

LIVINGSTON & MATTESICH

TN 20748

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79-AFC-4C
DATE MAY 30 2001
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EMILIO E. VARANINI
ATTORNEY AT LAW

May 30, 2001

BY HAND DELIVERY

Chuck Najarian, Compliance Program Manager
Ms. Nancy Tronaas, Compliance Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814 -3938
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Re: *Bottle Rock Power Plant (79-AFC-4C)*
Petition for Ownership Change

Dear Mr. Najarian & Ms. Tronaas:

Enclosed, please find two copies of the letter with enclosures which were given to the Commissioners yesterday, May 29, 2001.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,


EMILIO E VARANINI, III

EEV/hn

Enclosure

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May 29, 2001

EMILIO E. VARANINI
ATTORNEY AT LAW

VIA HAND DELIVERY

Commissioners
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: *Transfer of Ownership Between the California Department of
Water Resources and Bottle Rock Power Corporation for the
Bottle Rock Geothermal Power Plant Facility (79-AFC-4C)***

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-7505
FACSIMILE: (916) 448-1700
E-MAIL: EMILVARANINI@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3035

Dear Commissioners:

On May 21, 2001 Staff prepared a Proposed Order, which recommends approval of the ownership change in the above-referenced matter, subject to certain conditions. The purpose of this letter is to inform you that Staff's recommendation of Condition B of the Proposed Order is unnecessary and counterproductive. Should you approve the Proposed Order in its current form, such an action will result in the refusal of the California Department of Water Resources (CDWR) to go forward with the transfer of ownership to Bottle Rock Power Corporation (BRPC).

Condition B of the Proposed Order reads as follows:

"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."

Staff determined that a \$5 million surety bond, which guarantees the funds needed for closure, and a \$10 million environmental liability insurance policy provide "**substantial assurances**" to protect the public. Notwithstanding the foregoing, Staff persists in recommending continuing public liability of CDWR. CDWR through its attorneys has notified BRPC that Condition B is **not** acceptable, and that CDWR will not complete the transaction if it is subject to that condition.

BRPC has emphasized that with the available knowledge and capital, it can restore the 55MW geothermal power plant. The project can be partially on-line within a few months. BRPC has negotiated with CDWR for many months and CDWR has scrupulously required surety that is sufficient. Staff continues to promote financial exposure for CDWR above levels that even the Staff has deemed reasonable.

While BRPC understands that Staff has made cost comparisons between the decommissioning of the Central California Power Agency No. 1 Geothermal Facility (CCPA) project and the Bottle Rock Geothermal Power Plant (Bottle Rock), it should be noted that independent estimates by BRPC and the CDWR indicate that the bond, insurance, salvage value, and other assets equate to more than a sufficient amount to cover costs estimated for the future closure of the Bottle Rock project. BRPC further notes that the CCPA project (132 MW) is not an appropriate comparison as it was much larger than the Bottle Rock project.

To illustrate the differences in projects you should know that the CCPA project is nearly 4.5 times larger than the Bottle Rock project (1500 acres and 350 acres respectively). Additionally, BRPC recently learned that Staff has centered concerns on the particular size, design, and construction of the Bottle Rock building compared to the building at CCPA. To further demonstrate differences in the projects, BRPC submits herewith a comparison chart, which contrasts the CCPA project to the Bottle Rock project.

Moreover, BRPC points out that the demolition of buildings is an advanced science and art. In recent years, alternatives, from the use of finely designed explosives to highly technical cutting equipment, has decreased demolition costs (see attached letter from Bill Glueck, CEO, Plant Reclamation).

Please recall that the Bottle Rock project is the only project currently before the Commission that has any actual surety or environmental liability insurance, and that Bottle Rock is the first project within the last several thousand mega-watts brought before the Commission, which is to make available clean green power for California.

For the foregoing reasons, BRPC respectfully requests that you approve the transfer of ownership from CDWR to BRPC without Condition B, as that condition could cost Californians 55 mega-watts of new electric generation.

Very truly yours,



EMILIO E. VARANINI

EEV/ea

Enclosures

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COMPARISON TABLE

Central California Power Agency No. 1 (CCPA) and Bottle Rock Geothermal Power Plant

