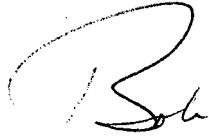


Memorandum

Date : May 21, 2001

Telephone: (916) 654-3936

To : Steve Larson
Executive Director



From : California Energy Commission - Bob Therkelsen, Deputy Director
1516 Ninth Street
Sacramento, CA 95814-5512
Assessment & Siting

TN 204108

DOCKET	
79-AFC-4C	
DATE	MAY 21 2001
RECD.	MAY 25 2001

Subject : **ITEM FOR THE MAY 30, 2001 BUSINESS MEETING—CALIFORNIA DEPARTMENT OF WATER RESOURCES PETITION FOR OWNERSHIP CHANGE FOR THE BOTTLE ROCK GEOTHERMAL POWER PLANT (79-AFC-4C)**

COMMISSION ACTION REQUESTED

In accordance with section 1769(b) of Title 20, California Code of Regulations, the California Department of Water Resources (DWR) filed a petition on April 6, 2001 with the California Energy Commission to transfer the ownership and obligations imposed by the conditions of certification of the Bottle Rock Geothermal Power Plant (79-AFC-4C) from DWR to the Bottle Rock Power Corporation.

The petition for ownership change satisfies all the legal requirements of section 1769(b). Energy Commission staff recommends conditional approval of the petition for ownership change as presented in the attached Order.

BACKGROUND AND SUMMARY

The Energy Commission certified the 55 MW DWR Bottle Rock geothermal power plant in 1980 for the purpose of providing electricity for the State Water project. The Energy Commission's jurisdiction over the development of the Bottle Rock geothermal plant was primarily limited to the power plant site; if the ownership change is approved by the Energy Commission, the development of the steamfields will remain under the jurisdiction of Lake County (Lake County Amended Use Permit 85-27).

Bottle Rock operations commenced in 1985. By 1990 DWR decided to shut the power plant down due to a lack of steam. According to DWR, the Bottle Rock power plant rarely attained 40 MW. In April 1993, the Energy Commission approved an amendment to the conditions of certification that modified the monitoring and reporting requirements in consideration of the plant's shutdown status (Energy Commission Order #93-0426-02). In October 1997, the Energy Commission approved an extension for the suspension of operations for an additional three years to allow DWR to prepare a facility closure plan [Energy Commission Order #97-1203-1(a)]. To date, DWR has not filed a closure plan with the Energy Commission.

In order for the power plant to be restarted, a petition to restart the plant and to amend the current suspended monitoring and reporting requirements must be filed in accordance with section 1769(a) of Title 20 of the California Code of Regulations. A petition to restart the power plant would be evaluated for possible changes to the original conditions of certification and the possible need to impose new conditions to assure compliance with all current laws, ordinances, regulations, and standards.

It is staff's opinion that, due to the power plant's poor performance history, the proposed acquisition by the Bottle Rock Power Corporation could be considered a highly speculative business transaction. Additionally, given that it is only a recent formation, staff is concerned about Bottle Rock Power Corporation's ability to fund decommissioning activities, should the need arise. Therefore, Energy Commission staff reviewed the purchase agreement between DWR and the Bottle Rock Power Corporation, together with supplemental documents provided by the parties, to determine if satisfactory financial security was required to fund the clean-up of unforeseen environmental accidents, and/or the decommissioning of the power plant should those actions become necessary subsequent to the proposed transfer of ownership. Staff determined that the surety bond for decommissioning and reclamation liabilities, and the environmental impairment insurance that are requisite in the purchase agreement, appear to provide substantial assurances of protection of public health and safety, and the environment.

It bears mentioning that there remains an inherent risk with this proposed change of ownership, given the uncertainties of a successful restart of this power plant and the unknown financial capacity of the Bottle Rock Power Corporation.

Staff Recommendation

Staff recommends approval of the petition for ownership change subject to the following condition that the parties strictly adhere to the terms of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease" and that DWR remain responsible for ensuring the closure and decommissioning of the facility should such actions become necessary subsequent to the transfer of ownership.

Nancy Tronaas is the Compliance Project Manager, and Dan Rios is the Compliance staff counsel for this project. Staff will make a presentation at the Business Meeting.

Attachment

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 79-AFC-4C
)	Order No.
Bottle Rock Geothermal Power Project)	
)	
Petition for the Transfer of Ownership)	COMMISSION ORDER
from the California Department of Water)	APPROVING OWNERSHIP
Resources to Bottle Rock Power)	TRANSFER
<u>Corporation</u>)	

INTRODUCTION

On April 6, 2001, the California Department of Water Resources (DWR) submitted a Petition to transfer ownership of the Bottle Rock Geothermal Power Plant from DWR to the Bottle Rock Power Corporation. Pursuant to Title 20, California Code of Regulations, Section 1769(b), the Commission's Executive Director, relying on a review of the application by Commission Staff and other governmental agencies, has recommended that the Commission approve the Petition for transfer of ownership on the condition that DWR remain responsible for ensuring the closure and decommissioning of the facility should such actions become necessary subsequent to the transfer of ownership.

SUMMARY OF HEARING

At a regularly scheduled business meeting on May 30, 2001, the Commission received the Executive Director's recommendation, as well as a copy of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease" and copies of all pertinent Memoranda and correspondence between Commission Staff, DWR and Bottle Rock Power Corporation and its representatives and comments from the parties.

