



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

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

Docket No. 11-CAI-03

NOTICE OF PREHEARING CONFERENCE

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

The Prehearing Conference will be conducted on:

***TUESDAY, OCTOBER 11, 2011
Beginning at 9:00 a.m.***

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

DOCKET

11-CAI-03

DATE Sept 21 2011

RECD. Sept 21 2011

Teleconference Option

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

Background and Procedure

Energy Commission staff have filed a Complaint against DyoCore under Title 20, section 1231¹ of the California Code of Regulations. Section 1231 permits any person, including Energy Commission staff, to file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the Commission. The Complaint is docketed as a formal proceeding with the Commission as Docket Number 11-CAI-03.

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

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

The Complaint requests the following relief:

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

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

The complaint was amended on September 9, 2011 and pursuant to a Committee Order dated September 16, 2011, Staff was directed to serve the amended complaint on the Respondent. Under Energy Commission regulations, the Committee must commence a hearing on the matter on or before December 8, 2011 if the matter has not been resolved. The hearing will provide the parties (Staff, Respondent DyoCore, Inc., and any Intervenors) an opportunity to present evidence and testimony in support of their positions in the matter, and to cross-examine the evidence and testimony of the other parties.

Purpose of Prehearing Conference

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

PLEASE NOTE: At the prehearing conference the Committee may order the parties to adjourn into a public workshop wherein the parties would discuss areas of agreement and dispute and work toward resolution. Accordingly, parties are directed to be represented at the prehearing conference by persons with authority to discuss resolution of the case and bind the party to a settlement agreement.

Prehearing Conference Statements

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

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

Each Prehearing Conference Statement shall include:

1. A preliminary listing of witnesses anticipated to be presented by the party in subsequent hearings; a brief summary of the testimony to be offered by each witness; and qualifications of each expert witness. This list shall include all witnesses currently known to the party; parties may supplement this list in the future with witnesses not currently known to the party, subject to any deadlines which may be established by the Committee;
2. A preliminary exhibit list identifying exhibits and declarations that each party anticipates offering into evidence in subsequent hearings, provided in the format attached to this Notice. This list shall include all exhibits and declarations currently known to the party; parties may supplement this list in the future with newly-discovered exhibits and written testimony not currently known to the party, subject to any deadlines which may be established by the Committee. The Hearing Office will provide the parties with a Word version of the Exhibit List template;
3. Proposals for scheduling the exchange of exhibits and testimony and dates for the hearings;
4. Comments, if any, on the Committee's intention to use informal hearing procedures, described below;
5. A discussion of the key issues in the case including but not necessarily limited to:
 - a. whether or not data submitted by DyoCore was false;
 - b. KEMA's role with respect to review of data submitted by DyoCore prior to suspension of the ERP;
 - c. how a power curve is generated;
 - d. how the correct point on a power curve is selected for purposes of determining rated output;
 - e. what the correct amount of the rebate for DyoCore turbines would have been under the pre-suspension ERP if the turbine's listed output was at the level Staff contends is accurate;

- f. whether the ERP regulations in existence at the time DyoCore submitted its application permitted rebates up to 100 percent of the installed system cost to the consumer;
- g. details of the pricing methodology used by distributors of the DyoCore turbine including the costs of the turbines and associated equipment, sales commissions, salaries, labor costs, overhead and profit margins;
- h. the results of any tests that have been conducted to determine the output of the DyoCore turbine;
- i. whether or not any such testing is currently underway or contemplated, the expected date of completion, and the cost for such testing;
- j. the identities of any qualified testing entities; and
- k. proposals for handling of the applications for rebates that have not yet been paid.

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

Notice of Committee's Intention to Use Informal Hearing Procedures

Pursuant to Government Code section 11445.10 et seq., and section 1217 of the Commission's regulations, the Committee may conduct all or portions of the hearings in an informal manner. For example, the Committee could allow a panel of witnesses sponsored by a single party or by multiple parties to testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties substituting for formal direct and cross-examination. Other aspects of the hearing may be conducted informally as well at the discretion of the Committee. Any objections to the taking of testimony or evidence in an informal manner shall be filed on or before the deadline for filing Prehearing Conference Statements (**12:00 Noon on Tuesday, October 4, 2011**).

