

PREHEARING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

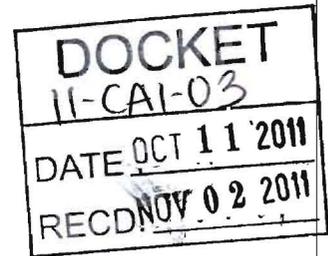
In the Matter of the Complaint )  
Against: )  
 ) Docket No. 11-CAI-03  
DyoCore, Inc., Brought by )  
Energy Commission Staff )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 11, 2011  
9:41 A.M.

REPORTED BY: PETER PETTY, AAERT CER\*\*D-493  
TRANSCRIBED BY: JAMES F. PETERS, CSR 10063

Contract No. 170-09-002



*ORIGINAL*

APPEARANCES

COMMITTEE MEMBERS

Carla Peterman, Presiding Member

James F. Boyd, Associate Member

HEARING OFFICERS, ADVISERS

Raul Renaud, Hearing Officer

Saul Gomez, advisor to Commissioner Carla Peterman

Eileen Allen, advisor to Commissioner James D. Boyd

PUBLIC ADVISER

Jennifer Jennings, Public Adviser

Lynn Sadler, Assistant Public Adviser

COMPLAINANT: ENERGY COMMISSION STAFF

Jonathan Knapp, Staff Counsel

Alan Ward, Assistant Chief Counsel

RESPONDENT

David Raine, CTO

INTERVENORS

Stephen J. Meyer

Downey Brand

representing Solar Point Resources

Brian Pierce, CEO

representing Energy Pros

ALSO PRESENT

Chris Hawke, Solar Point Resources

Kirk Lessley

Justin Malan, Distributed Wind Energy Association

Joseph Rosales

INDEX

PAGE

Opening Comments by Hearing Officer Renaud	1
Introductions	2
Opening Comments by Presiding Member Peterman	4
Comments by Hearing Officer Renaud	4
Discussion Regarding the DyoCore Complaint by Staff	8
Afternoon Session	88
Staff/DyoCore Agreement	88
Adjournment	105
Certificates of Reporter/Transcriber	106



1 Let me start with staff if you would introduce yourself  
2 and your people.

3 STAFF COUNSEL KNAPP: Jonathan Knapp, staff  
4 counsel.

5 HEARING OFFICER RENAUD: Your mic is working when  
6 this red ring is on.

7 (Thereupon a discussion occurred off the record.)

8 STAFF COUNSEL KNAPP: Jonathan Knapp, staff  
9 counsel.

10 ASSISTANT CHIEF COUNSEL WARD: Allan Ward with  
11 the Commission's Legal Office.

12 HEARING OFFICER RENAUD: All right. And on  
13 behalf of DyoCore?

14 MR. RAINE: My name is David Raine with DyoCore.

15 HEARING OFFICER RENAUD: Thank you for coming.  
16 And on behalf much intervenor Solar Point?

17 MR. MEYER: Stephen Meyer --

18 HEARING OFFICER RENAUD: Thank you.

19 MR. MEYER: -- for Solar Point. And I'm here  
20 with Chris Hawke and Robert Tablak also from Solar Point.

21 HEARING OFFICER RENAUD: Thank you. And on  
22 behalf of intervenor Energy Pros?

23 MR. PIERCE: Brian Pierce.

24 HEARING OFFICER RENAUD: Thank you. All right.  
25 Are there any government officials here, who would like to

1 introduce themselves?

2           Members of the public wish to introduce  
3 yourselves?

4           Okay. Now, those of you participating by WebEx,  
5 you are presumably able to hear what we're saying right  
6 now. We can't hear you because we've muted you. And  
7 that's so that you can rustle your papers and do whatever  
8 else you do in the normal course of daily life without our  
9 hearing it. When it comes time for you to speak, we'll be  
10 able to unmute you and give you the opportunity to address  
11 the room.

12           At the end of the proceeding today, also we will  
13 have a public comment period, which will allow members of  
14 the public to address the Committee.

15           This proceeding is being stenographically  
16 recorded. And that means that eventually it will be  
17 transcribed into a typed format or booklet, which will  
18 show everything that everybody said in the room today.  
19 Because of that, it's important that we make an effort to  
20 speak clearly and enunciate, and not speak all at the same  
21 time. That allows for a much clearer record if we can  
22 make sure that we have one person speaking at a time and  
23 they speak clearly.

24           In addition, those on the phone, if you would  
25 identify yourselves before you speak, that would also be

1 of assistance in making sure we have a clear record.

2 Before I proceed further, let me ask the -- if  
3 Presiding Member Peterman has some opening remarks.

4 PRESIDING MEMBER PETERMAN: Thank you, Mr.  
5 Renaud. Good morning, everyone. Thank you all for being  
6 here today and for bringing hard work and substantial work  
7 you've already put in to preparing materials for this  
8 hearing. We look forward to hearing all the facts and  
9 assessing them. The integrity of the Emerging Renewables  
10 Program is very important to us, and most important is  
11 protecting the interests of ratepayers and consumers.

12 I hope we can resolve this issue as quickly as  
13 possible, so we can move forward and that the ERP can  
14 remain a welcoming program to both small and large  
15 innovators alike.

16 And with that, I'll just see if my fellow  
17 Committee member, Commissioner Boyd, has any comments.  
18 Thank you.

19 ASSOCIATE MEMBER BOYD: Thank you. I think you  
20 covered all the subjects and I would rather -- us move  
21 into this, since we've lost a lot of time. So I'm anxious  
22 to hear what all the folks have to say as are you. Thank  
23 you.

24 HEARING OFFICER RENAUD: Okay, thank you.

25 The laws underwhich we're proceeding today

1 actually do not require that a prehearing conference be  
2 held. They could call for a hearing of some sort, which  
3 we interpret to be an evidentiary hearing, which involves  
4 testimony and evidence. We decided to hold a prehearing  
5 conference today, because of the complexity of issues and  
6 the possibility of resolving some of those issues and  
7 narrowing the issues in advance of the evidentiary hearing  
8 and making that proceeding much more streamlined or  
9 perhaps not even necessary.

10           The purpose of a prehearing conference, in  
11 general, is to determine the parties readiness to proceed  
12 to evidentiary. And that's why we asked, for example,  
13 that the parties provide their exhibits and their witness  
14 lists, that way we can get a look and get a preview of the  
15 evidence and make a determination as to whether we see any  
16 big holes in that evidence.

17           We also hope at a prehearing conference to  
18 discuss and clarify the claims made in the complaint and  
19 the relief sought. We will -- we would like to hear from  
20 each party a brief summary of their position in the  
21 matter. And perhaps most importantly, we would like to  
22 identify areas of agreement among the parties and possible  
23 resolution, again with an eye toward narrowing the issues  
24 and streamlining this proceeding.

25           That should help us determine whether or not at

1 the end of day there are issues which, in fact, will  
2 require adjudication. Perhaps, we'll be able to sort  
3 everything out and not even need to go to evidentiary  
4 hearing.

5 And as I stated earlier, we will have a public  
6 comment period at the end.

7 Prehearing conference statements were called for  
8 in the notice, to be filed by the parties. They were due  
9 October 3rd, and we did receive timely filings from the  
10 staff, from DyoCore and from Intervenor Solar Point. And  
11 we thank you for those, and for your hard work in  
12 assembling them.

13 Intervenor Energy Pros is new and didn't have  
14 time to prepare a prehearing conference statement. So  
15 that's fine.

16 I think we might as well just dive right into  
17 things here. Let's start with the complaint, because the  
18 complaint is really why we're here. The staff Energy  
19 Commission staff filed a complaint against DyoCore  
20 alleging that the rating of the DyoCore turbine under the  
21 ERP was incorrect, and that it was incorrect as a result  
22 of false or incorrect information provided by DyoCore.

23 The complaint asks the Committee do four things.  
24 First, it is to remove the DyoCore turbine from the list  
25 of approved wind turbines. That the -- that we provide

1 guidance as to the resolution of applications for rebate  
2 reservations and payment requests that are currently  
3 pending. That the Commission possibly refer the matter to  
4 the State Attorney General as appropriate for  
5 investigation and prosecution. And that the Commission  
6 send notice to consumers who are possibly affected by all  
7 of this, and I can -- I'm proud to report that we've  
8 accomplished the last one. We did send out the letter a  
9 few weeks ago. And the -- so notice has been provided to  
10 all possibly affected members of the public, who were in  
11 the process of seeking rebates for wind systems involving  
12 DyoCore turbines.

13 In the -- in reviewing those four tasks, maybe it  
14 would make sense, at this point, to address the second one  
15 next, which is guidance as to the resolution of  
16 applications for rebate reservations and payment requests.  
17 In the prehearing conference statements, there is  
18 discussion of a -- of negotiations that have been ongoing  
19 and a possible formula for resolving the -- these rebate  
20 requests.

21 Perhaps, to summarize, I can say that there are  
22 some, I believe, it's 1,086 rebate applications in issue.  
23 Let's see 631 of those are not complete. They were not  
24 complete as of the date of the final deadline for filing  
25 applications prior to the suspension of the program. And

1 staff's recommendation is that those simply be rejected,  
2 which makes sense.

3           The other 455 are complete, but haven't been  
4 processed to the point of actually reserving funds. And  
5 staff recommends that these -- those applicants receive  
6 priority for their applications when the program resumes.  
7 I guess the question that I have is does the staff need  
8 guidance or approval from the Committee to do those two  
9 things. They frankly sounded like administrative  
10 decisions that could be made within the program, but  
11 perhaps staff would care to address that, just  
12 specifically that point of the resolution of the 1,086  
13 pending applications.

14           STAFF COUNSEL KNAPP: Thank you. So under the  
15 existing guide book for the Emerging Renewables Program,  
16 there are audit provisions that are referenced in our  
17 prehearing conference statement, that provide staff the  
18 authority to reject applications that contain false  
19 information. So in order to -- so as an -- as stated in  
20 our statement, we're recommending that that pool of  
21 applications, the other 455 that are otherwise complete,  
22 be rejected to that basis.

23           With respect to your question of does staff have  
24 the authority to then grant those applicants the ability  
25 to remain there to retain their place in the queue going

1 forward, that's not specified in the guide book, so I  
2 think that that is a question that would go to the  
3 Committee.

4 HEARING OFFICER RENAUD: All right. Thank you  
5 for that explanation.

6 You referenced false information, of course, with  
7 respect to the audit provisions. False kind of carries  
8 with it an implication of more than just being wrong, but  
9 actually being knowingly incorrect. I take it that's what  
10 you meant is that the information is actually false,  
11 knowingly false, as opposed to simply being incorrect?

12 STAFF COUNSEL KNAPP: With regard to that  
13 question, so our -- we understand -- you know, false means  
14 that it's inaccurate, and the information is, I think, by  
15 all parties, agreement at this point in time, you know,  
16 for the DyoCore turbine, you know rated output of 1.6  
17 kilowatts 18-mile an hour winds is inaccurate. And that,  
18 from our vantage point, is false.

19 Our investigation is ongoing. We don't -- in  
20 terms of -- you know, we're not -- our case is premised on  
21 the fact that that information was inaccurate at the time  
22 of application. So I guess that's my answer.

23 HEARING OFFICER RENAUD: All right. Now, we also  
24 have the 249 R2 applications, which we're at the stage  
25 where monies were actually set aside and prepared for

1 payment upon completion of an installation, as I  
2 understand it.

3           And there's a formula been proposed, which would  
4 make payment based upon actual costs incurred. And we  
5 understand that the payments would be made by the State  
6 Controller's office and thus do need to be approved by the  
7 Commission. And I think that's clearly something that the  
8 Committee would need to make a recommendation about and  
9 the Commission approve before those checks could be cut.

10           There is the formula set forth quite clearly in  
11 the prehearing conference statement filed by staff. Solar  
12 Point has indicated assent to it. And Solar Point is the  
13 largest single distributor apparently involved in this  
14 matter. So that's a good start.

15           Let me ask Energy Pros Mr. Pierce, has -- does  
16 Energy Pros have any concerns about the formula? Have you  
17 reviewed it? Does it look okay?

18           MR. PIERCE: Is that better?

19           I reviewed the prehearing statement as indicated  
20 by the staff. And we would agree to it as it's written  
21 and we'll work through that.

22           HEARING OFFICER RENAUD: All right. Thank you  
23 for that. DyoCore have you looked at the formula?

24           MR. RAINE: Yes. We have looked at the formula.  
25 I'm a bit confused though, because we're talking about

1 resolution, when we haven't even talked about what was  
2 wrong? Somehow, I'm seeing the process that's going on,  
3 we seem to be all of a sudden deciding, okay, we're  
4 guilty. Let's go ahead and come to a resolution, and not  
5 discuss what happened.

6 HEARING OFFICER RENAUD: Well, there hasn't been  
7 any discussion about fault or guilt or anything else at  
8 this point.

9 MR. RAINE: Then why are we talking -- you don't  
10 go to court and talk about the sentence time before you  
11 talk about whether someone's guilty. I'm not  
12 understanding this. You take people agreeing to a  
13 settlement here, when we haven't even discussed whether or  
14 not DyoCore has done anything wrong. That seems  
15 completely a miss direction. And again the whole process  
16 here is about this. It's about misdirection. It's about  
17 not talking about the facts. It's about not talking to  
18 DyoCore. It's about let's just get rid of DyoCore. Lit's  
19 throw the ugly child in a cabinet and we can all just go  
20 out and play. You cannot go out and play.

21 HEARING OFFICER RENAUD: Well, nobody has  
22 proposed anything that would negatively impact DyoCore at  
23 this point. What you have is an administrative problem of  
24 the applications that were submitted, and --

25 MR. RAINE: I apologize. I respect the process

1 and I --

2 HEARING OFFICER RENAUD: No. No. I understand  
3 your concern and I -- and we will and dressing the  
4 question of why the data was wrong if it was wrong later  
5 on.

6 MR. RAINE: Then my response to your question is  
7 no, I disagree.

8 HEARING OFFICER RENAUD: You --

9 MR. RAINE: I disagree to the settlement.

10 HEARING OFFICER RENAUD: You're not -- and is  
11 there a specific part of it that you object to. It starts  
12 on page, I think it's 28.

13 MR. RAINE: I object to talking about a  
14 resolution without talking about the problem.

15 HEARING OFFICER RENAUD: All right. Let me ask  
16 staff about a provision of the formula. There is a  
17 provision on page 31, it's is second arrow under four.  
18 And that Section 4 generally sets forth safeguards for  
19 making sure that payments are submitted for  
20 actual -- actually incurred expenses with correct  
21 documentation.

22 It calls for a declaration, in which the  
23 applicant attests that -- it's a little confusing to read,  
24 but, "That there's information that will ensure that  
25 DyoCore, its employees, managers, owners, and investors do

1 not directly benefit from the Energy Commission's efforts  
2 to pay for applicant's costs".

3 Can you enlighten us a little on why that  
4 provision is in there? Why don't you want DyoCore to  
5 benefit and what do you mean by benefit?

6 STAFF COUNSEL KNAPP: So I guess to back up. You  
7 know, regarding the proposal that we've put forward for  
8 resolution, the outstanding applications and payment  
9 requests. We are putting that forward as an option for  
10 distributors and brand use consumers to be able to be  
11 reimbursed for expenses that they incurred, you know, as a  
12 result of purchasing and installing the small wind systems  
13 used in the DyoCore turbine.