DESCRIPTION	CCPA	BOTTLE ROCK
<i>Project Area</i>		
Total Acreage	±1,500 acres	±350 acres
Roads (paved)	±12 miles	±1.5 miles
Roads (unpaved)	±8 miles	±1.5 miles
<i>Power Plant</i>		
Generation Capacity	132 MW	55 MW
Number of Turbines	2 turbines	1 turbine
Plant site Acreage	8.3 acres	4.5 acres
Out Building Acreage	11.5 acres	1.5 acres
Out Buildings (total)	3 buildings	1 building
<i>Steamfield</i>		
Well Pads	18 pads	3 pads
Pad Sumps	17 sumps	3 sumps
Pad Area (total)	37.4 acres	5.8 acres
Total Disturbed Acreage	±60 acres	±13 acres
Wells, Production	19 wells	12 wells
Wells, Injuection	3 wells	2 wells
Wellhead Vertical Change	±1,200 feet	±500 feet
Steam Pipeline (total)	±32,000 feet (6 mi.)	±10,400 feet
Injection Pipeline (total)	±7,000 feet	±2,640 feet
<i>Closure Cost Differential</i>		
Dollar Amounts	\$12.5 million (est.)	\$5.0 million (bond)

NOTE: CCPA data was taken from Closure and Restoration Plans. Bottle Rock data was taken from the various Site Assessments, Engineering Data Books, and other sources.



PLANT RECLAMATION

May 7, 2001

Bottle Rock Power Corp.
1275 4th St. - No. 105
Santa Rosa, Ca 95404

Attn: Ronald E. Sues, JD
President

Dear Ron,

As per your inquiry of the removal of C.C.P.A. facility in the Kelseyville area of the California Geysers in Sonoma County the following is a description of the plant.

The power plant consisted of two 66 MW rated, low pressure (115 psia), geothermal steam turbines supplied by Toshiba. Each 66 MW turbine generator had an associated tube and shell condenser, non-condensable gas removal system and a 10 cell, forced draft cooling tower. A switchyard was adjacent to the turbine generator building, which utilizes a separate 13.8 KV to 230 KV step-up transformer for each unit. Both units shared a common hydrogen sulfide emission control system including both a Stretford process and a DOW incinerator.

The steam leaseholds included over 2,225 acres. There were 22 wells and over 32,000 feet of pipeline used to supply steam to the power plant.

The generating facility was connected to the PG&E 230 KV geothermal transmission collector line via a 1.7 mile double circuit transmission tapline.

Appurtenant facilities included service buildings, shop facilities, and warehouses located at the plant site and steamfield.

Attached is a list of the equipment removed from the C.C.P.A. plant is included with letter.

If you compare the C.C.P.A. plant to the Bottle Rock facility a conservative estimate would be that the Bottle Rock removal costs should be about fifty percent (50%) or less commensurate to site remediation requirements.

In our opinion, cost studies should note, there was 6 plus miles of steam pipe at C.C.P.A. plant and considerably less footage at the Bottle Rock Power Plant

Bottle Rock Power Plant has less than half the power generating capacity and 25% of the water cooling capacity of C.C.P.A.

Also, convenient accessibility to Bottle Rock Plant Corp. site is a cost factor.

In my opinion, at this time, with the information we have, our estimated cost of Bottle Rock Plant remove would be between Four to Five million dollars (\$4 to \$5 mil).

If you require a detailed set of specifications, they can be generated.

I make these accuracies of opinions generated from the experience of removing Unit 1, Unit 2, Unit 3, Unit 4, and C.C.P.A. Power Generating Plant in the Geysers in the Coldwater Creek area.

I hope this information is what you require, please feel free to contact me if I can be of any additional assistance.

Sincerely,



Bill Glueck, C.E.O.

BG/cs

COPY

SURETY BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT THE UNDERSIGNEDS ATTEST TO THE FOLLOWING:

Bottle Rock Power Corporation, 725 Farmer's Lane, Suite 8, Santa Rosa, California 95405, a corporation organized and existing under the laws of the State of California, as PRINCIPAL, and Surety Company, whose address is _____, organized and existing under the laws of the State of _____ and licensed to do business in the State of California, as SURETY, are held and firmly bound unto the California Department of Water Resources (OBLIGEE) in the penal sum of Five Million Dollars (\$5,000,000 USD) for the payment of which we hereby bind ourselves, our successors, and assigns.

Whereas, the above named PRINCIPAL has entered into the Purchase Agreement for Bottle Rock Power Plant and Assignment of Geothermal Steam Lease ("Purchase Agreement") with OBLIGEE and has compelled itself to fulfill and to complete the obligations as stated in Sections 2.4 and 7.1(e) of said Purchase Agreement;

Whereas, a demand has been made upon PRINCIPAL by OBLIGEE in the Purchase Agreement for security to insure compliance by the PRINCIPAL with the obligations of said Purchase Agreement, and this surety bond is executed and tendered in accordance with the provisions of the Purchase Agreement which is an Insured Contract hereunder;

Whereas, PRINCIPAL has chosen to file this performance surety bond as a guarantee that the decommissioning of the Bottle Rock Power Plant and related facilities and the reclamation of the land used or disturbed during the geothermal operations will be completed as required by Sections 2.4 and 7.1(e) of said Purchase Agreement;

