

DOCKETED

Docket Number:	79-AFC-04C
Project Title:	Compliance - Application for Certification of DWR Bottlerock Geothermal Project
TN #:	201160
Document Title:	V.V. & J. Coleman LLC Prehearing Statement
Description:	N/A
Filer:	Mark Peterson
Organization:	Diepenbrock Elkin LLP
Submitter Role:	Intervenor Representative
Submission Date:	11/12/2013 9:56:40 AM
Docketed Date:	11/12/2013

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of the:

**COMPLIANCE - APPLICATION FOR
CERTIFICATION OF DWR
BOTTLEROCK GEOTHERMAL
PROJECT**

Docket No. 79-AFC-4C

**V.V. & J. COLEMAN, LLC'S DIRECT TESTIMONY,
EXHIBIT LIST, AND PREHEARING STATEMENT
RELATED TO THE NOVEMBER 18, 2013 COMMITTEE HEARING AND
NOVEMBER 19, 2013 COMMITTEE CONFERENCE**

November 12, 2013

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On or about March 8, 2013, Bottle Rock Power, LLC ("Bottle Rock") filed a Petition to Amend (the "Petition") (Petition to Amend TN# 69879) seeking modification of Order Number 01-0530-07. On or about November 5, 2013, the Committee issued a Notice of Committee Hearing, Committee Conference and Hearing Orders ("Order"). Now, pursuant to the Order, V. V. & J. Coleman, LLC (the "Landowner") submits this direct testimony, Exhibit List and Prehearing Statement to state the Landowner's position regarding the Petition.

I. PREHEARING STATEMENT

Order Number 01-0530-07 purports to require Bottle Rock to maintain a closing bond for the Bottle Rock power plant.¹ Bottle Rock's Petition, in part, seeks clarification of its obligations under Order Number 01-0530-07, most specifically any relating to a closing bond for

¹ Bottle Rock has maintained throughout the proceeding that the obligation to maintain a closing bond and environmental insurance was an original condition of the purchase agreement between Bottle Rock and the California Department of Water Resources, and was not specifically required under Order 01-0530-07. See Petition to Amend TN #69879, pp. 2-3.

the plant. Bottle Rock, through the Petition and subsequent filings, seeks removal of any obligation to maintain a closing bond. However, in response to comments and concerns of the Commission and other interested parties, Bottle Rock proposes to obtain a bond in the amount of \$709,000 to cover the estimated costs of decommissioning the plant. That bond amount is based on the July 29, 2013 Bottle Rock Power Plant Decommissioning Estimate prepared by Plant Reclamation (the "July 29 Estimate") (TN #200053 pp. 8-17).

After reviewing Bottle Rock's Petition, proposal for the Decommissioning Bond and the July 29 Estimate, Commission Staff sought to develop their own decommissioning cost estimate. To develop their estimate, Commission Staff (1) considered historical decommissioning estimates of the plant; (2) modified the historical estimates to attempt to normalize the estimates in 2013 dollars and by adding costs that Commission Staff opined were insufficiently considered; (3) determined an average of the modified estimates; and (4) added 25% as "contingency" for "uncertainty in estimating closure of an operating geothermal power plant at some indeterminate future date." (Staff Analysis of Proposed Modifications to the Compliance Conditions of Certification (formerly the general provisions) TN# 200419 p. 43 ("Original Staff Analysis")). Through this formula, Commission Staff developed a decommissioning cost estimate of \$4,129,970.

After publicizing their own decommissioning cost estimate, Commission Staff conducted a Public Workshop on October 4, 2013, to receive comments. After that workshop, Commission Staff reduced their estimate of decommissioning costs to \$2,698,750. This revised estimate (1) used the July 29 Estimate only, but removed an important credit for salvage value of the equipment and material removed from the site, and (2) again imposed a 25% "contingency" to "reflect[] the uncertainty of the closure work scope, given the lack of clarity of the extent of

hazardous waste disposal, transportation, and salvage value, all at some future indeterminate date.” (Staff Response to Comments Received Regarding Staff’s Analysis of the Bottle Rock Geothermal Power Plant – BRPP Petition to Amend TN# 201062 p. 4 (“Staff Response”)).

A. Landowner’s Position.

The Committee has requested statements from the parties regarding the Petition. As an initial matter, the Landowner appreciates Bottle Rock’s offer to provide some financial assurances for decommissioning as a measure of good faith even though, as Landowner understands, most operators are not required to do so. Turning to the substance of the issue, the Landowner’s position is unique: it has a significant interest in both the environmental concerns associated with operating and decommissioning the plant, as well as the economic viability of Bottle Rock’s power plant. Accordingly, the Landowner respectfully requests that any financial assurances that may be required of Bottle Rock for decommissioning, and the method of funding such assurances, should protect the property, while allowing Bottle Rock to succeed in providing clean, renewable energy to the State of California.

