

DOCKETED

Docket Number:	12-CAI-04
Project Title:	David Coleman Complaint Concerning Bottle Rock Power
TN #:	201636
Document Title:	Bottle Rock Power LLC's Request to Withdraw Appeal
Description:	Bottle Rock Power LLC's Request to Withdraw Appeal and Exhibit A
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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

BOTTLE ROCK POWER, LLC

**BOTTLE ROCK GEOTHERMAL
POWER PLANT**

Docket No. 79-AFC-4C

Docket No. 12-CAI-04

**BOTTLE ROCK POWER, LLC'S REQUEST TO WITHDRAW APPEAL OF THE
COMMITTEE'S DECISION SUSTAINING COLEMAN COMPLAINT AND
CLOSE THE COMPLAINT PROCEEDING**

February 3, 2014

Kristen Castaños, Esq.
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Phone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for BOTTLE ROCK POWER, LLC

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

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CLOSE THE COMPLAINT PROCEEDING**

Bottle Rock Power, LLC ("Bottle Rock") herein submits the following request to withdraw its appeal of the Committee decision in this proceeding, which sustained the underlying complaint against Bottle Rock. (See Decision Sustaining Complaint Against Bottle Rock Power, LLC, dated February 6, 2013 (TN# 69413) (the "Complaint Decision"). Herein, Bottle Rock provides the Commission with a procedural overview and status of the resolution of the underlying complaint. In addition, Bottle Rock requests the Commission to officially close this proceeding with no further action.

I. BACKGROUND

As is detailed throughout the Petition to Amend ("PTA") proceeding (79-AFC-4C) and this Complaint proceeding (12-CAI-04), the Complaint Decision stems from a May 30, 2001 Commission Order (the "2001 Order"), which transferred ownership of the Bottle Rock Geothermal Power Plant ("BRPP" or "Project") from the Department of Water Resources

(“DWR”) to Bottle Rock Power Corporation.¹ (See Commission Order No. 01-0530-07.)

Therein, the Commission required Bottle Rock to “strictly adhere to the terms of the Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease.” (2001 Order at p. 4.)

In August 2012, Bottle Rock, DWR, and the Project property owner, V.V. & J. Coleman, LLC (“Landowner”), entered into a Settlement Agreement and Release of Claims (“Settlement Agreement”), which amended the original Purchase Agreement referred to throughout this proceeding. The Settlement Agreement removed the bond requirement of the Purchase Agreement in exchange for a release of liability to the State of California. On October 11, 2012, a complaint was submitted to the Commission by David Coleman alleging that Bottle Rock violated the terms of the 2001 Order.

On February 6, 2012, after hearing the evidence relating to the Complaint, the assigned Committee to the Complaint proceeding issued its Decision and stated, among other things, that:

6. Bottle Rock Power, LLC shall, on or before March 8, 2013, file a new surety bond in the principal amount of \$5 million, naming the California Energy Commission as obligee for closure and site restoration of the Bottle Rock Power Plant upon decommissioning. Filing of this surety bond shall be stayed if Bottle Rock Power, LLC files a petition to amend the bond requirement on or before March 8, 2013....

(Complaint Decision at p. 8, paragraph 6, in pertinent part.) In response to the Complaint Decision, Bottle Rock filed a PTA pursuant to the Committee’s directive, and filed an appeal to

¹ In 2006, ownership of BRPP was subsequently transferred from Bottle Rock Power Corporation to Bottle Rock Power, LLC, the current owner. (See Order Approving Changes of Ownership, Restart of Operation after Suspension and 11 Facility Design Changes, Order No. 06-1213-12 (TN #38646).

the Complaint Decision to preserve its legal rights pending the outcome of the PTA proceeding. (See CEC TN #69879 and #69612, respectively.)

On December 16, 2013, the Commission issued its Decision on Bottle Rock's PTA (the "PTA Decision"), which required, among other things, a reduced surety bond in the amount of \$1,676,875. Bottle Rock did not appeal the Commission's PTA Decision and timely complied with the PTA Decision by providing proof of a surety bond on January 14, 2014. (See email correspondence and attachments, dated Tuesday, January 14, 2014 from Samantha Huggins to CEC Staff Camille Remy-Obad, copying Kevin Bell and Jeffery Ogata, attached hereto as Exhibit A.)