14 And I have a statement with regard to kind of an  
15 explanation for why we're -- why we proposed that way of  
16 resolving the claims that I'd like to put in the record.  
17 But -- and so maybe I'll do that in a moment and I'd also  
18 like to address the errata and the addendum to staff's  
19 proposal that we've handed out.

20 But to answer your specific question, and to  
21 address Mr. Raine's concern, we're -- you know, the  
22 way -- I guess the reason for structuring this in the way  
23 that it is, is that, you know, we want to provide an  
24 option to distributors and end-use consumers so that  
25 they -- without -- that we don't believe -- I should back

1 up.

2           The end-use consumers and distributors were never  
3 the subject of this complaint. The complaint was lodged  
4 against the manufacturer DyoCore. And as we've said just  
5 alleging that the data that was submitted for the purpose  
6 of listing the DyoCore turbine as eligible for use under  
7 the ERP, that that data was false, that it was inaccurate.

8           So with respect to Mr. Raine's concern,  
9 the -- what we're discussing in terms of resolving these  
10 claims does -- from our vantage point, doesn't impact his  
11 interests and his -- you know, we are -- just to the  
12 contrary, you know, we've sought to give him the greatest  
13 due process protections available. And, you know, we're  
14 going -- you know, we contemplate that there will be an  
15 evidentiary hearing at which -- and we believe that it's  
16 very necessary that there is -- there will be an  
17 evidentiary hearing, so that Mr. Raine will have a full  
18 out -- and that DyoCore will have a full opportunity to  
19 present their side of the story to the Committee.

20           That said, we believe that since the, you know,  
21 distributors and end-use consumers who have been caught up  
22 in this and are being severely impacted by this  
23 proceeding, insofar as they're continuing to accrue  
24 interest charges and other finance charges, personal  
25 guarantees are at issue for a lot of these small

1 businesses and so forth, that we wanted to -- and given  
2 that they were never the subject of our complaint to begin  
3 with, we wanted to be able to -- you know, we worked with  
4 distributors to be able to establish this option, so that  
5 you know, they would have a way to kind of limit the  
6 exposure that they're currently facing.

7           From our vantage point, we don't see that  
8 as -- we see these as just two very separate processes,  
9 and we don't see that it's necessary to resolve the  
10 question with regard to whether or not the data was false,  
11 in order to address, you know, the separate question of,  
12 you know, how to most appropriately resolve these  
13 outstanding claims.

14           HEARING OFFICER RENAUD: Well --

15           STAFF COUNSEL KNAPP: So sorry to interrupt, so  
16 whenever -- I don't know -- I would like to read the  
17 statement into the record, but can I do that at any time  
18 that you think is appropriate.

19           HEARING OFFICER RENAUD: It's a statement  
20 concerning what?

21           STAFF COUNSEL KNAPP: Just our explanation of,  
22 you know, staff's perspective on why -- the kind of  
23 animating concerns behind our -- the resolution for the  
24 outstanding claims.

25           HEARING OFFICER RENAUD: Well, does it relate to

1 the reason for the data being inaccurate or does it relate  
2 specifically to the terms of the proposed settlement?

3 STAFF COUNSEL KNAPP: It relates specifically to  
4 why we proposed the settlement -- why we proposed the  
5 formula for resolution in this case.

6 HEARING OFFICER RENAUD: Well, at this point, I  
7 want to avoid getting into discussion about why the data  
8 is inaccurate. I'm veering away from that at this point,  
9 and we will get back to it.

10 STAFF COUNSEL KNAPP: Oh, I certainly --

11 HEARING OFFICER RENAUD: If statement is going  
12 the get into that --

13 STAFF COUNSEL KNAPP: Not at all. Not at all.

14 HEARING OFFICER RENAUD: How long is it?

15 STAFF COUNSEL KNAPP: It's approximately a page  
16 and a half.

17 HEARING OFFICER RENAUD: All right. Go ahead.

18 STAFF COUNSEL KNAPP: So staff respectfully  
19 submits that the proposal for resolution of outstanding  
20 applications and payment requests that it's put forward in  
21 its prehearing conference statement, as amended in the  
22 errata, and the addendum submitted today, merits the  
23 consideration and ultimate approval of the Renewables  
24 Committee.

25 The express is purpose of the Emerging Renewables

1 Program, or ERP, is to encourage the expansion of private  
2 sector infrastructure for production and distribution of  
3 small wind systems and fuel cells by incentivizing greater  
4 consumer participation in the markets for these emerging  
5 renewables.

6 Cognizant of the purpose of the ERP from the  
7 outset of this proceeding, staff has worked to develop a  
8 proposal for resolution of this matter that redresses the  
9 myriad problems and complications presented, yet does not  
10 erode confidence in the small wind industry or the Energy  
11 Commission's administration of ERP.

12 In short, staff seeks to encourage the continued  
13 development of the market for small wind systems and does  
14 not want to inadvertently chill participation in the  
15 market, and in particular the ERP.

16 Neither end-use consumers nor distributors  
17 retailers were the intended target of staff's  
18 investigation and complaint against DyoCore, Inc. or  
19 DyoCore. Thus, regardless of the outcome of this  
20 proceeding, staff believes it is critical to resolve all  
21 outstanding applications and payment requests for end-use  
22 consumers and distributors retailers in a fair, equitable,  
23 and expedient manner.

24 Staff's animating concerns are reflected in the  
25 proposal's treatment of small businesses and individuals

1 that were issued payment claim forms. There are two forms  
2 under the ERP.

3 With regard to distributors and retailers, staff  
4 recommends a formula for resolution of pending R2 forms  
5 whereby the following categories of actual and provable  
6 costs would be reimbursed by the ERP:

7 Equipment and turbine components costs;  
8 installation and other related costs, for example,  
9 engineering, permitting, financing, electrical component  
10 assembly; general administrative costs, sales tax and  
11 shipping; staff compensation, for example management,  
12 sales staff, legal, accounting, and administrative  
13 personnel, 15 percent overhead based on the expected  
14 rebate level of the R2 forms as if the rebates for the R2  
15 forms are paid in full; five percent profit based on the  
16 expected rebate level of the R2 forms.

17 And all this would be predicated on a cap of the  
18 total payment, so that it could not exceed what the Energy  
19 Commission would have paid at the expected rebate level  
20 based upon a rated output of 1.6 kilowatt at 18 miles an  
21 hour for the DyoCore turbine.

22 With regard to end-use consumers, staff  
23 recommends reimbursement of actual and provable costs  
24 incurred for small wind systems that use the DyoCore  
25 turbine. Further, in the case of end-use consumers who

1 were issued an R2 form and aside a rebate payment for a  
2 small wind system that uses the DyoCore turbine, yet  
3 ultimately decided to install a different system, and  
4 incurred costs towards the installation prior to today,  
5 October 11, 2011, staff recommends that these applications  
6 be processed for reviewed under the 10th edition of the  
7 ERP guide book, the current edition.

8           And as noted in our prehearing conference  
9 statement, staff understands that the small  
10 business -- that many of the small businesses and end-use  
11 consumers impacted by the DyoCore matter, continue to  
12 incur interest payments on loans and other finance  
13 charges. Thus, staff urges that it is in the best  
14 interests of these small businesses, end-use consumers and  
15 the Energy Commission to reach conclusion on the payment  
16 arrangement and make payments as soon as possible.

17           And so accordingly, what we're asking is that the  
18 Committee consider putting the issue of the approval of  
19 staff proposal on the agenda for the November 2nd, 2011  
20 business meeting.

21           HEARING OFFICER RENAUD: All right. Thank you  
22 for that. What indications do you have that the proposal  
23 would be acceptable to other distributors and persons who  
24 are not present today?

25           STAFF COUNSEL KNAPP: So staff has spoken with

1 all distributors that have come forward to speak with us  
2 about resolving these claims. I believe that we are going  
3 to hear from other distributors that, you know, we are  
4 intending to call in to express their support for the  
5 proposal.

6 HEARING OFFICER RENAUD: All right. Thank you.  
7 Okay. Thank you. I think -- I'm trying to think where to  
8 go from here. You haven't heard any negative response to  
9 the proposal other than we've heard from Mr. Raine today,  
10 have you?

11 STAFF COUNSEL KNAPP: We have not heard anyone  
12 who is opposed to the --

13 HEARING OFFICER RENAUD: All right. I'm asking  
14 these questions, because you're seeking a Committee  
15 recommendation and you're also seeking it today and so we  
16 kind of need to get a sense -- the Committee doesn't have  
17 the authority to impose a settlement on anybody,  
18 particularly people who aren't parties. So, you know, the  
19 most we could do is recommend it with the understanding  
20 that if someone decides they're not going to sign up for  
21 that, they to.

22 Go ahead.

23 STAFF COUNSEL KNAPP: If I could address that  
24 point. We certainly understand that. And so what we're  
25 recommending is that -- is a formula that would

1 essentially represent an option for you know distributors  
2 to -- that, you know, a formula that would unable  
3 the -- that we believe, you know, would unable the  
4 Committee and ultimately the Commission to arrive at a  
5 fair payment for, you know -- for these distributors and  
6 for the end-use consumers that are impacted by the DyoCore  
7 matter.

8           So all that we're asking that be on the November  
9 2nd, 2011 business meeting is the formula, so that -- so  
10 not any particular settlement or any particular, you know,  
11 payout arrangement for a particular distributor or a  
12 particular end-use consumer, but that overall if the  
13 approval is -- if the Committee -- or the Commission were  
14 to approve the formula, then, you know, distributors and  
15 individual end-use consumers could come in and then could  
16 individually, you know, workout how that formula applies  
17 to them themselves.

18           HEARING OFFICER RENAUD: Okay. Please, of  
19 course.

20           PRESIDING MEMBER PETERMAN: Hi. Commissioner  
21 Peterman here. Clarifying question. It seems to me that  
22 embedded in the formula calculation is the assumption that  
23 the data provided was false, because otherwise if the data  
24 provided is not found to be false, then one would be  
25 entitled to full subsidy initially suggested, correct?

1           STAFF COUNSEL KNAPP: So, I think that that is  
2 correct, that the -- that what you said correct. That  
3 said, I mean, there are some nuances to the formula, in  
4 terms of that what we, you know, ultimately decided, you  
5 know, and worked through with, you know, with the  
6 distributors and internally with staff was that the -- you  
7 know, what we ultimately decided was the -- was a fair  
8 outcome here, included percentages for overhead and profit  
9 that were based upon revenue, and revenue was calculated  
10 based upon revenues that -- you know, as that seemed to be  
11 the more appropriate model to use for small business  
12 enterprises, then the base the overhead and the profit  
13 percentages against costs, which is what would be more  
14 commonly done for government contracting. So -- and that  
15 was -- and just in fairness to the entities that were  
16 involved and to the business practices and the accounting  
17 practices that they use.

18           So I think that's the only place -- so overall, I  
19 would certainly agree with your assessment, but I think  
20 that was the only place that we, you know, were looking  
21 at. You know, looking at it from the perspective of what  
22 they would have expected to have obtained, had the numbers  
23 been accurate.

24           MR. MEYER: Stephen Meyer from Solar Point. What  
25 staff has recommended is an option. It's one that we

1 endorse, and I think most distributors will decide --  
2 most, if not all, the distributors will decide to  
3 participate.

4           It is -- it may be the case that as the result of  
5 this hearing it is determined that the listing of the  
6 DyoCore turbines is not appropriate and that sort of  
7 thing. And for distributors who wish to await that  
8 outcome, of course, they can await that outcome. Many  
9 distributors, such as my client, are placed in a very  
10 difficult situation. And without taking a position one  
11 way or another with regards to the DyoCore turbines, we're  
12 put into, you know, just a very, very difficult financial  
13 situation with our company and, you know, and quite  
14 serious peril.

15           We've appreciated working -- we've met with staff  
16 many hours. And I think what they've come up with -- I  
17 think using the term settlement may not -- you know, it  
18 is, in some sense, a settlement, but what we have here is  
19 a process or is an option and a process for resolution  
20 that I think the -- particularly the distributors, I  
21 think, will be -- but particularly my client, I think,  
22 speaking -- or my client speaking to many other  
23 distributors would endorse without taking a position one  
24 way or another with regards to these turbines.

25           PRESIDING MEMBER PETERMAN: Mr. Meyer, thank you

1 for that clarification and for calling out that it is an  
2 option. I appreciate that the proposed formula is an  
3 attempt to address some of the financial concerns more  
4 immediately than after the resolution of this complaint.

5 This question I would have for staff about the  
6 formula is depending on the outcome of this complaint  
7 hearing, if the information provided is deemed not false,  
8 distributors decide to then go with receiving the fall  
9 initial subsidy and not following the formula. I  
10 appreciate the formula also includes the payments for  
11 things not normally covered within the subsidy.

12 STAFF COUNSEL KNAPP: That would certainly be an  
13 option. That would certainly be an option. So, you know,  
14 again, I would, I guess -- in answering that question, I  
15 would put out there, you know, again that from our  
16 understanding all parties, at this point, agree that the  
17 numbers that were submitted were inaccurate.

18 MR. MEYER: Stephen Meyer again for Solar Point  
19 is that there are not going to be two bites at the apple  
20 here. I mean, there's a release that is going to be  
21 signed by distributors who take this option. So  
22 it's -- so you can either -- it is an option, and that's  
23 what we're talking about.

24 STAFF COUNSEL KNAPP: The one other thing I would  
25 like to add is that with respect to, you know, the

1 statement that I read into the record, you know,  
2 our -- staff's view of this is that the proposal that we  
3 worked out is a fair resolution of this matter. Looking,  
4 you know, the broader purposes that are behind this, in  
5 terms of, you know, not wanting to erode confidence in the  
6 small wind industry and then specifically in the Energy  
7 Commission's administration of the ERP and other incentive  
8 programs.

9           So from our vantage point, you know, this  
10 proposal, you know, is something that -- you know, that we  
11 would be behind regardless of the outcome here, and -- and  
12 I guess without getting into the merits of case, like  
13 that's as far as I'll go.

14           PRESIDING MEMBER PETERMAN: So just to make sure  
15 that I understand and how this relates to Mr. Raine and  
16 DyoCore's concern, the proposed formula then is based on  
17 the premise that the information is inaccurate, which it  
18 seems, at least from the prehearing conference statements  
19 that all parties agree to, although we can get to that,  
20 but it is not implied that it was intentionally  
21 inaccurate. So hopefully -- at least that's from my  
22 perspective, Mr Raine, if you'd like to comment.

23           MR. PIERCE: Brian Pierce, Energy Pros. From my  
24 understanding, and if I'm wrong please correct me, the  
25 solution that's been proposed by staff here is for

1 resolution of pending R2 forms, correct?

2 MR. RAINE: Yes, you are correct.

3 MR. PIERCE: And if Mr. -- if Mr. Raine and  
4 DyoCore, through this process, is reinstated or found to  
5 not be at fault or, you know, that assumption is -- that  
6 you're talking about, Commissioner Peterman, is found that  
7 he's not at fault or whatever it is, wouldn't that then  
8 affect the R1 forms that are still pending or that were  
9 submitted as complete, but for an expediency for the end  
10 users and for the contractors that have installed these  
11 and sold these, to me, this looks like just a resolution  
12 of the R2 forms, because who knows how long the  
13 evidentiary process for DyoCore would take. But I think  
14 that would affect -- if it's then being -- we  
15 can -- DyoCore is approved or whatever, I think that would  
16 affect the R1 forms.

