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AZ CORP COMMISSION
DOCKET CONTROL

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6 Attorneys for Clear Energy Systems, Inc.

5-03479A-12
0360

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 In the matter of:

9 CHRISTOPHER DEAN DEDMON
CRD#3015575 and KIMBERLY
10 DEDMON, husband and wife,

11 ROBERT R. COTTRELL (a.k.a
"ROB COTTRELL"),

12 SDC MONTANA CONSULTING, LLC
13 (a.k.a., d.b.a., a.b.n. "SDC MONTANA" and
"SDC MONTANA OIL & GAS
14 EXPLORATION"), an Arizona limited
15 liability company,

16 RSC ADVENTURES LLC, an Arizona
limited liability company.

**RESPONSE TO MOTION TO COMPEL
AND RESPONSE TO REQUEST FOR
IMMEDIATE RULING**

Arizona Corporation Commission
DOCKETED

JUL 26 2013

DOCKETED BY
NR

17
18 Clear Energy Systems, Inc. ("Clear Energy"), by and through its counsel, hereby request
19 that the Arizona Corporation Commission ("Commission"), deny the request for immediate
20 ruling and quash the Administrative Subpoena or, in the alternative, issue a protective order on
21 the basis that the underlying requests are unduly burdensome and seek among other things,
22 correspondence, communications, internal memoranda and other documents from Clear Energy
23 shareholders that are protected from disclosure. This Response is supported by the following
24 Memorandum of Points and Authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

Christopher Dean Dedmon and Kimberly Dedmon (the “Dedmons”) request that the Commission provide an immediate ruling (“Ruling Request”) on their Motion to Compel.

II. LEGAL ARGUMENT

Firstly, the Dedmons are misleading the Commission by seeking a motion to compel and an immediate ruling on the motion to compel. Specifically, the Dedmons state in the Ruling Request that Clear Energy has **provided no documents** to them. This is a blatantly false statement. In reality, Clear Energy has provided, among other things: (1) a list of purchasers of its stock, (2) the sale price, and (3) a copy of pages from its Offering Memorandum supporting the stock price. In other words, Clear Energy has, in fact, complied with numbers 1, 2, 3, 4, 5, and 8 of the Exhibit “A” attached to the Administrative Subpoena. See Exhibit “1” Email to Alan Baskin providing (i) Clear Energy Stock List and (ii) Selected Pages of Offering Memorandum and **Exhibit “2”** Email to Burton Bentley providing stock price.

Not only are the Dedmons misleading this Commission by seeking the Ruling Request and sanctions, but their counsel even acknowledged production by Clear Energy of some documents when he asked the undersigned whether Clear Energy will produce **any additional documents** in one of the emails attached to their pleadings. Clear Energy has provided information which was requested in reliance of Dedmons’ counsel’s email which focused Clear Energy on what was really needed under the Subpoena. See email from Alan Baskin attached as **Exhibit “3”**.

Therefore, the Commission must quash the remainder of the Subpoena or issue a protective order against disclosure particularly of:

- 1 • Request No. 3(a): All communications with shareholders.
- 2 • Request No. 6.: All documents or information reflecting or relating to the
- 3 value of Clear Energy stock. This would include but not be limited to: (a) all
- 4 financial statements (balance sheet, profit and loss, cash flow and changes of
- 5 equity), annual, quarterly and monthly financial reports whether audited or
- 6 unaudited, with accompanying footnotes and any auditor's reports including any
- 7 amendments; and (b) all federal and state tax returns.
- 8 • Request No. 9: "All communications with Clear Energy Shareholders".
- 9 Rule 45(c)(3)(A)(iii)-(iv), provides, in part, that a court "must quash or modify" a
- 10 subpoena if it "requires disclosure of privileged or other protected matter" or
- 11 "subjects a person to undue burden". In this case, the Administrative Subpoena
- 12 must be quashed and a protective order issued as the Administrative Subpoena
- 13 requests disclosure of confidential information and information not reasonably
- 14 calculated to lead to the discovery of admissible evidence. (See e.g., shareholder
- 15 communications).
- 16

17 In this matter, Clear Energy forthrightly produced the information the Dedmons need to

18 repay investors. As a matter of fact, their counsel specifically detailed which documents were

19 necessary for the Dedmons to repay the investors. See Exhibit "3", *supra*. Clear Energy

20 complied and produced those documents believing it provided the information the Dedmons'

21 counsel requested. Now, the Dedmons seek information beyond that information. The

22 additional information will not provide information which is relevant to allow them to repay

23 investors. Instead it requests disclosure of correspondence, communications, internal

24 memoranda and other documents from Clear Energy shareholders and confidential information.

