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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of the)	
)	Docket No. 79-AFC-4C
BOTTLE ROCK GEOTHERMAL)	
POWER PLANT PETITION TO)	
<u>AMEND (79-AFC-4C)</u>)	

**DAVID COLEMAN AND FRIENDS OF COBB MOUNTAIN'S PRE-HEARING
STATEMENT RELATED TO THE NOVEMBER 18, 2013 COMMITTEE HEARING**

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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of the)
)
COMPLAINT AGAINST THE) Docket No. 12-CAI-04
BOTTLE ROCK GEOTHERMAL)
POWER PLANT (79-AFC-4C))

DAVID COLEMAN AND FRIENDS OF COBB MOUNTAIN’S PRE-HEARING
STATEMENT RELATED TO THE NOVEMBER 18, 2013 COMMITTEE HEARING

I. INTRODUCTION

Intervenors David Coleman and Friends of Cobb Mountain submit the following Pre-hearing Statement for the November 18, 2013 Committee Hearing regarding Bottle Rock Power’s Petition to Amend.

Intervenors are in general agreement with the Staff’s revised recommendations contained in Staff’s October 28, 2013 *Response to Comments Received Regarding Staff’s Analysis of the Bottle Rock Geothermal Power Plant (BRPP) Petition to Amend (79-AFC-4C)*. (TN 201062.) Additionally, Intervenors remain concerned that Bottle Rock failed to provide adequate responses to Staffs’ Data Requests and that Bottle Rock has refused and failed to address these inadequacies. (See TN 71454, 71652, 200053.)

II. DISCUSSION

A. BACKGROUND INFORMATION

Intervenors adopt by reference the Project Description and Background contained in the September 6, 2013 Staff Analysis of Proposed Modifications to the Compliance Conditions of Certification (formerly the General Provisions). (TN 200416.)

B. COMMENTS ON STAFFS' PROPOSED COMPLIANCE CONDITIONS

Intervenors agree with Staff's modification to COM-16, which requires that the adjustments to the surety bond associated with the triennial Provisional Closure Plan be mandatory and not discretionary. (See TN 201062 at p. 6.)

C. A BOND AND ENVIRONMENTAL INSURANCE POLICY ARE NECESSARY IN ORDER TO PROVIDE FINANCIAL ASSURANCE

Bottle Rock has argued that it should not be required to have a closure bond. Bottle Rock bases its argument on primarily two factors: 1) other owner/operators are not required to have similar closure bond; and 2) Bottle Rock is more financially stable than in 2001 when the Commission issued the original order. Both arguments are unsupported by the facts and cannot be the basis for removing the bond and environmental insurance requirements.

With respect to the argument that other owner/operators are not required to have similar bond closures. Other owner/operators such as Calpine and Pacific Gas & Electric are large corporations doing business in California with significant assets and other projects covered by the California Energy Commission. Thus, if the situation arose to close one of their geothermal projects, those companies would have sufficient assets to pay for all closure and remediation. Bottle Rock, however, does not have sufficient assets to pay for an unplanned closure or even a planned closure. This project is Bottle Rock's only facility in California and Bottle Rock appears to have no other additional assets. In fact, the Department of Water Resources raised this very issue in a letter dated May 21, 2009:

Your second suggestion seems to assume that the Energy Commission will give up the security bond for its standard language regarding the closure of geothermal facilities. Again I am not convinced this will occur because it would require the Energy Commission to give up the security of the bond for a promise by a limited liability corporation which will probably have almost no assets when decommissioning occurs.

(TN 51637; see also TN 53427 (Department of Water Resources expressing concern that Bottle Rock will not have sufficient assets to cover the substantial costs required for decommissioning.)) Neither the Settlement Agreement and Release of Claims nor the significantly redacted Amended and Restated Geothermal Lease Agreement address the issue of whether Bottle Rock, in the absence of a bond, will have sufficient assets at the time of decommissioning. (TN 201127.)

Bottle Rock was formed specifically for the operation of this facility and has provided no evidence that it possesses any other additional assets. Bottle Rock's parent companies, U.S. Renewables Group, RiverStone Holding, and the Carlyle Group have not stepped up to provide legal assurance that they would be responsible for any and all costs associated with plant closure and remediation. Thus, at the present time, Bottle Rock, with no known assets other than the Bottle Rock facility, is the party responsible for funding the plant closure. If the facility requires immediate closure, Bottle Rock has not demonstrated that it possesses sufficient assets to meet its obligations. As such, a bond requirement must exist in order to provide financial assurances to the Commission and the public that sufficient assets exist for plant closure and remediation.