17 And so I don't think it is killing DyoCore's or  
18 making them look as bad to have this resolved quickly.  
19 It's just a matter of more an expediency issue.

20 HEARING OFFICER RENAUD: Yeah, I mean, it looked  
21 to me like the proposal for the 455 complete R1s would be  
22 that once the program is reinstated, they would have  
23 priority and could select any equipment that's on the  
24 approved list, including DyoCore, if it's on the approved  
25 list.

1           STAFF COUNSEL KNAPP: Certainly. Certainly. And  
2 just to make one more point. With respect to -- you know,  
3 we've described this -- you know, the proposed resolution  
4 of claims as an option, that distributors or end-use  
5 consumers could decide to take. If they don't take it,  
6 the Committee could certainly recommend -- you know, at  
7 the conclusion of the evidentiary hearing with DyoCore,  
8 the Committee could certainly recommend a different  
9 proposal.

10           So we put forward this option, you know, in  
11 recognition of, you know, the -- you know, the overall  
12 purposes that I've discussed, but then also -- and in  
13 particular, you know, the financial situation that many of  
14 these small businesses and individuals are based in.

15           HEARING OFFICER RENAUD: Okay. Thank you.  
16 Technical question. Mr Raine.

17           MR. RAINE: I apologize. We kind of walked over  
18 your last statement. It actually is indicated that  
19 they're not supposed to use DyoCore products. And, in  
20 fact, that direct statement is that DyoCore is not to  
21 benefit whatsoever from any of these reservations. So  
22 that last statement you made is incorrect, it does exclude  
23 DyoCore from participating.

24           HEARING OFFICER RENAUD: Very good point. And  
25 that's why I questioned that particular part of this. And

1 that probably leads to where I'm going next. Let's assume  
2 that the --

3 PRESIDING MEMBER PETERMAN: Just a question.

4 HEARING OFFICER RENAUD: Go ahead, please.

5 PRESIDING MEMBER PETERMAN: Just a clarifying  
6 question. Can the distributors on behalf of customers  
7 accept such a formula? Have the rights to the subsidy  
8 been assigned to you? You just clarify, either staff or  
9 our intervenors.

10 STAFF COUNSEL KNAPP: So there is 67 applicants  
11 that are individual end-use consumers. And so they  
12 would -- you know, they would have to accept -- you know,  
13 to the extent that, you know, we know that their  
14 situations were people that put small wind system used the  
15 back were turbined on a credit card. You know, and  
16 they're out \$17,000 or different amounts.

17 So in those instances, you know, the proposal  
18 provides that they would be able to get reimbursement for  
19 their actual and provable costs that they've incurred.

20 So -- but then in -- so under -- and I guess  
21 backing up, under the ERP, the rebate could be -- the  
22 application could be in the name of a retail distributor  
23 or in the name of a consumer. And so the proposal  
24 provides for both scenarios.

25 HEARING OFFICER RENAUD: All right. Thank you.

1           So let's kind of back up and think about where we  
2 are. The Committee is just asking for clarification about  
3 the four requests that were in the complaint. And, as I  
4 said earlier, okay, we've sent them notice. Referral to  
5 the Attorney General, that's down the road possibly.  
6 Provide guidance as to resolution of applications. Well,  
7 if the formula is approved by the committee, we've taken  
8 care of that.

9           And we then have the first request, which is to  
10 remove the DyoCore turbine from the list. And, in fact,  
11 from the complaint, I'll read. It simply says, "I request  
12 that the DyoCore turbine be immediately removed from the  
13 Energy Commission's list of eligible small wind turbines  
14 on the ERP website".

15           And we have some questions about that, about that  
16 request. Are you contemplating a permanent delisting? In  
17 effect, kind of a blacklisting of DyoCore, or is that  
18 simply to remove the listing of that turbine at 1.6  
19 kilowatts from the list, subject to possible reinstatement  
20 once compliance with the new guidelines is demonstrated?

21           ASSISTANT CHIEF COUNSEL WARD: What we're asking  
22 for is the immediate delisting. But the Committee can  
23 certainly decide, after hearing the evidence at the  
24 evidentiary hearing, whether or not it wanted to extend a  
25 longer ban, if that was appropriate.

1 HEARING OFFICER RENAUD: If the -- let's think  
2 about that a little bit. So you'd be suggesting the  
3 Committee might have the option to, in effect, blacklist  
4 this company? Extend the removal beyond some point at  
5 which there might be a new compliant rating, is that what  
6 you're suggesting?

7 ASSISTANT CHIEF COUNSEL WARD: Depending upon  
8 what happens at the evidentiary hearing and the actions  
9 that are shown, I think that is a possibility. I think  
10 that is within the --

11 HEARING OFFICER RENAUD: Where I -- I don't see  
12 that we have any legal authority to punish DyoCore. Due  
13 have any authority for that? I mean, you're suggesting a  
14 punishment, really, would you agree with that?

15 ASSISTANT CHIEF COUNSEL WARD: Well, since the  
16 Commission decides the list and who goes on the list of  
17 who's to receive the rebates, I think if these actions are  
18 taken -- and under the provisions of guide book that talk  
19 about the authority that the Commission has, if there's  
20 instances of misstatements or fraud, I think this would be  
21 within their ability.

22 HEARING OFFICER RENAUD: I agree that there are  
23 audit provisions and so on in the old guide book, but I  
24 don't see that they contain the sort of remedy that you're  
25 suggesting, which would be basically to bar DyoCore from

1 participation. If you can point me to something, I'd be  
2 interested, but what it looks like to me is that the audit  
3 provisions allow thereto be a review of the data and the  
4 facts and a determination made as to whether or not to  
5 delist, but that after that, if the -- if corrections were  
6 made, delisting could be reinstated.

7 STAFF COUNSEL KNAPP: Just as a point of  
8 clarification, we're not -- you know, in the complaint we  
9 did not seek any type of blacklisting going forward. I  
10 mean we're simply recognizing, with regard to what Mr.  
11 Ward said, that, you know, that the -- you know as a  
12 result of the evidentiary hearing, you know, with regard  
13 to, you know, to what is ultimately shown in this case,  
14 you know, we don't know how the Committee's response to  
15 that would be.

16 But nevertheless, staff is not seeking any type  
17 of blacklisting and we -- just to the contrary, you know,  
18 the new guide book establishes third party -- you know,  
19 standards for certification of the third party  
20 certification of power curves. And we believe that that  
21 is a very appropriate mechanism to, you know, to have a  
22 clean list of equipment going forward. And, you know, at  
23 this present time, we don't, you know, see any reason that  
24 DyoCore couldn't resubmit their product to that, you know,  
25 standard.

1 HEARING OFFICER RENAUD: Okay, because what I'm  
2 trying to do here is kind of highlight the distinction  
3 between our deciding that the listing was inaccurate, is  
4 1.6 kilowatts is not correct versus deciding fault for  
5 that. Why is it inaccurate?

6 And if, in fact, everybody agreed that the  
7 listing is wrong and needs to be corrected, and it is  
8 going to be corrected pursuant to the new guidelines, then  
9 why do we really care about the fault? Why is that  
10 important?

11 We could save an awful lot of hearing time and  
12 taxpayer expense if we didn't have to go down that road,  
13 assuming everybody was in agreement, and I'm not making  
14 that assumption. We'll have to ask everybody. If  
15 everybody is in agreement that the listing needs to be  
16 corrected and staff is willing, once it's corrected, to  
17 put this turbine back on the list, aren't we done?  
18 Doesn't that complete what you've asked is committee do,  
19 which is take the turbine off the list?

20 ASSISTANT CHIEF COUNSEL WARD: Well, I would just  
21 add that one of our other asks on the list was whether or  
22 not to recommend this to the Attorney General's office?  
23 And if we just say well it's inaccurate, it doesn't get to  
24 the rest of the information to get to that recommendation.

25 HEARING OFFICER RENAUD: I understand your point.

1 Would it -- do you think it would be appropriate for the  
2 Energy Commission to hold evidentiary hearings to  
3 determine whether or not to refer a matter to the Attorney  
4 General versus simply calling it to the attention of the  
5 Attorney General, and let them do their own determination  
6 investigation?

7 STAFF COUNSEL KNAPP: So I think that  
8 there's -- you know, I that I on, you know, on a  
9 fundamental level that if we want -- yeah, if we had  
10 agreement by all parties that the information, you know,  
11 what it was submitted in June of 2010, the ultimate, you  
12 know, data that was submitted that underlined the rating  
13 at 1.6 kilowatt at 18 mile an hour winds for DyoCore  
14 turbine, that if we -- if we had agreement that that  
15 information wasn't accurate when submitted, then that is,  
16 in essence, what we're here to show -- what we're here to  
17 establish.

18 Now, I've said, you know, in my remarks that all  
19 the parties agree. I mean, that's our argument. I mean  
20 that's laid out in the prehearing conference statement. I  
21 don't know that Mr. Raine would necessarily, you know,  
22 outright agree to that statement.

23 We view him as having made those admissions. And  
24 that's what's reflected in our prehearing conference  
25 statement -- or I should say, it would be DyoCore as

1 having made those admissions.

2 With regard to the need for the evidentiary  
3 hearing, if that issue was resolved, you know, I think  
4 that that -- you know, I think, in part, one of, you know,  
5 the -- I think that that would really be a question. I  
6 don't know that it would be necessary.

7 HEARING OFFICER RENAUD: Well, maybe -- sorry go  
8 ahead Mr. Ward, please.

9 ASSISTANT CHIEF COUNSEL WARD: No. I was just  
10 going to add that, perhaps instead of an evidentiary  
11 hearing for that, it could be taken up in a closed session  
12 by the Commission itself, so you wouldn't have to have  
13 this entire process just for the question of whether or  
14 not to refer this matter to the Attorney General's office?

15 HEARING OFFICER RENAUD: That's a possibility,  
16 and I -- but I think you're highlighting the fact that if  
17 the parties, in fact, agree that the listing was  
18 incorrect, we're just down to that one question, aren't  
19 we, whether or not to refer to the Attorney General. And  
20 how that would be approached, I'm not sure, but I'm  
21 questioning whether conducting an evidentiary hearing at  
22 this agency would be the route to go down for that.

23 ASSISTANT CHIEF COUNSEL WARD: The concern I have  
24 is that what hasn't been resolved is our proposed  
25 settlement does have the provision -- not settlement, but

1 our proposed payment arrangement nor the distributors is  
2 sort of an off ramp to this proceeding does have that  
3 provision of not profiting DyoCore. So what's left on the  
4 table is what happens to any payments that would be going  
5 to DyoCore through -- that they might be out through this  
6 payment arrangement.

7 HEARING OFFICER RENAUD: Well, see, but then we  
8 get back to that question of punishment. That is by  
9 including a provision like that you're asking the  
10 Committee, in effect, to punish DyoCore for submitting  
11 wrong data.

12 PRESIDING MEMBER PETERMAN: Mr. Ward, can you say  
13 your last statement again. I didn't fully understand that  
14 point about how they would be profiting from the payment  
15 option -- the proposed settlement -- proposed option.

16 MR. MEYER: Can I -- one of the things is  
17 that -- as I understand this provision, is that, you know,  
18 this is addressing the R2s, so if we as a distributor  
19 decide to take this option under the formula, then, you  
20 know, what this formula is so the -- I think what they're  
21 trying to address is whether, you know, we would share --  
22 you know -- the money that we would get, we would be  
23 sharing any of that money with DyoCore.

24 We would not be doing that, because, first, we  
25 are looking at actual costs, and so we're -- you know,

1 what we paid. And so -- versus just practically nobody is  
2 going to be paying DyoCore, but you know we have no  
3 trouble as a distributor in pursuing this formula of  
4 not -- you know not sharing -- you know, not sharing  
5 income with -- you know, with DyoCore. The way this  
6 formula works, that wouldn't happen anyway.

7           And so -- you know, and with regards to the R1s,  
8 if later on there's a determination that the -- with  
9 regards to the R1 applications that are on file, if later  
10 on there's a determination that the DyoCore turbines are  
11 properly listed, you know, then I would -- you know,  
12 people will pursue -- you know, will -- if they decide to  
13 opt for the DyoCore equipment, you know, in those  
14 instances there would be money that would be shared.

15           But the purpose of, you know, this declaration,  
16 which you note -- this declaration refers to costs  
17 directly applicable to the approved applications or the R2  
18 forms. So we're really just limiting it to the R2s. And  
19 so -- you know, I think staff's purpose was just, as I  
20 understood it in going through this, it's just with  
21 regards to the R2s we're not going to be sharing any  
22 income or any benefit or any dollars with DyoCore.

23           HEARING OFFICER RENAUD: Yeah that's -- we  
24 appreciate that clarification. I that really does help us  
25 understand it. Mr. Ward, you were about to speak as well.

1 You think he covered it? Already good.

2 Well, you know, this -- did you have something  
3 else Mr. Knapp?

4 All right. Well, as I stated at the outset, one  
5 of the goals of a prehearing conference is to determine  
6 areas of agreement, that is where parties can agree on  
7 certain facts in the case, and then we done to have try  
8 those facts.

9 And I think we've come to the realization that a  
10 critical fact is whether or not the rating of the turbine  
11 at 1.6 kilowatts at 18 miles per hour was correct.  
12 Without regard to why, why it was listed, how it got that  
13 way isn't what we're talking about. Just is it -- is that  
14 a wrong number?

15 I think I know that staff thinks it's a wrong  
16 number. Mr. Raine, how do you feel about that? Is that  
17 the wrong number?

18 MR. RAINE: I'm just trying to understand your  
19 question. You said without regard to why? I didn't  
20 understand that.

21 HEARING OFFICER RENAUD: Yeah, at this point,  
22 we're not addressing whether it was your fault that the  
23 number is wrong, if it's wrong, or someone else's fault  
24 our it was a mistake or it was intentional or anything  
25 else, just plain is it the wrong number? Should the

1 number for rating that turbine be lessor different?

2 MR. RAINE: It could be different, yes.

3 HEARING OFFICER RENAUD: Different. All right.  
4 Intervenor Solar Point, is that -- should that be a  
5 different number or do you not have any --

6 MR. MEYER: We're really not taking a position on  
7 it.

8 HEARING OFFICER RENAUD: Energy Pros the same  
9 thing?

10 MR. PIERCE: Yes.

11 HEARING OFFICER RENAUD: All right. That to me,  
12 without putting into a formal written stipulation, but for  
13 purposes of this discussion, makes it sound to me like the  
14 parties agree, the staff and the respondent agree, that  
15 the rating is incorrect. And obviously, you know,  
16 the -- an incorrect rating doesn't be long on the ERP  
17 list. It should be corrected.

18 You know, and on that basis, I mean I can't see  
19 why the Committee wouldn't say well of course we should  
20 take it off the list until it's corrected.

21 Lynn?

22 ASSISTANT PUBLIC ADVISER SADLER: Oh, yes.

23 HEARING OFFICER RENAUD: Just one second. And  
24 the question is, do we need to go into a determination of  
25 why it's wrong, is that necessary if the end result is

1 simply going to be that the listing is correctable under  
2 the new rules? And maybe I'll leave that as a rhetorical  
3 question while we see who's on the phone who would like  
4 the speak

5 Ms. Sadler, did you have someone who specifically  
6 made a request?

7 (Thereupon Ms. Sadler responds to Hearing  
8 Officer Renaud about opening WebEx.)