25

1 Furthermore, documents in Request No. 6 particularly require production of documents
2 that are beyond the scope of discovery and not reasonably calculated to lead to the discovery of
3 admissible evidence. Therefore, Clear Energy respectfully requests that the Commission quash,
4 or at a minimum modify the subpoena to protect Clear Energy from disclosure of the documents
5 reflected above, and find that Clear Energy complied with the Administrative Subpoena as
6 necessary to allow the Dedmons to repay investors.

7 **III. CONCLUSION**

8 Clear Energy requests that the Commission find that it has complied with the
9 Administrative Subpoena and that it be quashed to the extent it requests additional information
10 which is confidential and not likely to discoverable information. In the alternative, Clear Energy
11 requests that a protective issue be issued to protect it from unnecessary disclosure of confidential
12 information.
13

14 RESPECTFULLY SUBMITTED this 26th day of July, 2013.

15 **TB** TIFFANY & BOSCO
P.A.

16 By: /s/ J. Daryl Dorsey #024237

17 Christopher R. Kaup

18 J. Daryl Dorsey

19 Third Floor Camelback Esplanade II

20 2525 East Camelback Road

21 Phoenix, Arizona 85016-4237

22 *Attorneys for Clear Energy Systems, Inc.*

1 ORIGINAL and thirteen (13) copies filed
2 with the Arizona Corporation Commission on
3 this 26th day of July, 2013 as follows:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

6 COPY mailed or emailed on this day to:

7 Burton M. Bentley
8 THE BENTLEY LAW FIRM, P.C.
9 5333 N. 7th St., Suite C-121
10 Phoenix, AZ 85014
11 Email: bmb@burtonbentley.com

10 And

11 Alan S. Baskin
12 BADE BASKIN RICHARDS PLC
13 80 E. Rio Salado Parkway, Suite 511
14 Tempe, AZ 85281
15 Email: alan@bbrplc.com
16 *Attorneys for Respondents Chris Dean Dedmon,*
17 *Kimberly Dedmon, and SDC Montana Consulting, LLC*

15 Hearing Officer
16 Hearing Division
17 Arizona Corporation Commission
18 1200 W. Washington St.
19 Phoenix, AZ 85007

19 Ryan J. Millecam
20 Securities Division
21 Arizona Corporation Commission
22 1300 W. Washington, 3rd Floor
23 Phoenix, AZ 85007

22 /s/ Louis A. Lofredo

Exhibit “1”

From: J. Daryl Dorsey
To: "Alan Baskin"
Cc: [Burton M. Bentley](#); [Ryan Millecam](#); [Rosemarie Connell](#); [Cristina McDonald](#)
Subject: RE: Clear Energy subpoena
Date: Monday, July 15, 2013 3:58:00 PM
Attachments: [Clear Energy - Dedmon Stock List \(554747\).pdf](#)
[Clear Energy selected pages of offering memorandum \(554744\).pdf](#)

Alan,

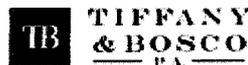
I have been authorized to provide selected pages from Clear Energy's recent offering memorandum. These pages provide the stock price. This information combined with the Stock List (which was previously provided) gives you information as to the purchaser and stock price in response to your request.

Please let me know if this acceptable. If more information is required, please let me know so I can request it before Wednesday.

Thanks.

