

DOCKETED

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Project Title:	Compliance - Application for Certification of DWR Bottlerock Geothermal Project
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Filer:	Pam Fredieu
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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 79-AFC-4C
)	
)	
BOTTLE ROCK GEOTHERMAL)	STAFF PREHEARING
POWER PLANT)	CONFERENCE STATEMENT
)	
)	

**STAFF PREHEARING CONFERENCE STATEMENT,
DIRECT TESTIMONY, AND EXHIBIT LIST**

I. BACKGROUND

The Energy Commission certified the 55 MW Department of Water Resources (DWR) Bottle Rock Geothermal Power Plant (BRPP) in 1980 for the purpose of providing electricity for the State Water Project. Operations at BRPP commenced in 1985. By 1990, DWR elected to close the facility due to a lack of geothermal steam. The Energy Commission approved an amendment to the conditions of certification that modified the monitoring and reporting requirements in consideration of the plant's shutdown status in April 1993 [Energy Commission Order #93-0426-02]. The Energy Commission approved an extension for the suspension of operations in October 1997, allowing DWR an additional three years to prepare a facility closure plan [Energy Commission Order #97-1203-1(a)].

On April 6, 2001, DWR submitted a Petition to transfer ownership of BRPP from DWR to the Bottle Rock Power Corporation.

In its Order approving the Petition for transfer of ownership dated May 30, 2001, the Energy Commission found that "adequate measures appear to have been taken to enable DWR to ensure the proper closure and decommissioning of the Bottle Rock Power Plant subsequent to the transfer of ownership in the event Bottle Rock Power Corporation is unable to do so." The Energy Commission's approval was specifically conditioned on compliance with the purchase agreement:

- (a) The parties shall strictly adhere to the terms of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease".

The Purchase Agreement included sections 2.4 (Security for Decommissioning and Reclamation Liabilities) and 2.5 (Environmental Impairment Insurance).

Section 2.4 of the Purchase Agreement required Bottle Rock Power Company to deliver a five (5) million dollar surety bond¹ to DWR to ensure that sufficient funds would be available for the eventual decommissioning of the facility, and required that the bond remain in place until five (5) years after completion of all decommissioning. Section 2.4(a) further provided that:

“...if [DWR] receives a complete release of liability under the Francisco Steam Field Lease, then Buyer may adjust the amount of the bond to the amount of an independent engineering estimate approved by [DWR] of the cost of decommissioning the Plant and Steam Field required to meet the requirements of the California Energy Commission, the County of Lake and any other regulatory agency with jurisdiction.”

Section 2.5 of the Purchase Agreement requires that Bottle Rock Power Corporation maintain an Environmental Impairment Insurance policy, with limits on liability in an amount not less ten million dollars, designating DWR as a co-insured. That section also mandated that the policy must remain in effect at all times during the operation and decommissioning of the power plant, and extends to the associated steam fields.

On December 13, 2006, the Energy Commission approved the change of ownership from Bottle Rock Power Corporation, LLC to Bottle Rock Power LLC (BRP), filing an Order to that effect. The Order also changed or deleted some, but not all, Conditions of Certification, and allowed the restart of operations. All other conditions remained in full force and effect, including the condition that BRP strictly adhere to the Purchase Agreement, which required the maintenance of a \$5 million closure bond and environmental insurance.

On August 29, 2012, BRP and DWR finalized an agreement amending the Purchase Agreement, which included a settlement agreement with landowners V.V. & J. Coleman, LLC. That amendment deleted sections 2.4 and 2.5² from the Purchase Agreement, and provided DWR with a complete release of liability.

On October 11, 2012, David Coleman filed a Complaint pursuant to California Code of Regulations, title 20, section 1237. The complaint alleged that amendment to the Purchase Agreement violated the Commission's May 30, 2001 Order #01-0530-07 (May 2001 Order) approving the transfer of ownership of BRPP from DWR to Bottle Rock Power Corporation. Staff investigated the complaint and concluded that BRP violated the condition imposed on the project owner in the Energy Commission's May 31, 2001 Order.

¹ Without any adjustment for, or consideration of, salvage or site conditions.

² BRP has indicated that their \$10 million Environmental Impairment Insurance Policy is still in effect for two or three more years.

