

## DOCKETED

<b>Docket Number:</b>	79-AFC-04C
<b>Project Title:</b>	Compliance - Application for Certification of DWR Bottlerock Geothermal Project
<b>TN #:</b>	201378
<b>Document Title:</b>	Request for Consideration of Revisions to Presiding Member's Proposed Decision
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December 6, 2013

**VIA ELECTRONIC DOCKETING**

The Honorable Karen Douglas  
Presiding Member  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

The Honorable Janea Scott  
Associate Member  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Re: Bottle Rock Power Plant (79-AFC-4C)  
Request for Consideration of Revisions to Presiding Member's Proposed Decision**

Dear Commissioners Douglas and Scott:

Project Owner, Bottle Rock Power, LLC ("Project Owner" or "BRP"), has received the Presiding Member's Proposed Decision ("Proposed Decision") on BRP's Petition to Amend the Conditions of Certification for the Bottle Rock Geothermal Power Plant (the "Project"), which was published on November 27, 2013. BRP appreciates the Committee's very thoughtful and thorough review of the PTA. Given our need for timely resolution, BRP does not object to the Proposed Decision, but respectfully requests that the Commission consider a modification to the payment schedule.

BRP has reviewed the Proposed Decision in the context of the fiscal impacts it will have on the Project's operational cash flow. BRP must impress upon the Committee and the Commission that an initial deposit of \$1,341,500.00 is not financially responsible. In that regard, BRP requests that the Committee and Commission consider the payment schedule presented below at the December 11, 2013 Business Meeting, as well as minor changes to COM-16 to reflect the proposed payment schedule. BRP's requested modifications to COM-16 are provided in Attachment A hereto.

As BRP has presented during this proceeding, requiring a substantial sum of money to be set aside for financial assurance at this time creates financial impediments that will inhibit required investment in expansion of the Project. It will impair the ability of BRP to meet its month-to-month operating expenses (including a reasonable cash reserve) and meet its performance obligations in the California Public Utilities Commission-approved Power Purchase Agreement.



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As of November 30, 2013, BRP has approximately \$3.5 million of available cash. (See Balance Sheet and year end cash reconciliation, attached hereto as Attachment B.) Based on year-end expenses, BRP forecasts that number to decrease to approximately \$2.3 million in mid-January when the initial financial assurance deposit is expected to be due. December's forecasted \$1.2 million of expenses does not include upcoming maintenance outages or potential unplanned outages. Moreover, typical expected monthly expenses can exceed \$1 million not including maintenance outages or unplanned outages. In light of the amount of cash available to the Project and existing operational cash flow requirements, as well as the investment required for Project expansion to meet the long-term performance obligations of the Power Purchase Agreement, providing an initial financial assurance amount of \$1,341,500.00 is not, as stated previously, financially responsible. Consistent with prior representations, however, BRP can and will provide an initial deposit of \$709,000.00 within 30 days of the Commission's decision, and make annual deposits thereafter to achieve both the total financial assurance amount and six year funding schedule identified in the Proposed Decision. The following proposed funding schedule would ensure financial assurance in the fully funded amount of \$1,676,875.00 by 2019 in accordance with the Proposed Decision:

**BRP's Proposed Payment Plan**

<b>Year</b>	<b>Amount Deposited</b>
Initial Deposit (2014)	\$709,000.00
2015	\$193,575.00
2016	\$193,575.00*
2017	\$193,575.00*
2018	\$193,575.00*
2019	\$193,575.00*
<b>Total Deposited by 2019</b>	<b>\$1,676,875.00*</b>

\*This amount shall be adjusted based on the outcome of the triennial Provisional Closure Plan. The first triennial report is due in 2016.



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In addition to the proposed schedule above, BRP requests that the Commission consider the minor revisions to condition of certification COM-16 to reflect the above payment schedule. As previously noted, the proposed revisions to COM-16 are specific to the payment schedule and do not affect any other portion of the condition.

BRP appreciates the Committee's time and efforts in arriving at a decision on the PTA. Representatives from BRP will be in attendance at the December 11, 2013 Business Meeting and available should the Committee or any other Commissioner have questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'KTC' followed by a stylized flourish.