J. Daryl Dorsey

Associate



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From: Alan Baskin [<mailto:alan@bbrplc.com>]
Sent: Monday, July 15, 2013 1:31 PM
To: J. Daryl Dorsey
Cc: [Burton M. Bentley](#); [Ryan Millecam](#); [Rosemarie Connell](#); [Cristina McDonald](#)
Subject: Clear Energy subpoena

Daryl

Without waiving any of our clients' rights please let me know if your client will produce

information reflecting all sales of Clear Energy stock from 2011-2013. We have no objection to redaction of the names of the parties involved.

If your client is willing to produce the information, please do so by Wednesday, July 17.

Thanks

Alan

Alan Baskin
Bade Baskin Richards PLC
80 East Rio Salado Parkway, Suite 511
Tempe, Arizona 85281
Telephone: 480-968-1225
Facsimile: 480-968-6255
E-mail: alan@bbrplc.com

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DEDMON STOCK LIST

<u>SHAREHOLDER</u>	<u>NUMBER OF SHARES</u>	<u>CONTACT INFO</u>
Aldrich Descendants Trust c/o Ottaway	25,000	(H) (602) 230-0789 randyottaway@yahoo.com (w) (602) 230-1040
Randy Ottaway	33,334	(Same as above)
Obedei Sinclair	7,500	(503) 228-6394 Ramio@hotmail.com
Bram Pieters	25,000	(503) 638-1694
Nellie Pieters	58,334	(503) 638-1695 nellie.pieters@intel.com
Edward Tartaglio	100,000	(1152624) 141-0189 ertdd2000@aol.com (619) 445-5138
George Willse	183,334	(503) 844-4918 g.willse@comcast.net (971-227-6998) george.willse@intel.com
Dave Johnson	59,375	(602) 751-1139 djohnson@thelendingco.com
Mark Nickel	59,375	(480) 837-4856 broker@thelendingco.com (480) 505-9790
Robert Nickel	125,000	(949) 472-5035 robert.nickel@deltronix.net (949) 837-8736 (Mark has his info.)
Dale Nickel	12,500	(480) 994-1044 Son of Mark; Mark has his info)

Kevin Nickel	50,000	(480) 836-9601 (480) 650-4130	
Robert Swartzel	100,000	(623) 341-4912	swartzel1@cox.net
Richard Swartzel	50,625	(734) 649-8156 (734) 395-2112	rich-swartzel@mototron.com
Michael Klein	22,500	(602) 418-5759	anythingonland@cox.net
Chris Hendrick	12,500	(602) 989-7446 (602) 298-0404	
Brian Seligmiller	31,250	(623) 217-5626	bseligmiller@thelendingco.com
Barry Serota	40,000	(623) 594-2403 (623) 594-2903	barry.serota@spcorp.com
Ralph Reynolds Sr.	18,750	(623) 398-8406	breyholds25@cox.net
Ralph Reynolds Jr.	25,000	(623) 521-6340 (623) 334-0108	rj@thelendingco.com
Rick Reynolds	25,000	((620) 684-6951	rickreynolds@primarylendingsourc
Amos Chalmers	25,000	(602) 448-8206	
Rueben Whitten	12,500	(623) 640-6677	
Fred Tapella	50,000	(831) 464-0254	
Judith Miller	75,000	(207) 942-5675	stanmiller263@adelphia.net
Rene Stinnett	150,000	(623) 341-8696	majorelectrene@aolo.com

Michael Guida Jr.	150,000	(602) 717-2086 (602) 283-0721	mguida@cfiemail.com
Ray Bohnert	100,000	(602) 999-8733	
Frederick Pope	12,500	(623) 476-7430	
Steve Walshire	6,250	(602) 999-3298	
Mark Miller	6,250	(480) 251-9455	
Randy Rondberg	50,000	(480) 206-8486	fmussy@nationsfirstfin.com
Dan McCauley	1,750,000	(480) 595-1378	
Larry Huisinga	78,000	(708) 302-8815	
Ronald Miller	6,000	(309) 347-9388	
Darrel Huisinga	46,210	(636) 212-0201	eagler001@sbcglobal.net
Charles Royse	14,000	(832) 746-7741	
Andrea Huisinga	2,000	Combining with Darrel Huisinga's Shares	
Richard Huisinga	2,000	Combining with Darrel Huisinga's Shares	
James Redding	6,000	(309) 347-9310)	
James Schuering	4,000	(314) 432-6600	
Shawn Barker	6,000	Combining with Darrel Huisinga's Shares	

