



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

DOCKET

11-CAI-03

DATE NOV 04 2011

RECD. NOV 04 2011

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

DOCKET No. 11-CAI-03

COMMISSION ADOPTION ORDER

On November 2, 2011, at its regularly-scheduled business meeting, the California Energy Commission considered the recommendation of the DyoCore Complaint Committee, as well as the comments submitted orally and in writing by the parties and the public. The Energy Commission Orders as follows:

1. The DyoCore turbine is to be removed from the "List of Eligible Small Wind Turbines" on the ERP website.
2. DyoCore may apply for listing pursuant to the requirements of the ERP Guidebook that is in effect when the suspension of the ERP Program is lifted and the program restarts.
3. The Commission takes no position on the referral of this matter to the Attorney General on this record.
4. The Commission accepts DyoCore's stipulation that the data it submitted to the Staff in connection with the listing of the turbine for use in the ERP was inaccurate. The Commission acknowledges that this is not an admission of wrongdoing.
5. The Commission finds that there is no need to hold an evidentiary hearing. Accordingly we dismiss the Complaint as moot. This is for purposes of achieving a resolution of this matter and is not to be construed as reflecting upon the merits of the allegations of the complaint.
6. Pending applications for rebates for systems using the DyoCore turbine shall be processed as follows:

A. R1 Forms

i. All Incomplete Applications Shall be Rejected

The ERP Guidebook, 10th Edition, provides that “[f]unding reservations are made only for complete applications on a first-come, first-served basis. Applications that are missing application forms or have omissions or discrepancies will not be approved or processed.” Thus, the Energy Commission adopts the Committee recommendation that applications, or R1 Forms, for small wind systems that use DyoCore turbines which lack information necessary for processing, or reviewing, and thus, are incomplete, should be rejected.

There are currently 1,086 pending applications for small wind systems that use DyoCore turbines. Staff has determined that 631 of these applications are incomplete. The other 455 applications have been deemed complete. The Commission adopts the Committee recommendation that the 631 incomplete applications be rejected.

ii. All Complete Applications That Identify Small Wind Systems with DyoCore Turbines Should Retain Their Current Place In the Queue For Consideration Under the Eleventh Edition of the ERP Guidebook

The Commission orders that the 455 applicants whose applications have been determined to be complete and which identify small wind systems that use DyoCore turbines be given preferential treatment by retaining their current place in the queue when the program restarts provided that the applicants comply with the requirements of the Eleventh Edition of the ERP Guidebook. These applicants will be given preferential treatment by retaining their place in the queue for 180 days after the Eleventh Edition of the ERP Guidebook is adopted. Applicants that fail to reapply within this 180 day period by submitting a new application, or R1 Form, in accordance with the Eleventh Edition of the ERP Guidebook, will lose their place in the queue and be treated as an ordinary applicant should they choose to reapply at a later date.

B. R2 Forms

i. R2 Forms issued to Distributors/Retailers

With regard to R2 Forms issued to distributors/retailers, the Energy Commission adopts the Committee recommendation that the following categories of actual and provable costs incurred as of

October 11, 2011, be reimbursed by the ERP:

- Equipment/turbine component costs.
- Installation and other related costs, e.g., engineering, permitting, financing, electrical component assembly, general administrative costs, sales tax, and shipping.
- Staff compensation, e.g., management sales staff, legal, accounting, and administrative personnel. Management costs and salaries shall be capped at 50 percent of all other costs.
- Fifteen percent overhead based on the expected rebate level of the R2 Forms (as if rebates for R2 Forms were paid in full).
- Five percent profit based on the expected rebate level of the R2 Forms.
- A cap on the total payment so that it cannot exceed what the Energy Commission would have paid at the expected rebate level of 1.6 kW at 18 mph winds.

Further, any actual and provable unavoidable costs incurred until the claim is submitted to the State Controller's Office, but in any event no later than November 15, 2011, e.g., accrual of reasonable interest or finance charges, shall be reimbursed pursuant to the above formula.

In the case of distributors/retailers who were issued an R2 Form and assigned a rebate payment for a small wind system that uses the DyoCore turbine, yet ultimately decided to install a different system and incurred costs toward the installation prior to October 11, 2011, these applications shall be processed pursuant to the Tenth Edition of the ERP Guidebook.

ii. R2 Forms issued to End-Use Consumers

The ERP shall reimburse applicants who are end-use consumers for actual and provable costs that they have incurred for small wind systems that use the DyoCore turbine.