BACKGROUND

The Commission certified the 55 MW DWR Bottle Rock Geothermal Power Plant in 1980 for the purpose of providing electricity for the State Water Project. The Commission's jurisdiction over the development of the Bottle Rock facility was primarily limited to the power plant site. Development of the underlying steamfields remains under the jurisdiction of Lake County pursuant to Lake County Amended Use Permit 85-27.

Operations at the Bottle Rock facility commenced in 1985. By 1990, DWR elected to close the facility due to a lack of steam. According to DWR, the Bottle Rock facility rarely attained 40 MW. The Commission approved an amendment to the conditions of certification that modified the monitoring and reporting requirements in consideration of the plant's shutdown status in April 1993 (Energy Commission Order #93-0426-02). The Commission approved an extension for the suspension of operations in October 1997, allowing DWR an additional three years to prepare a facility closure plan [Energy Commission Order #97-1203-1(a)]. DWR has not filed a closure plan with the Commission to date.

In order for the Bottle Rock facility to be restarted, a petition to restart the plant and to amend the current suspended monitoring and reporting requirements must be filed in accordance with Title 20, California Code of Regulations, Section 1769(a). A petition to restart the facility would be evaluated for possible changes to the original conditions of certification and the possible need to impose new conditions to assure compliance with all current laws, ordinances, regulations, and standards.

Commission staff is concerned that, given the facility's poor performance history, the proposed acquisition by the Bottle Rock Power Corporation could be considered a highly speculative business transaction. Additionally, the Bottle Rock Power Corporation was only recently formed and its financial capability to fund decommissioning activities is uncertain. In light of these concerns and in the interest of ensuring the continued protection of public health and safety and the environment, staff requested, by way of correspondence dated April 26, 2001, DWR to provide the following:

1. A copy of the purchase agreement between DWR and Bottle Rock Power Corporation,
2. A copy of any appraisals by or for DWR providing an estimate of costs for decommissioning activities,
3. A brief summary of the salient points of the purchase agreement addressing any financial security associated with the potential decommissioning of the facility and environmental mitigation, and
4. A description of any continued responsibilities or obligations that will be retained by DWR subsequent to the proposed transfer of ownership.

DWR responded to Commission Staff's request for further information by way of correspondence dated May 2, 2001, attached to which was, among other things, a copy of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease" (the Purchase Agreement).

Section 2.4 of the Purchase Agreement requires Bottle Rock Power Corporation to provide DWR with a five million dollar (\$5,000,000) surety bond to be delivered to DWR at the closing of the transaction. Bottle Rock Power Corporation is further required to submit an independent engineering estimate of the cost to decommission the facility and for all site restoration and remediation obligations for DWR's approval every third year after closing. That section further requires that, if such engineering estimate

exceeds \$5,000,000, Bottle Rock Power Corporation shall increase the security to cover the amount of the estimated cost plus twenty-five percent (25%). The amount of the security may also be reduced to the estimated cost to decommission the facility and for site restoration and remediation, plus 25%, in the event the estimated cost is less than the initial \$5,000,000 security amount. The security is to remain in place until five (5) years after completion of all decommissioning.

Section 2.4 of the Purchase Agreement further authorizes DWR to inspect the premises to determine whether substantial hazardous substance contamination on the property exists on the property from the operation of the facility or any related facilities. In the event DWR finds any such contamination, DWR may require Bottle Rock Power Corporation to cease any operations causing such contamination and to clean-up and remedy all such contamination.

Section 2.4 of the Purchase Agreement authorizes Bottle Rock Power Corporation to elect to substitute a letter of credit as the security required under that section in the same amount and on the same terms and conditions as those specified relative to the surety bond.

Section 2.5 of the Purchase Agreement requires that, at or prior to closing of the transaction, Bottle Rock Power Corporation shall have purchased an Environmental Impairment Insurance policy, with limits of liability in an amount not less than ten million dollars (\$10,000,000), designating DWR as co-named insureds. The insurance policy must remain in effect at all times during operation and the decommissioning of the power plant, and extends to the associated steam fields.

Finally, in its May 2, 2001 correspondence in response to Commission Staff's request for further information relative to the transaction, DWR indicated that "(t)he Department will not have any continued responsibilities or obligations subsequent to the proposed transfer unless they are imposed by law and the Buyer fails to meet its obligation to take care of them".

COMMISSION FINDINGS

The Commission hereby finds that DWR's Petition for transfer of ownership satisfies the requirements of Title 20, California Code of Regulations, Section 1769(b). Bottle Rock Power Corporation will be responsible for complying with the Commission's conditions of certification and all subsequent Energy Commission Orders. Adequate measures appear to have been taken to enable DWR to ensure the proper closure and decommissioning of the Bottle Rock Power Plant subsequent to the transfer of ownership in the event Bottle Rock Power Corporation is unable to do so. And, Ronald E. Sues, President of the Bottle Rock Power Corporation, has filed the requisite statements verifying that Bottle Rock Power Corporation understands and agrees to comply with the conditions of certification.

ORDER

Having considered staff's recommendation and comments from the parties and all submitted documents, the Commission hereby approves the transfer of ownership of the Bottle Rock Power Plant from the California Department of Water Resources to Bottle Rock Power Corporation subject to the following conditions:

- (a) The parties shall strictly adhere to the terms of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease", and
- (b) The California Department of Water Resources shall remain responsible for ensuring the closure and decommissioning of the facility should such actions become necessary subsequent to the transfer of ownership.

Dated: _____

State of California
Energy Resources Conservation
And Development Commission

WILLIAM J. KEESE
Chairman