Anthony Naimo	20,000	(602) 206-6400	
Steve Engen	12,500	(623) 487-1149 Ext.103	sengen@thelendingco
Robert Engen	18,750	(602) 803-0098	
John Winn	8,750	(623) 376-8298	
Dave Coombs	11,250	(817) 919-5825	coombs@1scom.net
Brenda Long	6,250		

TOTAL 3,693,587 Shares

factors, including certain alleged misrepresentations. See “Capitalization - Recent Securities Offerings – December 2012 Offering” below.

Securities Restrictions

Purchasers of our securities must be aware of the long-term nature of their investment and be able to bear the economic risk of their investment for an indefinite period of time. There is no public trading market for our securities and there can be no assurance that any such market will develop in the foreseeable future. None of our securities have been registered under the Securities Act or the securities laws of any state or province in Canada. The right of any purchaser to sell, transfer, pledge or otherwise dispose of such securities is limited by the Securities Act, state securities laws, any other applicable laws, including the applicable securities legislation in Canada, and the regulations promulgated thereunder. Our transfer records will reflect “stop transfer” restrictions with respect to our securities and any certificates representing such securities will bear the following or similar legends:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or under the securities laws of any state. These shares may be sold or otherwise transferred only if they are registered under the Securities Act and applicable state securities laws or if the corporation receives an opinion of counsel satisfactory to the corporation to the effect that an exemption from such registration is available.

Securities issued to Canadian subscribers shall also bear the following additional legend:

Unless permitted under securities legislation, the holder of this security must not trade the security before the date which is four months and one day after the later of (i) [insert the distribution date] and (ii) the date the corporation became a reporting issuer in any province or territory.

See also “Restrictions Under U.S. Securities Laws” on page v of this Memorandum.

Lack of Trading Market

There is no established public trading market for our securities and we cannot predict with certainty when an active trading market in our securities will develop. If a market should develop for our securities in the future, there can be no assurance that the market price for our securities will equal or exceed the amount paid by holders of our securities to purchase our securities.

Registrar and Transfer Agent for Our Common Stock

At present, we act as our own transfer agent for the transfer of our outstanding Common Stock. All of our Common Stock is subject to restrictions on transfer.

CAPITALIZATION

The following table sets forth the capitalization of the Company as of March 31, 2013, June 30, 2012, and June 30, 2011.

	<u>March 31, 2013</u> <u>(unaudited)</u>	<u>June 30, 2012</u>	<u>June 30, 2011</u>
Shareholders Deficit:	\$	\$	\$
Common Stock (1).....	64,016	58,952	52,782
Additional paid-in capital.....	29,277,999	25,861,831	21,647,862
Treasury stock, at cost (2,158,815 shares of Common Stock).....	(40,000)	(40,000)	(40,000)
Deficit accumulated during the development stage.....	<u>(33,705,028)</u>	<u>(28,038,250)</u>	<u>(22,609,097)</u>
Total shareholders' deficit.....	(4,403,013)	(2,157,467)	(948,453)

- (1) \$0.001 par value; 125,000,000 shares authorized; 58,952,445 and 52,781,634 shares issued as of June 30, 2012 and June 30, 2011; 61,856,746, 56,793,630 and 50,622,819 shares outstanding as of March 31, 2013, June 30, 2012 and June 30, 2011.

Pro forma Common Stock issued and outstanding on a fully-diluted basis as of March 31, 2013, after giving effect to the exercise of all outstanding Common Stock purchase warrants and stock options exercisable within 60 days of March 31, 2013, and the conversion of all convertible debentures and bridge loan notes, is 80,064,887 (exclusive of 7,335,553 shares reserved under the 2010 Plan and 6,033,333 shares underlying options which have been granted but are not scheduled to vest within 60 days of March 31, 2013). This calculation includes all Common Stock equivalent securities sold in connection with our 2011 Equity Units (including all direct settle transactions and an additional 840,235 shares issuable upon exercise of Common Stock equivalent securities issued with the 2011 Equity Units). At our April 23, 2013 annual stockholders meeting, our stockholders increased our authorized Common Stock from 95,000,000 shares to 125,000,000 shares.

