

## DOCKETED

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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 REBUTTAL TESTIMONY AND  
REVISED PREHEARING STATEMENT AND EXHIBIT LIST**

November 15, 2013

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Pursuant to the Committee's November 5, 2013 Notice of Committee Hearing, Committee Conference and Hearing Orders, Bottle Rock Power, LLC ("BRP" or "Bottle Rock") herein submits the following Rebuttal Testimony and Revised Prehearing Statement and Exhibit List in advance of the Committee Hearing on BRP's Petition to Amend ("PTA") as related to the Bottle Rock Geothermal Power Plant ("BRPP").

**I. BOTTLE ROCK'S REBUTTAL RESPONSES TO COMMITTEE'S QUESTIONS  
TO PARTIES**

Bottle Rock responds herein to specific points set forth in the parties' Opening Testimony, but does not provide written rebuttal testimony by any of its witnesses. The rebuttal information set forth herein corresponds to the Committee's queries in the Notice of Committee Hearing, Committee Conference and Hearing Orders, dated November 5, 2013.

**A. Bottle Rock Requests that the Commission Remove the Bond Requirement in its Entirety.**

**1. The evidence supports complete removal of the bond requirement.**

Bottle Rock sets forth below its rebuttal to Staff's Prehearing Conference Statement, Direct Testimony, and Exhibit List ("Staff's Prehearing Statement") and Intervenors' Prehearing Statement.

Staff's Prehearing Statement concludes that Bottle Rock has not provided sufficient evidence to support removal of the bond requirement. Staff suggests that BRP has requested removal of the bond requirement due to inability to pay. (Staff's Prehearing Statement, p. 7.)<sup>1</sup> In fact, BRP has provided and continues to provide evidence to demonstrate that the conditions under which the bond requirement was imposed have changed and those changed conditions warrant removal of the bond requirement. (See BRP's Prehearing Statement at p. 2 and the Direct Written Testimony of Brian Harms at p. 1 (TN# 201164 and 201155, respectively).)

Bottle Rock's request is consistent with the Commission's standard approach to closure funding requirements, which is to require such funding only where unusual circumstances warrant and Bottle Rock is not asking for special treatment. In fact, the Commission has no standard set of requirements for closure funding. Bottle Rock notes that in 1998 when the Commission considered a closure fund for the Sutter Power Plant, Commissioner Keese urged staff to develop a standard condition for closure funding. (See Transcript from Sutter Power Plant (97-AFC-2) ("Sutter Transcript") Evidentiary Hearing at pp. 81-82 (Bottle Rock's Proposed Exhibit 21; TN# 20214) indicating that the Commission wanted to make an attempt to develop "uniform applicable standard that [they] can apply as a template" and urged "[Staff] to

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<sup>1</sup> Intervenors David Coleman and Friends of Cobb Mountain make similar arguments about the need for financial assurance for closure. (Intervenors' Prehearing Statement, p. 2.)

get it up to the Commission as fast as possible.”) Yet, to date, no policy or uniform standards for closure funding have been adopted by the CEC and, instead, the need for such funding appears to have been addressed on a case by case basis.<sup>2</sup>

With respect to each case, Staff has testified in proceedings for other power plants as follows:

...Now, historically, closure funds have been included as a condition of verification, only when there is a compelling reason to do so. Some examples of this would be a known history of financial irresponsibility of the project applicant’s previous project or dealings. Another example would be quantities of -- or types of hazardous materials stored on site, which the securing or removal would require an unusual cost. Those are the kinds of situations that we would look at as possibly requiring a closure fund. Now, we had a closure fund required for only one previously Commissioned certified power plant. That was the [SEGS]. And the reason for that was because of an unusually large volume of petrochemical heat transfer fluid that is used to convert the solar energy to electricity. It was determined that there would be an unusual cost to removing and securing that material. So we required a relatively small closure fund, in the neighborhood of about fifty thousand dollars.

(Sutter Transcript at p. 56-57.)