II. THE UNDERLYING ISSUES FOR THE COMPLAINT HAVE BEEN RESOLVED, THE COMPLAINT PROCEEDING SHOULD BE CLOSED AND NO PENALTY IS WARRANTED

In light of the PTA Decision on Bottle Rock's PTA and Bottle Rock's subsequent compliance therewith (as of January 14, 2014), Bottle Rock no longer intends to maintain its appeal of the Complaint Decision. Bottle Rock, therefore, requests that the Commission officially close the Complaint Proceeding. Bottle Rock further requests that, upon closing the Complaint proceeding, the Commission resolve paragraph 8 of the Complaint Decision by concluding that no penalty should be issued. Specifically, paragraph 8 reads as follows:

8. The amount of penalty, if any, for the foregoing violation of the 2001 Order is hereby referred to the full Commission, as provided for in Public Resources Code, section 25534.1. We recommend that consideration of the penalty be held in abeyance until the amendment process outline above has been completed.²

² Staff's Prehearing Conference Statement in the Complaint Proceeding recommended imposition of a penalty in the amount of \$10,000. (See Staff's Prehearing Conference Statement in the Complaint Proceeding (TN #69111) at pp. 8-9.)

(Complaint Decision at p. 8, paragraph 8.)

Bottle Rock, Staff and the parties involved herein have worked diligently to resolve the Complaint in accordance with the process identified in the Complaint Decision, and to reach a resolution that will ensure protection of the public and environment upon decommissioning of the Project. Bottle Rock appreciates the efforts of the Committee and the Commission to achieve a result that fairly considered all parties' positions. In light of this satisfactory resolution and Bottle Rock's timely compliance with the conditions approved in the PTA, Bottle Rock believes it is appropriate to close the Complaint Proceeding without imposing a penalty. (See, Pub. Resources Code, § 25534(b) (authorizing imposition of penalty for "material false statement" or "significant failure to comply").) The violation found in the Complaint Decision was not significant in that it did not endanger public health or safety or result in any environmental impact. Bottle Rock had no mal-intent when it entered the Settlement Agreement to remove the bond requirement and did not knowingly or purposefully disregard the 2001 Order.³ As noted, the violation was timely cured through the PTA proceeding and subsequent compliance therewith. For these reasons, Bottle Rock requests that the Commission close the Complaint proceeding without imposing a penalty.

III. CONCLUSION

As discussed above, Bottle Rock believes this matter has been resolved in a fair and responsible manner. Furthermore, the Project is in compliance with all laws, ordinances, regulations, standards, and Commission orders. In that regard, Bottle Rock respectfully requests

³ Moreover, Bottle Rock did not make any "material false statement" and the Commission was provided notice of the proposed amendment to the Purchase Agreement in a letter dated August 3, 2012 (see, Staff Response to Complaint (TN# 68503) at p. 4).

that the Commission consider the Complaint (12-CAI-02) resolved and close the proceeding without penalty to the Project owner.

Dated: February 3, 2014

By:

A handwritten signature in blue ink, appearing to read 'KTC', is positioned above a horizontal line.

Kristen T. Castaños
Attorneys for Bottle Rock Power, LLC

Exhibit A

EMAIL TO CAMILLE REMY-OBAD RE DECOMMISSIONING BOND
(DATED JANUARY 14, 2014)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Samantha Huggins [<mailto:SamHuggins@BottleRockPower.com>]
Sent: Tuesday, January 14, 2014 12:17 PM
To: Remy-Obad, Camille@Energy; Brian Harms
Cc: Castanos, Kristen T.; Michael Moore; Bell, Kevin W@Energy; Ogata, Jeffery@Energy
Subject: RE: decommissioning Bond update

Camille,

Please find attached a copy of the bond. The original is going out FedEx overnight with expected delivery by 10:30 am tomorrow.

Samantha Huggins
Bottle Rock Power, LLC
P.O. Box 326. Cobb CA, 95426
t: 707.928.4578
f: 707.928.4581
c: 707.570.9098
www.bottlerockpower.com

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From: Remy-Obad, Camille@Energy [<mailto:camille.remy-obad@energy.ca.gov>]
Sent: Tuesday, January 14, 2014 8:11 AM
To: Brian Harms
Cc: Castanos, Kristen T.; Samantha Huggins; Michael Moore; Bell, Kevin W@Energy; Ogata, Jeffery@Energy
Subject: RE: decommissioning Bond update

Thank you Brian, I've forwarded your update to our Legal Dept. as well.

