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STATE OF CALIFORNIA

**ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of the)
)
BOTTLE ROCK GEOTHERMAL)
POWER PLANT PETITION TO)
AMEND (79-AFC-4C))

Docket No. 79-AFC-4C

**DAVID COLEMAN'S RESPONSE BOTTLE ROCK POWER LLC'S
REQUEST TO WITHDRAW APPEAL OF THE COMMITTEE'S DECISION
SUSTAINING COLEMAN COMPLAINT AND CLOSE THE COMPLAINT
PROCEEDING**

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STATE OF CALIFORNIA

**ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of the)
)
COMPLAINT AGAINST THE) **Docket No. 12-CAI-04**
BOTTLE ROCK GEOTHERMAL)
POWER PLANT (79-AFC-4C))

**DAVID COLEMAN’S RESPONSE BOTTLE ROCK POWER LLC’S
REQUEST TO WITHDRAW APPEAL OF THE COMMITTEE’S DECISION
SUSTAINING COLEMAN COMPLAINT AND CLOSE THE COMPLAINT
PROCEEDING**

Complainant David Coleman submits the following Response to Bottle Rock Power LLC’s Request to Withdraw Appeal of the Committee’s Decision Sustaining Coleman Complaint and Close the Complaint Proceeding. While Mr. Coleman supports Bottle Rock Power’s (“Bottle Rock”) request to close the complaint proceeding, the Commission should reject Bottle Rock’s request that no civil penalty be imposed. Moreover, the Commission should impose a civil penalty of not less than \$50,000. This amount is based upon: Bottle Rock’s flagrant and willful violation of this Commission’s May 30, 2001 Order; the economic savings incurred by Bottle Rock for not having to maintain a bond for nearly 16 months; and the costs to the State to hear the complaint and to enforce the May 2001 Order.

This complaint proceeding came about because Bottle Rock elected to ignore the conditions and obligations of the Energy Commission’s May 30, 2001 Order which required strict compliance with the Purchase Agreement for the Bottle Power Plant and Assignment of Geothermal Lease. (See Decision Sustaining Complaint Against Bottle Rock Power, LLC (“Complaint Decision” dated February 12, 2013, at p. 4.) The Order required that Bottle Rock maintain a decommissioning bond. An Order and obligation

that Bottle Rock was clearly aware of. Bottle Rock, without obtaining prior approval from the Commission, amended the Purchase Agreement. The amended Purchase Agreement deleted the requirements to maintain a \$5 million closure bond and deleted the requirement for an Environmental Impairment Insurance Policy. (*Id.*) (Complaint Decision at p. 2.) In September 2012 Bottle Rock cancelled the bond and thus from September 2012 until January 2014, Bottle Rock did not have a bond to secure the cleanup and decommissioning of the plant. (*Id.* at p. 3.) Bottle Rock, however, failed to obtain approval from the Commission prior to cancelling the bond.

Based upon Bottle Rock's actions and flagrant disregard for the Commission's May 2001 Order, a civil penalty is appropriate. Public Resources Code section 25534(e) provides:

In determining the amount of the administrative civil penalty, the commission shall take into consideration 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.

The Commission's Staff recommends that the Commission impose a \$10,000 civil penalty pursuant to section 25534. Mr. Coleman respectfully disagrees with the Staff's recommendation regarding the amount of the civil penalty. Based upon the factors discussed in section 25534(e), Mr. Coleman respectfully requests that the Commission impose a civil penalty of no less than \$50,000.

A. Bottle Rock Willfully and Knowingly Violated the Commission's May 2001 Order

Culpability for violating the May 2001 Order rests entirely with Bottle Rock. Bottle Rock unilaterally cancelled bond. Bottle Rock's argument that the May 2001 Order did not include a bond condition had little or no merit. (See Complaint Decision.)

