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VIA E-MAIL

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Re: California Energy Commission ("Commission") Business Meeting, Agenda Item 3.b. Committee Appointments for proceeding 11-CAI-03 -- Complaint Against DyoCore, Inc.

Dear Commissioners:

We are writing on behalf of Solar Point Resources, Inc. and Desert Power, Inc. (the "Distributors") authorized distributors of the DyoCore, Inc. SolAir 800 wind turbine ("DyoCore Turbine"). The unfortunate circumstances surrounding the Complaint Against DyoCore, Inc. ("Complaint"), has put the Distributors in a very difficult situation. The Distributors relied upon the List of Eligible Small Wind Turbines, the representations in the Emerging Renewables Program Guidebook and reassurances from this Commission and the Commission Staff ("Staff") that existing reservations would be processed and paid until late in the evening on July 26, 2011, when David Raine of DyoCore provided a copy of the Complaint to Chris Hawke of Solar Point. The Distributors have invested significant funds and incurred substantial costs in reliance upon this program and are currently facing shortfalls of millions of dollars.

The Distributors have acted responsibly and have followed the requirements of the Commission's Emerging Renewables Program in a professional manner. Staff has confirmed that the Distributors were well organized, worked to understand the program and submitted complete applications and documentation under the requirements of the program. The

Distributors took the time to discuss the Emerging Renewables Program, the required steps, necessary documentation, and payment schedules and commitments with Staff. In addition, Solar Point's lender independently reviewed the Emerging Renewables Program Guidebook to understand the requirements of the program and the Commission's website to confirm the DyoCore Turbine was included in the program.

The Distributors did not limit their review to the Commission's program but also investigated DyoCore and its turbine. Solar Point requested and confirmed the warranty for the DyoCore Turbine, visited DyoCore's research lab in San Diego, and later the larger research lab including a wind tunnel in San Diego. Solar Point also checked wiring details and construction details including placing the DyoCore Turbines in series. Solar Point was entering the business of selling wind turbines when it became a distributor of the DyoCore Turbine. Therefore, Solar Point conducted due diligence on not only the Commission's program but also DyoCore's product. Solar Point further inquired of the Commission Staff about the method used by KEMA to review and rate the wind turbines. Solar Point was informed that there was not a published method for these small wind turbines. Thus, the Distributors who are not wind turbine engineers were unable to double check the rating.

Solar Point submitted the appropriate documents with the Commission to be listed as both an installer and a retailer in the Commission's data base. (See Emerging Renewables Program Final Guidebook, Tenth Edition, April 2010, CEC-300-2010-003-F ["Tenth Edition"], at 8-9; and Emerging Renewables Program Draft Guidebook (with redline), Eleventh Edition, July 2011, CEC-300-2011-004-D ["Draft Eleventh Edition"], at 7-8.) The Distributors have sold systems to customers, filed Reservation Request Forms (CEC 1038 R1) with the Commission, received Rebate Payment Claim Forms (CEC 1038 R2), and installed systems all under the assumption that the equipment met the Emerging Renewables Program requirements and would, if properly documented, obtain the rebates allowed by the program.

The Distributors also paid close attention to the temporary suspension of the program in March and the impacts of that suspension on existing R2s. The notice of Temporary Suspension of the Emerging Renewables program stated, "The Energy Commission will, however, continue to process payment claims for rebate reservations approved before this date." (At 1, March 4, 2011.) And, Commission Staff's statement when presenting the suspension of the program to this Commission on March 17, 2011 included the following, "The temporary suspension does not affect applications that were approved prior to the suspension of the program nor does it affect processing of payments for applications that were approved before the suspension." (Commission Business Meeting, March 17, 2011, at 4.) Finally, the Commission Staff reconfirmed their intent to honor the existing reservations filed prior to the temporary suspension at the April 14, 2011 Staff Workshop on Proposed Changes to the Emerging Renewables Program. Based upon these public comments and statements, the Distributors continued to purchase DyoCore Turbines, take deposits from customers, seek local government approvals for installations and complete installations of DyoCore Turbines.