Whereas, the SURETY and their successors and assigns agree to guarantee the obligation and to indemnify the OBLIGEE from the failure of the PRINCIPAL to complete the decommissioning of the Bottle Rock Power Plant and related facilities and reclamation of the land used or disturbed during the geothermal operations in conformity with Sections 2.4 and 7.1(e) as specified in the Purchase Agreement, not to exceed the maximum amount of the penal sum of this bond;

Whereas, SURETY, as part of the obligation secured by this bond, agrees that costs and reasonable expenses and fees, including reasonable attorney fees incurred by OBLIGEE in successfully enforcing such obligation against SURETY, all to be taxed as costs and included in any judgment rendered, shall be included in the penal sum specified in this bond;

Whereas, obligations guaranteed by this surety bond shall be in effect for the lands described in the Geothermal Steam Lease which are subject to Section 7.1(e) upon which operations of PRINCIPAL will have been conducted;

THE TERMS AND CONDITIONS OF THIS SURETY BOND ARE:

If PRINCIPAL faithfully completes all obligations set forth in Section 7.1(e) of the Purchase Agreement and all conditions contained therein, then this bond obligation shall be void; otherwise it will remain in full force and effect as follows:

- (a) beginning on the date of the Closing of the Purchase Agreement between PRINCIPAL and OBLIGEE and extending until all decommissioning and reclamation work pursuant to Section 7.1(e) has been completed; or
- (b) beginning on the date of the Closing of the Purchase Agreement between PRINCIPAL and OBLIGEE and continuing until the bond is released or replaced with OBLIGEE's approval;
- (c) beginning on the date of the Closing of the Purchase Agreement between PRINCIPAL and OBLIGEE and continuing until the bond is replaced with OBLIGEE's approval by another form of security.

The failure of PRINCIPAL to fulfill the obligations specified in Purchase Agreement Section 7.1(e) shall result in forfeiture of this surety bond according to the instructions of the agreement and obligate SURETY to perform its bond commitments within thirty (30) days of the forfeiture for the benefit of the OBLIGEE.

The amount of SURETY's liability hereunder may be adjusted as provided in Section 2.4 of the Purchase Agreement, which adjustment may be reflected by the use of an Increase Rider or Decrease Rider.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the obligations as stated in Sections 7.1(e) of the Purchase Agreement, or any other provision of the Purchase Agreement, or to the work to be performed thereunder, or the specifications accompanying the same, or the acceptance or retention by OBLIGEE of additional security for such obligations, or the agreement by OBLIGEE to subordinate, compromise, release any such security, or the release by OBLIGEE of PRINCIPAL of any part of all its obligations under such Sections 7.1(e) or the acceptance, substitution or release of one or more guarantors, endorsers or sureties, shall in any way affect SURETY's obligation on this bond and SURETY does hereby waive notice of any such change, extension of time, alteration, addition or

... matters, and all rights under Section 2845 of the Civil Code of California and agree that these are not a condition precedent to SURETY's obligations hereunder. SURETY authorizes OBLIGEE at any time in its discretion to reasonably alter any of the terms of the Reclamation Plan, to take and to hold any additional or substituted security for PRINCIPAL's obligations hereunder and to subordinate, compromise, or release any security, to release PRINCIPAL of its liability for all or any part of the work or performance required under the Reclamation Plan, to release, substitute, or add any one or more guarantors, endorsers, or sureties, and to assign this surety bond in whole or in part.

SURETY hereby waives:

(a) Any defense of exoneration based on any impairment of SURETY's rights or remedies against PRINCIPAL, including any rights of subrogation;

(b) All rights, liabilities and defenses based on any legal disability of PRINCIPAL or any discharge or limitation of the liability of the PRINCIPAL to OBLIGEE, whether contractual or arising by operation of law, or by reason of any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause or defense, including without limitation any claim of disability, offset, demand or defense that PRINCIPAL may assert or claim under the Purchase Agreement;

(c) All rights, including those arising under Section 2809 of the California Civil Code, to reduce SURETY's obligation in proportion to any reduction in the obligations of PRINCIPAL so that OBLIGEE shall at all times have first dollar coverage under the surety bond;

(d) All rights, including rights under Section 2845 of the California Civil Code, to require OBLIGEE to pursue PRINCIPAL, any other person, any other security that OBLIGEE may hold, or any other remedy whatsoever before proceeding against SURETY hereunder;

(e) All rights of reimbursement or subrogation, all rights to enforce any remedy that OBLIGEE or SURETY may have against PRINCIPAL, and all rights to participate in any security held by OBLIGEE with respect to PRINCIPAL's obligations, but only until all amounts and performance required under Section 7.1(e) of the Purchase Agreement have been paid or performed in full.