Camille Remy Obad, J.D. LEED AP

Compliance Project Manager

Direct: (916) 654-3940 | Fax: (916) 654-3882

Camille.Remy-Obad@energy.ca.gov

CALIFORNIA ENERGY COMMISSION

Siting, Transmission, & Environmental Protection (STEP) Division

1516 Ninth Street, Sacramento, CA 95814

www.energy.ca.gov

From: Brian Harms [<mailto:BHarms@BottleRockPower.com>]

Sent: Tuesday, January 14, 2014 8:06 AM

To: Remy-Obad, Camille@Energy

Cc: Castanos, Kristen T.; Samantha Huggins; Michael Moore

Subject: decommissioning Bond update

Camille,

We have signed the collateral agreement and the bond documents are on the way. I must sign, and have notarized, the bond hard copies so that I can send to you. I may not be able to get you the hard copies by the deadline but the bond will be issued with my signature if I get the docs today which should meet the intent of the requirement. I will scan and sent to you as soon as available.

Brian Harms

Bottle Rock Power, LLC

7385 High Valley Road

PO Box 326

Cobb, CA 95426

office (707) 928-4578

cell (707) 245-0903

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FINANCIAL GUARANTEE BOND

Date bond executed: **January 13, 2014**

Effective date: **January 13, 2014**

Principal: **Bottle Rock Power, LLC
PO Box 326
Cobb, CA 95426**

Type of organization: **Limited Liability Company**

State of incorporation: **Delaware**

Surety(ies): **Lexon Insurance Company
240 Cedar Knolls Rd. – Suite 308
Cedar Knolls, NJ 07927**

Facility name, address: **Bottle Rock Power, 7385 High Valley Road, Cobb,
CA 95426**

Total penal sum of bond: **\$1,341,500**

Surety's bond number: **1096322**

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto, are firmly bound to the California State Energy Resources Conservation and Development Commission (hereinafter called the Energy Commission), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally, with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under state regulations, to have an Energy Commission certification in order to own and operate the facility identified above, and

WHEREAS said Principal is required to provide financial assurance closure, including interim maintenance and postclosure care of the facility, as a condition of certification, and

WHEREAS said Principal shall establish a standby trust fund, with the Energy Commission as its Beneficiary, as is required when a surety bond is used to provide such financial assurance.

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the Energy Commission, or other courts of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance and obtain written approval from the Energy Commission of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the Executive Director of the Energy Commission, or designee, from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Energy Commission that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility closure into the standby trust fund, as directed by the Energy Commission.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner and to the Energy Commission, provided, however, that cancellation shall not occur during the one-hundred-twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the Energy Commission, as evidenced by the return receipts.


The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Energy Commission.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond when the Principal updates its closure Cost Estimate, as required by the Energy Commission, so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one (1) year, and no decrease in the penal sum takes place without the written permission of the Energy Commission.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies).

Principal: **Bottle Rock Power, LLC**


By: **Brian Harms** **President**
[Corporate seal]

Surety: **Lexon Insurance Company**
240 Cedar Knolls Rd. – Suite 308
Cedar Knolls, NJ 07927


By: **Kieran J. Moran** **Attorney in Fact**
[Corporate seal]

State of incorporation: **TEXAS**

Liability limit: **\$4,397,000**

Bond premium: **\$33,537.50**

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF LAKE

On this 14th day of January 2014 before me, *Thanh Huynh Fults, Notary Public*, personally appeared **Brian Harms**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the document.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Thanh Huynh Fults

Thanh Huynh Fults

Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Financial Guarantee Bond

(Title or description of the attached document)

CAPACITY CLAIMED BY THE SIGNER

- Individual
- Corporate Officer
President
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

LEXON INSURANCE COMPANY

STATE OF NEW JERSEY

COUNTY OF MORRIS

On this 13th day of **January** 2014, before me, a Notary Public within and for said County and State, personally appeared **Kieran J. Moran** to me personally known, who being duly sworn, upon oath, did say that he is the **Attorney-in-fact** of and for the **Lexon Insurance Company**, a corporation created, organized and existing under and by the virtue of the laws of the **State of Texas** that the Corporate seal affixed to the foregoing instrument is the seal of said Corporation; that the seal was affixed; and the said **Kieran J. Moran** did acknowledge that he executed the said instrument as the free act and deed of said Corporation.