On January 22, 2013, the Committee appointed to the proceeding conducted a hearing on the complaint. On February 6, 2013, the Committee sustained the complaint against BRP, concluding that the project "violated its license for failing to maintain the \$5 million bond". The Committee ordered BRP to file a new \$5 million surety bond by March 8, 2013, or stay the bond Order by submitting a petition to amend the bond requirement and an engineering study and decommissioning cost estimate.³

On March 8, 2013, BRP filed a Petition to Amend pursuant to Public Resources Code Section 1769 seeking relief from the requirement to strictly adhere to the surety bond and environmental impairment provisions of the facility's original 2001 Purchase Agreement.

Staff completed its analysis of the Petition to Amend, and filed the Staff Assessment on September 6, 2013. Based on that analysis, staff's initial recommendation regard BRP's bond requirement was to reduce the amount of that bond to \$4,130,000 based on a review of several previously prepared closure estimates. A workshop was held on October 4, 2013, during which BRP asserted that the only relevant closure estimate was the most recent one which was submitted on July 29, 2013. Staff agreed to revisit its initial recommendation, and based on its updated analysis filed a response to comments on October 28 which recommended that the bond requirement be reduced to \$2,698,750.

II. STAFF'S POSITION

1) Desired outcome, including any legal authority supporting that outcome.

Having reviewed and considered the history of this project, particularly the recent complaint proceeding and the instant Petition to Amend, staff recommends the following:

- That the bond obligation be reduced from the current requirement of \$5 million to \$2,698,750; and
- That the Energy Commission adopt the revised Conditions of Certification as proposed.

The Energy Commission's approval of the change in ownership on May 30, 2001 was specifically conditioned on strict adherence to the terms of the Purchase Agreement. The terms of that Purchase Agreement required that BRP maintain a \$5 million Bond for Decommissioning. That Order, and the condition imposed on the project owner, remains in full force and effect, and BRP has already been found to have violated that Condition by eliminating the \$5 million bond without Energy Commission approval.

BRP has provided sufficient evidence to justify a reduction in their bond requirement, but not to the extent requested by BRP. Staff reviewed the July 29, 2013 cost estimate

³ On July 2, 2013 the Committee ordered that the requirement for the \$5 million bond continue to be stayed pending resolution of the March 8, 2013 Petition to Amend.

(estimate) and agrees that it would be appropriate to use that estimate, for the most part, but notes several deficiencies. First, BRP has not adequately factored in certain foreseeable expenses relating to the value of salvaged materials, the contamination and remediation of those materials, and the transportation of those materials from what is a remote location, expenses which would significantly reduce or eliminate the proposed salvage credit. For this reason, BRP's requested salvage value of \$1,265,000 is not supported by the estimate. Secondly, BRP proposes to leave the turbine building and surrounding graded areas within the plant fence line in place, but its estimate does not account for the lack of fill rubble from not demolishing the turbine building, fill that is a necessary and foreseeable expense for decommissioning. Lastly, since the closure cost budget represents a "feasibility level" estimate of the closure work and cannot benefit by comparison with other independently prepared work estimates, a 25 percent contingency of \$539,750 ($\$2,159,000 \times 0.25$) is both reasonable and necessary under the guidelines presented in the California Department of Transportation's "Project Development Procedures Manual dated December 15, 2007," Chapter 20 "Project Development Cost Estimates" and Appendix AA "Cost Estimates."⁴ For these reasons, staff recommends that the bond be reduced from the current requirement of \$5 million to \$2,698,750 to cover the cost of plant closure. Staff notes that the proposed Conditions of Certification would require the owner to recalculate the bond value every three years to reflect the most current project and site conditions.

2) Proposed Conditions of Certification

Staff recommends the adoption of the Conditions of Certification as proposed in the Staff Assessment, with the following modification to COM-16:

COM-16: Closure Financial Assurances

A. Financial Assurance Mechanism: Surety Bond

The project owner must establish an irrevocable surety bond for closure in an amount of the most recently approved provisional or final closure cost estimate. The obligation amount of the bond will be initially set at \$3,865,000 \$2,698,750 and will be changed to reflect the most current closure cost estimate prepared pursuant to COM-15 within 60 days of the approval of such estimate by the CPM. The Project owner will provide financial assurances (a "Security") to the CPM to guarantee that an adequate level of funding is available to implement the closure of the facility. The surety bond will be provided to the CPM who may draw on the Security if the CPM determines the project owner has failed to implement an approved closure plan. The CPM may use money from the Security solely for implementation of the requirements of the Conditions of Certification related to closure. The CPM's use of the Security to implement the closure may not fully satisfy the project

⁴ (http://www.dot.ca.gov/hq/oppd/pdpm/chap_pdf/chapt20.pdf,
http://www.dot.ca.gov/hq/oppd/pdpm/apdx_pdf/apdx_aa.pdf),

owner's obligations under these conditions. The Security shall be returned to the project owner in whole or in part upon the successful completion of the closure.

