



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

NOTICE OF PREHEARING CONFERENCE

PLEASE TAKE NOTICE that the Energy Commission has designated a Committee of two commissioners to conduct proceedings on the Complaint against DyoCore, Inc. brought by Energy Commission staff. The Committee has scheduled a Prehearing Conference as follows:

The Prehearing Conference will be conducted on:

***MONDAY, SEPTEMBER 19, 2011
Beginning at 9:00 a.m.***

**California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, CA 95814
(Map attached)**

Teleconference Option

Parties and the Public may attend the Prehearing Conference in person at the above location or by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate by WebEx, please see the "**Participation through WebEx**" directions attached to this Notice.

Background and Procedure

Energy Commission staff have filed a Complaint against DyoCore under Title 20, Section 1231¹ of the California Code of Regulations. Section 1231 permits any person, including Energy Commission staff, to file a complaint alleging a violation of a statute,

¹ All subsequent regulatory references shall be to Title 20, unless otherwise specified.

regulation, order, program, or decision adopted, administered, or enforced by the Commission. The Complaint is docketed as a formal proceeding with the Commission as Docket Number 11-CAI-03.

The Complaint alleges that DyoCore violated the intent of the Energy Commission's Emerging Renewables Program ("ERP") and, in particular, Appendix 3, Section (A)(2) of the ERP Guidebook by submitting information to the Commission that grossly overstated the performance of the DyoCore turbine in order to have it listed by the Commission as eligible for use under the ERP.

The Complaint requests the following relief:

- The immediate removal of the DyoCore turbine from the Energy Commission's "List of Eligible Small Wind Turbines" on the ERP website;
- Energy Commission guidance regarding the resolution of pending ERP applications for rebate reservations and payment requests for small wind systems using the DyoCore turbine;
- That the Energy Commission take all action necessary to recover ERP funds that were paid as rebates for small wind systems using the DyoCore turbine; and
- Referral of this matter to the Attorney General for investigation and prosecution, if appropriate.

DyoCore contends that it followed Energy Commission procedures in connection with its participation in the ERP, that Commission staff and consultants reviewed its submissions and approved them, and that in any event the amounts of the rebates for purchasers of its product would not be affected by revising the listed performance figures for the turbine.

Under Energy Commission regulations, the Committee must commence a hearing on the matter on or before October 24, 2011, if the matter has not been resolved. The hearing will provide the parties (Staff, Respondent DyoCore, Inc., and any Intervenors) an opportunity to present evidence and testimony in support of their positions in the matter, and to cross-examine the evidence and testimony of the other parties.

Purpose of Prehearing Conference

The parties to the proceeding are Energy Commission staff, Respondent DyoCore, Inc., and any Intervenors. The Prehearing Conference is a public forum where the Committee will hear the parties' respective positions on the matter, identify areas of agreement or dispute, discuss potential resolution of the case, establish a schedule for hearings, and discuss the schedule and procedures necessary to conclude the complaint and investigation process.

PLEASE NOTE: At the Prehearing Conference the Committee may order the parties to adjourn into a public workshop wherein the parties would discuss areas of agreement

and dispute and work toward resolution. Accordingly, parties are directed to be represented at the Prehearing Conference by persons with authority to discuss resolution of the case and bind the party to a settlement agreement.

Prehearing Conference Statements

To facilitate the process, each party (Staff, Respondent DyoCore, Inc., and Intervenors, if any) shall serve and file a **Prehearing Conference Statement**. The statements shall be received by the Hearing Officer and other parties on the Proof of Service list and the Commission's Docket Unit, 1516 9th Street, MS-4, Sacramento, California, 95814-5512, by **12:00 Noon on Wednesday, September 14, 2011**.

Failure to file a Prehearing Conference Statement by the deadline may preclude a party from participating at the Prehearing Conference.

Each Prehearing Conference Statement shall include:

1. A preliminary listing of witnesses anticipated to be presented by the party in subsequent hearings; a brief summary of the testimony to be offered by each witness; and qualifications of each expert witness. This list shall include all witnesses currently known to the party; parties may supplement this list in the future with witnesses not currently known to the party, subject to any deadlines which may be established by the Committee;
2. A preliminary exhibit list identifying exhibits and declarations that each party anticipates offering into evidence in subsequent hearings, provided in the format attached to this Notice. This list shall include all exhibits and declarations currently known to the party; parties may supplement this list in the future with newly-discovered exhibits and written testimony not currently known to the party, subject to any deadlines which may be established by the Committee. The Hearing Office will provide the parties with a Word version of the Exhibit List template;
3. Proposals for scheduling the exchange of exhibits and testimony and dates for the hearings;
4. Comments, if any, on the Committee's intention to use informal hearing procedures, described below;
5. A discussion of the key issues in the case including but not necessarily limited to whether or not data submitted by DyoCore was false, KEMA's role with respect to review of data submitted by DyoCore prior to suspension of the ERP, whether or not the rebate for DyoCore turbines would have been less if the turbine's listed output was at the level Staff contends is accurate, whether the ERP regulations in existence at the time DyoCore submitted its application permitted rebates up to 100% of the cost to the consumer, and proposals for handling of the applications for rebates that have not yet been paid.