9 HEARING OFFICER RENAUD: Okay. All right. Let  
10 me, this is Raul Renaud, the Hearing Officer, and I'm  
11 addressing those of you who are on the phone or on your  
12 computers. We're making -- we're asking whether or not  
13 there's general agreement about the rating of the turbine  
14 being incorrect. And I think actually the only people who  
15 would really matter with respect to that question legally  
16 for purposes of the complaint, are the complainant and the  
17 respondent. But we're still interested in hearing whether  
18 others interested persons have input on that.

19 Interested person could be, I think, anybody  
20 affected by this entire matter.

21 MR. PIERCE: Would an interested person include  
22 other manufacturers or would it just be only those  
23 affected by this specifically?

24 HEARING OFFICER RENAUD: It's hard for me to see  
25 how another manufacturer could be affected if they're not

1 involved in a transaction that's the subject of this  
2 complaint. I could see they could have an opinion.

3 MR. PIERCE: Maybe for expediency we could limit  
4 it?

5 HEARING OFFICER RENAUD: Yeah.

6 MR. PIERCE: In other words comment.

7 HEARING OFFICER RENAUD: All right. There's no  
8 one on the phone who wishes to address that point. We've  
9 heard from the intervenors that it's not really a question  
10 they're concerned about. And we do know from the -- both  
11 the complainant and the respondent that that -- the rating  
12 is wrong.

13 So let me ask staff, complainant, whether having,  
14 you know, achieved consensus on that critical fact, it's  
15 necessary to proceed to evidentiary hearing on the  
16 question of why the rating is wrong? In other words, What  
17 would that accomplish?

18 STAFF COUNSEL KNAPP: Well, I guess it depends  
19 how you frame the issue. So the issue is simply a  
20 delisting of the product, then we would agree. That if,  
21 you know, all parties agree that the 1.6 kilowatt 18 mile  
22 an hour listing the incorrect, then that would obviate the  
23 need for a hearing.

24 If -- you know as staff is suggesting or  
25 recommending that we go further and -- with respect to,

1 you know, the clause and the proposal that you've  
2 identified, that references, that, you know, benefits that  
3 DyoCore would receive. And so if under, you know, an  
4 unjust enrichment theory, you know, the -- to the  
5 extent -- and staff would seek -- you know, would  
6 recommend that it would be appropriate that in this  
7 instance our position is that the data was incorrect,  
8 because it was false as submitted, and that their -- and  
9 so if the -- if we were to -- so that this -- so another  
10 purpose for the evidentiary hearing, apart from delisting,  
11 would be, you know, appropriate resolution of funds that  
12 are owed or that funds that, you know, without the  
13 interruption of this complaint proceeding, would have been  
14 directed under the ERP program to DyoCore as the  
15 manufacturer or to other distributors that are associated  
16 with DyoCore, then we believe that there would be -- you  
17 know, so if that is a concern to the Committee that given  
18 the allegations that are present in this complaint  
19 regarding the submission of false information, you know,  
20 that those funds don't -- that those funds are not  
21 directed to DyoCore under the ERP program, then we would  
22 believe that it was necessary to have an evidentiary  
23 hearing to get at the request of why the information is  
24 incorrect.

25 ASSOCIATE MEMBER BOYD: I wanted to ask -- I

1 guess we've heard -- ask this question of staff. We've  
2 heard from one of today's intervenors, a distributor  
3 obviously, that they can't envision a scenario where there  
4 would be enrichment of DyoCore. If this process that the  
5 staff has suggested be act upon by the full Commission at  
6 a future business meeting, that would enact the formula  
7 for settlement of -- strike the word settlement -- just  
8 for resolution of many people's grievances have being left  
9 holding, you know, holding debt unnecessarily and having  
10 nothing to do with their actions.

11 If in reality that's all this is and it addresses  
12 R2s only, do you see any possible enrichment of DyoCore or  
13 would the language, as indicated here, just be -- since  
14 perception is reality in this town, just there has a  
15 safeguard, but in -- I guess I'm asking is if in reality  
16 you envision anyway DyoCore would be enriched by the  
17 Commission approving and putting into process this  
18 suggested resolution of one part of the whole issue we're  
19 trying to deal with?

20 STAFF COUNSEL KNAPP: No, I guess is the simple  
21 answer. So with regard to the proposal that we put  
22 forward and given that we have this provision in the  
23 proposal that safeguards against that possibility, we  
24 don't see, as Mr. Meyer was stating, any scenario in which  
25 the implementation of the proposal for resolution of these

1 outstanding applications and payment requests, that we're  
2 putting forward today, would result in enrichment of  
3 DyoCore our any of its -- any companies that are  
4 affiliated with it.

5           So but my -- the concern that I was voicing, and  
6 I done think I was very clear about it, was not with  
7 respect to the proposal that we're putting forward, but  
8 with respect to the ultimate outcome of this matter.

9           So if we all -- so we've gone around the table  
10 and have essentially agreed the information was incorrect.  
11 And if we stop there, then the product can get delisted  
12 and then, you know, DyoCore can seek to have it relisted  
13 under the new -- the new 11th edition of the ERP guide  
14 book.

15           And we're not saying any outcome here would  
16 preclude them from doing that, but -- and the figures I  
17 don't have in front of me here, but -- and perhaps Mr.  
18 Raine could speak to this, it's our understanding that  
19 there are outstanding R2 forms, there are outstanding R1  
20 forms that were submitted by DyoCore directly. And so  
21 what -- and submitted by some other distributors that  
22 were -- a knowledge or belief, we understand may be  
23 affiliated with DyoCore.

24           So with respect to, you know, that's interests,  
25 what we're saying is, if you stop here and you just

1 establish that it's inaccurate, then there's no -- there  
2 wouldn't be any justification for claiming that there was  
3 unjust enrichment.

4           You know, we're saying that our position is that  
5 this situation arose, you know, with regard to, you know,  
6 the DyoCore matter and, you know, has been a huge  
7 interruption in the ERP program -- I mean, not that it was  
8 so onerous, but has led to, you know, a significant  
9 divergence of resources under the ERP program and has  
10 cost, you know, distributors and at least consumers, you  
11 know, a lot of financial detriment. And that the -- that  
12 it all from our view, stems from the submission of false  
13 information by DyoCore.

14           So from our view, it would be, you know, an  
15 absurd result if they were to receive the payments, you  
16 know, for these R2s -- outstanding R2s and R1s under the  
17 program.

18           HEARING OFFICER RENAUD: Are the 249 R2s that are  
19 referred to in your prehearing conference statement, are  
20 they among -- I mean are the ones you're talking about  
21 included in those 249?

22           STAFF COUNSEL KNAPP: Yeah. That's my  
23 understanding. And I apologize, I don't have the numbers  
24 in front of me. We can provide those numbers to the  
25 Committee shortly.

1           PRESIDING MEMBER PETERMAN: I'm just going to ask  
2 a clarifying question, Mr. Raine, before you speak. So is  
3 it staff's assertion that in the evidentiary hearing, you  
4 would present evidence that the incorrect information was  
5 submitted intentionally incorrect? And I guess a  
6 clarifying question also either for staff or for hearing  
7 officer is whether we -- a determination of intentional  
8 false information is necessary to bring a case before the  
9 Attorney General?

10           STAFF COUNSEL KNAPP: No. To your latter  
11 question, it wouldn't be necessary. And you know, and we  
12 can't we certainly can't speak for the Attorney General  
13 and whether they would be interested in, you know, further  
14 prosecuting this case. But as a technical matter, no it  
15 wouldn't be necessary.

16           Under the California False Claims Act, it would  
17 be sufficient to show that there was a reckless disregard  
18 for truth of the -- for the veracity of information that  
19 was submitted. But that's not what we're necessary -- you  
20 know, our case is premised upon the submission of false  
21 data, but the way that we believe that's important in the  
22 context of our complaint and in this complaint proceeding  
23 is that we -- you know, staff -- you know, it's staff's  
24 view that the data was false as submitted. It was  
25 theoretically impossible. You know, we discussed that

1 thoroughly in the prehearing conference statement. And  
2 there were a lot of other inconsistencies and  
3 irregularities in what came in.

4           So from our -- so we are not -- our case isn't  
5 about intentional fraud. That was never -- our case  
6 isn't -- we didn't -- that's not the threshold that we set  
7 out to prove.

8           That said, you know, our investigation is ongoing  
9 at the evidentiary hearing. You know, a lot of other  
10 context and facts regarding this, you know, we will  
11 present, but we're not -- but in order to achieve the  
12 goals of, you know, the complaint as written, we  
13 were -- you know we're out to -- you know, we've  
14 always -- you know, our objective has always been to show  
15 that the information was false as submitted, not that it  
16 was -- you know, not that it rises to another level in  
17 terms of State of mind of DyoCore, in terms of an intent  
18 and showing an intention or so forth.

19           HEARING OFFICER RENAUD: Okay. Mr. Raine, it's  
20 time for you to talk. It's your turn. I think the first  
21 question the Committee is interested in is the issue of  
22 whether there, are among those R2s, ones in which your  
23 company as a financial stake and what you're position is  
24 on those, and anything else you'd like to say about what  
25 we've been talking about here.

1           MR. RAINE: I appreciate your candor in allowing  
2 me to -- I really appreciate this process and finally  
3 having the ability. As you know, for a lot of you, that  
4 I've been at other meetings and this is probably the first  
5 time anybody's asked me about my data. I mean, me and  
6 Jonathan have a conversation about it. Jonathan likes to  
7 be really creative in his words, though he says inaccurate  
8 data, I think he's mentioned false about probably 50 times  
9 in this meeting.

10           I do understand a bit from -- you know, I'm not  
11 so ignorant to, you know, these types of processes and I'm  
12 really kind of honored to even be part of one, because I  
13 always thought, God, those people are pretty incredible  
14 that get to go sit in front of these committees and, you  
15 know, and defend their companies and their names, but the  
16 circumstances unfortunately are not so honorable.

17           What I'd like to do is just take a brief, maybe  
18 two or three minutes, and kind of explain why I'm here.  
19 And maybe that might help in the aspect of the Board.

20           I definitely respect the process and I respect  
21 the decision and where we are most likely going to end up  
22 here is probably not, you know, so much a mystery to me as  
23 it is to you either.

24           I built a company literally out of my home. I  
25 started making turbine in my shop literally from ground

1 zero, just bending pipe, winding coils, putting things  
2 together. I had no clue what the industry was, none  
3 whatsoever. I had serious intentions of just solving an  
4 energy problem from my own home.

5 San Diego Gas and Electric seen my turbines, came  
6 up to my house and asked me what they were. They could  
7 have asked me to remove them. I didn't have permits. I  
8 didn't know what it was doing. But instead they said, you  
9 need to get in touch with the CEC. And they gave me a  
10 phone numbers. They initiated calls. And we started down  
11 that process.

12 It was amazing to me that I could make something  
13 out of the garage that other people would even want or  
14 something that could even qualify for such a program. I  
15 had some turbines installed across my house for that time  
16 for a little over a year. My brother in Illinois had  
17 incredible wind. We had actually one of them on his  
18 house, the first one I built, took and put it out there,  
19 for no other reason than just to help him out. He had  
20 been unemployed for about a year, year and a half.

21 We started taking it more seriously as people  
22 inquired. And that kind of led to the investments on our  
23 parts. And we talk about consumers losing money in  
24 companies, you know, losing money, and employees losing  
25 jobs. And I think nobody feels this more than me. I

1 promised things to my family. I promised things to my  
2 brothers. I promised things to my distributors. I -- you  
3 know, I based everything on the intention of just making a  
4 good product.

5           When I created the initial data, we took it from  
6 the watt meter and from the wind meters. That's all I  
7 knew how to do. You know -- and to analyze data, I have  
8 it with me and we could try to open it. It's incredible.  
9 It's gigabytes of data. It's actually every time I open  
10 it, it crashes my machine. Other people that have looked  
11 at the data, you know, they've tried the break it into  
12 parts. And it's a very daunting task. And then to add  
13 into that task -- not only that, but then to add into it  
14 the density altitude and the other equations, the bin  
15 data, and all that fun stuff that tends to make us feel  
16 really start, makes me feel like an idiot.

17           And that is really where I made my mistake. I  
18 thought we could easily, you know, assemble this data and  
19 provide it. In my correspondence with KEMA or with  
20 anybody ever about my product, and nobody will correspond  
21 with more than, you know, my distributors or those that  
22 have bought my product especially, I know that. And what  
23 hasn't been discussed is all the conversations with my  
24 clients, people in the field.

25           We don't promise exorbitant power numbers. We

1 just promise a good product that will support. And  
2 anybody that has had a relation we know, I personally have  
3 gone out to houses. I've climbed on roofs. I, you know,  
4 have done as much as I could to support this product more  
5 than anybody else in the market.

6 That data that was submitted was it inaccurate?

7 At the time, I didn't think so. I thought it was  
8 perfect. It was the best that we could do. We reached  
9 out to KEMA. We asked for their help. We asked for their  
10 advice, and by were extremely gracious when we were given  
11 our listing.

12 We in fact -- you know, at one point, we could  
13 have chosen any number on the scale. We could have chose  
14 30 miles per hour. We could have chose 40 miles per hour.  
15 Had I been this evil genius that a lot of people would  
16 make me out to be, I would have easily chose 40 miles per  
17 hour at 2 kilowatts. I had every right to do so. You  
18 know, the motor produces a tremendous amount of power.  
19 Would it ever do that on a rooftop?

20 I'll be the first to tell you no, it won't. You  
21 know, the nominal power is very -- it's minimal a couple  
22 hundred watts, but I didn't write the rules for the  
23 program. I didn't sit on your board and determine if that  
24 program applied to my product. I submitted an application  
25 and, you know, I was very humbled that we were accepted,

1 and given the opportunity to provide our product to the  
2 California residents that qualify.

3           We then invested a ton of money. To sit here and  
4 say DyoCore should not benefit. I assure you right now  
5 DyoCore has not benefited. The first statement of the  
6 complaint is fraud. I don't know if anybody here has ever  
7 been accused fraud, and what it does to you.

8           I don't get -- my phone doesn't ring anymore. I  
9 have people calling me all types of names now. I have  
10 people, you know, telling me they don't to deal with our  
11 product, don't even want to return their inventories.  
12 That was intensely damaging to us, without a cause. And  
13 then to sit here and say no we didn't mean fraud. We  
14 meant inaccurate, but fraud and false is everywhere, and  
15 it keeps coming up and it keeps coming up.

16           You know, I almost welcome going to the next  
17 level right now, you know, sitting in front of the  
18 district attorney or -- I don't know what that next level  
19 is, courts, because at this point for me, my value is just  
20 somebody sitting here listening to me, just saying, hey  
21 look, I didn't do anything. I just provided what they  
22 asked for and I expected other people to help me out.

23           And, you know, maybe I was naive in that process,  
24 maybe I was wrong to expect those things, but it's how we  
25 got to this point here today.

1           I still contend I have a great product. It is  
2 made right here, 90 percent of it. It is a tremendous  
3 application. We have changed how this product -- or how  
4 wind applies to virtually the entire market space. Never  
5 until our product have you been able to install a turbine  
6 on the roof. No one's talked about that. No one's talked  
7 about the half a million dollars we spent on permitting  
8 work or all the time we spent in communities educating  
9 them.

10           I look around at all these pictures, green  
11 technologies, and the children that thought of these ideas  
12 and these concepts. I'm one of those guys. That's all I  
13 did was have a concept, and I went out there and I  
14 employed it.