Provisions from the California Bond and Undertaking Law, as well as other statutory and case law may be applicable; consult an attorney if needed. Upon request, the CPM can provide examples of acceptable cost estimation techniques and financial assurance mechanisms.

B. Insurance Mechanism: Coverage for Sudden Accidental Occurrences

The project owner must demonstrate to the Energy Commission financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from facility operations. The project owner will have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$10 million per occurrence, exclusive of legal defense costs.

BRP must demonstrate the required liability coverage by having liability insurance. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. BRP must provide a copy of the insurance policy with original signatures. The liability endorsement(s) must also contain original signatures and must be submitted to the CPM. If the insurance policy is scheduled to be cancelled, BRP must submit a notice of the upcoming cancellation to the CPM at least 90 days before cancellation of the policy. If the policy is otherwise cancelled, BRP must immediately notify the CPM.

3) Witnesses.

Witnesses on behalf of staff may include Ed Brady, Matthew Layton, and Camille Remy-Obad. Matters to which these witnesses shall offer testimony is included in the Staff Assessment filed on September 6, 2013, as well as Staff's Response to Comments on October 28, 2013. Staff proposes to submit the testimony primarily through documents previously prepared and docketed through these proceedings, and anticipates that minimal time would be required for clarification, if required, provided through live testimony. Those witnesses will be present for cross-examination if requested.

4) The names of each witness offered by another party for which cross examination is desired and the estimated time required for that cross-examination.

If Brian Harms is called as a witness on behalf of BRP, staff would request 30 minutes for cross-examination. Having not seen the proposed witness list by BRP or other parties at the time of this filing, staff reserves the right to request cross examination of any witness called by any party in this proceeding.

- 5) The amount of time the party desires for oral argument.

Staff will require no more than 15 minutes for oral presentation.

- 6) Whether the party believes the Committee's decision will benefit from the filing of post-hearing briefs and suggested topics for briefing.

The issues presented for consideration by the Committee in this matter are factual, rather than legal, in nature. Each party has set forth those facts upon which they rely for their respective positions. Therefore, staff does not believe that post-hearing briefings are necessary.

- 7) Whether the "Compilation of the Conditions of Certification for Bottle Rock Geothermal Power Plant" filed by staff (TN 200475) accurately reflects the originally approved Conditions of Certification as modified by subsequent amendments. Describe any inaccuracies, with references to supporting documents.

The "Compilation of the Conditions of Certification for Bottle Rock Geothermal Power Plant" filed by staff (TN 200475) accurately reflects the originally approved Conditions of Certification as modified by subsequent amendments.

III. Exhibits

The following table identifies all exhibits staff intends to present at the hearing for consideration by the committee. All exhibits have been previously Docketed in the Bottle Rock licensing and compliance proceedings (79-AFC-4 and 12-CAI-04), and are identified by their docket transaction number and description.

Exhibit	Docket Transaction Number	Brief Description
100	200419	Staff Analysis or Proposed Modifications to the Compliance Conditions of Certification
101	201062	Staff Response to Comments
102	200156	CalTrans Project Development Procedure Manual, Chapter 20, Project Development Cost Estimates
103	200157	Caltrans Project Development Procedure Manual, Appendix AA, Cost Estimates

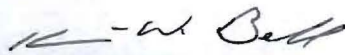
IV. CONCLUSION

The condition imposed on BRP to maintain a closure bond remains in full force and effect, and BRP has already been found to have violated that Condition by eliminating the \$5 million bond without Commission approval. BRP has, however, provided sufficient evidence to justify a reduction in their bond requirement to \$2,698,750.

Staff recognizes BRP's argument that there is a financial burden upon them to maintain a closure bond. However, there is nothing in the record for staff or the Committee to analyze and consider regarding BRP's claims of financial hardship. Without such evidence, there is nothing to determine the ability (or inability) of BRP to pay for the costs of closure now or in the future, which demonstrates the continued relevance of the Commission's May 30, 2001 Order that requires that a closure bond be maintained for BRPP.

Date: November 12, 2013

Respectfully Submitted,



KEVIN W. BELL
Senior Staff Counsel