

DOCKETED

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Public comment to hearing proceedings

Additional submitted attachment is included below.

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)

From:

Randall and Linda Fung
8195 High Valley Rd.
Cobb, CA 95426

Public comment to hearing proceedings

Dear Commissioners Douglas and Scott:

I respectfully disagree with the committee's decision to recommend lowering the amount of the bond for the reasons that I have previously presented in docketed public comments and public comments during the November 18, 2013 hearing at the Little Red School house in Cobb, California.

The lowered bond requirement does not include costs for:

1. The fact that the spoils sites might have to be used for filling in sumps per the requirements of the Central Valley Water Quality Control board, ordering the full closure of sumps with fill by the end of 2014.
2. The cost of a third party oversight agency if BRP were to suddenly walk away.
3. The cost of a guard at the gate during deconstruction, as required by the Lake County use permit.
4. The cost of hazardous waste removal to distant sites
5. The repair of High Valley Rd after extensive use for deconstruction
6. Any road right issues if BRP were to suddenly terminate.

7. The costs for continued maintenance of the building transfer to VV& J Coleman family trust.

While the committee argues that the cost of soil for fill and the 25% contingency costs are at conflict because they represent the same, then the argument has to be that the contingency could not possibly cover all of the above stated possible costs arising from the early demise of Bottle Rock Power.

As previously stated, the costs estimates presented by BRP only are valid if BRP were to oversee the hiring of Plant Reclamation. But if BRP were to suddenly not exist some other agency would have to take over the decommissioning and this possible scenario has not been discussed.

That said, we are even more concerned with Bottle Rock Power's latest request to extend the payment of the lowered bond over many years until 2019.

Bottle Rock Power has asked the CEC to consider a payment plan that would fulfill the obligation of the full bond by 2019.

Yet BRP has argued that requiring the bond would cause them financial ruin.

BRP has stated in testimony that they have neutral cash flow (transcript page 31, line 8).

What do you think would happen if you were to go to the bank, and ask for a bank loan and state that you had neutral cash flow? Would they approve a loan on your word that you would find a gold mine in six years?

BRP's own admission that it has neutral cash flow and that an unforeseen event with their wells could cause them to lose i million dollars is indeed proof of the need for immediate bonding.

BRP wants the CEC to believe that they are reliable based upon some vague concepts.

1. That the newly approve Power Purchase Agreement is a vote of confidence in their ability to exist for the next twenty years.

-Yet is been shown that the reason for the new PPA was that BRP had severe penalties and could not (and did not intend to) pay the amount and would have to shut its doors if not approved.

2. The approval by Lake county for the extension of the use permit proves that the county believes that BRP will be around for that length of time.

-And it has been shown that the County receives a substantial property tax income in the amount

of \$500,000 from the approval of the use permit for BRP.

3. That BRP has been in business longer than DWR and that profit is not part of the equation, but length of being in business.

-A guy hanging onto a rope on a cliff does not show me that he will last much longer, even if he has hung on for an hour.

5. That BRP carries no debt.

Has the original investment of one hundred million dollars plus ever been paid back?

During questioning about BRP's profit margin, Mr. Harms tried to argue that financial status is a transient element that substantial decisions should not be made upon (transcript page 33,

"And since we're making a substantial decision, I

10 would prefer that we focus on those things that are not

11 transient. Financial results really are a transient."

But as Presiding Officer so aptly stated,

"this uncertainty on this take-it-on-faith, if you will,

19 approach that you're going to be able to take care of

20 your closure obligation without having something put

21 away is -- is certainly one of the key questions in this

22 decision."

As BRP has asked the CEC for the consideration of a payment plan for the bond until 2019, I feel that it is important to closely examine the "risk evaluation" of the proposal, as Mr. Harms calls it.

As any financial institution would consider of a loan, the financial history, profit loss are all important factors. Yet BRP continues to withhold this information and we are to take BRP's "take it on faith" that they only have 3 million dollars to end of year balance. BRP's own admission that it has neutral cash flow and that an unforeseen event with their wells could cause them to lose i million dollars is indeed proof of the need for immediate bonding.

What we do know from testimony and proceedings is that BRP has an endless list of broken promises and an attitude of Wimpy's "I will pay you a week from tuesday"

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1. Bottle Rock Power has never been able to meet any of its power obligations with PG&E.
2. The PPA that BRP claims is an approval of their reliability shows the opposite. BRP claimed that if a new PPA was not reached, they would have to close their doors. So PGE was forced to forgo its penalties to prop up BRP to go forward into the expansion. But what is even more disclosing is Mr. Harm's testimony that BRP never intended to pay the penalty!
(transcript page 46, line 18)

"14 Including, for example, we had performance
15 penalties from our previous power purchase agreement.
16 Those had to be eliminated because they've set -- along
17 the balance sheet is a large negative even though there
18 was **no intention to ever pay them.**"

That's like admitting to a loan official that you never intended to pay your old loan!

