

This is a complaint regarding Bottle Rock Power, LLC's noncompliance with a decision of the California Energy Commission (Commission). This complaint is filed pursuant to Title 20, California Code of Regulations, Section 1237.

My name is David Coleman and I reside at: 3733 Canon Ave Oakland, CA 94602

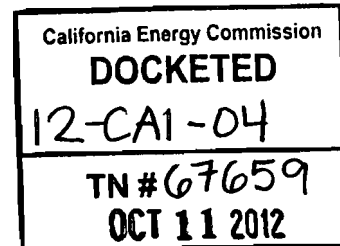
The contact information for Bottle Rock Power, LLC:

Brian Harms, General Manager

Bottle Rock Power, LLC

7385 High Valley Road
P.O. Box 326 Cobb, CA 95426

Phone: (707)928-4578



Statement of Facts:

The Commission certified the California Department of Water Resources' (DWR) 55 MW Bottle Rock Geothermal Power Plant in 1980. On April 2, 2001, DWR submitted a petition to the Commission to transfer ownership of Bottle Rock Geothermal Power Plant from DWR to Bottle Rock Power Corporation.

The Commission held a hearing on DWR's petition to transfer ownership on May 30, 2001. The main issue at the Commission's hearing was how to insure the cleanup and reclamation of the power plant site upon decommissioning (See Att. 1, pgs. 82-97, May 30, 2001 hearing transcript). Commission staff recommended that the Commission approve the transfer of ownership on the condition that DWR remain responsible for ensuring the closure and decommissioning of the facility should such action become necessary subsequent to the transfer of ownership. At the hearing, DWR's representative, Mr. Bob James, objected to staff's recommendation and instead pointed to Sections 2.4 and 2.5 of the Purchase Agreement as providing adequate financial assurance that the site will be cleaned up when the plant is decommissioned. Section 2.4 required that, among other things, at the time of sale, Bottle Rock Power deliver a five million dollar surety bond to DWR for the cost of site restoration and remediation. Section 2.5 required the purchase of an Environmental Impairment Insurance Policy of not less than ten million dollars and required that the policy be in effect at all times, through the decommissioning of the plant. (See Att. 2, Sections 2.4 and 2.5 of the Purchase Agreement.) The Commission order approving the transfer quote extensively from Sections 2.4 and 2.5 of the Purchase Agreement, and contained the finding that, "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." (Att. 3, Commission Order Approving Ownership Transfer, May 30, 2001) The Commission approved the transfer of ownership subject to the following condition:

"The parties shall strictly adhere to the terms of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease."

I understand that DWR and Bottle Rock Power recently amended the Purchase Agreement to delete Sections 2.4 and 2.5. In response to a Public Records Act request on the issue of the financial assurances, I received a copy of an August 3, 2012 memo from Cathy Crothers, DWR

Chief Counsel to Robert Weisenmiller, Chairman of the California Energy Commission (Att. 4). The memo states in part, "This memo is to advise your agency that the Department of Water Resources (DWR) is planning to amend the 'Purchase Agreement for the Bottle Rock Power Plant and the assignment of Geothermal Lease,' dated April 5, 2001 by the deletion of Sections 2.4 and 2.5 in exchange for a release of any liability of DWR to Bottle Rock Power or the owners of the geothermal steam." Robert Francisco who represents the V. V. and J Coleman Family LLC owners of the property confirmed that the agreement has been amended.

The amendment of the Purchase Agreement to delete Sections 2.4 and 2.5 clearly violates the Commission's May 30, 2001 order. I represent the Coleman Family Trust owners of property adjacent the Bottle Rock Power plant. We are opposed to the amendment because we are not confident that the project owners, a limited liability corporation, will devote adequate funds to the decommissioning of the plant and reclamation of the site. Lake County expressed its opposition to the amendment based on the same reasons, in an August 28, 2012 letter to the Department of Water Resources (Att. 5).

I request that the Commission take action to insure that there is adequate funding for closure and reclamation in the event of decommissioning of the Bottle Rock Power plant. The Commission could remedy this situation by notifying the project owner and DWR that the recent amendment of the Purchase Agreement is null and void as it was not submitted to the Commission for approval pursuant to Title 20, California Code of Regulations, Section 1769. I further request that the Commission conduct a hearing on the issue of financial assurances for the cleanup and decommissioning of the Bottle Rock project. We are concerned that the Department of Water Resources, even prior to the purported amendment of the Purchase Agreement, never enforced the conditions contained in Sections 2.4 and 2.5. My concern results from the fact that, in response to a Public Records Act request that I submitted to DWR requesting documents regarding the surety bond and liability insurance required by those sections, I only received a copy of the letter from Ms. Crothers to Commission Chairman Weisenmiller.

