who are end-use consumers for actual and provable costs that they have incurred for small wind systems that use the DyoCore turbine.

There would be a cap on the total payment that could be issued under the ERP for each application. Thus, the total sum that could be paid out to all parties to a particular application, including end-use consumers, distributors and retailers, could not exceed the rebate amount that was requested, and presumably based upon a rated output of 1.6 kW at 18 mph winds for the DyoCore turbine.

In the case of end-use consumers who were issued an R2 Form and assigned a rebate payment for a small wind system that uses the DyoCore turbine, yet ultimately decided to install a different system and incurred costs toward the installation prior to October 11, 2011, the Committee recommends that these applications be processed, or reviewed, under the Tenth Edition of the ERP Guidebook.

C. Recommendations Applicable to All Payments

i. Payment Subject to Approval by State Controller

The Energy Commission does not issue its own checks under the ERP or its other programs. Instead, after the Energy Commission approves payments, it submits a request to the State Controller's Office ("SCO"). If SCO approves the payment, it then issues the check. Because of this arrangement, payments under the proposal would be subject to approval by SCO.

ii. Recommended Requirements for Applicants before Receiving Payment for R2 Forms

The Committee recommends that the Energy Commission require that applicants satisfy the following conditions before receiving payments under the proposed formula:

- Any applicant that is a distributor or retailer must refund all deposits it has obtained from end-use consumers prior to receiving payment for R2 Forms under the proposed formula.

- Applicants must execute a release agreement that releases all claims against the Energy Commission and KEMA, Inc. arising from the applicant's involvement in the ERP.
- A distributor or retailer seeking reimbursement under the proposed formula must submit a declaration in which it attests under penalty of perjury that any payment that it receives under the proposed formula will not directly benefit DyoCore, its employees, managers, owners, investors, or any other individuals affiliated with DyoCore.
- Backup documentation for all claimed expenses associated with the applicant's R2 Forms:
 - For materials and equipment, receipts or other proof of purchase.
 - For staff and consultants, copies of time sheets showing hours associated with the R2 Forms or sales contracts showing the amount of the commission.
 - For management compensation, flexibility in the types of documents allowed compared to staff and consultants.
 - Other documentation as appropriate.
- Proof that applicants have not or cannot receive additional payments from other sources that would result in double recovery (e.g., an insurance claim that would pay for what the Energy Commission has paid for through this process). This requirement would not preclude applicants from recovering additionally from DyoCore for amounts not covered by the payment that results from application of the proposed formula.