Kelly Aileen Brannan
Notary Public

KELLY AILEEN BRANNAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 18, 2017

POWER OF ATTORNEY

LX-078907

Lexon Insurance Company

KNOW ALL MEN BY THERE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint:

Kieran J. Moran, Charles P. Moran, Kelly A. Brannan*****

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 3,000,000.00 Three Million***** dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.



LEXON INSURANCE COMPANY

BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY L. TAYLOR Notary Public- State of Tennessee Davidson County My Commission Expires 01-09-16

BY [Signature] Amy L Taylor Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 13th Day of January 20 14.



BY [Signature] Andrew Smith Assistant Secretary

“WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”

LEXON INSURANCE COMPANY
FINANCIAL STATEMENT SUMMARY
As of December 31, 2012

ASSETS	LIABILITIES
Bonds	Reserve for Losses and Loss Expense
\$42,206,968	\$34,757,067
Money Market &/or Stocks	Reinsurance payable on paid losses
14,540,167	418,429
Real Estate	Reserve for Unearned Premiums
9,652,019	27,579,327
Cash and Short-Term Investments	Reserve for Other Expenses
9,239,523	1,012,349
Other Invested Assets	Reserve for Taxes, Licenses, and Fees
0	908,140
Agents' Balances &/or Uncollected Premiums	Reserve for Current Federal Income Taxes
8,408,768	0
Investment Income Due & Accrued	Ceded Reinsurance Premiums Payable
386,235	1,701,635
Cash Collateral Held	Funds Held Under Reinsurance Treaty
25,614,374	100,000
Funds Held or Deposited with Reinsurance Companies	Reserve for Unauthorized Reinsurance
0	0
Receivable from Parent, Subsidiaries and Affiliates	Payable to Parent, Subsidiaries and Affiliates
2,719,558	77,923
Reinsurance Recoverable on Loss Payments	Collateral Held
1,174,708	25,614,374
Aggregate write-ins for other than Invested Assets	Other Liabilities
14,451,696	0
Other Assets	Total Liabilities
7,748,923	\$92,169,244
Total Assets	POLICYHOLDERS' SURPLUS
\$136,142,939	Capital Stock & Paid In Surplus
	\$25,823,403
	Surplus
	18,150,292
	Total Policyholder Surplus
	\$43,973,695
	Total Liabilities & Policyholder Surplus
	\$136,142,939

CERTIFICATE

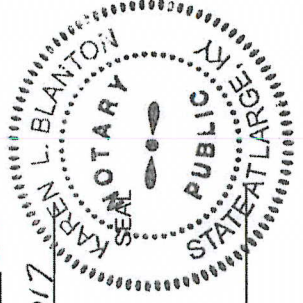
I certify that the above financial statements to the best of my knowledge are a true and accurate reflection of the financial condition of the Company as of December 31, 2012. Additionally, I certify that the above financial statements are in agreement with the Statutory Financial Statements filed with the Texas Department of Insurance as of the same date.

Gregory Lauer
Gregory Lauer
CFO, Secretary, VP & Assistant Treasurer

SUBSCRIBED

and sworn to me this 6 day of MARCH 2013.

My commission expires: JANUARY 13, 2017



Karen L. Blanton
Notary Public
KAREN L. BLANTON
Printed Name



Shipment Receipt

Address Information**Ship to:**

Camille Remy Obad
California Energy Commission
1516 Ninth Street

SACRAMENTO, CA
95814
US
916-654-3940

Ship from:

Samantha Huggins
Bottle Rock Power, LLC
7385 High Valley Road
P.O. Box 326
Cobb, CA
95426
US
7079284578

Shipment Information:

Tracking no.: 797631578432
Ship date: 01/14/2014
Estimated shipping charges: 16.52

Package Information

Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 1 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information:

Bill transportation to: MyAccount-929
Your reference: Bond
P.O. no.:
Invoice no.:
Department no.:

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