The Commission is authorized to take the actions I request under Public Resources Code Sections 25210 and 25534.

I declare, under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on, OCTOBER 10, 2012 at 3733 CANON AVE
OAKLAND CA 94602
California.



Original signed by David Coleman

Att.1 Transcripts

BUSINESS MEETING
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

ENERGY COMMISSION
1516 NINTH STREET
HEARING ROOM A, FIRST FLOOR
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 30, 2001

10:00 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

CONTRACT NO: 150-99-02

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSION MEMBERS

William Keese, Chairperson
 Robert Laurie
 Michal Moore
 Robert Pernell
 Arthur Rosenfeld
 James Boyd, Resources Agency

STAFF

Steve Larson, Executive Director
 Bill Chamberlain, Chief Counsel
 Cheri Davis, Project Manager
 Lisa DeCarlo, Staff Counsel
 Susan Gefter, Hearing Officer
 Chuck Najarian
 Dick Ratliff, Staff Counsel
 Garret Shean, Hearing Officer
 Kerry Willis, Staff Counsel

ALSO PRESENT

Issa Ajlouny
 Michael Boyd
 Peter Camp(via phone)
 Mike Carroll

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES CONTINUED

ALSO PRESENT

Tony Chapman

William Claycomb(via phone)

Jim Cole

Elizabeth Cord

Holly Duncan(via phone)

Christopher Ellison

Bob James

Michael Meacham(via phone)

Sharon Segner(via phone)

Alicia Torre

Emilio E. Varanini

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

INDEX

	PAGE
Pledge of Allegiance	1
1. Consent Calendar	
A and C	1
1B Energy Pro 3.1	1
2. Metcalf Energy Center	21
Mr. Mike Boyd	22
Ms. Duncan	27
Ms. Cord	27
Mr. Ajlouny	36
3. Mirant Delta LLC's	48
4. Pegasus Power Partners LLC	61
5. East Altamont Energy Center	61
	107
6. East Altamont Energy Center	61
	107
7. Bottle Rock Power Corp	82
8. Contra Costa Water District	97
9. Department of Motor Vehicles	98
10. New Buildings Institute	98
11. Lawrence Berkeley National Laboratory	99
12. Gas Technology Institute	99
13. Wind Turbine Company	100
14. PIER Environmental Technical Support Contract	101
15. Electric Power Research Institute(EPRI)	101
16. University of California, Irvine	102
17. California Air Resources Board	102

INDEX CONTINUED

	PAGE
18. Carl Moyer Advanced Technology Program	103
19. Minutes	115
20. Energy Commissioner and Oversight	115
21. Chief Counsel's Report	115
22. Executive Director's Report	115
23. Public Adviser's Report	115
24. Public Comment	116
25. Modesto Irrigation District	104
26. Site Regulations, General Discussion	104
27. Otay Mesa Generating Project	3
Mr. Claycomb	5
Ms. Duncan	9
Mr. Meacham	11
Mr. Mike Boyd	15
Mr. Carroll	16
Adjournment	116
Reporter's Certificate	117

1 CHAIRPERSON KEESE: We're putting this item over
2 for a few minutes..

3 COMMISSIONER LAURIE: Mr. Chairman, I would ask
4 what the Commission's intention are regarding the schedule
5 for today. I can tell you that I have an appointment
6 shortly after the noon area, and --

7 CHAIRPERSON KEESE: The Chair has to leave here
8 at 1:00 o'clock..

9 COMMISSIONER MOORE: I understood that we pushed
10 back till 1:00, so I've modified my lunch plans to go to
11 lunch at 1:00 o'clock..

12 COMMISSIONER LAURIE: Would that work for you?

13 CHAIRPERSON KEESE: Let's try another easy one.

14 Item 7, Bottle Rock Power Corporation. Possible
15 approval of a Petition for a Change of Ownership of the
16 Bottle Rock Geothermal Power Plant from California
17 Department of Water Resources to the Bottle Rock Power
18 Corporation.

19 MR. NAJARIAN: My name is Chuck Najarian. I'm
20 the power plant compliance program manager for the Energy
21 Commission..