15           What am I guilty of?

16           I'm guilty of being successful. I'm guilty of  
17 actually going out and educating a community on the  
18 product. I thought that's what the ERP program was put  
19 out there for. I thought that's what we applied for. To  
20 simply say, okay, we have inaccurate data, and then just  
21 take us off the list. I can respect that. I understand  
22 where that would come. But why not look at the data we've  
23 submit. It was accurate data. You can't change wind  
24 data. You can't change the watt meter data. That's raw  
25 data. We've given it to some great people. People much

1 smarter than myself. We thought KEMA was one of those  
2 companies that, you know, had the capability to do that.

3 Maybe they weren't. Maybe we mistakenly expected  
4 that, but we have gone to other people since. We're part  
5 of the SWCC process now. Only to find out, they didn't do  
6 testing. So now we still have to reach out to another  
7 company to do testing, even though, you know, we thought  
8 we were following the applicable rules.

9 I want to close in just saying, you know, I came  
10 from a software business and, you know, I was doing  
11 extremely well before I left it. And I regret doing so in  
12 some aspects. In other ones, I really love this market.  
13 And, you know, regardless of the outcome today, you know,  
14 you guys will see my product or, you know, a product have  
15 our hands on in the very near future, because, you know  
16 what, I understand a lot more now. And I know there's a  
17 huge demand for this type of solution.

18 It's not a get-rich-quick scheme. This isn't a  
19 product that DyoCore is making billions of dollars off.  
20 We sell our product at extremely low cost to make it  
21 available to everybody. And there was strategic thought  
22 in that. It wasn't to say okay we're going to say a  
23 billion of these. It was to say, let's make the average  
24 homeowner be able to afford it, outside of the CEC  
25 program, outside of any program.

1           And we were hopeful to continue doing that, but  
2 this process has absolutely destroyed us. It is -- and I  
3 don't say it's your fault or anyone's fault here. But the  
4 process is a really unfortunate one. We have closed down  
5 our California offices. We have let our staff go. We  
6 have seen distributors go out of business. We have -- I'm  
7 down to you know just trying to maintain our manufacturing  
8 facility at this point, and you know, I'm now in a hearing  
9 where that initial data being created, though very simple  
10 solution, look at it.

11           You know have a professional look at it. Have a  
12 professional review it. Have a professional say this is  
13 what qualifies. You know what, also, by the way, we're  
14 talking two years ago. We have a lot more data. We have  
15 turbines installed in the field. Call these customers.  
16 They have real data. They have inverters on the wall  
17 telling them exactly what this out puts are.

18           This is a really simple resolution that's been  
19 made very complex by one allegation. And as think keep  
20 saying, they didn't intend that allegation, but it keeps  
21 floating around the room, fraud.

22           I ask, and I wish upon you, that, you know, if  
23 there is an next stage or an evolution here that we get to  
24 it fast, because I am definitely not getting younger and I  
25 am very stressed out and my family can't be in this

1 situation much longer.

2           You know, if I'm found guilty of something, great  
3 I'll accept those consequences, but I'm positive of where  
4 we were and where we came from and where we're going is a  
5 very honorable place to be. And we will go through it.  
6 We'll survive, but we're going to do so with a lot of  
7 effort and a lot of situate coming in the next couple  
8 years to recover from this.

9           I'm hoping that you'll take a serious look at our  
10 responses. You'll take a serious look at the program as  
11 it was put in place. There was virtually no standards to  
12 where we were. There was no standards to even modifying  
13 or changing the data. There definitely isn't any  
14 applicable rules or regulations pertaining delisting us.  
15 This should have really been as simple as KEMA looking at  
16 the data saying it was wrong, letting us know it was  
17 wrong, we then are able to then either provide them  
18 backups or answers questions.

19           We weren't given any of that opportunity. No one  
20 reached out. KEMA knew this data was wrong and they never  
21 once called me and said, we think it needs to be resolved.  
22 It needs to be fixed or can you have somebody else look at  
23 it. We would have been glad to do so, as we have been  
24 doing for the last six months.

25           I appreciate your time and I appreciate you

1 listening to us. Thank you.

2 HEARING OFFICER RENAUD: All right. Thank you  
3 for that. Let me ask you specifically, just to address  
4 the question of DyoCore's financial stake in any of the  
5 249 R2s. That's something we do need to understand. We  
6 were told that there are some of those that are -- you  
7 have a stake in, and we need to know that.

8 MR. RAINE: Yes. DyoCore has sold the product  
9 locally in our local market. We have several families,  
10 approximately 35, that have put down large deposits  
11 towards our product, and some of which have already been  
12 installed -- actually a large portion of which have  
13 already been installed. Some of them that are still  
14 pending and waiting installation.

15 HEARING OFFICER RENAUD: Okay. Just sticking to  
16 that point, Jonathan, What would be staff's position on  
17 those R2s?

18 STAFF COUNSEL KNAPP: So staff has provided me  
19 the numbers. So for R2s that are outstanding, there's 12,  
20 which the total rebate amount, you know, if it was based  
21 on the 1.6 kilowatt and 18 mile an hour rating, would be  
22 \$145,037.

23 With respect to -- there's also R1s outstanding,  
24 we don't know, sitting here, whether they're complete or  
25 incomplete, but there's 11 R1s outstanding. And the total

1 for those would be \$160,200. And we've already paid  
2 five -- for five systems totaling \$51,045.

3 ASSOCIATE MEMBER BOYD: Yes. You -- Jonathan,  
4 you do not have a number of R2s though that are specific  
5 to DyoCore or is that what you were telling us?

6 STAFF COUNSEL KNAPP: I'm sorry, if I rattled  
7 that off too quickly. So the approved applications that  
8 DyoCore -- the R2s for DyoCore, there's 12 that have been  
9 issued to them, and totals 145,000.

10 HEARING OFFICER RENAUD: And those are based on  
11 an assumption of 1.6 kilowatts and \$3 a watt?

12 STAFF COUNSEL KNAPP: That's correct.

13 HEARING OFFICER RENAUD: All right.

14 PRESIDING MEMBER PETERMAN: So just so I  
15 understand how -- Mr. Raine, thank you for your  
16 statement -- how Mr. Raine's R2 -- how DyoCore's R2s,  
17 excuse me, relate to the option that was discussed  
18 earlier, in terms of R2 resolution with the distributors,  
19 would it then be potentially DyoCore's option to go along  
20 with that formula or if they do not go along with that  
21 formula, then would those systems -- I mean, what would be  
22 the -- what's the alternative with those R2s?

23 HEARING OFFICER RENAUD: That is what staff's  
24 proposals with respect to those R2s under the formula?

25 STAFF COUNSEL KNAPP: So staff's proposal

1 would -- so one -- I guess -- you know, I realize as I sit  
2 here that I don't know Mr. Raine has just referenced  
3 substantial deposits being taken by his customers. And  
4 I'm aware of some of those instances. And in those  
5 instances where DyoCore's end-use consumers have directly  
6 paid for the system already, which I'm aware of at least  
7 one of those instances, that proposal would affect them  
8 insofar as those end-use consumers could come in and get  
9 their costs incurred, get their payments and their finance  
10 charges that they've accrued for -- you know, for those  
11 systems.

12           Specifically what the proposal is excluding is  
13 that payments, you know, at this stage of the proceeding  
14 would not be, you know, allowed to go directly to DyoCore.

15           So does that address your question?

16           HEARING OFFICER RENAUD: Mr. Raine, what's your  
17 position on whether or not we should proceed to  
18 evidentiary hearing on the question of fault, of why the  
19 rating was incorrect?

20           MR. RAINE: Actually, I would prefer a hearing.  
21 I mean, this has been hanging over my head now for nine  
22 months. I would prefer the opportunity to look at the  
23 data, to look at our process, to look at the procedure, to  
24 look at how we qualify.

25           HEARING OFFICER RENAUD: All right. Ladies and

1 gentlemen, we're going to take a recess, 15 minutes. So  
2 we'll resume at 11:20. We're off the record. Thank you.

3 (Thereupon a recess was taken.)

4 HEARING OFFICER RENAUD: Thank you for your  
5 patience in waiting for us. We're back on the record.  
6 The Committee deliberated about what's been said in the  
7 room this morning, and so on, and about its review of the  
8 various filings of the parties, and is repaired to make  
9 some recommendations regarding where we go from here.

10 Before doing that, we think it would be  
11 appropriate to open up for public comment. And I  
12 have -- I know there are a number of the people on the  
13 phone. You'll have a chance to make the comment if you  
14 wish. I also have two blue cards that were submitted  
15 here. Maybe I'll call those first.

16 Justin Malan, I believe it is.

17 Yes. Hi. Yes, please, and see if one of those  
18 mics will reach you. And stated your name and spell your  
19 last name if you would, please.

20 MR. MALAN: Justin Malan, M-a-l-a-n. I'm here  
21 representing the Distributed Wind Energy Association.  
22 Presiding Officer, Commissioners, thank you for holding  
23 this hearing. We think it's overview and we certainly  
24 commend you for taking this action. And we support you're  
25 ongoing action in this regard to ensure that the truth be

1 told as to exactly what's happening here.

2 As you know, and as Commissioner Peterman  
3 mentioned in her opening comments, the suspension of the  
4 ERP has had a huge impact on small wind in California.  
5 It's also had a huge impact on the renewables program and  
6 quite frankly it's given you, the Commission, a black eye.

7 I've sat through enumerable meetings in the  
8 hearings, in the Legislature and there is skepticism about  
9 how this program is managed, and I must say, other  
10 programs in the Energy Commission. So we're not here to  
11 point fingers. The reason I'm mentioning this is that  
12 it's of critical importance that this Commission takes  
13 these allegations very, very seriously.

14 The public, the Governor, the Legislature are  
15 looking closely at this. And you have seen senators  
16 question whether the ERP, renewables, public goods charge  
17 all these other programs are being properly managed. And  
18 it's on your shoulders to make sure that everything is  
19 done to protect the taxpayer's dollars, to protect the  
20 integrity of the ERP, to honor the Governor's commitment  
21 to the distributed generation commitment that he's made  
22 under the new 33 percent renewables.

23 We're not coming here to point fingers. We're  
24 not making allegations. All we're saying is as a result  
25 of these actions, small wind is shut down in California.

1 You need start it up ASAP, otherwise there won't be small  
2 wind here. We used to lead the nation.

3           You can figure out who's responsible for letting  
4 this happen. But we urge you to not only take the actions  
5 that you need to take today, but to proceed with formal  
6 proceedings, so you can determine if there is guilt, if  
7 there's willful misconduct, if there's negligence. We're  
8 not saying there is or isn't. But either you or the AG  
9 needs to make that determination, so the public can be  
10 assured that you've done your due diligence.

11           Thank you.

12           HEARING OFFICER RENAUD: All right thank you for  
13 your comment.

14           Next one I have is Chris Hawke, Solar Point  
15 resources.

16           MR. HAWKE: Good morning, Presiding Officer and  
17 Committee members. My name is Chris Hawke. I'm the CEO  
18 of Solar Point Resources. I just have two brief comments  
19 that I'd like to make. I'd like to personally thank the  
20 staff, CEC staff, and attorneys for their hard work and  
21 efforts with respect to resolving the issues associated  
22 with the myriad of distributor problems incurred by the  
23 recent actions against DyoCore.

24           And secondly, I'd like to express again our  
25 strong support for the staff's proposal for the resolution

1 of the R2s. And we would, in addition, respectfully  
2 request that the Committee look favorably upon the staff's  
3 proposals and move forward to finalizing a resolution to  
4 this matter as soon as possible.

5 Thank you.

6 HEARING OFFICER RENAUD: Thank you for your  
7 comment.

8 Do we have anyone on the phone or participating  
9 by WebEx who wishes to address the Committee making a  
10 comment?

11 Please go ahead.

12 Kirk Lessley, are you listening?

13 Kirk Lessley?

14 MR. LESSLEY: Yeah, can you hear me?

15 HEARING OFFICER RENAUD: Yes. Please go ahead.  
16 Speak up as loud as you can. Thank you.

17 MR. LESSLEY: What's going to happen the R2s  
18 since the April suspension?

19 HEARING OFFICER RENAUD: Let me repeat. It's  
20 hard to hear. I think your question is what's going to  
21 happen to the R2s?

22 MR. LESSLEY: Well, I have about \$240,000 worth  
23 of R2s that have expired since the April suspension. And  
24 I have several that are expiring every week. So how are  
25 we going to address those?

1 HEARING OFFICER RENAUD: I'm going to ask staff  
2 to respond to your question. Did you get the question?

3 STAFF COUNSEL KNAPP: Sir, this is Jonathan  
4 Knapp, staff counsel at the Energy Commission. I  
5 understand your question to be that you're holding 242 R2  
6 forms or approved applications?

7 MR. LESSLEY: No, 242 --

8 STAFF COUNSEL KNAPP: I'm sorry, 240,000 in  
9 total. So the proposal that staff has put forward for  
10 resolution of the all outstanding applications, the R1  
11 forms and for resolution of all the approved applications  
12 or payment requests, the R2 forms, is set forth in our  
13 prehearing conference statement, beginning at page 30.

14 Andy essentially what it covers is that you would  
15 be -- you know, as the applicant, you would -- if you  
16 elected this option, you would be entitled to costs  
17 incurred for, you know, a variety of expenditures that are  
18 set forth in the statement, essentially your equipment and  
19 turbine costs, your equipment costs, your installation and  
20 other related costs, staff compensation, including  
21 management compensation, and 15 percent overhead, based  
22 upon the total amount that you expected to receive, which  
23 you've indicated is 240,000 and five percent profit, again  
24 based upon the expected amount that you anticipated to  
25 receive.

1           And then there are certain provisions that go  
2 along with that that are set forth there. And if I could,  
3 I'd like to take this opportunity to read our errata and  
4 addendum into the record so that everyone who  
5 didn't -- doesn't have a hard copy that's not here today  
6 will know the additions to the formula and the corrections  
7 that we've made.

8           HEARING OFFICER RENAUD: Maybe we could wait till  
9 after we've completed public comment and then we'll do  
10 that.

11           STAFF COUNSEL KNAPP: Of course.

12           HEARING OFFICER RENAUD: Okay. Kirk -- what was  
13 his name? Kirk Lessley are those R2s expired or about to  
14 expire?

15           MR. LESSLEY: Yes. They have expired. I have  
16 another. Okay. I have about 130,000 that are still  
17 current -- \$130,000 total that are still current. I have  
18 240,000 that have expired since the April suspension.

19           HEARING OFFICER RENAUD: So the question is about  
20 the expired ones really.

21           STAFF COUNSEL KNAPP: Yes. I'm sorry for  
22 misunderstanding your question.

23           MR. LESSLEY: Yes. And to follow-up, I  
24 have -- you know, all mine were -- I was leasing, so the  
25 six shelves that I put in I -- there is 1603 money owed to

1 me that I can't get, because, you know,  
2 everything -- they're not -- I can't leave them up there  
3 if they're not going to work. So there's a lot of money  
4 sitting out there on jobs that I've done and ones, you  
5 know, the R2s I just have questions about.

6 STAFF COUNSEL KNAPP: Well sir, if I could  
7 address your specific question about the expired  
8 applications. We're not -- the proposal doesn't draw  
9 distinctions between expired R2s and R2s that are current.

10 MR. LESSLEY: Okay. If that's the case, then I  
11 support the resolution as it's stated there. I would go  
12 look at the R2s, the resolution as it's stated in the  
13 information I have. I would support that.