Amount of Financial Assurances

The Landowner is pleased that Commission Staff recognizes that the July 29 Estimate provides the best, most competent estimate of the projected costs of decommissioning at this time. However, the Landowner is concerned that Commission Staff continue to question whether the expert who prepared the July 29 Estimate adequately factored in certain costs relating to the salvage credit. Specifically, Commission Staff cites three conditions that it believes that were not factored into the July 29 Estimate that Commission Staff opines “would significantly reduce or eliminate the proposed salvage credit”: (1) contamination, (2)

transportation, and (3) equipment value. (Staff Response TN# 201062 p. 3). However, these factors are in fact specifically addressed by Plant Reclamation in its estimate (July 29 Estimate TN# 200053 marked p.5). Moreover, Commission Staff has never contended that Plant Reclamation lacked the requisite expertise to prepare the estimate. Thus, Commission Staff, without adequate basis or reason, rejects the expertise of the qualified, independent expert that was hired to develop the estimate. It is undisputed that Plant Reclamation had the expertise necessary to prepare the estimate, and the Landowner is therefore satisfied that Plant Reclamation adequately considered all relevant factors in arriving at its estimate, including the factors of concern to Commission Staff.

If the July 29 Estimate is given appropriate deference, as the Landowner does and the Commission should, the only amount in dispute is the 25% contingency that Commission Staff recommends to “reflect[] the uncertainty of the closure work scope , given the lack of clarity of the extent of hazardous waste disposal, transportation, and salvage value, all at some future indeterminate date.” (Staff Response TN# 201062 p. 4). The Landowner believes that the uncertainty regarding the hazardous waste disposal, transportation and salvage value are adequately addressed in the July 29 Estimate. However, the mere fact that the decommissioning will occur at “some future indeterminate date,” or that decommissioning costs could be different in the future, does not justify rejection of an independent expert’s estimate of the amount appropriate to cover decommissioning costs, let alone the imposition of an arbitrary 25% contingency factor upon that estimate.² If the Commission shares Commission Staff’s belief that

² Commission Staff cites guidelines developed by the California Department of Transportation for estimating costs on large scale transportation construction projects at the stage before design work even begins. (CalTrans Project Development Procedure Manual, Chapter 20, Project Development Cost Estimates, TN# 201156) However, Commission Staff does not describe why it selected that 25% contingency rather than the some other contingency suggested, such as the PR Cost Estimate 15% contingency, which is used after the public hearing process, and as part of the project approval process. Commission Staff has not adequately explained why a 25% contingency is the

this is a valid concern, the issue would be better dealt with by requiring updated estimates at stated intervals so that the estimate can be adjusted up or down as may be appropriate, rather than forcing Bottle Rock to bond an amount in excess of what is recommended by the independent expert that has considered this issue.

Funding Method

As mentioned above, the Landowner's position is unique: it seeks an appropriate balance between properly providing for decommissioning of the plant and the economic viability of the power plant. The Landowner conducted year-long negotiations with Bottle Rock in order to properly balance those interests before agreeing to the reduced scope of decommissioning in the Amended Lease (see Amended and Restated Geothermal Lease and Agreement, TN 201127 pp.13-30), including releasing Bottle Rock from the bonding requirement entirely. During the negotiation process, the Landowner retained an industry expert to review Bottle Rock's operations, including on-site visits. The Landowner's expert was satisfied that Bottle Rock was properly maintaining its facilities and was pursuing a reasonable path to increase production and output, thereby improving the economic circumstances of the project. After receiving such information from its industry expert, the Landowner is comfortable allowing Bottle Rock to fund the financial assurances over some period of time. The Landowner does not believe that allowing funding over time will increase the risk posed by having a power plant on its property.

The Landowner believes that requiring immediate funding of the financial assurances is unsupported by the facts and circumstances, and therefore unnecessary. In the Petition, Bottle Rock suggested that the financial assurances could be funded over a period of time according to

most appropriate level to require. The Landowner recognizes that due to the unknown time of the decommissioning, there is some uncertainty. However, the uncertainty only relates to time, not scope, as is the case in the CalTrans procedures.

a plan approved by the Commission. (Petition, TN# 69879 pp 8-9). Allowing funding over time would allow Bottle Rock to use its capital to complete its continuing expansion project, while simultaneously providing assurances that the future closing costs will be appropriately provided for. In its analysis, Commission Staff states that it is “unable to assess when the project can be expected to close,” (Original Staff Analysis, TN# 200419 p. 10), and apparently concludes that by allowing the financial assurances to be funded over time, there will be increased risk of closure in the near future. Commission Staff therefore recommends that the financial assurances be put in place immediately. Not only is the Commission Staff’s conclusion logically unsupported, but the Landowner is concerned that requiring Bottle Rock to immediately fund the financial assurances will create a short-term burden that could jeopardize Bottle Rock’s ability to continue operating and performing.