Recent Securities Offerings

July and August 2011 Common Stock Offering

During July and August of 2011, we raised additional capital through a private offering of 30,000 shares of our Common Stock at a price of \$1.00 per share.

September 2010 Bridge Loan

In September 2010, we obtained a bridge loan for approximately \$400,000 (the "September 2010 Bridge Loan") from affiliates of Wellington West Capital Markets Inc., Toronto, Canada ("Wellington West") in anticipation of our contemplated private placement of the Convertible Debenture Units and the 2010 Equity Units (defined below). We issued 1,066,400 warrants in connection with the September 2010 Bridge Loan, which are exercisable for three years from the date of issuance and have an exercise price of \$0.80 per share of Common Stock. The September 2010 Bridge Loan did not bear any cash interest and was due on the earlier of (i) March 31, 2011 and (ii) the completion of additional capital raises totaling \$5.0 million. In consideration for structuring the September 2010 Bridge Loan, we paid Wellington West a fee equal to 3.0% of the principal amount of the September 2010 Bridge Loan. We repaid the September 2010 Bridge Loan in December 2010.

Private Placement of Convertible Debenture Units and 2010 Equity Units

In November and December, 2010, we completed a private placement offering of 2,720 Secured Convertible Debenture Units (the "Debenture Units") at a price of \$1,000 per Debenture Unit, and 5,840,950 Equity Units (the "2010 Equity Units") for \$0.60 per 2010 Equity Unit, resulting in aggregate gross proceeds to the Company of \$6,224,570.

Each Debenture Unit consists of (i) a Secured Convertible Debenture (a "Debenture") with an aggregate principal amount of \$1,000, and (ii) three-year warrants for the purchase of 250 shares of Common Stock with an exercise price of \$1.20 per share (the "Debenture Unit Warrant") and, following the Company's failure to complete a "liquidity event" (discussed further below), the number of shares of Common Stock that can be purchased upon exercise is 275 shares of Common Stock. The Debentures initially bore interest at a rate of 12.0% per annum, and were due November 15, 2012. In October 2012, the holders of Debentures agreed to extend the maturity of the Debentures from December 15, 2012 to December 15, 2013 and the Company agreed to increase the interest rate on the Debentures from 12% to 14% per annum. The Debentures are convertible into shares of our Common Stock, at the option of the holder, initially at a rate of \$0.80 per share and, following the Company's failure to complete a "liquidity event" (discussed further below), the rate decreased to \$0.72 per share.

Each 2010 Equity Unit consists of (i) one share of Common Stock, (ii) a "Liquidity Event Warrant" attached to the share of Common Stock certificate entitling the holder, in the event we fail to complete a "liquidity event" (see following paragraph) by November 15, 2011, to purchase (at a price of \$0.01 in the aggregate) additional shares of Common Stock equal to 10% of the number of shares represented by the attached Common Stock certificate, and (iii) one-half of one three-year warrant to purchase a share of Common Stock at an exercise price of \$1.00 per share (the "Equity Unit Warrant").

In connection with this offering, we agreed to endeavor, without obligation, to complete an initial public offering or other "liquidity event" generally resulting in our Common Stock becoming freely tradable or comparable liquidity on or prior to November 15, 2011. We did not complete such a liquidity event. As a result, (a) the conversion price of the Debentures was reduced by 10%, (b) the Liquidity Event Warrant became exercisable, and (c) the number of shares of Common Stock that can be purchased upon exercise of each Debenture Unit Warrant and Equity Unit Warrant, at the exercise price per share then applicable under each such warrant, was increased by 10%.

The Debentures are issued pursuant to and governed the terms of a Trust Indenture between the Company and BNY Trust Company of Canada, as Trustee (the "Indenture"), which contains provisions relating to events of default, enforcement, change of control, cash redemption, conversion, subordination, positive and negative covenants, and other provisions customarily contained in indentures of this nature. Reference should be had to the Trust Indenture for the actual provisions.