14 STAFF COUNSEL KNAPP: So as a clarification, so  
15 the reservation period is 12 months. And so if -- if  
16 these R2 proved applications expire during the suspension  
17 of the program, we're not treating them any differently.

18 MR. LESSLEY: Okay.

19 STAFF COUNSEL KNAPP: They'll be covered by this  
20 proposed form.

21 MR. LESSLEY: Okay. Then I support the  
22 resolution.

23 STAFF COUNSEL KNAPP: Thank you.

24 MR. LESSLEY: I want to go on the record as  
25 saying that.

1 HEARING OFFICER RENAUD: All right. Thank you  
2 for that comment. There anyone else who wishes to make a  
3 comment?

4 Just speak up. Go ahead.

5 Doesn't sound like it.

6 All right, anyone in the room wish to make a  
7 public comment?

8 Mr. Raine, yeah you're a party, so we're just  
9 looking for non-parties right now.

10 Okay, there aren't any. Mr. Raine, what did  
11 you -- what generally is your topic here?

12 MR. RAINE: I'd just like to propose in kind of  
13 a -- I guess our recommendation for conclusion and move  
14 forward -- I know you've already addressed this and talked  
15 about this --

16 HEARING OFFICER RENAUD: Go ahead.

17 MR. RAINE: -- but I thought it might assist in  
18 just moving forward.

19 As we mentioned and this gentleman that was next  
20 to me that was kind enough to speak, Justin, you know, I  
21 agree with a lot of his statements and where we are in the  
22 industry, and I absolutely agree. And even from my own  
23 life experiences, you have to hold people accountable for  
24 what's being done.

25 So I'm definitely in no aspect trying to abate

1 accountability, but for the quick resolution of the  
2 intentions of the program and to get it back on track as  
3 the other point as Jonathan made, we would be willing to,  
4 you know, I guess to concede or to take upon your judgment  
5 or your call, you know, a resolution that would allow for  
6 a couple things.

7           One, in which, is obviously -- you know, I made  
8 an earlier statement, you know, just emotionally that we'd  
9 take all this all the way up to the Supreme Court if we  
10 had to. I want to assure you that was just an emotional  
11 statement. It is definitely not our intentions, as we  
12 hope to have a resolution as well.

13           We would accept a delisting with the ability and  
14 non-bias capability to reapply to the -- to approve the  
15 standards that are applicable at the time of application.  
16 We would like to apply DyoCore at minimum, at least our  
17 clients, to the same resolution as the -- has been offered  
18 to our distributors. And we'd like, in any resolution,  
19 and we completely understand there might be some events  
20 that go on beyond here for investigation and further  
21 discovery of facts later on, and we completely appreciate  
22 that, but I would like the specify that in any resolution  
23 that the data was, you know, mistakenly inaccurate,  
24 opposed to it was fraudulent or false.

25           That's a pretty big contention.

1 HEARING OFFICER RENAUD: Thank you for that  
2 offering clarification. That helps us. Let me ask staff  
3 then about Mr. Raine's request that the resolution of the  
4 DyoCore R2s be applied -- be done pursuant to the same  
5 formula as the other ones. Is that something staff can  
6 accept or not?

7 Yeah, and if you want to have a conference about  
8 that separately, you know, we can take another recess and  
9 let you discuss that. But go ahead.

10 STAFF COUNSEL KNAPP: We just need a minute.

11 (Thereupon a discussion occurred off the record.)

12 HEARING OFFICER RENAUD: Yes, Mr. Knapp.

13 STAFF COUNSEL KNAPP: Thank you. So I guess as a  
14 point of clarification, you know, staff would first -- you  
15 know, just like the make it clear that all DyoCore's  
16 clients are covered, all the individual consumers, the  
17 end-use consumers are covered under the proposal. So they  
18 would be entitled to costs incurred, financing costs as  
19 would any other end-use consumer that's affected by the  
20 DyoCore matter.

21 With respect to, you know, David Raine's  
22 suggestion -- Mr. Raine's suggestion, we would be -- we  
23 very much appreciate his willingness to work, you know, on  
24 a mutual resolution, if it works for all parties involved.

25 Staff -- so there was just -- we believe that may

1 be possible. We would need clarification regarding the  
2 clause in our prehearing conference statement that  
3 Commissioner Peterman identified early on with respect  
4 to -- you know, we believe it's necessary to have, you  
5 know, an assurance that neither DyoCore's employees, it's  
6 managers owners or investors do not -- oh, I'm sorry.

7           Essentially that staff would need -- would need  
8 to be able to confirm that neither DyoCore, its employees,  
9 its managers, owners or investors do not directly benefit  
10 from the Energy Commission's efforts to pay for  
11 applicant's costs directly attributable to its approved  
12 applications or R2 forms.

13           And so if we had that -- and our understanding is  
14 that the outstanding R2 forms, we clarified on the break,  
15 that those are held by individual consumers, the  
16 applications are. And so under our formula, we would be  
17 paying those consumers directly. They presumably have  
18 already paid DyoCore for those systems.

19           However, there's -- from our -- there's an  
20 outstanding issue of whether, you know, we understand  
21 information and believe that there are investors in  
22 DyoCore that are also involved in other distribution  
23 companies. And so we would need -- so in order to move  
24 forward in this type of resolution, we would need that  
25 assurance.

1 HEARING OFFICER RENAUD: Okay. Thank you. With  
2 respect to that clause, the declaration clause on page 31,  
3 do you have any kind of proposed language for that, for  
4 what that declaration might look like?

5 ASSISTANT CHIEF COUNSEL WARD: What we just need  
6 the clarification of what Mr. Raine's statement was that  
7 clients would be allowed to partake of the same formula  
8 that we've already proposed for distributors. What we're  
9 saying is that customers who have already paid for DyoCore  
10 systems, we fully intended to be able to partake from this  
11 formula. So we're trying to figure out if there's  
12 anything else in what he said and what he's agreeing  
13 to -- if what he's agreeing to complies with our term that  
14 we already, which we think it might, then we're done on  
15 that issue is what we're trying to point out.

16 HEARING OFFICER RENAUD: And that term you mean  
17 is the issue about the declaration?

18 ASSISTANT CHIEF COUNSEL WARD: That's right. So  
19 we just need clarification of exactly what's intended.

20 HEARING OFFICER RENAUD: Here's what I'm  
21 wondering, is whether the best way to accomplish this  
22 discussion is to keep going the way we are, which we're  
23 willing to do, or to have you guys adjourn into a workshop  
24 setting, where you could hash these things out and then  
25 report back to the Committee. And it would be basically

1 that specific issue that the terms of how resolution of  
2 the R2s that involved DyoCore would be handled?

3 And I'm open to suggestions on that. And I'd  
4 like to hear from Mr. Raine as well.

5 MR. RAINE: Yeah, I'm a little mixed on this and  
6 it might take some thought, because like our distributors,  
7 I mean, we are subject to the exact same fallout as  
8 everybody. We have expenses. We have overhead. We  
9 closed our office. We let our installers go. We have  
10 people that -- they're probably on line right now waiting  
11 for resolution, that have lost their jobs. Currently on  
12 unemployment.

13 We have the same expenses. To say DyoCore does  
14 not benefit, I don't understand that point. I don't  
15 understand what that means. Does it mean I'm going to  
16 buy a Jaguar next week? No.

17 You know costs being covered here are barely  
18 enough just to catch up a couple bills. We'll still be  
19 out a substantial amount of money. And I'm being very  
20 forward and frank with you, in that DyoCore will end up  
21 filing bankruptcy because of this hearing and these events  
22 that have taken place and the allegations that have been  
23 made inappropriately throughout the entire course of it.  
24 That's going to cause a substantial damage. DyoCore, I  
25 assure you, will not benefit.

1 I will not benefit. My family will not benefit.  
2 My employees will not benefit. To hold us subject to even  
3 further discrimination without cause is really just like  
4 kicking someone when they're down. All right. It just  
5 doesn't make sense to me.

6 HEARING OFFICER RENAUD: Staff.

7 STAFF COUNSEL KNAPP: Well, it sounds like then  
8 we probably can't reach the resolution that was  
9 contemplated. So from our vantage point, we go forward  
10 with an evidentiary hearing. You know, we are confident  
11 that we'll show that the information, as Mr. Raine is  
12 willing to stipulate to, was incorrect as submitted.

13 But further, we'll show that DyoCore was aware of  
14 the mistakes at pertinent periods of time and asset forth,  
15 I think, very clearly in our prehearing conference  
16 statement, that didn't come forward to the Energy  
17 Commission, didn't come forward to its distributors and  
18 correct the mistake.

19 And that so in totality, and just overall,  
20 demonstrated that, you know, that from our vantage point,  
21 you know, it's reckless disregard for the veracity of the  
22 information that they were putting forward.

23 And in totality, our -- you know, our position is  
24 that given these, you know, gross mistakes, and the way in  
25 which this unfolded, that DyoCore should not be allowed to

1 be enriched, you know, by these mistakes. And so that's  
2 our position.

3 PRESIDING MEMBER PETERMAN: Just a clarifying  
4 question. You mentioned that there's a subset of the R2s  
5 that there are customers associated with. Could we get  
6 some clarification on what the remainder of the R2s that  
7 would be -- how many R2s are there associated with DyoCore  
8 that are not associated with a customer?

9 STAFF COUNSEL KNAPP: The clarification is that  
10 they're all associated with the customer. So the -- what  
11 it appears to us is that the, you know, remaining  
12 potential for unjust enrichment, from our viewpoint, would  
13 be to the extent that, you know, DyoCore or its, you know,  
14 employees, managers, investors and so forth are involved  
15 in other states in other distribution companies that are  
16 also holding R2 forms.

17 Well, and as I said, that's not information -- I  
18 believe we're not presenting that as factual -- but what  
19 we would ask then -- and we're not presenting that as a  
20 fact, that we're just saying that that's what we  
21 understood going in -- from information that we received.

22 But what we would say then, if that's not the  
23 case, Mr. Raine, then, you know, if this proposal applied  
24 equally to DyoCore, and so under the proposal, you know,  
25 this provision on page 31 is just saying that basically

1 that none of the proceeds from this -- you know, the  
2 proposed formula and the application of the formula, would  
3 go to DyoCore directly or to, you know, the other  
4 entity -- other individuals and entities -- other  
5 individuals referenced

6           If that -- if what you're saying is true that  
7 DyoCore investors don't have any involvement in any other  
8 distribution company, and we're saying simultaneously that  
9 we're going to -- you know, we're -- as the government,  
10 we're going to step in and do the right thing by your  
11 consumers, then maybe there's not an outstanding financial  
12 interest for DyoCore.

13           I mean, if that's -- is that the case?

14           MR. RAINE: And that very well would be the case,  
15 absolutely. Like I said, we might have one or two jobs  
16 that we paid for because clients wanted our product. So  
17 what do we do with that? We paid for it.

18           STAFF COUNSEL KNAPP: Well, so -- you know, what  
19 we would be willing to agree to is that you would be  
20 disclaiming any financial interest in those. And  
21 we -- you know, we think it would be helpful perhaps to  
22 adjourn to a workshop and talk about this really.

23           HEARING OFFICER RENAUD: This does sound like  
24 something that if can you get together and kind of talk  
25 details, nuts and bolts, you can at least get a sense of

1 how -- whether or not you think this will work.

2 PRESIDING MEMBER PETERMAN: I guess including  
3 getting to some understanding about whether the  
4 information needed could be provided at some point. I can  
5 appreciate, Mr. Raines, that you might not have all the  
6 information available with you today. And so the reason  
7 for the workshop adjournment, would be to see if you could  
8 get to an agreement to this.

9 MR. RAINE: I appreciate that. Thank you very  
10 much.

11 HEARING OFFICER RENAUD: We're just -- we're  
12 thinking it would be productive for staff and Mr. Raine to  
13 engage in a discussion off the record and then come back  
14 and report. And we could adjourn for awhile or whatever  
15 you think it might take. What do you think two hours,  
16 three hours, including lunch?

17 MR. RAINE: If I may, I think actually probably  
18 only a couple minutes. I just have to talk to one person.  
19 I agree, we might only have one or two jobs that we paid  
20 for and have completed that we're out expenses.

21 (Thereupon a discussion occurred off the record.)

22 HEARING OFFICER RENAUD: Okay. It's been pointed  
23 out to me, first, that on our WebEx system we have a  
24 caller who is not able to communicate by audio but is  
25 writing a comment. And I probably ought to just read it

1 into the record.

2           It's from Jeff Locke. And it says, "The proposed  
3 formula does not work for a consumer such as myself. As a  
4 direct DyoCore customer, I have incurred an \$8,000 deposit  
5 cost and DyoCore had me pay \$1,500, the electrical costs.  
6 DyoCore has not incurred any costs except for permit fees.

7           "I am currently at \$9,500 out of my pocket. I  
8 have no turbines installed. If DyoCore is unable to  
9 complete the contract due to closed offices and/or  
10 bankruptcy, how does the CEC propose to resolve?"

11           Anybody want to address that?

12           STAFF COUNSEL KNAPP: To the person on WebEx, so  
13 under our proposed formula, you know, the State is  
14 stepping in -- you know, the Energy Commission is stepping  
15 in and so we would be -- if you paid out \$9,500 those are  
16 the costs that you've incurred that's what the State will  
17 be reimbursing you for.

18           HEARING OFFICER RENAUD: Mr. Locke, I hope can  
19 you hear that. Maybe you could signal that you could by  
20 typing something.

21           Yes, he did. Thank you for the clarification.

22           STAFF COUNSEL KNAPP: Just to make one  
23 clarification on that point. We're assuming that that's  
24 for an R2 application -- or an approved application for an  
25 R2.

1 HEARING OFFICER RENAUD: Mr. Locke, was  
2 that -- did you have an R2?

3 Yeah, he does. Okay good. All right. Good.

4 Okay. Well, I think here's what we're going to  
5 do. We are going to ask that staff and Mr. Raine  
6 discuss -- we're hammering out the nuts and bolts of this.  
7 Other parties, intervenors you're welcome to be in on  
8 that, if you wish, you're parties. But members of the  
9 public that would not be appropriate for you to be  
10 involved in that. We will hear the results of the  
11 discussions when you come back.

12 The Committee wants to express the following:

13 I mean the first concern we have is that the  
14 consumers in the State of California be made whole here  
15 and not feel that they've been victimized in any way. And  
16 it sounds as though the formula that you've presented  
17 would accomplish that, subject to some hammering out of a  
18 few details that looks like you've got a very good handle  
19 on.

20 We were impressed by Mr. Malan -- I'm sorry, if I  
21 got your name wrong -- Mr. Malan's comment regarding the  
22 need to determine what happened here so that corrections  
23 to the program could be made. The Committee's very  
24 mindful of that. The Committee is also mindful of the  
25 fact that the question of what happened, why the listing

1 was wrong, is very complicated, and the parties have  
2 submitted hundreds of pages of documentary evidence on  
3 that point.

4           If we were to conduct evidentiary hearings on  
5 that, it would be hotly contested. I think it would  
6 probably involve on considerably more than a single day of  
7 hearing. We would have witnesses being sworn and  
8 testifying, being cross-examined. The Committee would be  
9 called upon to judge the credibility of witnesses.

10           And on balance, having reviewed the submissions  
11 and the arguments been made so far, it looks to the  
12 Committee, just initially, that there is -- the answer to  
13 the question of fault is probably more complicated than  
14 simply saying it's that guy's fault or it's that entities  
15 fault. It would be a much more involved finding than  
16 that.