Bottle Rock was quite aware of its obligations under the Commission's May 2001 Order. Despite a very specific provision that Bottle Rock comply with the terms of the Purchase Agreement, Bottle Rock cancelled the security bond without obtaining prior approval from the Commission. The plain language of the Order or the record does not support any assertion that Bottle Rock acted in good faith. In fact, in May 2009, the Department of Water Resources warned Bottle Rock that the Commission may not agree with the removal of the bond. In discussing modification of the Purchase Agreement, DWR stated to Bottle Rock:

Your second suggestion seems to assume that the Energy Commission will give up the security bond for its standard language regarding the closure of geothermal facilities. Again I am not convinced this will occur because it would require the Energy Commission to give up the security of the bond for a promise by a limited liability corporation which will probably have almost no assets when decommissioning occurs.

(Exhibit 202, TN 51637.)

Thus, in May 2009, DWR expressed the very concern about removal of the bond requirement that was expressed during the complaint proceedings and Petition to Amend. On September 24, 2009, the DWR further informed Mr. Harms that:

Mr. King's letter appears to indicate a desire to eliminate the need for the security bond under the Agreement by: (1) having the Coleman family release any liability of the State under the lease hold, and (2) by having the California Energy Commission's standard license closure conditions that would not rely on bonds to fund the costs of decommissioning.

(Exhibit 201, TN 53427.)

Bottle Rock was clearly aware of the May 2001 Order and the concerns about removal of the bond requirement.

B. Bottle Rock Has Provided No Evidence That it Cannot Pay a Civil Penalty

The Staff Recommendation indicates that Bottle Rock, through the unsubstantiated representations of Brian Harms, has limited ability to pay and that a substantial fine could have a negative effect on the project's ability to continue business.

In the Petition to Amend proceeding, Bottle Rock had ample opportunity to document its financial condition. Instead of providing the Commission competent evidence regarding ability to pay, Bottle Rock, through Mr. Harms, offered only unsubstantiated statements, but no evidence. Thus, there is no competent evidence before the Commission that Bottle Rock has a limited ability to pay or that a fine of \$50,000 would in any way impair its ability to continue business. As such, the Commission should not base a decision upon any of Mr. Harms' statements regarding financial ability to pay. It should also be noted that Mr. Harms repeatedly stated that Bottle Rock could not afford a bond requirement of \$1,300,000, yet Bottle Rock timely secured a bond to meet the Commission's requirements.

C. The Violation Resulted in Significant Economic Savings to Bottle Rock

Bottle Rock cancelled the bond in approximately September of 2012 after amending the Purchase Agreement with DWR. (Complaint Decision at p. 3.) Although the Committee found that Bottle Rock had violated the bond requirement, the Committee stayed the requirement to have a bond pending Bottle Rock's Petition to Amend regarding the Bond Requirement. (*Id.*)

Pursuant to the Commission's Ruling in December 2013, Bottle Rock acquired a security bond with a premium amount of \$33,537.50. (Bottle Rock Request to Withdraw, Exhibit A.) That averages approximately \$2,794 a month. Thus, Bottle Rock went approximately 16 months with no bond in place and having paid no premiums for a bond. Thus, the economic savings to Bottle Rock during this time period exceeded \$44,000. And that is based upon the reduced bond amount, not the economic savings had Bottle Rock maintained the original \$5 million bond as required by the May 2001 Order and Complaint Decision. Bottle Rock should not profit from its failure to comply with this Commission's Order. Therefore, a civil penalty that takes into account Bottle Rock's economic savings is appropriate.

D. The State Incurred Significant Cost to Pursue the Complaint

Upon Mr. Coleman filing a Complaint regarding Bottle Rock's violation of the May 2001 Order, CEC staff conducted a public workshop and the Committee conducted a public hearing. Additionally, Staff conducted its own independent investigation of Bottle Rock's violations. Thus, the Commission incurred numerous expenses in terms of staff time and public hearings in order to act upon the complaint and enforce the Commission's May 2001 Order. While Mr. Coleman does not have a dollar figure regarding the costs to the Commission, it would be safe to argue that such staff time exceeded \$10,000 of taxpayer money.

III. CONCLUSION

Taking into consideration Bottle Rock's economic savings associated with its willful and knowing violation of the May 2001 Order, along with the costs incurred by the State of California, Mr. Coleman respectfully requests that the Commission impose a civil penalty of no less than \$50,000.

Dated: February 14, 2013

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