At this time Solar Point has 110 installations at what is referred to as the R2 stage and 266 more R1 applications filed prior to the temporary suspension. The Emerging Renewables Program has several stages. The first stage involves filing a form called an R1, Reservation Request Form, and documentation to support the reservation. According to the guidebook, "[A] funding reservation provides the purchaser assurance that the reserved funds will be available when the payment claim is made." (Tenth Edition at 13; Draft Eleventh Edition at 14.) If the information provided to the Commission on the R1 is complete and meets all program requirements, the Commission will "send a copy of the R2, Payment Claim Form (CEC-1038 R2) to the purchaser and designated payee to confirm the amount of funding reserved on the purchaser's behalf." (Tenth Edition at 19; Draft Eleventh Edition at 20.) The guidebook notes, "[T]he available rebate amount may change during the term of the program. Therefore, the Energy Commission recommends that applicants wait to install system equipment until after they receive a confirmation indicating the amount of funding that has been reserved for their rebate." (Tenth Edition at 18; Draft Eleventh Edition at 19.) The Distributors followed the guidebook instructions and did not install any equipment until they received an R2 for that installation. Once the Distributors obtained an R2 for an installation, they carefully followed the program requirements outlined in the guidebook to obtain rebate payments including installing the systems in an orderly fashion to ensure they met the deadlines contained in the R2s. "To receive rebate payment, all program requirements must be in compliance and a complete claim for payment must be made before the expiration of the reservation." (Tenth Edition at 19; Draft Eleventh Edition at 20.)

In reliance upon the Emerging Renewables Program and the instructions for the R1 submittals and the R2s received from the Commission, Solar Point performed all of the following prior to July 26, 2011.

- Developed a small business to support sales, engineering, permitting, installation and financing for wind turbines.
- Designed and created a database specifically for tracking customers and processing R1s, R2s, interconnection agreements, customer contracts, deposits, sales commissions, installations and payments.
- Developed form contracts for customers, sub-contractors and sales staff.
- Designed and implemented a sales and marketing program with an initial focus on the April 6, 2011 deadline for the rebate level change.
- Ordered and paid for 540 DyoCore Turbines to support existing R2s.
- Purchased inverters and other equipment required for the installation.
- Procured steel for pole mounted turbines.

- Obtained engineering design for pole mounts and numerous roof mounts.
- Completed independent testing and review by TUV on the electrical interconnection required by San Joaquin County to obtain a master building permit, and
- Arranged for equipment, installation and business financing with personal guarantees.

The Distributors have ceased ordering and installing DyoCore Turbines at all locations pending Commission action on the complaint and are only completing existing turbine installations which were started prior to the issuance of the Complaint. Nonetheless, the Distributors have customers including churches, low to moderate income homeowners, schools and small businesses that are now concerned about the program and whether they will be able to participate directly in the transition to renewable energy. Now those customers just like the Distributors are trying to better understand the situation and what it means for those projects that have completed R1s and those that have obtained R2s. In addition, the Distributors have existing credit lines secured by personal guarantees that will be maturing in the near future with no source of repayment. This situation is especially troubling given the recent revelation from Staff that they initiated the investigation of DyoCore in March of 2011 while at the same time continuing to encourage program participants including the Distributors to proceed with equipment purchases and installations of equipment.

The current status of the program and the circumstances surrounding the complaint is putting substantial financial strain on the Distributors, their independent sales force and their customers with outstanding deposits. Therefore, the Distributors request an expedited but also complete resolution of the outstanding R1s and R2s.

Very truly yours,

DOWNEY BRAND LLP

Jane E. Luckhardt

JEL:ln

cc: Jonathan Knapp, Staff Counsel (via e-mail)
Allan Ward, Staff Counsel (via e-mail)
Gabriel Herrera (via e-mail)