The total sum that could be paid out to all parties to a particular application, including end-use consumers, distributors and retailers, shall not exceed the rebate amount that was requested, based upon a rated output of 1.6 kW at 18 mph winds for the DyoCore turbine.

In the case of end-use consumers who were issued an R2 Form and assigned a rebate payment for a small wind system that uses the DyoCore turbine, yet ultimately decided to install a different system and incurred costs toward the installation prior to October 11, 2011, these applications shall be processed pursuant to the Tenth Edition of the ERP Guidebook.

C. Procedures Applicable to All Payments

i. Payment Subject to Approval by State Controller

Payments under this Order shall be subject to approval by the State Controller's Office.

ii. Requirements for Applicants before Receiving Payment for R2 Forms

Applicants must satisfy the following conditions before receiving payments pursuant to this Order:

- Any applicant that is a distributor or retailer must refund all deposits it has obtained from end-use consumers prior to receiving payment for R2 Forms under the proposed formula.
- Applicants must execute a release agreement that releases all claims against the Energy Commission and KEMA, Inc. arising from the applicant's involvement in the ERP.
- A distributor or retailer seeking reimbursement pursuant to this Order must submit a declaration in which it attests under penalty of perjury that any payment that it receives under the proposed formula will not directly benefit DyoCore, its employees, managers, owners, investors, or any other individuals affiliated with DyoCore.
- Applicants must submit backup documentation for all claimed expenses associated with the applicant's R2 Forms as follows:
 - For materials and equipment, receipts or other proof of purchase.
 - For staff and consultants, copies of time sheets or other appropriate documentation showing hours associated with the R2 Forms or sales contracts showing the amount of the commission.

- For management compensation, flexibility in the types of documents allowed compared to staff and consultants.
- Other documentation as appropriate.
- Applicants must submit proof that applicants have not or cannot receive additional payments from other sources that would result in double recovery (e.g., an insurance claim that would pay for what the Energy Commission has paid for through this process). This requirement does not preclude applicants from seeking recovery from DyoCore for amounts not covered by the payment that results from application of this Order.

It is so Ordered.

CERTIFICATION

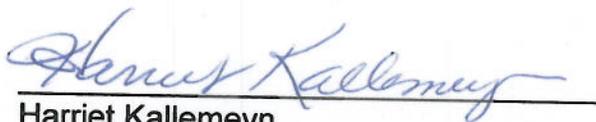
The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on November 2, 2011.

AYE: Weisenmiller, Douglas, Peterman

NAY: None

ABSENT: Boyd

ABSTAIN: None



Harriet Kallemeyn

Secretariat

California Energy Commission



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

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

COMPLAINANT

California Energy Commission
Robert P. Oglesby
Executive Director
1516 Ninth Street
Sacramento, CA 95814
e-mail service preferred
roglesby@energy.state.ca.us

California Energy Commission
Payam Narvand
Program Manager
1516 Ninth Street
Sacramento, CA 95814
e-mail service preferred
pnarvand@energy.state.ca.us

COUNSEL FOR COMPLAINANT

California Energy Commission
Gabe Herrera
Senior Staff Counsel
1516 Ninth Street
Sacramento, CA 95814
e-mail service preferred
gherrera@energy.state.ca.us

California Energy Commission
Jonathan Knapp
Staff Counsel
1516 Ninth Street
Sacramento, CA 95814
e-mail service preferred
jknapp@energy.state.ca.us

RESPONDENT

DyoCore, Inc.
Ralph Bettencourt, CEO
David Raine, CTO
3125 Tiger run Court, #104
Carlsbad, CA 92010
ralph@dyocore.com
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

*Energy Pros
Shad Derifield
Brian Pierce, Jr.
c/o Robert F. Kane
Law Offices of Robert F. Kane
870 Market Street, Suite 1128
San Francisco, CA 94012
rkane1089@aol.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@sbcglobal.net

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

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

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
Commissioner and Presiding
Member
CPeterma@energy.state.ca.us

James D. Boyd
Vice Chair and Associate Member
jboyd@energy.state.ca.us

Raoul Renaud
Hearing Officer
rrenaud@energy.state.ca.us

**ENERGY COMMISSION -
CHIEF COUNSEL**

Jennifer Martin-Gallardo
Staff Counsel
e-mail service preferred
jmarting@energy.state.ca.us

**ENERGY COMMISSION -
PUBLIC ADVISER**

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Maggie Read, declare that on November 4, 2011, I served and filed copies of the attached Commission Adoption Order. 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:

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

- 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: _____
Maggie Read
Hearing Adviser's Office