

## DOCKETED

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<b>Project Title:</b>	Compliance - Application for Certification of DWR Bottlerock Geothermal Project
<b>TN #:</b>	201392
<b>Document Title:</b>	Letter re Objection to Bottle Rock Power's December 6, 2013 Letter and Attachments
<b>Description:</b>	N/A
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December 10, 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's Petition to Amend (79-AFC-4C)**

Dear Commissioners Douglas and Scott:

Intervenors David Coleman and Friends of Cobb Mountain are in general agreement with the Committee's November 27, 2013 Proposed Decision on Bottle Rock Power's ("BRP") Petition to Amend the Conditions of Certification for the Bottle Rock Geothermal Power Plant ("Project"). Intervenors, however, object to BRP's December 6, 2013 letter and attachments. The letter references BRP's finances and the Power Purchase Agreement ("PPA") with Pacific Gas & Electric. Attachment B to the letter is a Balance Sheet dated November 30, 2013. BRP has continually and consistently refused to provide any evidence to support its assertions regarding BRP's financial status and the PPA. Now after the time has passed for submittal of evidence and cross-examination, BRP submits a balance sheet without any declaration or other evidence as to its accuracy or authenticity. Intervenors object to the letter and Attachment B on the grounds that they are not supported by the evidence in the record and the letter seeks to introduce evidence into the record after the Committee's November 21, 2013, quasi-adjudicatory hearing in Cobb, California.

Throughout this proceeding and the previous Complaint proceeding, Bottle Rock has consistently stated that it would not reveal any financial information. Mr. Harms has repeatedly claimed that such information is privileged and cannot be provided. (See e.g. Transcript of Committee Hearing, November 21, 2013 ("Transcript") at p. 31:22; 32-12-14; 33:2-4.) Mr. Harms even refused to answer the question of whether BRP has turned a profit. (*Id.* at p. 33:13-17.) Now, unhappy with the Committee's proposed decision regarding the timing of payments for the financial assurance requirement, BRP comes forward with some minimal financial information in the form of a November 30, 2013 Balance Sheet to support its argument that the Commission should modify the Committee's proposed payment schedule. (BRP Letter dated December 6, 2013, Attachment B.)

Attachment B does not constitute evidence and should not be considered by the Commission. Attachment B is not part of any declaration, nor has it been subject to cross-examination, nor was it provided to the Committee prior to its proposed decision, nor is it identified as an exhibit in this matter. Moreover, it simply provides a snap shot of BRP's financial status on a particular day. Had BRP wanted its financial status to be considered by the Committee and the Commission regarding the amount of the financial assurance requirement or payments for such requirement, then BRP had ample opportunity to submit such information. BRP not only failed to do so, but objected to and refused to answer any questions regarding BRP's financial status. (See Transcript at p. 31:22; 32-12-14; 33:2-4.) BRP wants the Commission to consider its limited and unsupported financial information and status, but only on BRP's terms and without any evidence to support its accuracy or authenticity. The Commission should reject the comment letter and any reference to BRP's financial status.

Mr. Harms has repeatedly made unsupported assertions about the Bottle Rock's financial health, but despite repeated requests by Intervenors and staff, BRP has refused to provide any evidence to support Mr. Harm's assertions. Mr. Harms asserts that Bottle Rock is in good financial health, yet at the same time argues that Bottle Rocks' finances are so precarious that the requirement of a bond that has been in place for over 10 years must be significantly reduced in order for Bottle Rock to expand its operations and meet its obligations under its new PPA with Pacific Gas & Electric. Again, the Commission should reject BRP's assertions as BRP has refused to provide any evidence, let alone substantial evidence, to support its position. As such, there is no basis for removal of the financial assurance requirement or modifying the Committee's recommended payment schedule.

It should also be noted that over a year ago, BRP unilaterally and in violation of this Commission's Order, cancelled its \$5 million bond. (See Docket 12-CAI-04, TN 69413.) Nothing on the balance sheet submitted by BRP indicates how much money BRP saved by cancelling the bond nor how or whether BRP has since spent that money.

BRP's letter also asserts that the financial assurance requirement will impair BRP's ability to meet its performance obligations in the PPA. No substantial evidence in the record supports this statement as BRP has refused to provide a copy of the PPA to the Commission and Intervenors. The record only contains Mr. Harm's unsupported assertions regarding the PPA. Such statements are inconsistent California's Secondary Evidence Rule which limits oral testimony regarding the contents of written agreement when the agreement is not produced. (See Evid. Code, §§ 1520, 1521.) Had BRP wished to make arguments based upon the obligations under the PPA, then BRP had the opportunity to introduce the PPA into the record of proceedings. BRP, however, refused to do so. (Transcript at p. 36:14-19.) Moreover, BRP has provided neither a legal basis nor citation for its refusal to submit a copy of the PPA. As such, the Commission should

not consider any reference in the December 6<sup>th</sup> letter regarding BRP's obligations under the PPA.

BRP uses the claim of privilege in refusing to introduce the PPA into this proceeding. In his testimony, Mr. Harms references the PPA, but refuses to make it available on the claims that its terms are confidential and not subject to disclosure. (Transcript a p. 36:14-19; see Direct Testimony of Brian Harms, Exhibit 18 (TN 201155).) When convenient, however, Mr. Harms provided written testimony regarding the terms of the PPA. (Exhibit 18.) Mr. Harms also answered cross-examination questions regarding the PPA. (Transcript at pp. 48:4 to 50:4.) Despite answering questions regarding the PPA, BRP continues to claims that the terms of the PPA are confidential. Arguably, by providing selective information regarding the terms of the PPA, Mr. Harms has waived any claim to privilege or confidentiality. Despite this waiver, BRP continues in its refusal to provide this Commission and the public the benefit of reviewing the PPA. As such, any reference to the PPA in BRP's December 6<sup>th</sup> letter should be disregarded.

If the Commission is inclined to modify the payment schedule based upon BRP's most recent submission, then Intervenors respectfully request that the Commission remand the matter back to the Committee for further evidentiary proceedings and cross-examination. As BRP has opened the door to its finances and the PPA, the Committee should then direct BRP to provide more detailed financial information, along with the PPA. At which time, Intervenors and Staff should have the opportunity to submit rebuttal testimony and to cross-examine BRP's witnesses regarding the new evidence. Failure to provide Intervenors the opportunity for cross-examination regarding Attachment B and BRP's financial status violates Intervenors' right to due process in this quasi-adjudicatory matter.

Very truly yours,

***Donald B. Mooney***

Donald B. Mooney

Attorney for Intervenors David Coleman

And Friends of Cobb Mountain