17           So we have to question whether that would be a  
18 productive exercise to engage in. Now, we don't have the  
19 authority not to hold a hearing, but the Committee's  
20 recommendation is that it wouldn't be productive to hold  
21 that hearing. That it appears that a resolution to the  
22 concerns raised in the complaint is at hand, that the  
23 question of fault would -- might help in making  
24 improvements to the program for when it's reinstated. But  
25 I can assure you that the program is being revamped

1 thoroughly and that the new guide book will address the  
2 concerns that have arisen as a result of this matter. And  
3 it's out there now for public comment. It's being -- it's  
4 an ongoing process of getting it revised, and the  
5 Committee is convinced that the revised program will be  
6 able to ensure that something like this can't happen in  
7 the future.

8           So what we'd like to do is advise you that the  
9 Committee is prepared to recommend to the Commission  
10 resolution of the financial aspects of this pursuant to  
11 the formula proposed by staff. We would like to ask that  
12 the staff and Mr. Raine adjourn into a, what we'll call, a  
13 workshop setting discussion, to try and workout exactly  
14 how you'll resolve those 12 R2s.

15           And assuming you're able to come to a resolution  
16 of that, that staff give serious thought to whether or not  
17 the -- it would make sense to proceed to evidentiary  
18 hearing on the question of fault, and to let us know  
19 whether or not you still would want to do that.

20           The staff's basically -- you're in charge of that  
21 complaint and filed it and you're the ones that have the  
22 authority to determine whether or not to proceed further  
23 with it.

24           All right. So I would like to ask the -- if the  
25 Commissioners have any comments before we send you to your

1 discussions? And I think we're going to ask that you come  
2 back at 1:00 and let us know how you're doing.

3 Commissioner Peterman, Commissioner Boyd?

4 ASSOCIATE MEMBER BOYD: No.

5 HEARING OFFICER RENAUD: Ms. Jennings, our Public  
6 Adviser?

7 PUBLIC ADVISER JENNINGS: Yes. Thank you. I  
8 just want to clarify. You're going to leave the phone  
9 lines and the WebEx open for purposes of this being a  
10 public workshop, correct?

11 HEARING OFFICER RENAUD: For the public workshop,  
12 yeah.

13 PUBLIC ADVISER JENNINGS: Okay.

14 HEARING OFFICER RENAUD: Well, I don't know.  
15 What do you think?

16 It does doesn't it.

17 PUBLIC ADVISER JENNINGS: Pardon me?

18 PRESIDING MEMBER PETERMAN: We're just trying to  
19 figure this out.

20 HEARING OFFICER RENAUD: Good question.

21 (Thereupon a discussion occurred off the record.)

22 PUBLIC ADVISER JENNINGS: And I would like the  
23 point out, the deadline for intervention has not past.  
24 It's still a week away and people did express to our  
25 office that they wanted to participate, but didn't want to

1 intervene too early if it wasn't going to be necessary.  
2 So we may have some potential intervenors on the phone.

3 HEARING OFFICER RENAUD: Thanks for seeking that  
4 clarification. And you've raised a very good question. I  
5 want to ask staff and Mr. Raine, typically when we ask  
6 parties to convene into a workshop to hammer out an issue  
7 that's a continuation of a public hearing. It's just that  
8 the decision makers aren't there.

9 Do either of you have any concerns about our  
10 doing it that way? That is, are the discussions you think  
11 you would have ones that you would not want to be public?

12 STAFF COUNSEL KNAPP: Staff has no concern.

13 HEARING OFFICER RENAUD: All right. Mr. Raine?

14 MR. RAINE: No, I have no concerns.

15 HEARING OFFICER RENAUD: Fine. Then it will be a  
16 public workshop. Anybody can listen in. We won't be  
17 there obviously, but we will come back at 1 o'clock.

18 Yes.

19 MR. MEYER: With regards to the recommendation  
20 that was made with regards to the formula as to the  
21 distributors who are not -- you know, don't have any  
22 direct involvement, is that issue resolved at this point?  
23 I'm trying to figure out whether we should come back at 1  
24 o'clock?

25 HEARING OFFICER RENAUD: No. It's -- what we're

1 doing is saying that we would recommend that to the  
2 Commission?

3 MR. MEYER: Yeah. And I understand that. I'm  
4 just trying to determine with regards to, has that -- the  
5 decision to make the recommendation been made at such a  
6 point that we can leave --

7 HEARING OFFICER RENAUD: Yes.

8 MR. MEYER: -- and not come back at 1 o'clock?

9 HEARING OFFICER RENAUD: Yeah, you can go.

10 What's up in the air is the 12 R2s here.

11 (Thereupon a discussion occurred off the record.)

12 STAFF COUNSEL KNAPP: Okay. Given that we're  
13 going to conclude that part of it or that you've decided  
14 to, you know, conclude that part of it, then we would like  
15 to read our errata and addendum into the record for  
16 everyone's benefit.

17 HEARING OFFICER RENAUD: Please proceed to that.  
18 Thank you.

19 STAFF COUNSEL KNAPP: So we've put forward a  
20 revised example of the application of the formula for  
21 resolution of the R2 forms held by distributors and  
22 retailers asset forth on page 30 of staff's prehearing  
23 conference statement.

24 And so under the -- under the revised formula,  
25 there's a -- it states, "As an example of how this

1 approach would work assume the rebate payment for existing  
2 R2 forms for a particular distributor or retailer is  
3 \$100,000. If all are installed, then the actual expenses  
4 to date are 40,000, the applicant would receive \$60,000  
5 calculated by taking the \$40,000 of costs plus \$15,000  
6 which is derived by calculating 15 percent of the \$100,000  
7 which was the expected total payout, and \$5,000, which is  
8 five percent for profit of the expected total payout".

9           And then with respect to -- we just added a  
10 clause to the suggested requirements for applicants before  
11 receiving payment for R2 forms a set forth on page 31 and  
12 32 of staff's prehearing conference statement. So under  
13 the headings suggested requirements for applicants before  
14 receiving payment for R2 forms, staff recommends that the  
15 Energy Commission require that applicants satisfy the  
16 following conditions before receiving payments under the  
17 proposed formula. And the language that we've added is,  
18 "Any applicant that is a distributor or retailer must  
19 refund all deposits it has obtained from end-use consumers  
20 prior to receiving payment for R2 forms under the proposed  
21 formula".

22           And then finally, as we've reference in our  
23 statement initially, we've inserted Section 11(b)(3) of  
24 the applicability of the proposed formula for resolution  
25 to applicants or end-use consumers. And this would

1 approximately go on page 32 of staff's prehearing  
2 conference statement if it were to be amended.

3           So and this simply reads, "Under the proposal for  
4 resolution of outstanding R2 forms, the ERP would  
5 reimburse applicants for end-use consumers for actual and  
6 provable costs that they have incurred for small wind  
7 systems that use the DyoCore turbine. As noted, there  
8 would be a cap on the total payment that could be issued  
9 under the ERP breach application. Thus, the total sum  
10 that could be paid out to all parties to a particular  
11 application, including end-use consumers, distributors and  
12 retailers cannot exceed the rebate amount that was  
13 requested and presumably based upon a rated output of 1.6  
14 kilowatts at 18 miles an hour for the DyoCore turbine.

15           "In the case of end-use consumers who were issued  
16 an R2 form and assigned a rebate payment for a small wind  
17 system that used the DyoCore turbine, yet ultimately  
18 decided to install a different system and incurred costs  
19 towards the installation prior to October 11, 2011, staff  
20 recommends that these applications be processed or  
21 reviewed under the 10th edition of the ERP guide book".

22           Thank you, Commissioners.

23           PRESIDING MEMBER PETERMAN: High. So that was a  
24 little fast for me and it's okay, because I have it  
25 written in front of me, but just being aware that people

1 on the phone might not, I have a couple of questions.

2 One, will this -- is this posted publicly now?

3 And then my second would be if it's allowed  
4 legally for you just to summarize in a bit more plain  
5 English what the main changes are from -- I appreciate you  
6 read it into the record, but if you can just highlight  
7 what the main changes are, that would be great.

8 STAFF COUNSEL KNAPP: Of course. We will post it  
9 publicly following the hearing. With respect to the main  
10 changes, there was a mistake made in the formula. It  
11 was -- the formula that appeared in our prehearing  
12 conference statement calculated the amounts for overhead  
13 an proffer it by reference to costs instead of the revenue  
14 figure of hundred thousand dollars, so that's the  
15 correction that was made there.

16 We -- with respect to -- we just clarified that  
17 this was always the intent of the proposal was  
18 that -- that any distributor or retailer must refund all  
19 deposits to end-use consumers in order to receive payment  
20 for R2 forms under the formula. And so we just expressly  
21 stated that?

22 And then the last -- the insertion of the section  
23 of 11(b)(3), was just the applicability of how it applies  
24 to applicants that we've been discussing today, in terms  
25 of, you know, namely that they'll be paid for all their

1 costs incurred.

2 PRESIDING MEMBER PETERMAN: And also, Hearing  
3 Officer, just as a question about process, even if the  
4 Committee proposes that the Commission adopt this formula,  
5 will the public have an opportunity to continue to comment  
6 on this item prior to the vote at the Commission business  
7 meeting?

8 HEARING OFFICER RENAUD: I would anticipate this  
9 would be an agenda item for the business meeting, and like  
10 any other, would be subject to public comment.

11 PRESIDING MEMBER PETERMAN: And also as  
12 clarification, again this is an option, so can you state  
13 again what's the alternative option if distributors choose  
14 not to comply with there formula? Is there such a option?

15 STAFF COUNSEL KNAPP: Well, what we had discussed  
16 initially was that if, you know, this option was presented  
17 so that distributors and retailers and end-use consumers  
18 could elect to go down this path now prior to an  
19 evidentiary hearing with DyoCore, now that we're -- you  
20 know, that there's a contemplation that there might be a,  
21 you know, a more expedient resolution with DyoCore, then  
22 our sense would be that this would be the formula for  
23 everyone.

24 HEARING OFFICER RENAUD: Okay. Thank you.

25 All right. Thank you. I think what we'll do

1 then is we'll adjourn until 1:30. The workshop is ordered  
2 by the Committee for the purpose of discussing resolution  
3 of the DyoCore R2s, and -- yeah, and we'll hear back from  
4 you then at 1:30 we'll be in the room.

5 Thank you.

6 (Thereupon a lunch break was taken.)

7

8

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1           And that DyoCore agrees that they would stipulate  
2 that neither DyoCore nor its employees, managers, owners,  
3 investors or anyone else affiliated with DyoCore would  
4 directly benefit from the Energy Commission's efforts to  
5 pay for applicant's costs under the proposed resolution  
6 much outstanding pending claim forms or R2 forms as stated  
7 in staff's prehearing conference statement, and amended.

8           DyoCore -- and then finally, DyoCore can -- staff  
9 agrees that DyoCore can resubmit their turbine as eligible  
10 for use in the ERP under the guide book that is in effect  
11 when the suspension is lifted and the program is  
12 restarted.

13           HEARING OFFICER RENAUD: Okay.

14           STAFF COUNSEL KNAPP: Oh, and I think the point  
15 that I missed was -- and given the first point that I  
16 referenced with regard to that the information was  
17 incorrect as submitted. As a result of that, they will be  
18 immediately delisted -- the product will be immediately  
19 delisted for that -- the turbine.

20           HEARING OFFICER RENAUD: Mr. Raine, did you wish  
21 to add anything to that or indicate agreement or  
22 disagreement?

23           MR. RAINE: I agree to the basic context of the  
24 terms. The only thing I ask your advice on is, obviously  
25 there's a -- contention on our part, you know, that we

1 didn't do anything wrong. And I understand in this  
2 resolution, it helps move the ERP back into place, and  
3 allows us to resubmit and I definitely appreciate that. I  
4 don't want to sound light of that.

5           But the statement data was inaccurate, I  
6 just -- you've got to understand my caution towards that,  
7 in that I an attorney here representing me, and, quite  
8 frankly, can't afford one. I want to make sure that in  
9 that I'm not being taken advantage of, that they're not --  
10 the statement is not going to be used against us later on  
11 or it's going to -- like in the complaint, this is very  
12 obvious contention of mine. It alleges fraud. Jonathan  
13 has made very clearly that the data was false and  
14 alleges fraud, even though when confronted with that  
15 question, he says it's just not accurate.

16           So I just want to make sure that at the end when  
17 the dust falls that that statement is cautious as to how  
18 it is stated and how it indicates that first and foremost  
19 we haven't done anything fraudulently. And I know you  
20 can't specifically state that, but there has to be  
21 creative verbiage for the intention of good -- or the  
22 actions of good intention on our part in accepting this.

23           I don't know how to do that and I'm asking your  
24 advice and your consideration in reviewing this  
25 stipulation as it is written as it is accepted. The

1 general context of it is acceptable to us.

2 HEARING OFFICER RENAUD: I think what I can  
3 safely say -- first of all, I have to say is since I'm an  
4 attorney, you're not my client and I can't give you legal  
5 advice. But what can I tell you is that as we understand  
6 it, there is no determination of fault being made here.  
7 That means nobody's being found guilty or not guilty.

8 MR. RAINE: That could be stipulated.

9 HEARING OFFICER RENAUD: It's neutral.

10 MR. RAINE: That sentence or that could be  
11 stipulated.

12 HEARING OFFICER RENAUD: Yeah. And the  
13 Committee's recommendation to the Commission will be  
14 explicit about that, that there -- because there will be  
15 no evidentiary hearing, there will be no determination of  
16 fault.

17 MR. RAINE: I appreciate that.

18 HEARING OFFICER RENAUD: All right. And I think  
19 just in terms of plain English language that the word  
20 "inaccurate" doesn't carry a connotation of wrongdoing.  
21 It's the same as saying incorrect or something like that.

22 ASSOCIATE MEMBER BOYD: Mr. Chairman, let me  
23 clarify. No evidentiary hearing presumes then the staff  
24 is going to withdraw its complaint.

25 STAFF COUNSEL KNAPP: That's correct.

1           ASSOCIATE MEMBER BOYD: All right. And I just  
2 back up what the hearing officer said with regard to the  
3 use of the word "inaccurate data", it doesn't imply it was  
4 fraudulent data. I don't know how much better we could  
5 say it though. So, in any event.

6           PRESIDING MEMBER PETERMAN: I'll just add that  
7 again I'm in the exactly sure physically what we're going  
8 to have, but we'll have something that will go to the  
9 business meeting and that will stipulate these conditions.  
10 And that gives you some opportunity between and the  
11 business meeting to share it with a lawyer or have someone  
12 else review it and also offer any additional comments,  
13 particularly publicly in the business meeting. You can  
14 come speak at that.

15           HEARING OFFICER RENAUD: Thank you very much.

16           Mr. Pierce, yes.

17           MR. PIERCE: Okay. Sorry. It's quite confusing.  
18 As a contractor, we do multiple products an services. And  
19 we've affiliated ourselves with DyoCore and we were  
20 recognized as such. And when the complaint was issued and  
21 press releases were sent, it has affect our business  
22 greatly to be associated with an allegation of fraud.

23           I would hope that when that complaint is  
24 withdrawn, that there's also a presses release saying that  
25 the complaint and the allegation of fraud has been

1 withdrawn. Hopefully that's fair.