To the extent specified in the Indenture, the Debentures are subordinated in right of payment to the Company's Permitted Indebtedness (as defined in the Indenture) which term generally includes all indebtedness of the Company for borrowed money. The Debentures are secured by all of the principal assets of the Company. The security is subject to Permitted Liens (as defined in the Indenture) which term includes liens that secure Permitted Indebtedness. The Indenture allows the Company to redeem the Debentures in certain circumstances, including, if certain liquidity event conditions are not satisfied, at any time following the first anniversary of the date of issuance of the Debentures at 105% of the principal amount of the Debentures to be redeemed plus accrued and unpaid interest to the redemption date. The holders will, however, have the right to convert their Debentures into Common Stock of the Company prior to any such redemption.

In the event of a change of control of the Company, the holders of the Debentures have the right to require the Company to repurchase their Debentures at par plus accrued and unpaid interest or may elect to convert the Debentures into Common Stock of the Company, but must choose between the two alternatives. The Company is subject to certain negative covenants under the Indenture, including covenants that, generally described and subject to certain exceptions, restrict the ability of the Company to redeem or purchase its capital stock or interests in or rights to purchase capital stock, engage in any transaction not in the ordinary course or at arm's length or make any distribution in cash on its capital stock. In another such covenant, the Company agrees not to incur or have outstanding any Indebtedness, as defined in the Indenture, in excess of \$1 million, other than (i) Indebtedness under the Debentures and related agreements and (ii) Permitted Indebtedness in an aggregate amount not greater than \$2 million.

Events of default under the Indenture include failure to make payment on the Debentures when due after a cure period, failure to observe or perform the covenants under the Indenture or in the Security Agreement, in certain cases after notice and a cure period, certain cross defaults and certain bankruptcy or insolvency-related defaults. Upon the happening of an event of default under the Indenture, the Debentures can be accelerated and the Indenture trustee and the holders of the Debentures will have other applicable remedies, subject to the subordination and other provisions of the Indenture and the Security Agreement. Such remedies would include the exercise of rights under the Security Agreement or given to a secured party under applicable law, including the right to take possession and sell or otherwise dispose of the collateral that secures the Debentures.

Our agents, in consideration for the offering of the Debenture Units and the 2010 Equity Units, were paid a commission equal to 7% of the gross proceeds from such offering, payable in Canadian dollars, and warrants exercisable to acquire, on or before 24 months after the closing of the offering, that number of shares Common Stock equal to (A) seven percent (7%) of the number of shares of Common Stock sold pursuant to the offering at a strike price of \$0.60 per share, and (B) 7% of the number of shares of Common Stock underlying the Debentures sold pursuant to the offering at a strike price of \$0.80 per share.

All of the debentures and warrants issued in connection with our September 2010 Bridge Loan and private placement of the Debenture Units and the 2010 Equity Units provide that the number of shares the holder is entitled to acquire upon either conversion or exercise thereof, as applicable, and the applicable conversion or exercise price, are subject to adjustment in certain specified events (which events, in general, would otherwise have the effect of diluting the interests of the holders).

December 2011 Financing

In December 2011, the Company completed a private placement offering of 5,601,567 Equity Units (the "2011 Equity Units") at a price of \$0.75 per 2011 Equity Unit, resulting in aggregate gross proceeds to the Company of \$ 4,201,175.25.

Each 2011 Equity Unit consisted of (i) one share of Common Stock, (ii) one-half of one Common Stock purchase warrant (a "Warrant"), and (iii) one Liquidity Event Warrant. Each whole Warrant entitled the holder thereof to acquire one share of Common Stock for a period of 24 months from the Closing Date at a purchase price of \$1.15 per share. Each Liquidity Event Warrant entitled the holder to an additional 0.1 share of Common Stock per Unit for no additional consideration in the event that a "liquidity event" (see following paragraph) has not occurred prior to June 2, 2013.

