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STATE OF CALIFORNIA

**ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)
)
BOTTLE ROCK POWER, LLC) Docket No. 79-AFC-04C
)
BOTTLE ROCK GEOTHERMAL)
POWER PLANT)

**DAVID COLEMAN AND FRIENDS OF
COBB MOUNTAIN'S STATUS REPORT**

April 9, 2013

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Pursuant to the Committees' June 28, 2013 Scheduling Order, Intervenors David Coleman and Friends of Cobb Mountain submit this Status Report.

Since the issuance of the Committee's Scheduling Order, two events have been taken place: Staff's June 28, 2013 Data Requests and Bottle Rock's subsequent objections and incomplete responses to the Data Requests. Despite the reasonable and relevant Data Requests, Bottle Rock failed to provide an adequate response to several of the Data Request. Bottle Rock's objections and inadequate responses appears to be continuation of Bottle Rock's efforts to withhold relevant information from the Committee and the public regarding Bottle Rock's operations and ability to meet its financial obligations with respect to decommissioning and site restoration. While Bottle Rock has petitioned the Commission to be relieved of the bond requirement and other financial requirements contained in Order Number 01-0530-07, Bottle Rock has demonstrated an unwillingness to provide critical information for the Committee and the parties to this matter to evaluate the Petition to Amend. As a result, Mr. Coleman and Friends of Cobb Mountain believe that the case development is not progressing satisfactorily.

The Committee's June 28, 2013 Order indicates that the parties should focus on the appropriate scope and level of post-closure remediation; the costs of remediation and the appropriate method of providing funding for the remediation.

A. BOTTLE ROCK'S DECOMMISSIONING REPORT ATTEMPTS TO LIMIT THE SCOPE AND LEVEL OF POST-CLOSURE REMEDIATION

As evidenced by Bottle Rock's objections and responses to Data Request #2, and the amended Decommission Report, Bottle Rock is attempting to limit the scope and level of post-closure remediation. Bottle Rock is also attempting to limit its responsibility of the site regarding security and post-closure maintenance.

Bottle Rock attempts to limit its closure plan to sometime in the distant future, whereas in evaluating the closure, Commission staff have assumed that closure could

occur anytime between now and the next three years. Staff correctly seeks to determine the required to initiate and complete closure in the near future as opposed to in 15 to 20 years.

Staff has also indicate that closure is considered demolition and removal of everything except for the turbine generator plant building, water treatment and storage building, and perimeter access roads (which would require ongoing cost of maintenance and security, until an alternative use is implemented). Bottle Rock has objected to such closure requirements and has clearly indicated through its Decommission Plan that scope of closure is less than that anticipated by staff.

As for security and post-closure maintenance, Bottle Rock argues that will be the responsibility of the landowner and thus Bottle Rock need not provide that information to the Committee. If Bottle Rock has such an agreement with the landowner, then Bottle Rock should provide the agreement to the Committee and parties. Moreover, even if such agreement exists, there still needs to be a plan for funding post-closure maintenance and security. If Bottle Rock does not take financial responsibility, then the landowner should be required to submit information that it has the financial capability to fund post-closure maintenance and security. If the landowner cannot provide such assurances, then the Committee should demand such assurances from Bottle Rock.

B. BOTTLE ROCK'S OBJECTIONS TO THE DATA REQUESTS ARE WITHOUT MERIT

1. DATA REQUEST # 1

Data Request #1 seeks information regarding alternative financial assurance mechanisms, other than that proposed in the Petition to Amend. Bottle Rock argues that the Data Request calls for speculation because the total closure costs have not been determined and on that basis Bottle Rock cannot provide any alternative financial mechanisms. Bottle Rock's objection is without merit and hinders the Committee's ability to rule on the Petition to Amend.

Bottle Rock has submitted its own cost estimate for decommissioning and closure. While Mr. Coleman and FOCM assert that Bottle Rock's Decommissioning Report underestimates the decommissioning/closure costs, at a minimum, Bottle Rock could rely upon its own Decommissioning Report to develop and identify an alternative financial assurance mechanism that would allow the Commission to access within 30 days of an event that required closure or remediation. The Committee should direct Bottle Rock to comply with the Data Request as a key element in the Committee's deliberations regarding whether to approve the Petition to Amend is to provide the public and the Commission assurances that Bottle Rock has the financial ability to meet the closure costs in the event of a worst case scenario. That is what the current bond requirement and environmental insurance policy protects against. As Bottle Rock seeks to have the bond requirement removed, then it needs to be able to provide assurance to the public and the commission that financing is available for closure other than at the end of the project's projected life expectancy. Bottle Rock is a company of limited means and financial resources. Thus, Bottle Rock must be able to demonstrate to the Committee and the public that it has the financial means to initiate decommissioning and closure under a worst case scenario. If Bottle Rock cannot provide such assurances, then the message that Bottle Rock sends is that it would become the Commission and taxpayers' responsibility.