In light of this testimony, Bottle Rock researched numerous, random Commission Decisions to determine whether bond requirements were set forth in any other Final Decision issued in Application for Certification proceedings. Based on this research, Bottle Rock noted the Commission has, in fact, licensed only two power plants that require a decommissioning fund or funding mechanism; specifically, the SEGS IX & X Projects (“SEGS”) (89-AFC-1) and the

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<sup>2</sup> Intervenors suggest the size of the company and number of assets should determine whether to require a closure fund. It is unclear what Intervenors would consider to be “large corporations doing business in California with significant assets and other projects covered by the California Energy Commission,” (Intervenors’ Prehearing Statement, p. 2) but this does not appear to be a standard that the CEC has used to determine whether a closure fund is necessary.

Beacon Solar Energy Project (“Beacon Solar”) (08-AFC-2) (See BRP’s Proposed Exhibits 23 and 24 (TN# 201216 and 201217, respectively)).<sup>3</sup> Approved nearly two decades apart, the Commission imposed a condition in each project that required a specific type of decommissioning fund. In SEGS, the Commission required the establishment of a dedicated facility security/ decommissioning fund in the amount of \$100,000 for each unit. The funds were established to ensure restoration of the site. (See Sutter Transcript at p. 56-57; SEGS Final Decision at pp. 544-555 (Bottle Rock’s proposed Exhibits 21 and 23, respectively).) In the Beacon Solar proceeding, the Commission imposed a mitigation measure via Condition of Certification BIO-19 that required the development of a “funding mechanism...in consultation with the Energy Commission staff to ensure sufficient funds are available for revegetation, reclamation, and decommissioning.” (See Beacon Solar Final Decision at p. 293.) Based on the impacts to biological resources as identified in the Beacon Solar Final Decision, it is clear that the condition set forth therein was intended to mitigate significant biological impacts. In stark contrast, however, all of the remaining Commission decisions that Bottle Rock reviewed simply set forth general closure conditions.<sup>4</sup> In fact, Bottle Rock found that closure funding generally has not been required by the Commission as a required condition, rather such funding conditions have been imposed to mitigate specific circumstances in two projects within two decades.

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<sup>3</sup> We note that the Beacon Solar license was terminated by the Commission on August 27, 2013. (See Commission TN# 71133 and 71230, not included herewith as proposed Exhibits.)

<sup>4</sup> To the extent there is standard language, Bottle Rock presents these “standard” closure conditions in BRP’s proposed Exhibit 25 (TN# 20218), which represents the pertinent language from each of the additional randomly reviewed decisions. In Bottle Rock’s view, the “uniform applicable standard” that has been applied to nearly every project approved by the Commission has been the language as set forth in the excerpts from the decisions provided in Bottle Rock’s Exhibit 25.

## **2. The circumstances have changed since 2001.**

BRP acknowledges that in 2001, when the Project was transferred from the Department of Water Resources to Bottle Rock Power Corporation, there were unusual circumstances justifying a bond requirement. At that time, the Bottle Rock Power Plant had been mothballed for well over a decade and there were significant questions about the ability of the Project to operate reliably. (See the 2001 Order.) In fact, those same questions remained when BRP purchased the Project in 2006, because the Project remained non-operational at that time. Today, however, BRP has a six year track record of operating reliably and generating clean, renewable power. The Project is operating under an approved Power Purchase Agreement and has County use permits that allow for continued operation and expansion through the year 2043. BRP has continued to invest in the project, while reliably generating power and pursuing expansion efforts. The recent operational history and status of the Project justify removal of the bond requirement entirely.

### **B. Bottle Rock's Cost Estimate is Accurate**

While BRP maintains its position that a bond is not required, Bottle Rock has made every effort to assuage the Intervenors and the Staff's concerns related to decommissioning and closure funding. That is, Bottle Rock obtained the requisite third party estimate for decommissioning and closure costs. As Staff has admitted, this estimate is reasonable and accurate based on the best available information. However, Staff refuses to allow salvage value as a cost offset. In addition, Staff sets forth an unreasonable contingency of 25 percent, despite the fact that Staff is recommending that the cost estimate be revised every three years and the bond adjusted accordingly. Bottle Rock has not objected to this three year review, although it is more frequent than most other licensed facilities' requirements to review and update closure plans.

