BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF THE COMPLAINT AGAINST DYOCORE, INC. BROUGHT BY ENERGY COMMISSION STAFF	**Docket No. 11-CAI-03**

COMMITTEE RECOMMENDATION

On Tuesday, October 11, 2011 the Committee conducted a prehearing conference in this matter. Complainant Energy Commission Staff, Respondent DyoCore, and Intervenors Solar Point and Energy Pros attended in person. At the prehearing conference, the committee and the parties discussed the status of the case, determined areas of agreement, and explored possibilities for resolution of issues. As a result of the prehearing conference, the committee makes the following recommendations to the California Energy Commission concerning this matter.

The Complaint requests the following relief:

1. The immediate removal of the DyoCore turbine from the Energy Commission's "List of Eligible Small Wind Turbines" on the ERP website;
2. Energy Commission guidance regarding the resolution of pending ERP applications for rebate reservations and payment requests for small wind systems using the DyoCore turbine; and
3. Referral of this matter to the Attorney General for investigation and prosecution, if appropriate.

The Committee's recommendations are as follows:

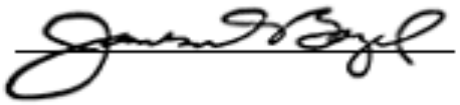
1. The DyoCore turbine should be de-listed as requested. DyoCore may apply for listing pursuant to the requirements of the Eleventh Edition of the Emerging Renewables Program Guidebook which is currently being prepared, once the program is reinstated.
2. There are two categories of pending applications for rebates: R-1 and R-2. R-1 applications have been submitted but not acted upon. There are 1,069 R-1s. Of those, 631 are not complete and should be rejected. The remaining 455 are complete and those applicants should be given priority for participation in the program when it resumes. There are 247 R-2s. These are applications which have been approved, and which would have been paid upon completion of the installation. Staff proposed a formula, set forth in its Prehearing Conference

Statement, which would result in the payment of actual expenses plus profit and overhead on those R-2s. The parties have accepted the formula with some modifications; its terms are attached hereto. The formula should be adopted by the Commission.

3. The Commission should take no position on referral of the matter to the Attorney General.
4. DyoCore stipulates that data it submitted to the staff in connection with the listing of the turbine was inaccurate. This is not an admission of wrongdoing. The Commission should accept this stipulation.
5. Staff stipulates that in light of the above agreement points there is no need to hold an evidentiary hearing. Accordingly, Staff will withdraw the complaint. This stipulation is for purposes of achieving a resolution of this matter and is not to be construed as reflecting upon the merits of the allegations of the complaint. The Commission should accept this stipulation.

Dated: October 14, 2011, at Sacramento, California.

CARLA PETERMAN
Commissioner and Presiding Member
DyoCore Complaint Committee



JAMES D. BOYD
Vice Chair and Associate Member
DyoCore Complaint Committee

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.

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

Docket No. 11-CAI-03
(Revised 10/5/2011)

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DECLARATION OF SERVICE

I, Maggie Read, declare that on October 19, 2011, I served and filed copies of the attached Committee Recommendation and Committee-Recommended Resolution of Outstanding Applications and Payment Requests for Small Wind Systems That Use the DyoCore Turbine,, dated October 14, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/renewables/emerging_renewables/11-cai-03/].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(*Check all that Apply*)

For service to all other parties:

__x__ Served electronically to all e-mail addresses on the Proof of Service list;

__x__ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "e-mail service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

__x__ by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); *OR*

____ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-CAI-03
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

____ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original signed by: _____
Maggie Read
Hearing Adviser's Office