Bottle Rock also argues that it is more financially stable than in 2001 when the Commission issued the original order and bond requirement. To date, Bottle Rock has refused to provide evidence to support this assertion. Through the process involving the Complaint filed by David Coleman and in this Petition to Amend proceeding, Bottle Rock has continually refused to provide the Commission and the public information regarding its financial status. While Bottle Rock's president, Brian Harms, makes bold statements regarding Bottle Rock's financial health and status, Bottle Rock refuses to provide any evidence, let alone sufficient evidence, to support these statements. In fact, Bottle Rock argues that it needs the bond requirement removed in order to access capital and credit so that Bottle Rock can move forward with its significant expansion plans. Thus, Bottle Rock, by its own admission, does not have sufficient assets to cover its

expansion, let alone its closure of the facility. As such, the Commission must impose the bond requirement and environmental insurance.

It should also be noted that Bottle Rock most certainly obtained investors to restart the geothermal facility when it had a bond requirement of \$5,000,000. The Staff recommendation is for a nearly 50 percent reduction in the bond requirement.

D. BOTTLE ROCK HAS FAILED TO PROVIDE ADEQUATE RESPONSES TO STAFF'S DATA REQUESTS

Bottle Rock still has taken no action to address its inadequate responses to the Staffs' Data Requests. Despite Staffs' reasonable and relevant Data Requests, Bottle Rock failed to provide adequate responses to several of the Data Requests. Bottle Rock's objections and inadequate responses constitute a continuation of Bottle Rock's practice 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 refuses to provide critical information for the Committee and the parties to this matter to evaluate the Petition to Amend.

E. 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 the Data Requests, and the amended Decommission Report, Bottle Rock seeks to limit the scope and level of post-closure remediation. Bottle Rock also attempts to limit its responsibility of the site regarding security and post-closure maintenance. (See Intervenors' August 2013 Status Report.)

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. Closure includes 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 the 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 Committee should direct the landowner 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.

F. Intervenor's Position Regarding the Petition to Amend

1. The Desired Outcome

Intervenors seek an outcome whereby the Committee retains a bond requirement to ensure adequate assets are available at the time of closure and decommissioning. As stated above, Intervenors support Staff's recommendation of a bond requirement in the amount of \$2,698,750.

2. Conditions of Certification

Intervenors support Staff's proposed Conditions of Certification as modified in Staff's October 28, 2013 *Response to Comments Received Regarding Staff's Analysis of the Bottle Rock Geothermal Power Plant (BRPP) Petition to Amend (79-AFC-4C)*.

3. Witnesses

As Intervenors support the Staff's recommendation of a bond in the amount of \$2,698,750, Intervenors do not intend to submit any direct testimony. Intervenors, however, reserve the right to submit testimony in rebuttal to any testimony submitted by Bottle Rock Power.

4. Cross-Examination

At the time of this Pre-Hearing Statement, Intervenors are not aware of the witness to be produced by Bottle Rock. Intervenors anticipate they will seek to cross-exam any witnesses put forth by Bottle Rock Power.

5. Amount of Time for Oral Argument

Intervenors request up to 10 minutes for oral argument.

6. Post-Hearing Briefs

Intervenors believe that the Committee's decision may benefit from the filing of post-hearing briefs depending upon the arguments and evidence submitted by Bottle Rock Power. The suggested topics include whether Bottle Rock Power met its burden of proof to support a Petition to Amend.

7. Unofficial Compilation of the Conditions of Certification for Bottle Rock Geothermal Power Plant

Intervenors believe that the Unofficial Compliation of the Conditions of Certification for Bottle Rock Geothermal Power Plant (TN 200416) accurately reflects the originally approved Conditions of Certification as modified by subsequent amendments.

III. CONCLUSION

Intervenors support the Staff's recommendations regarding the bond requirement and environmental insurance and respectfully requests the Committee adopt Staff's recommendations.

Dated: November 12, 2013

LAW OFFICE OF DONALD B. MOONEY

By Donald B. Mooney

Donald B. Mooney
Attorney for David Coleman and
Friends of Cobb Mountain

DECLARATION OF SERVICE

I, Donald B. Mooney, declare that on November 12, 2013, I served and filed copies of the following:

**INTERVENORS DAVID COLEMAN AND FRIENDS OF COBB MOUNTAIN'S
PRE-HEARING STATEMENT RELATED TO THE NOVEMBER 18, 2013
COMMITTEE HEARING**

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:

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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: November 12, 2013

Donald B. Mooney
Donald B. Mooney

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