As the Company failed to complete a liquidity event generally resulting in its Common Stock becoming freely tradable or comparable liquidity by June 2, 2013, (a) the Liquidity Event Warrant became exercisable and (b) the number of shares of Common Stock that can be purchased upon exercise

of each Warrant, at the exercise price per share then applicable under each such warrant, was increased by 10%.

In connection with the offering, the Company agreed to use its commercially reasonable efforts to cause all (i) directors or (ii) stockholders that hold greater than 5% (on a post-offering basis) of the issued and outstanding securities of the Company (each, a "Tag Along Insider") to enter into an agreement (a "Tag Along Agreement") among the Company, the Tag Along Insiders and the subscribers, whereby any selling Tag Along Insider (the "Selling Party") shall grant to the subscribers and any other Tag Along Insider tag along rights (the "Tag Along Rights") on sales of 20% or more of the shares of Common Stock held by such Selling Party, during any 12-month period, on terms and conditions not less favorable than the terms and conditions on which the shares of Common Stock of such Selling Party are to be purchased. The Tag Along Rights will expire upon the earlier of a liquidity event or 36 months following the execution of the Tag Along Agreement. The Company and the subscribers have agreed on the terms of the Tag Along Agreement and it became effective as of February 1, 2012.

In addition, the Company agreed that if prior to completion of a liquidity event, the Company issues any additional shares of Common Stock or rights to purchase shares of Common Stock through a private placement or otherwise with terms (including pricing terms) more favorable ("Favorable Terms") than the offering, subscribers under the offering shall have the right (the "Top Up Right") to retroactively have such Favorable Terms apply to the securities they purchased under the offering. These Top Up Rights are not triggered by the issuance of additional shares of Common Stock pursuant to the exercise of options, warrants, or convertible securities outstanding at the time of the offering.

Our agents for the offering of 2011 Equity Units were paid a commission equal to 7% of the gross proceeds from the offering and warrants exercisable to acquire, on or before 24 months after the closing of the offering, that number of shares of Common Stock equal to seven percent (7%) of the number of 2011 Equity Units sold pursuant to the offering at a strike price of \$0.75 per share.

All of the warrants issued in connection with the offering of 2011 Equity Units provide that the number of shares the holder is entitled to acquire upon either conversion or exercise thereof, as applicable, and the applicable conversion or exercise price, are subject to adjustment in certain specified events (which events, in general, would otherwise have the effect of diluting the interests of the holders).

2012 Common Stock Offerings

During May of 2012, we raised additional capital through a private offering of 333,334 shares of our Common Stock at a price of \$0.75 per share. From September 2012 to March 31, 2013, we issued an additional 433,332 shares of our Common Stock in a private placement at \$0.75 per share.

Government Grant and Advance

See "Business – Government Grant and Government Advance" above for a description of the \$2 million of government funding received by the Company in the fall of 2011.

2012 Convertible Debentures (Bridge Loans)

On November 5, 2012, the Company's Board of Directors authorized management to proceed with the offering and sale of up to \$1 million of convertible debentures to serve as bridge loans to support the Company's capital needs as it moves into the production phase of its operations. Absent these bridge loans, management had concluded that, depending on the timing of the receipt of payments due under the International Master Distributor Agreements described above, the Company may not be in a position to meet its cash obligations. See "Business--Marketing and Sales" above for additional information

Exhibit “2”

From: J. Daryl Dorsey
To: "Burton M. Bentley"
Cc: "Alan Baskin"
Subject: RE: Motion Tto Compel -- Rule 37(a)(2)(C) Compliance
Date: Tuesday, May 14, 2013 4:26:00 PM

Mr. Bentley,

I have been authorized to disclose the last sale price for Clear Energy stock. According to my client representative, the latest stock sales have been at \$.75. I provided other information previously to Mr. Baskin. I am not sure whether the information provided is sufficient at this time to curtail the filing of a motion to compel, but I am more than happy to have a call regarding this matter today (480-292-1883 (my cellphone) or tomorrow with you or Mr. Baskin.