Petitions to Intervene to Become a Formal Party

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

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

The deadline to file a Petition to Intervene in this case is Tuesday, October 18, 2011. Petitions filed after that date and time extensions for new Intervenors to review case materials will be granted only upon a showing of extraordinary good cause. Persons interested in intervening are therefore encouraged to file their petitions as soon as possible.

How to Intervene

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

Agency and Public Participation

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

Local, state, and federal governmental agencies may participate at the prehearing conference, as necessary. (Cal. Code Regs., tit. 20, § 1714.5.) Elected officials and members of the public may present public comments at this event and/or submit written comments. Written comments will be made available to the public by the Energy Commission's Docket Unit. Please include "**Docket No. 11-CAI-03**" on any written comments.

During the public comment portion of hearings and workshops, members of the public may speak in person, via WebEx and conference call, or provide written comments. Written comments may be handed directly to the public adviser, e-mailed to PublicAdviser@energy.state.ca.us for delivery to the Docket Unit, emailed to dockets@energy.state.ca.us, or mailed via US Postal Service to:

Energy Commission Docket Unit
Docket No. 11-CAI-03
1516 Ninth Street, MS-4
Sacramento, CA 95614

Please note that your written and oral comments, attachments, and associated contact information (e.g. your address, phone, email, etc.) become part of the viewable public record. Additionally, this information may become available via Google, Yahoo, and any other search engines.

Energy Commission Information

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

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

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

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

Dated: September 21, 2011, at Sacramento, California.

A handwritten signature in cursive script, reading "Carla Peterman".

CARLA PETERMAN
Commissioner and Presiding Member
DyoCore Complaint Committee

A handwritten signature in cursive script, reading "James D. Boyd".

