

DOCKETED

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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:) Docket No. 12-CAI-04

COMPLAINT AGAINST THE)
BOTTLE ROCK GEOTHERMAL)
POWER PLANT)
) STAFF RESPONSE TO BOTTLE
) ROCK POWER LLC'S REQUEST
) TO CLOSE THE COMPLAINT
) PROCEEDING

I. SUMMARY

David Coleman filed a complaint on October 11, 2012, alleging that Bottle Rock Power LLC violated the conditions of a 2001 Energy Commission order approving a change of ownership of the project. A Committee was assigned, and conducted a hearing on the complaint on January 22, 2013. On February 6, 2013, the Committee issued its decision finding that Bottle Rock LLC violated the condition requiring that it maintain a closure bond. The Committee ordered Bottle Rock Power LLC to file a surety bond, which was stayed to allow for the filing of a Petition to Amend at the discretion of the project owner. Commission Staff recommended a fine of \$10,000 – that recommendation remains unchanged. The Committee referred the question of a penalty to the full Energy Commission for consideration and held in abeyance.

Bottle Rock Power LLC filed an appeal of the Committee Decision on February 20, 2013 and filed a Petition to Amend its conditions of certification requiring the bond. Its appeal was stayed pending the outcome of that separate amendment proceeding. On December 16, 2013, the Committee assigned to hear the Amendment issued an Order denying Bottle Rock Power LLC's request to eliminate the bond requirement and modified the amount of the bond. On February 4, 2014, Bottle Rock Power LLC filed its Request to Withdraw Appeal of the Committee's Decision Sustaining Coleman Complaint and Close the Complaint Proceeding.

II. STAFF RECOMMENDATIONS

The Energy Commission’s May 30, 2001 Order included a condition that required the project owner to “strictly adhere to the terms of the ‘Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease.’” Those terms required the maintenance of a Decommissioning Bond, and Bottle Rock Power LLC violated that express condition of its certification when it purposefully deleted that requirement without prior Energy Commission authorization.

California Public Resources Code section 25534 provides in relevant part:

- (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:
 - (2) Any significant failure to comply with the terms or conditions of approval of the application, as specified in the commission's written decision.
 - (3) A violation of this division or any regulation or order issued by the Commission under this division.
- (b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25543.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars (\$50,000).

The law gives us three sanctioning options for violations of conditions of certification: amendment of conditions, revocation of certification, and a fine. Here, the option of amending the conditions of certification by order of the Energy Commission was not exercised through the complaint proceeding: a separate proceeding was held for that purpose. Also, revocation of certification would be vastly disproportional to the nature of the violations. That leaves a fine.

The largest fine that the Energy Commission can impose is \$75,000, plus an additional \$1,500 for each day of violation (with an upper limit of \$50,000 for the per-day penalties), so the maximum aggregate fine is \$125,000. In determining the amount of a fine, the law instructs us to consider: the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require. (*Id.*, § 25534.1, subd. (e)[paragraphing added].)

Staff notes that Bottle Rock Power, LLC continued throughout the complaint proceeding to take the position that no Energy Commission condition required the maintenance of a surety bond, and that the settlement agreement entered into on August 29, 2012 was not in conflict with the Energy Commission's May 30, 2001 Order, despite all information presented to the contrary. Because the violation appears to have been a purposeful

attempt to circumvent the Energy Commission's authority, this factor alone would indicate that a significant fine is appropriate. In mitigation, however, the violation of the Energy Commission's certification resulted in no harm to the environment. Also, now that the violation has been removed or resolved (i.e., Bottle Rock Power LLC has obtained the appropriate amendment to the certificate through a separate proceeding), staff is confident that sufficient safeguards are in place to ensure adequate site remediation in the event of a closure. The "cost to the state in pursuing the enforcement action," is on the order of tens of thousands of dollars, considering the salaries of the Energy Commission personnel involved in the proceeding. Finally, as to the factors that the Energy Commission must consider "with respect to the violator," Bottle Rock Power LLC did not voluntarily petition the Energy Commission to make the changes to its certification until after a complaint had been filed by a member of the public. Rather, Bottle Rock Power LLC argued that the project's conditions of certification did not require the maintenance of a bond or even adherence to the original purchase agreement. On the other hand, Bottle Rock Power LLC did eventually provide sufficient information to modify the bond, and has no significant prior history of violations of this type at the Energy Commission. Based on the (unsubstantiated) representations of Brian Harms, Bottle Rock Power LLC's ability to pay is limited, and a substantial fine could have a negative effect on the project's ability to continue in business. The economic savings, if any, achieved by the project resulting from the violation are moot, now that the Energy Commission has granted the Petition to Amend the project, and a new surety bond is in place.

Carefully balancing all of the legally-applicable factors, staff continues to recommend a fine of \$10,000.

Date: February 11, 2014

Respectfully Submitted,


KEVIN W. BELL
Senior Staff Counsel