In addition, Staff's Prehearing Conference Statement shall include a copy of any written contract or agreement, and a summary of any oral agreement, with KEMA concerning KEMA's duties with respect to the ERP known or reasonably available to Staff.

Notice of Committee's Intention to Use Informal Hearing Procedures

Pursuant to Government Code Section 11445.10 et seq., and Section 1217 of the Commission's regulations, the Committee may conduct all or portions of the hearings in an informal manner. For example, the Committee could allow a panel of witnesses sponsored by a single party or by multiple parties to testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties substituting for formal direct and cross-examination. Other aspects of the hearing may be conducted informally as well at the discretion of the Committee. Any objections to the taking of testimony or evidence in an informal manner shall be filed on or before the deadline for filing Prehearing Conference Statements (**12:00 Noon on Wednesday, September 14, 2011**).

Petitions to Intervene to Become a Formal Party

The Energy Commission's Decision on the Complaint will be based on the official evidentiary record developed at the hearing. Only formal parties (Staff, Respondent, and approved Intervenors) may present evidence and cross-examine witnesses at the hearing.

Anyone with an appropriate interest in the Complaint may file a Petition to Intervene and become a formal party. At the Evidentiary Hearing, a formal party may offer testimony and documentary evidence, receive documents filed by other parties, and cross-examine witnesses. However, a formal party must also comply with Committee orders, procedures, and filing requirements, and is subject to having its own witnesses cross-examined by other parties.

The deadline to file a Petition to Intervene in this case is September 26, 2011. Petitions filed after that date and time extensions for new Intervenors to review case materials will be granted only upon a showing of extraordinary good cause. Persons interested in intervening are therefore encouraged to file their petitions as soon as possible.

How to Intervene

The Energy Commission's Public Adviser's Office will assist any person or organization interested in preparing a Petition to Intervene. For assistance in this process, contact the Public Adviser's Office at (916) 654-4489 or (800) 822-6228 or e-mail: **[publicadviser@energy.state.ca.us]**.

Agency and Public Participation

It is not necessary to be an Intervenor to participate in the public process. Anyone desiring information on how to participate may contact the Public Adviser's Office as indicated above.

Local, state, and federal governmental agencies may participate at the Prehearing Conference and Hearing, as necessary. (Cal. Code Regs., tit. 20, § 1714.5.) Elected officials and members of the public may present public comments at these events and/or submit written comments to the Energy Commission's Docket Unit. Please include "**Docket No. 11-CAI-03**" on any written comments.

Energy Commission Information

Contact Lourdes Quiroz if you have a disability and need assistance to participate in this event, at (916) 654-5146 or e-mail: [lquiroz@energy.state.ca.us].

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: [mediaoffice@energy.state.ca.us].

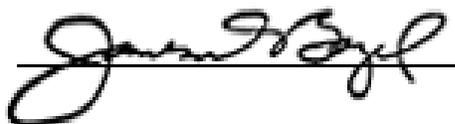
Questions of a legal or procedural nature should be directed to Raoul Renaud, the Hearing Officer, at (916) 651-2020 or e-mail: [rrenaud@energy.state.ca.us].

Information concerning the status of the proceeding, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page at: [http://www.energy.ca.gov/renewables/emerging_renewables/11-cai-03/].

Dated: August 31, 2011, at Sacramento, California.



CARLA PETERMAN
Commissioner and Presiding Member
DyoCore Complaint Committee



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

PARTICIPATION IN THE PRE-HEARING CONFERENCE THROUGH WEBEX
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:

- Please go to <https://energy.webex.com> and enter the MEETING NUMBER unique to the specific hearing date:

➤ 9/19/11 – Prehearing Conference meeting number: **926 453 878**

- When prompted, enter your information and the MEETING PASSWORD: **complaint#3**

After you login, a prompt will appear on-screen for you to provide **your** phone number. In the **Number box**, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio portion of the meeting.** International callers can use the "Country/Region" button to help make their connection.

2. COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:

- Please go to <https://energy.webex.com> and enter the unique meeting number and the meeting password (above).

- *After you login, a prompt will ask for your phone number. Click "CANCEL."*

- *Instead call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your computer screen after you login.*

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

- *Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the meeting number unique to the specific hearing date:*

➤ 9/19/11 – Prehearing Conference meeting number: **926 453 878**

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit [<http://support.webex.com/support/system-requirements.html>].

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.



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SAMPLE EXHIBIT LIST

NOTE: The format of the samples provided below is equally applicable to all parties. However, given the likely differences in the documentary evidence submitted by the parties, the samples illustrate how to address specific types of evidence that might be unique to each party.

Exhibit	Brief Description	Offered	Admitted
COMPLAINANT'S EXHIBITS			
1	ABC Power Plant Project Complaint; dated [month, day, year], and docketed on [month, day, year].		
RESPONDENT'S EXHIBITS			
200	LETTER FROM CALIFORNIA ENERGY COMMISSION DATED dated [month, day, year], and docketed on [month, day, year].		
INTERVENOR'S EXHIBITS			
300	Testimony of Expert, Jane Doe		

SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT.

California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, CA 95814