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

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

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

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

➤ 10/11/11 – Prehearing Conference meeting number: **920 076 383**

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

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

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

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

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

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

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

➤ 10/11/11 – Prehearing Conference meeting number: **920 076 383**

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

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



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Docket No. 11-CAI-03

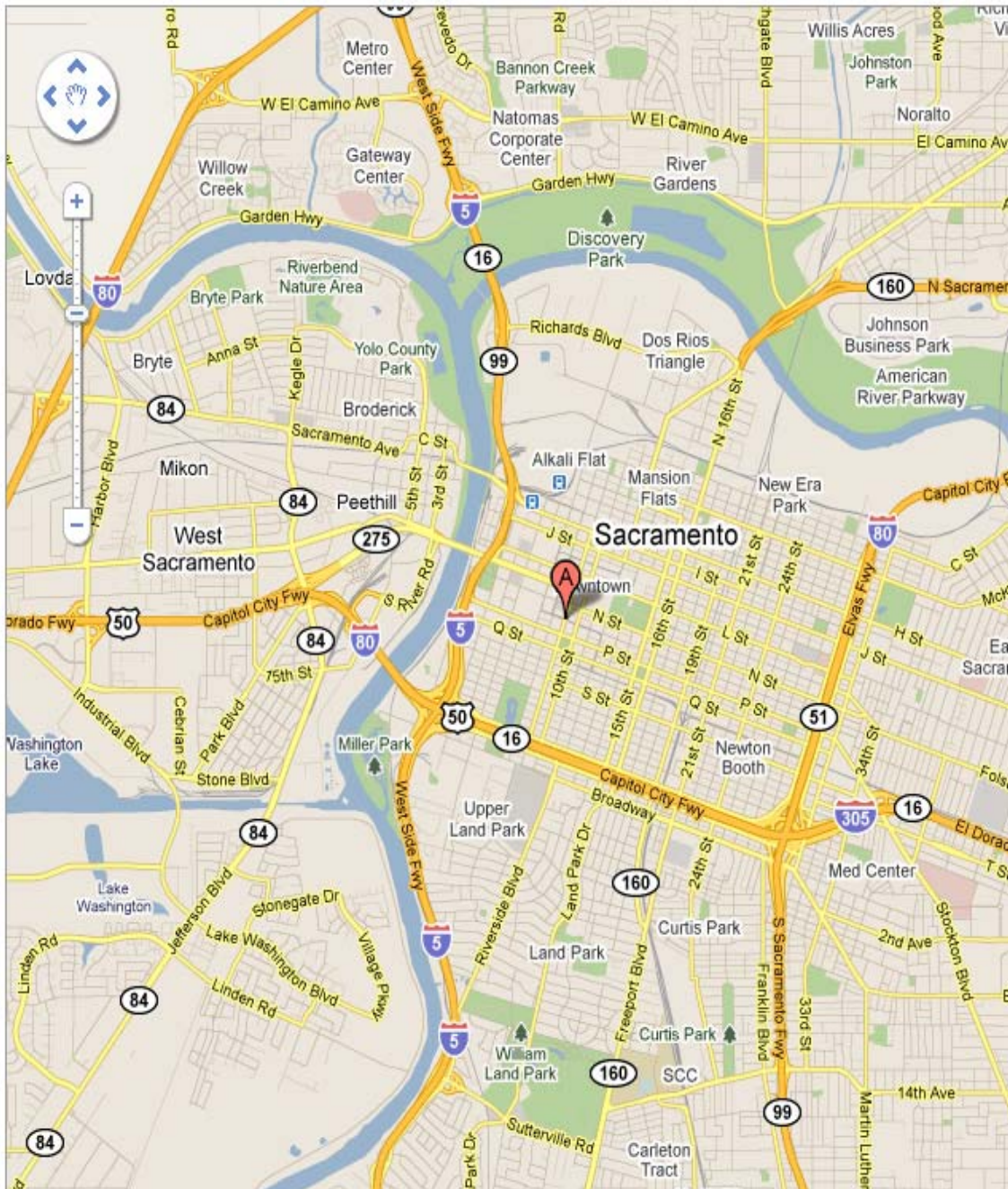
SAMPLE EXHIBIT LIST

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

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

SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT.

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





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***IN THE MATTER OF THE COMPLAINT AGAINST
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ENERGY COMMISSION STAFF***

***Docket No. 11-CAI-03
(Revised 9/16/2011)***

COMPLAINANT

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California Energy Commission
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RESPONDENT

DyoCore, Inc.
Ralph Bettencourt, CEO
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Carlsbad, CA 92010
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dave@dyocore.com

INTERVENORS

Solar Point Resources Inc.
Jane E. Luckhardt
Stephen J. Meyer
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
jluckhardt@downeybrand.com
smeyer@downeybrand.com

**INTERESTED
ENTITIES/AGENCIES**

Bay Area Energy Solutions
1326 Marsten Road
Burlingame, CA 94010
www.bayenergy.com

California Solar Systems
1411 Rusch Court
Santa Rosa, CA 95401
barryw@855casolar.com

Synergy Corp.
863 N Bush Avenue
Clovis, CA 93611
marlin.magic@sbcbglobal.net

Crizer Wind Energy, Inc.
1191 4th Street
Los Osos, CA 93402
crizerwindenergy@sbcbglobal.net

My Wind Power
4037 Phelan Road, A267
Phelan, CA 92371
www.info@mywindpower.biz

Energy Pros
2235 Solitude Court
Rocklin, CA 95765
brian@energyproslc.com

Wind Solar Solutions
420 Avalon Street
Morro Bay, CA 93442
corky@windandsolarsolutions.com

CA Green Team
720 North China Lake Boulevard
Ridgecrest, CA 93555
tammy@cagreenteam.com
rayw@cagreenteam.com

Prevailing Wind Power
324 N Gertruda
Redondo Beach, CA 90277
bob@prevailingwindpower.com

**INTERESTED ENTITIES/AGENCIES
(cont.)**

Desert Power, Inc.
77380 Michigan Dr.
Palm Desert, CA 92211

San Diego Small Wind
3125 Tiger Run Ct. #103
San Marcos, CA 92009

Apple Acres, Inc. DBA Gridnot
P.O. Box 645
Lucerne Valley, CA 92356
info@gridnot.com

**ENERGY COMMISSION –
DECISIONMAKERS**

Carla Peterman
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CP.eterma@energy.state.ca.us

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jboyd@energy.state.ca.us

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PUBLIC ADVISER**

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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on September 21, 2011, I served and filed copies of the attached NOTICE OF PREHEARING CONFERENCE, dated September 21, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[http://www.energy.ca.gov/renewables/emerging_renewables/11-cai-03/].

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

(Check all that Apply)

For service to all other parties:

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

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

AND

For filing with the Docket Unit at the Energy Commission:

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

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

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

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

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

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

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

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

Original Signed By: _____

RoseMary Avalos
Hearing Adviser's Office