



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

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

DOCKET NO.: 11-CAI-03

DATED: OCTOBER 21, 2011

STAFF'S COMMENTS ON THE COMMITTEE RECOMMENDATION

On October 19, 2011, the Committee assigned to hear this matter ("Committee") issued its recommendation regarding stipulations that had been agreed upon between Energy Commission Staff ("Staff") and DyoCore, Inc. ("DyoCore") at the Prehearing Conference held on October 11, 2011 ("Prehearing Conference"), and Staff's proposal for resolution of outstanding applications, or R1 Forms, and payment requests, or R2 Forms, that identify small wind systems that use the DyoCore SolAir wind turbine ("DyoCore turbine"). Staff's comments on the Committee Recommendation follow.

I. Suggested Modifications to Committee's Recommendation

A. Resubmission of DyoCore Turbine as Eligible for Use in the ERP

At the Prehearing Conference, DyoCore agreed to stipulate to the following statement:

Data provided by DyoCore for the purpose of listing the DyoCore turbine as eligible for use in the ERP was inaccurate as submitted.

On the basis of this stipulation, DyoCore and Staff agreed that the DyoCore turbine would be immediately de-listed or removed from the Energy Commission's "List of Eligible Turbines" on the ERP website.

In response to a request by DyoCore, Staff agreed to stipulate to the following statement:

DyoCore can resubmit their turbine as eligible for use in the ERP under the Guidebook **that is in effect** when the suspension is lifted and the program restarts.

By contrast, the Committee's Recommendation states:

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.

Thus, the Committee's Recommendation specifically refers to the Eleventh Edition of the ERP Guidebook whereas the stipulation agreed upon by Staff more generally refers to "the Guidebook that is in effect when the suspension is lifted and the program restarts." Accordingly, Staff requests that the Committee's Recommendation be modified to conform to the actual language agreed upon by the parties.¹

B. Referral to the Attorney General

Staff requests that the Energy Commission ("Commission") make no finding or conclusion regarding referral of the DyoCore matter to the Attorney General at this time. The complaint filed by Staff against DyoCore requested that the Commission refer this matter to the Attorney General for investigation and prosecution, as appropriate. Staff's request was based on the presumption that there would be an evidentiary hearing and a formal record that would assist the Commission in making a determination as to whether a referral was appropriate. However, on the basis of several stipulations reached between Staff and DyoCore at the Prehearing Conference, both parties agreed not to have an evidentiary hearing in this matter. Consequently, Staff has not had an opportunity to present evidence to either the Committee or the Energy Commission regarding the question of whether it would be appropriate to refer this matter to the Attorney General. Therefore, Staff requests that the Order issued by the Energy Commission not address the issue of referral to the Attorney General at all.

Alternatively, in the event that the Commission decides to adopt the Committee's Recommendation regarding referral to the Attorney General, Staff requests that the words "on this record" be appended to the proposed language. Thus, the Commission's Order would read:

The Commission takes no position on the referral of the matter to the Attorney General on this record.

This modification would recognize the limitations of the Commission's determination by acknowledging that it was made without the presentation of evidence.

¹ Notably, at the November 2, 2011 business meeting, the Energy Commission will also vote upon lifting the ERP suspension and adopting the Eleventh Edition of the ERP Guidebook. Accordingly, Staff recognizes that the referenced disparity between the stipulation language agreed upon by the parties and the wording of the Committee's Recommendation may have no practical significance.

II. Suggested Modifications to Committee’s Recommended Resolution of Outstanding Applications and Payment Requests for Small Wind Turbines that Use the DyoCore Turbine

A. R1 Forms – Treatment of Complete Applications

Staff submits the following suggested revision to the Committee Recommendation regarding treatment of the 455 applications determined to be complete which identify small wind systems that use the DyoCore turbine:

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. These applicants will be given preferential treatment by retaining their place in the queue for 120 days after the Eleventh Edition of the ERP Guidebook is adopted. Applicants that fail to reapply within this 120 day period by submitting a new application, or R1 Form, in accordance with the Eleventh Edition of the ERP Guidebook, will lose their place in the queue and be treated as an ordinary applicant, should they choose to reapply at a later date.~~

The Committee's proposal for allowing applicants to keep their place in the queue for one year would significantly restrict the effective use of program funds for far longer than necessary to achieve the desired outcome, *i.e.*, to provide preferential treatment to this pool of applicants. Under the proposed revisions for the Eleventh Edition of the ERP Guidebook, the rebate level for small wind systems that generate less than 10 kilowatts (“kW”) will drop from \$3.00/Watt to \$2.50/Watt one-hundred and twenty (120) days after the ERP Guidebook revisions are adopted by the Commission. If these applicants are not willing to move forward when the rebate level is \$3.00/Watt (*i.e.*, within 120 days of the adoption of the ERP Guidebook revisions), they are not likely to move forward afterwards when the rebate level drops to \$2.50/Watt.

B. R2 Forms – Recommendation for Payment of Actual and Provable Unavoidable Costs

Staff submits the following suggested revision to the Committee Recommendation regarding the payment of any actual and provable unavoidable costs incurred by any applicant, *i.e.*, distributors/retailers and end-use consumers:

Further, any actual and provable unavoidable costs incurred ~~between October 11, 2011 and prior to November 2, 2011~~ 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 order to administer a payout to applicants under the formula recommended by the Committee, it is necessary to fix an end date by which actual and provable unavoidable costs must have been incurred or accrued. As the Energy Commission will decide whether to adopt the Committee's Recommendation at the November 2, 2011 business meeting, Staff believes that it would be appropriate to designate the end date for unavoidable costs as November 2, 2011.

Respectfully submitted,

/s/ Jonathan Knapp

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