The premise supporting the immediate-funding requirement is fundamentally flawed. Allowing the financial assurances to be funded over time carries risk that the power plant might cease operating without full financial assurances yet in place; however, it does not increase the risk that the plant will actually close. To the contrary, allowing the financial assurances to be funded over time should actually lessen the likelihood of closure by freeing operating capital for Bottle Rock. Additionally, Bottle Rock has invested significant amounts of time and money into purchasing, reopening and maintaining the plant. This includes significant modernization of the control systems. It has also invested significant expense in preparations to expand the steam field in order to increase production at the plant. These are hardly the actions of a company that intends to close the plant in the near future. These investments can only provide a return if the plant can operate for an extended period of time. To require Bottle Rock to make an additional and substantial investment immediately to fulfill questionable financial assurances immediately

is unnecessary and does not take into account the substantial capital investment that Bottle Rock has committed to reactivating and expanding the project.

It appears that much, if not all, of the desire for the financial assurances stems from complaints made by the plant's neighbors. Many of the comments from David Coleman and other neighbors have focused on Bottle Rock's conduct and operations. Specifically, neighbors complained of physical ailments, noise, smells, etc. These comments appear designed to portray Bottle Rock as an irresponsible operator, thus undeserving of trust when it comes to its future obligations regarding plant closure. As the Commission is aware, the Landowner, itself, had concerns about Bottle Rock's operations immediately after Bottle Rock began operating in 2007. However, at least since 2009, Bottle Rock has worked extensively to maintain the property, improve neighbor and community relations, and generally act as a good tenant. Bottle Rock has increased the security on the property and maintains the roads in excellent condition. The Landowner routinely visits to inspect the plant and surrounding property, including visits with an independent industry expert. Bottle Rock has welcomed these visits and has shown itself to be a responsible operator from the perspective of the Landowner. Bottle Rock's improved conduct and operations over the last four years, when considered with the significant financial investment Bottle Rock has already made and that it will continue to make in its expansion project, satisfies the Landowner that Bottle Rock will continue to operate the plant for an extended period in a favorable manner. For these reasons, the Landowner is comfortable with allowing Bottle Rock to fund the financial assurances over time.

B. Landowner's Direct Testimony & Time Estimate for Examination.

The Landowner does not anticipate submitting any direct testimony and does not anticipate offering any witnesses, but the Landowner reserves the right to submit direct testimony and offer witnesses based on the direct testimony and prehearing statements submitted concurrently with the Landowner's prehearing statement.

C. Required Time for Cross-Examination.

The Landowner does not anticipate that it will cross-examine any witnesses, but the Landowner reserves the right to identify witnesses and the amount of time needed for cross-examination in its Rebuttal Testimony and Revised Prehearing Statement to be filed on November 15, 2013.

D. Amount of Time Needed for Oral Argument.

The Landowner anticipates that it will need 10 minutes for oral argument.

E. Post-Hearing Briefs.

The Landowner does not believe at this time that the Committee's decision will benefit from post-hearing briefs. The Landowner reserves the right to revisit this issue upon receipt and review of the other parties' statements.

F. Conditions of Certification.

The Landowner defers to Commission Staff and Bottle Rock regarding the accuracy of the Unofficial Compilation of the Conditions of Certification for Bottle Rock Geothermal Power Plant.

II. LANDOWNER'S EXHIBIT LIST

The following table identifies all exhibits the Landowner intends to provide to the Committee.

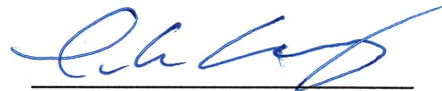
Exhibit #	Docket Transaction Number	Brief Description
400	69879	Petition to Amend filed March 8, 2013
401	200053	Bottle Rock Power Plant Decommissioning Estimate prepared by Plant Reclamation on July 29, 2013
402	200419	Staff Analysis of Proposed Modifications to the Compliance Conditions of Certification (formerly the general provisions)
403	201062	Staff Response to Comments Received Regarding Staff's Analysis of the Bottle Rock Geothermal Power Plant – BRPP Petition to Amend
404	201127	Amended and Restated Geothermal Lease and Agreement

III. CONCLUSION

The Landowner asks that, if any financial assurances are required of Bottle Rock, that the amount of financial assurances be limited to \$709,000 as was determined appropriate by Plant Reclamation in the July 29 Estimate. The Landowner also requests that Bottle Rock be allowed to fund this obligation over a specified time, with the requirement that the amount of financial assurances be updated periodically to take into account possible changes in decommissioning costs.

Date: November 12, 2013

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