We know that Central Water Quality Control Board ordered BRP to fill their sumps by the end of the year 2012. And that BRP had to ask to extend their obligations until 2013 because the fill dirt was supposed to come from the expansion project which has still not yet been started. And that BRP has again asked for a further extension until the end of year 2014 for the same reason, but admitted in testimony that they have adequate spoil sites to use for decommissioning.

According to staff, the newly proposed PPA requires BRP to produce 15 mw by the year 2018. Staff was concerned that if BRP could not produce 15 mw by that timeline, PG&E could terminate the Power Purchase Agreement. Mr Harms states in testimony:
transcript page 49,

They
9 can terminate the power purchase agreement if we don't
10 meet that performance criteria. However, if we have
11 invested a certain amount of money and we don't meet
12 that, then that meets the performance criteria because
13 the intent of the performance was to encourage Bottle
14 Rock to make the appropriate investment.

21 MR. HARMS: Yes, there is an amount that we have
22 to invest. If we invest that amount of money, however,
23 **even if we're not successful at reaching the 15-megawatt**
24 **number we are -- we essentially -- they do not have the**
25 **right to terminate the contract. We have met the**

conditions.

Now this is an amazing admission to future investors! BRP only has to find investors to give him money for the expansion, and he has fulfilled his obligations with PG&E. No need to actually find steam, make profit or be successful. Just look like you are trying.

AN ADMISSION OF A BOONDOGGLE PROJECT?

So now we come to the critical question.

If Bottle Rock Power is asking for the Commissioners to consider funding the bond until 2019, what are Bottle Rock Powers risk evaluation of lasting that long. We know that BRP is neutral cash flow, and that any occurrence of the steam fields could possibly shut BRP down. We know that BRP has tapped its allowance from the two mother companies and that BRP has to look for outside funding sources.

(transcript, page 42).

So it all comes down to one transient promise. The promise of going forward into the expansion project.

If Bottle Rock Power is not able to go forward into the expansion project, all the cards will fall down.

BRP knows this and has admitted it. The promise of filling the sumps, the promise of providing electricity for PG&E, the promise of money for closure, the promise of I'll pay you a week from tuesday.

So let us examine that transient promise. It rests upon getting investors to believe in the dream.

In proceedings, when Mr. Harms admitted that he didn't need to produce power, but only needed to invest in the expansion, Staff asked what that amount was to fulfill the terms of the PPA. Mr. Harms stated 32 million dollars needed to be invested into the new expansion project.

32 Million dollars of outside investors! BRP doesn't have any capital to invest. They've used up their allowance. The two mother companies are not investing. So who is going to invest? And what are they investing into? That is the real question. Mr. Harms already stated that success is not the criteria, but getting investors.

1. There is no proof of steam in the expansion field. BRP has never done any test wells to see what amount of steam exists. It is all theory and conjecture.
2. One would imagine that any investors would want to see the account records of profit/loss.

3. One would have to consider whether the one hundred million dollars plus that was invested into the startup was ever paid back to investors.
4. BRP would have to explain to investors why it has been so unsuccessful in getting resources from all the wells it already has drilled.
5. BRP would have to explain why no investor have already plunked their money down since the expansion has been approve three years ago.

Who, in their right mind is going to invest in a company with such a poor record? That's the critical question, because it determines Bottle Rock Power's future and the considerations of the CEC in accepting the premise that funding could go until 2019. Will BRP be around that long?

It is already December of 2013. The grading period for Lake County begins in April. If BRP were to have plans for beginning the expansion project for the year 2014, they should be making contract and plans by now. But by their own admission, they have barely enough to make it through the year hoping any unforeseen events should not happen.

No, it is highly unlikely that BRP will start development of the expansion project this coming year, so what's next? Hoping for investors for another years is not going to advance their financial stability.

The CEC should require the immediate bond, because any idea that BRP will last until 2019 is a leap of faith. Any investors looking for quick money, I have a bridge in Brooklyn I want to sell you.

Mr. Harms stated that substantial decisions should not be made on transient financial status. I agree. the CEC should not be making a substantial funding decision based upon BRP's transient dream.

Respectfully,
Randall and Linda Fung