Kristen T. Castaños

KTC:ms

# **ATTACHMENT A**

## BRP's Proposed Edits to COM-16 Related to Funding of Bond

### **COM-16: Closure Financial Assurances**

#### A. Financial Assurance Mechanism: Surety Bond

The project owner must provide financial assurances to the Energy Commission, guaranteeing adequate and readily available funds to finance interim operation, and facility closure, as needed. The financial assurances shall be in the form of an irrevocable closure surety bond and standby trust fund. The standby trust fund shall have as its Beneficiary the California State Energy Resources Conservation and Development Commission. Alternatively, a trust account, letter of credit, restricted bank account or other mechanism may be used if the mechanism and its provisions, including the institution involved, are approved by the CPM as providing an equivalent level of financial assurance. The surety bond or substitute mechanism must guarantee the project owner's performance of closure, as specified in the Provisional Closure Plan.

Within thirty (30) days following Energy Commission approval of the March 8, 2013 Petition to Amend, the project owner must establish and provide evidence of establishment of the surety bond or alternate financial assurances to the CPM. The financial assurance shall initially be \$709,000~~1,341,500~~. **The financial assurance amount shall be increased each year so that the amount of \$1,676,875 (\$1,341,500 plus 25% contingency factor) is reached by the year 2019, in accordance with the table below.**

<u>Year</u>	<u>Amount Deposited</u>
<u>Initial Deposit</u>	<u>\$709,000.00</u>
<u>2015</u>	<u>\$193,575.00</u>
<u>2016</u>	<u>\$193,575.00*</u>
<u>2017</u>	<u>\$193,575.00*</u>
<u>2018</u>	<u>\$193,575.00*</u>
<u>2019</u>	<u>\$193,575.00*</u>
<u>Total Deposited by 2019</u>	<u>\$1,676,875.00*</u>

**\*This amount shall be adjusted based on the outcome of the triennial Provisional Closure Plan. The first triennial report is due in 2016.**

Within sixty (60) days of CPM approval of each triennial Provisional Closure Plan prepared pursuant to **COM-15**, the financial assurance amount shall be adjusted to reflect any change in estimated costs, and the project owner must submit for CEP review and approval all documentation of the adjustment.

In the years 2015 and thereafter, the initially established financial assurances and any subsequently adjusted financial assurances shall be adjusted no later than November 30th of each year. **In the years 2019 and thereafter, the financial assurance shall continue to include a**

~~**25% contingency factor**, by multiplying the estimated costs by following contingency factors to yield the required financial assurance amount:~~

<del>Year</del>	<del>Contingency Factor</del>
<del>2015</del>	<del>1.05</del>
<del>2016</del>	<del>1.10</del>
<del>2017</del>	<del>1.15</del>
<del>2018</del>	<del>1.20</del>
<del>2019 and thereafter</del>	<del>1.25</del>

The project owner shall report the current value of the financial assurances in the Annual Compliance Report.

Using the financial assurances to implement closure may not fully satisfy the project owner's obligations under these conditions.

Provisions from the California Bond and Undertaking Law, as well as other statutory and case law may be applicable.

**B. Environmental Impairment Insurance:**

In conjunction with submittal of the triannual provisional or final cost estimate update, 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 or closure. 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.

BRP must demonstrate the required environmental liability coverage by having environmental impairment 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.

# **ATTACHMENT B**



**Bottle Rock Power, LLC and Subsidiary**  
**Consolidated Balance Sheet**  
**As of November 30, 2013**

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	<u>Nov 30, 13</u>
<b>Assets</b>	
Current assets	
Cash and cash equivalents	\$ 3,754,781.88
Accounts receivable	653,517.20
Prepaid expenses	229,217.17
Inventory	<u>426,047.85</u>
Total current assets	<u>5,063,564.10</u>
Plant, property & equipment, net	32,706,046.85
Restricted cash and deposits	<u>4,034,849.13</u>
Total assets	<u>\$ 41,804,460.08</u>
<b>Liabilities and Equity</b>	
Current liabilities	
Accounts payable	\$ 58,124.82
Accrued liabilities	<u>804,274.08</u>
Total current liabilities	<u>862,398.90</u>
Long Term liabilities	
Asset retirement obligation	4,272,820.00
PPA non performance	<u>20,869,978.37</u>
Total long term liabilities	<u>25,142,798.37</u>
Total liabilities	<u>26,005,197.27</u>
Members' equity	<u>15,799,262.81</u>
Total liabilities and equity	<u>\$ 41,804,460.08</u>

**Year End Cash Reconciliation**

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Cash in bank 11/30/13	\$	3,754,781.88
Accounts receivable		653,517.20
Accounts payable		(58,124.82)
Accrued liabilities		(804,274.08)
Cash available 11/30/13		<u>3,545,900.18</u>
December forecasted expenses		<u>(1,279,910.97)</u>
Cash available 12/31/13	\$	<u><u>2,265,989.21</u></u>