**1. It is appropriate to include salvage value in the decommissioning cost estimate.**

Staff continues to assert that it is inappropriate to include salvage value in the decommissioning cost estimate. As was testified to by staff in the Sutter Power Plant proceeding, “the assumption that the project might contain significant value at the time of closure is supported by recent experience at the Commission and elsewhere. We recently went through the entire closure process with a facility which is called the Cool Water gasification facility. And that the actual closure and removal of equipment is in process now and nearly complete. The experience there has been that the closure costs pretty much have been offset by the value of the equipment and the land of the project, so that there has been no net closure costs.....There was also a gas turbine on the facility, and that was sold for a substantial amount of money, and that amount included removing the equipment.” (Sutter Transcript, pp. 59-60.)

The July 29, 2013 Estimate is consistent with this experience and there is no contrary evidence to suggest that the Project has no salvage or reuse value, as staff has suggested.

**2. There is no support for the contingency fee.**

Staff cites to the California Department of Transportation’s “Project Development Procedures Manual dated December 15, 2007”, which discusses two phases of cost estimating: project planning and project design. This manual pertains to planning and design of construction projects, and does not provide any explanation for the various contingencies that are recommended at various stages of project consideration. The manual includes contingency factors as low as 5 percent at certain stages of project consideration. The manual does not support the application of a 25 percent contingency to a closure and decommissioning cost estimate for an existing facility. (“The percentage goes down as the project becomes more defined and thus less unknown.” (Staff’s Exhibit 103, Caltrans Manual App. AA at p. AA-5.)



Here, the cost estimate is based on a specified and well-defined project. The issue that creates uncertainty is the unknown point in time when the Project will be closed and decommissioned, which creates questions about potential cost increases, changes in salvage and reuse values, or changes in laws, ordinances, regulations or standards over time that could impact closure costs. These uncertainties, however, will be captured in the requirement to update the cost estimate every three years.

**C. Staff's Proposed Revisions to COM-16**

Should the Committee determine to recommend approval of staff's proposed Conditions of Certification COM-15 and COM-16, BRP reiterates its comments on COM-15 as presented in BRP's Prehearing Statement. BRP supports the proposed revisions to Subsection A of conditions COM-16 as set forth in Staff's Prehearing Statement, with the exception that BRP maintains that the appropriate amount of initial obligation is \$709,000, if any.

However, with respect to Subsection B of COM-16, BRP requests revisions to clarify that the insurance requirement pertains to environmental impairment insurance, as required in Paragraph 2.5 of the Purchase Agreement. To that end, BRP proposes the following amendments to Staff's proposed COM-16, Subsection B.

**B. Environmental Impairment 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 **environmental impairment** 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 **environmental** liability coverage by having **environmental impairment** 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.

**D. BRP’s Request to Cross-Examine Witnesses**

Bottle Rock requests to cross-examine Staff’s witnesses as follows and will require approximately 10 minutes per person: Ed Brady, Matthew Layton, and Camille Remy-Obad.

**E. Time Required for Oral Argument**

BRP does not anticipate requiring any more time than originally stated in its Prehearing Statement (30 minutes).

**F. BRP’s Position Regarding Post-Hearing Briefing**

BRP remains unable to determine whether the Commission’s decision will benefit from post-hearing briefing and reserves the right to request or suggest such briefing following the hearing, if such briefing is warranted.

**G. Bottle Rock’s Revised Exhibit List**

BRP proposes the following additional exhibits in support of its positions stated herein.

<b>Exhibit</b>	<b>TN#</b>	<b>Brief Description</b>
<b>21</b>	20214	Portions of the Transcript for the Sutter Power Plant Evidentiary Hearings (97-AFC-2)
<b>22</b>	20215	Pertinent Pages from the Sutter Power Plant Final Decision (97-AFC-2)
<b>23</b>	20216	Pertinent Pages from the SEGS IX and X Final Decision (89-AFC-1)
<b>24</b>	20217	Pertinent Pages from the Beacon Solar Final Decision (08-AFC-2)
<b>25</b>	20218	Pertinent Pages from various Final Decisions Issued by the Commission that Reflect Standard Closure Conditions of Certification
<b>26</b>	TBD	BRP’s Rebuttal Testimony and Revised Prehearing Statement and Exhibit List

## II. CONCLUSION

BRP reiterates its position that the current circumstances support elimination of the closure funding requirement and respectfully requests the Committee recommend approval of BRP's PTA.

Dated: November 15, 2013

By:



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