(f) Any obligation of OBLIGEE to advise SURETY of the financial condition of PRINCIPAL or any other circumstances affecting PRINCIPAL's ability to perform its obligations under Sections 7.1(e) of the Purchase Agreement, and;

(g) Presentment, diligence, demand, protest, dishonor, and any notices thereof or nonpayment, or any other notices of any kind except as expressly set forth herein.

SURETY'S obligations hereunder are independent and separate of those of PRINCIPAL and OBLIGEE may demand performance by SURETY and may bring a separate action against SURETY without first exhausting any security or remedy against PRINCIPAL or exercising any other right or remedy under the Purchase Agreement or first pursuing or exhausting any other remedy for the obligations of or remedy against PRINCIPAL,

PROVIDED, HOWEVER, subject to the provisions of Section 5(e) above and after all amounts due and performance required under Sections 7.1(e) and 7.1(f) of the Purchase Agreement have been indefensibly paid or performed in full, SURETY shall be subrogated to the rights of OBLIGEE against PRINCIPAL, including the right to enforce any remedy that OBLIGEE may have against PRINCIPAL, and to participate in any security held by OBLIGEE with respect to PRINCIPAL'S obligations which has not been applied by OBLIGEE to the satisfaction of amounts owed or performance due by PRINCIPAL to OBLIGEE and which OBLIGEE in its discretion has determined that it does not need to retain to secure any other amounts or performance owed or owing by PRINCIPAL to OBLIGEE.

The SURETY will give prompt notice to the PRINCIPAL and the OBLIGEE of any notice received or action filed alleging the insolvency of the SURETY, or alleging any violations of regulatory requirements which would result in suspension or revocation of the SURETY'S license to do business.

In the event that the SURETY becomes unable to fulfill its obligations under this surety bond for any reason, notice shall be given immediately to the PRINCIPAL and the OBLIGEE.

Upon the incapacity of the SURETY by reason of bankruptcy, insolvency, or suspension or revocation of its license, the PRINCIPAL shall be deemed to be without bond coverage and subject to enforcement actions by OBLIGEE. No termination, cancellation or expiration of this surety bond for any reason whatsoever, including for nonpayment of premiums, shall be void or ineffective unless OBLIGEE has received not less than thirty (30) days prior written notice thereof. In addition:

(a) If SURETY or OBLIGEE serves written notice of SURETY'S incapacity to perform to PRINCIPAL and OBLIGEE, the PRINCIPAL shall within fifteen (15) working days of said written notice submit a letter of credit or a replacement surety bond assuming all liabilities hereof and in an amount no less than the penal sum hereof which shall

be satisfactory to OBLIGEE, or the PRINCIPAL shall be subject to enforcement actions by OBLIGEE; and;

(b) If, at the time that the written notice described in Section 9(a) above is given, either all work required under the Reclamation Plan has not been fully and finally completed or PRINCIPAL fails to provide the letter of credit or replacement surety bond provided in Section 9(a) above, PRINCIPAL shall immediately and without further notice be deemed to be in default of its obligations thereunder, and OBLIGEE shall be entitled to immediately make demand under this surety bond for the payment and performance of all uncompleted obligations and requirements of the Reclamation Plan, and

(c) PRINCIPAL shall in all events remain liable for all work and workmanship performed, obligations under, and liabilities incurred in connection with Section 7.1(e) of the Purchase Agreement;

No delay or failure by OBLIGEE to exercise any right or remedy against PRINCIPAL or SURETY will be construed as a waiver of that right or remedy. All such rights or remedies are cumulative, but SURETY's liability hereunder shall not exceed the penal sum hereof. The obligations hereunder are subject to waiver, release, or amendment only by OBLIGEE, acting alone and in writing. No waiver, release, or amendment of any provision hereof is effective without the written consent of OBLIGEE.

If any provision of this surety bond is determined by a court or other forum of competent jurisdiction to be invalid or unenforceable, such provision shall not affect the validity or enforceability of any other provision.

This surety bond shall be governed by California law. The prevailing party in any action brought under or arising out of this surety bond shall be entitled to its reasonable attorney's fees. Any action brought hereunder shall be brought in the state or federal courts located in Sacramento, California.

IN WITNESS WHEREOF, the seal and signature of PRINCIPAL and SURETY are hereunto placed and attested to by their duly authorized officials on the dates set forth below.

Dated: _____

Dated: _____

SURETY

BOTTLE ROCK POWER CORPORATION

By _____

By _____

Title: _____

as President

SEAL

SEAL