J. Daryl Dorsey
Associate



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From: Burton M. Bentley [<mailto:bmb@burtonbentley.com>]
Sent: Monday, May 13, 2013 11:22 AM
To: J. Daryl Dorsey
Cc: 'Alan Baskin'
Subject: Motion Tto Compel -- Rule 37(a)(2)(C) Compliance

J.Daryl Dorsey:

Respecting the ACC Subpoena issued requiring Clear Energy to provide information about Omni shares sold by Christopher Dedmon as to which shares were issued or not issued, and all transactions involving these shares thereafter, you may wish to discuss with me any reasons you may have why we should not invoke the remedies of Rule 37, ARCP, by 5:00 pm on Tuesday, May 15, 2013.

Best Regards
Burton M. Bentley
(602) 861-3055

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Exhibit “3”

From: [Alan Baskin](#)
To: [J. Daryl Dorsey](#)
Cc: [Burton M. Bentley](#); [Ryan Millecam](#); [Rosemarie Connell](#); [Cristina McDonald](#)
Subject: RE: Clear Energy Subpoena
Date: Thursday, April 11, 2013 5:30:50 PM
Attachments: [9-23-05 Dedmon Consent.pdf](#)

Daryl

Attached is an ACC order from 2005 involving the sale of Clear Energy stock. My client, Chris Dedmon, was a party to that action. He was ordered to pay restitution related to his sales of Clear Energy stock. The stock was not originally issued to the purchasers, but my understanding is that Clear Energy subsequently issued stock to many, but not all of the purchasers.

Mr. Dedmon wishes to conclude the Clear Energy matter by paying restitution to those who purchased stock from him. To the extent the stock issued has value, Mr. Dedmon will be entitled to a setoff of his restitution obligations. Accordingly, the subpoena seeks to identify those who purchased and ultimately received Clear Energy stock sold by Mr. Dedmon, the amount of shares purchased, whether there have been any subsequent sales or transfers and the attendant details, and the value of the shares.

The subpoena is very straightforward and the Securities Division did not oppose its issuance, because it too would like to have this information so we can attempt to resolve the restitution issue. I copied Ryan Millecam, the Securities Division's prosecutor, so he can confirm that I have accurately described the relevant context and provide any additional relevant information.

Please have Clear Energy produce the subpoenaed information ASAP. I look forward to hearing from you tomorrow.

Thanks

Alan

From: J. Daryl Dorsey [mailto:jdd@tblaw.com]
Sent: Thursday, April 11, 2013 4:50 PM
To: 'Alan Baskin'
Subject: RE: Clear Energy Subpoena

Alan,

I do appreciate your courtesy and apologize for just getting back to you. I have been involved in some matters that seemed to take quite a bit of my time. As an initial response to the subpoena, can you provide me with a copy of the ACC's complaint so I have an understanding as to how information concerning Clear Energy is relevant and has a bearing on that case. Secondly, the Subpoena requests information from 2003 to the present. Mr. Dedmon has been separated from Clear Energy since 2008 as I recall. So, again, I would like to understand the relevance of this time frame.

Despite these concerns, if you can provide me with the complaint tomorrow morning, we can work through these issues. My client is expecting my call on Friday so feel free to call me to discuss to hasten this process, if necessary.

J. Daryl Dorsey
Attorney



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From: Alan Baskin [<mailto:alan@bbrplc.com>]
Sent: Tuesday, April 09, 2013 10:09 AM
To: J. Daryl Dorsey
Cc: Burton M. Bentley; Rosemarie Connell; Cristina McDonald
Subject: Clear Energy Subpoena

Daryl

This is a follow-up to our conversation and my voicemails regarding the Arizona Corporation Commission subpoena issued to Clear Energy. The return date for the subpoena was March 4, 2013. We have patiently waited for Clear Energy to comply with the subpoena, and I extended you a professional courtesy with the understanding that we would have a response last week.

We cannot tolerate any further delay. Please have Clear Energy produce the subpoenaed documents by Friday, April 12, 2013. If we do not receive the documents by that date we will take all appropriate action to enforce the subpoena and recover our fees.

Thanks

Alan

Alan Baskin
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