2 HEARING OFFICER RENAUD: It would be entirely  
3 factual, non-judgmental and bland to say the complaint has  
4 been withdrawn. And I that's what will be said. I don't  
5 anticipate any kind of comment about, you know, why. I  
6 mean that's not germane here. Just simply there was a  
7 determination made that this matter could be resolved,  
8 that that was the most expedient thing to do, and as a  
9 result, the complaint was no longer needed, was mute  
10 basically.

11 MR. PIERCE: Bland works for us.

12 HEARING OFFICER RENAUD: Staff, did you wish to  
13 comment on that?

14 STAFF COUNSEL KNAPP: Just to clarify for the  
15 record, so we've discussed, you know, this agreement with  
16 DyoCore in order to resolve the matter at this stage. And  
17 as a result of that, we'll withdraw our complaint. We're  
18 not withdrawing our allegations, just to be clear.

19 HEARING OFFICER RENAUD: Well, I'm not sure  
20 that's a clarification. I mean, allegations are made in  
21 writing and if the complaint's being withdrawn, that's the  
22 same as withdrawing the allegations, as far as I'm  
23 concerned.

24 Are you not conceding -- you are not conceding  
25 your position, let me put it that way.

1 ASSISTANT CHIEF COUNSEL WARD: Right. Both  
2 parties still have the legal right to do whatever they  
3 want to do. There's no --

4 HEARING OFFICER RENAUD: There's no judgment.  
5 There's not a final judgment here.

6 ASSISTANT CHIEF COUNSEL WARD: There's no part of  
7 this that would prevent us from still -- well, neither  
8 side is giving up a legal right in terms of their  
9 position.

10 HEARING OFFICER RENAUD: I think that's a very  
11 good way of saying it. This is not -- this is not a with  
12 prejudice withdrawal.

13 MR. RAINE: I absolutely accept that. I know in  
14 our original stipulation you sent over, you were asking us  
15 to give us up all our rights. So could we make it clear  
16 that we are -- an agreement, you are not giving up your  
17 rights, we also are not giving up our rights, and that  
18 will not be part of the stipulation. This is just an  
19 agreement to help everybody move forward.

20 HEARING OFFICER RENAUD: Well, you don't give up  
21 any rights unless you say you're giving up rights. So --

22 MR. RAINE: I just want to make sure the  
23 intentions are clear.

24 HEARING OFFICER RENAUD: The Committee  
25 recommendation will be silent on the issue of giving up

1 rights.

2 MR. RAINE: Thank you.

3 HEARING OFFICER RENAUD: All right. So let me  
4 just tell you all what this is going to look like.  
5 Basically, what the Committee's task is to make a  
6 recommendation to the full Commission for adoption.

7 All right. So it will be in the form of a  
8 document entitled committee recommendation and it will  
9 pretty much list the things that Mr. Knapp just said, and  
10 indicate that the Committee recommends that the Commission  
11 adopt those items. And that would be on the agenda  
12 hopefully for the November 2nd business meeting.

13 Commissioner Peterman, I know you had something.

14 PRESIDING MEMBER PETERMAN: I have a question  
15 about the RIs, specifically about holding the place in the  
16 queue. And this might be something that what is handled  
17 through the guide book process and not this prehearing  
18 conference, but I wanted to draw attention to the  
19 question, which is, is there going to be a time limit on  
20 how long a applicant can remain -- keep their place in the  
21 queue or if that's something that this Committee needs to  
22 determine?

23 STAFF COUNSEL KNAPP: Yes. We believe it's a  
24 question the Committee would determine. We believe it's a  
25 question that the Committee would properly determine.

1 HEARING OFFICER RENAUD: And I should add to what  
2 I was saying earlier that this Committee recommendation  
3 document will be publicly posted, become part of the  
4 business meeting agenda, and anyone will be able to review  
5 and comment on that document, submit written comments,  
6 come to the business meeting, address the Commission  
7 concerning it. So it will be, you know, something that  
8 will be subject to further review and comment and  
9 discussion, suggested edits whatever. I just want to make  
10 it clear that the Committee recommendation is not a final  
11 act by the Commission at all. And it's something that  
12 will be still subject to input until it's adopted by the  
13 Commission.

14 With the request -- respect to this question  
15 about the RIs, I think the Committee will make a  
16 determination as to how to deal with that and just put it  
17 in the recommendation and you'll see what that says.

18 One other -- I'll wait to you guys have met.

19 Anything else? Did you want to say anything?

20 STAFF COUNSEL KNAPP: We just wanted to make  
21 clarification for the record. I don't think this is  
22 necessary, but just in case it is just for the record,  
23 that when we said that this would be a decision for the  
24 Committee, we're referencing the Renewables Committee,  
25 just to be clear.

1           And I guess I do have a few edits.

2           (Laughter.)

3           STAFF COUNSEL KNAPP: Thank you.

4           HEARING OFFICER RENAUD: So you didn't mean this  
5 Committee, you meant the Renewables Committee?

6           STAFF COUNSEL KNAPP: That's what we meant.

7           HEARING OFFICER RENAUD: Got it.

8           STAFF COUNSEL KNAPP: The Renewables Committee  
9 overseeing the guide book.

10          HEARING OFFICER RENAUD: Okay. Good.

11          I should add one more thing that will go in the  
12 committee recommendation document. And that is a  
13 recommendation that the Commission take no position on  
14 referral to the Attorney General, in light of the fact  
15 that there will not be a determination as to fault made.  
16 That doesn't preclude somebody from making a referral to  
17 the Attorney General. It just is a recommendation from  
18 the Committee that the Commission not take a position on  
19 that.

20          All right, Mr. Knapp, you had something.

21          STAFF COUNSEL KNAPP: So I just have a few  
22 cleanup items, but -- okay. So first, just with respect  
23 to our addendum, this equation is -- the example that we  
24 presented is just causing more trouble than it's worth, so  
25 we'd just like to strike that.

1           The only purpose of it was to show that we're  
2 using a revenue figure for the calculation of overhead and  
3 profit and nothing else. And in particular, there was  
4 language that was pointed out to us that was miss intended  
5 or shouldn't have been there, which is that -- which calls  
6 out that if a particular distributor retailer -- let's  
7 see, "As an example of how this approach would work assume  
8 the rebate payment for existing R2 forms for particular  
9 distributor or retailers a hundred thousand, if all are  
10 installed".

11           And that that language, in particular, is  
12 problematic, because we are not -- you know, we're not  
13 suggesting that anyone go ahead with these installations,  
14 so we wanted to clarify that on the record.

15           And to further clarify that point on -- you know,  
16 we will -- staff can certainly submit a revised final  
17 clean version of our proposal that includes all the  
18 changes we discussed. And so we'd make one further change  
19 to just clarify that point, which is that on page 30 of  
20 the prehearing conference statement, there's a line in  
21 about the middle of the page where it's, "Thus staff  
22 recommends a formula for resolution of pending R2 forms,  
23 whereby the following categories of actual and provable  
24 costs would be reimbursed by the ERP".

25           We would amend that to just clarify that the

1 following categories have actual and provable costs  
2 incurred as of today, October 11, 2011, would be  
3 reimbursed by the ERP. So we're not counseling or we're  
4 not recommending that folks good forward and continue to  
5 incur expenses for the installations of these systems. So  
6 just as a clarification.

7           And I guess the only other point I wanted to make  
8 is that the proposal that we put forward, you know, as  
9 we've discussed at length, you know, would cover all the  
10 outstanding applications or R1 forms and all of the  
11 payment claim forms or R2 forms. And again we  
12 would -- we're certainly willing to submit a revised final  
13 clean version to the Committee for your consideration.

14           Thank you.

15           HEARING OFFICER RENAUD: In the addendum or  
16 errata and addendum, there's a new provision that requires  
17 refund of deposits. Is that still in effect?

18           STAFF COUNSEL KNAPP: Certainly.

19           HEARING OFFICER RENAUD: Thank you.

20           MR. HAWKE: If I may?

21           HEARING OFFICER RENAUD: Yes, please.

22           MR. HAWKE: If I may just a point of  
23 clarification.

24           HEARING OFFICER RENAUD: Why don't you state your  
25 name.

1 MR. HAWKE: Chris Hawke, the CEO with Solar Point  
2 Resources. With regard to what you had said about  
3 expenses through to date, as you know, we are continuing  
4 to incur finance charges, insurance charges, until we  
5 reach -- until we're paid and able to payoff our lines of  
6 credit. So we have charges that go beyond today.

7 ASSISTANT CHIEF COUNSEL WARD: Then we would  
8 suggest making it any unavoidable costs can be paid. But  
9 to the extent that costs can be avoided by not moving  
10 forward, we certainly don't want to encourage people to  
11 move forward with installations at this point.

12 HEARING OFFICER RENAUD: That makes complete  
13 sense. And in light of this discussion, I'm going to  
14 request that the staff prepare a final version of the  
15 formula with all of these changes that I can append to the  
16 Committee recommendation.

17 Yeah, and I guess that should happen pretty  
18 quickly, because the deadline for agendaizing for November  
19 2nd is right upon us. And we want to get that document  
20 out there docketed and, you know, available for public  
21 review. All right.

22 STAFF COUNSEL KNAPP: Certainly.

23 HEARING OFFICER RENAUD: Good.

24 ASSISTANT CHIEF COUNSEL WARD: Is there a  
25 specific time frame that we should be aware of?

1 HEARING OFFICER RENAUD: Well, this is Tuesday.  
2 I mean I -- can you get it to me by Thursday?

3 STAFF COUNSEL KNAPP: Yeah, of course.

4 HEARING OFFICER RENAUD: All right. Thank you.

5 PRESIDING MEMBER PETERMAN: Also, just mention  
6 that at that November 2nd business meeting, there will  
7 also be a vote held on the revised ERP guide book edition  
8 11. And so if you're coming for this issue, you can come  
9 and comment on that as well.

10 HEARING OFFICER RENAUD: All right. Does anyone  
11 have anything they want to add before we begin in  
12 the -- moving in the direction of wrapping up?

13 Yes.

14 MR. PIERCE: We just wanted to officially thank  
15 the Committee and the ERP staff. We know this has been a  
16 tightly contested issue. And we'd just like to thank you  
17 for your openness and willingness to work through this and  
18 proceed forward. So thank you.

19 HEARING OFFICER RENAUD: Yes. And I'm sure we'll  
20 have similar comments to make when we adjourn. But I  
21 think we should probably ask for public comment again.  
22 Anybody in the room wish to address the Committee?

23 All right, there anyone on the phone that wishes  
24 to address the Committee at this point and make a public  
25 comment? If you do just go ahead and speak.

1 All right, I think we've asked an answered, and  
2 there's been no response, so there's no public comment  
3 coming from the phone.

4 I think we're at the point where we --

5 MR. ROSALES: I have a comment.

6 HEARING OFFICER RENAUD: Oh, go ahead. Good.  
7 There you are. Go ahead. Speak right into your phone  
8 very loudly, please.

9 MR. ROSALES: Yes, I'm just --

10 HEARING OFFICER RENAUD: And identify yourself,  
11 please.

12 MR. ROSALES: My name is Joseph Rosales. I'm  
13 here in San Diego. I have some turbines installed, and I  
14 have put in my R2. And so I'm gathering from this meeting  
15 that when you go to the business meeting on November 2nd,  
16 all those that are in process will still be able to be  
17 applied and paid out, is that what I'm understanding?

18 STAFF COUNSEL KNAPP: Mr. Rosales?

19 MR. ROSALES: Yes.

20 STAFF COUNSEL KNAPP: This is Jonathan Knapp from  
21 the Energy Commission. So, yeah as we discussed, and I  
22 think recently saw an Email that came in in the last day  
23 or so from you, my understanding is that you have an  
24 installed system, a small wind system using the DyoCore  
25 turbine, is that correct?

1 MR. ROSALES: That is correct.

2 STAFF COUNSEL KNAPP: So under the proposed  
3 formula, you would be -- I think you've already paid  
4 DyoCore for that system?

5 MR. ROSALES: Yes.

6 STAFF COUNSEL KNAPP: Okay. So under the  
7 proposed formula, you would be entitled to be reimbursed  
8 for the -- you know, for the full cost that you paid to  
9 DyoCore.

10 MR. ROSALES: Okay. And so I'm just -- we're  
11 just waiting for the outcome of the meeting?

12 STAFF COUNSEL KNAPP: That's correct, assuming  
13 that the Committee goes forward and adopts the formula on  
14 November 2nd, that business meeting.

15 MR. ROSALES: Thank you very much. That's all I  
16 have to say.

17 STAFF COUNSEL KNAPP: Thank you, sir.

18 PRESIDING MEMBER PETERMAN: And, Mr. Knapp, can  
19 you just comment on how we will be informing all the  
20 customers of this proposal to go before the Commission and  
21 will we be facilitating them getting their payment claims,  
22 et cetera?

23 STAFF COUNSEL KNAPP: So we've done several mass  
24 mailings in this case already. So we would, you know, I  
25 guess once -- or assuming that the proposal for resolution

1 of all the outstanding applications and requests is  
2 approved -- or I guess prior to the business meeting, in  
3 order to give everyone notice, we can do another mass  
4 mailing to send out everyone the final clean version of  
5 the proposal that, you know, will be before the Commission  
6 on November 2nd. And we could also do, you know, a  
7 posting and certainly have an on line component of that as  
8 well.

9 PRESIDING MEMBER PETERMAN: Thank you. I would  
10 actually just consult with the Public Adviser to make sure  
11 that everyone is appropriately informed. Thank you

12 HEARING OFFICER RENAUD: Any other comment from  
13 anyone on the phone?

14 Comment from anyone in the room?

15 All right. I think we'll move in the direction  
16 of adjournment, and I will first ask Commissioner Boyd if  
17 he has any closing remarks?

18 ASSOCIATE MEMBER BOYD: Very briefly. I want to  
19 thank everybody for the efforts they made in the past, but  
20 in particular today. I think the outcome that has been  
21 reached is the most satisfactory outcome one could expect  
22 under the circumstances, so again commendations to all and  
23 let's hope we can just move forward now with the program.

24 One of the fallouts from this has been changes to  
25 the guide book, as referenced before, which will be before

1 the Commission at the same time that this issue is  
2 disposed of. So in any event, appreciate all your efforts  
3 and let's just start out with a clean sheet of paper as we  
4 turn the page and go forward on this program.

5 PRESIDING MEMBER PETERMAN: Hello. This is  
6 Commissioner Peterman. I echo Commissioner Boyd's  
7 sentiments. This program has been suspended since my  
8 fourth day on the job, and it will be a personal milestone  
9 as well to see the program restarted. I hope everyone who  
10 has been patient with us through this process will  
11 continue to participate and help us advance, you know, our  
12 generation in clean energy agenda. We've got some real  
13 great opportunities here and I look forward to all of you  
14 participating.

15 Thank you.

16 HEARING OFFICER RENAUD: All right. Thank you  
17 very much for all your hard work. We do appreciate it.  
18 And as I said, that Committee recommendation document will  
19 be coming out in very shortly.

20 Thank you and this meeting is adjourned.

21 (Thereupon the prehearing conference  
22 adjourned at 1:59 p.m.)

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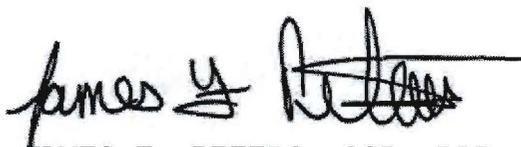
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