If Bottle Rock refuses to provide the requested information, then the Commission should simply deny the Petition to Amend and remove the stay and direct that Bottle Rock reinstate the bond. Bottle Rock's objections and tactics seemed to be directed at delay and continued avoidance to taking financial responsibility if closure and decommissioning are required earlier than currently anticipated.

2. DATA REQUEST # 2

As discussed above, Bottle Rock is attempting to limit the scope of its decommissioning obligations. While Bottle Rock did modify its Decommissioning

Report, it refuses to accept the staff's assumptions regarding the scope of the decommissioning and the time in which decommissioning could take place. As a result, Bottle Rocks' objections to Data Request # 2 are without merit and the responses are generally inadequate.

3. DATA REQUEST # 5

Bottle Rock also fails to adequately respond to Data Request #5 which requests a description of the damages contained in item 8 of the Amended and Restated Geothermal Lease and Agreement. Bottle Rock objects on the grounds that the Agreement is confidential. To the extent such confidentiality exists, all parties to the Agreement are parties to this action. As such, these parties can and should waive any confidentiality provisions in the Agreement. Without the description of damages in item 8, the Committee cannot adequately evaluate the financial obligations that Bottle Rock may incur. Such financial obligations resulting from damages described in item 8 may impact Bottle Rock's financial stability and may impact Bottle Rock's ability to pay for closure and decommissioning at the end of the project's anticipated life expectancy or sooner as expressed in Data Request No. 1. Bottle Rock's wholly inadequate response states that the damage provisions in item 8 do not pertain to site restoration and will not impact the cost of decommissioning. First, Bottle Rock provides no evidence to support this statement. Second, Bottle Rock misses the point raised in the Staffs' Data Request. The potential damages Bottle Rock may have to pay under item 8 remains unknown. Bottle Rock, as a small geothermal company has limited and uncertain financial resources as evidenced by Bottle Rock's arguments for removal of the bond and environmental insurance requirements as Bottle Rock is attempting to free up money in order to expand its operation and generating capacity. If Bottle Rock has such limited financial resources, then the damages provision in Item 8 may result in inadequate financial resources for decommissioning and site restoration. Without knowing what additional financial commitments Bottle Rock has made under its lease agreement, the Committee cannot

adequately evaluate whether Bottle Rock will have adequate financial resources at the conclusion of the project or have alternative financial mechanism in a worst case scenario.

If Bottle Rock continues to refuse to respond to Data Request # 5 and continues to refuse to provide information regarding damages in item 8, then the Committee should assume a worst case scenario regarding the damages that would have to be paid under the Agreement. Moreover, in assuming that worst case scenario, the Committee should further assume that the financial obligations under item 8, would impair Bottle Rock's ability to fund site closure and decommissioning, especially an earlier than anticipated closure.

Bottle Rock's objections and responses to the Data Request constitute a further illustration of Bottle Rock recalcitrant attitude towards the public and the Commission. Through the Petition to Amend, Bottle Rock requests that the Commission relieve Bottle Rock of the bond requirement, yet Bottle Rock refuses to provide the Committee and the public information allowing for a full and complete evaluation of Bottle Rock's financial ability to fund site restoration and decommissioning.

C. CONCLUSION

Bottle Rock's recalcitrant attitude has carried over from the complaint proceeding to this Petition to Amend. To date, Bottle Rock appears to take the attitude that it is entitled to the requested Petition on its terms and without providing this Committee the information and evidence it will need to in order to rule on the Petition. As a result, case development has not progressed satisfactorily. The Committee should direct Bottle Rock to provide adequate responses to the Data Requests and if necessary revisit the schedule based upon when Bottle Rock provides adequate responses.

Dated: August 9, 2013

LAW OFFICE OF DONALD B. MOONEY

By Donald B. Mooney

Donald B. Mooney
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DECLARATION OF SERVICE

I, Donald B. Mooney, declare that on August 9, 2013, I served and filed copies of the *David Coleman and Friends of Cobb Mountain's Status Report* dated August 9, 2013. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

For service to all other parties and filing with the Docket Unit at the Energy Commission:

 X I successfully uploaded the document to the Energy Commission's e-filing system and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.]

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: August 9, 2013

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