22 The Department of Water Resources has petitioned
23 the Commission to approve an ownership change for their
24 Bottle Rock Geothermal Power Plant in the geyserous region
25 of California. The proposed new owner Bottle Rock Power

1 Corporation intends to restart the power plant, a facility
2 that has been in suspension for the last 11 years, due to
3 uneconomical operational history.

4 Staff is recommending approval of the ownership
5 change conditioned upon DWR remaining responsible to the
6 extent necessary for the facility closure. We must find
7 that the knew owner can meet all conditions of
8 certification and subsequent amendments in order to
9 recommend approval of the ownership change.

10 Staff cannot make that finding until there is
11 more certainty that plant closure, should it occur, will
12 be expeditious and environmentally sound. Ideally, the
13 prospective project owner will fully participate in the
14 closure process.

15 However, there are reasons to be concerned about
16 closure. First, the Bottle Rock Power Corporation is a
17 newly formed company with no history of power plant
18 development. Second, there are legitimate questions about
19 steam supply, and therefore a successful profitable
20 restart.

21 After all, it was the lack of steam supply and
22 quality that resulted in DWR putting their plant in
23 suspension for the last 11 years.

24 Apparently, DWR has similar concerns because they
25 negotiated a \$5 million closure bond and \$10 million

1 environmental insurance policy. The policy and bond are
2 to be paid by the new owner and they're to be held by DWR.
3 DWR has indicated that their bond is more than adequate to
4 address closure.

5 However, DWR was concerned enough about
6 successful restart that they included a requirement to
7 revisit the bond every three years so that it could be
8 adjusted over time depending on DWR engineering
9 evaluations.

10 DWR has taken these steps, which staff equates to
11 responsibility, while at the same time, DWR refuses to be
12 named a responsible party if Bottle Rock Power Corporation
13 is unable to perform closure.

14 Although DWR has negotiated the requirement of a
15 bond, and that they be named coinsured on the
16 Environmental Protection Policy, no provision has been
17 made regarding the administration of bond and insurance
18 proceeds.

19 In other words, we ask who will attempt to access
20 the bond and carry out closure.

21 At first glance, one might conclude that the \$5
22 million closure bond should alleviate staff's concerns
23 relative to closure of this facility.

24 Bonding, however, is not money in the bank.
25 Bonding companies are not motivated to pay millions of

1 dollars. In fact, their motivation is quite the opposite.
2 Bankruptcy proceedings can complicate things even further.

3 DWR has an obligation to participate in closure
4 as needed. They obtained the original power plant
5 license, agreed to regulatory requirements, built the
6 power plant, were preparing to close facility and begin
7 working with the community, local government and the
8 Commission to that end.

9 A prospective buyer changed their plans, but not
10 their responsibility to the community and the Commission,
11 given concerns about successful restart and effective
12 closure.

13 In the final analysis, if the new owner cannot
14 participate in closure and if DWR does not remain
15 responsible, responsibility for closure could be
16 transferred to the Commissioner as a result of this
17 ownership change.

18 We urge the Commission to hold DWR accountable,
19 ensure the Commission is never in the inappropriate
20 position of acting as a power plant owner, and find DWR
21 responsible by conditioning the ownership change as
22 articulated in staff's recommendations.

23 That concludes staff's prepared remarks. I'd be
24 happy to answer any questions.

25 CHAIRPERSON KEESE: Thank you. Let's hear from

1 the applicant.

2 MR. JAMES: Bob James, Department of Water
3 Resources Counsel. The Department cannot accept that
4 condition and we will withdraw the petition to approve the
5 change of ownership if that condition is to be imposed.

6 The Department has always wanted to get rid of
7 this plant in an as-is condition and with no further
8 responsibility for it, except what may be in our
9 agreement.

10 And that's been our effort, and we worked with
11 your staff to succeed in doing that. You, the staff, has
12 proposed two conditions. The first condition is
13 acceptable and it says we'll enforce the agreement, and we
14 will. We'll be responsible for getting to the bonding
15 company if it's necessary to get to the bonding company,
16 and to get the insurance coverage, if we need to, but we
17 will not accept responsibility for any financial
18 commitment to the decommissioning of the project.

19 We believe that we've gotten adequate security.
20 We have an appraisal of which we base the five million.
21 We're getting \$10 million worth of environmental insurance
22 to do any environmental cleanup. All of those will be
23 enforced until at least decommissioning is completed. The
24 bond actually goes five years after the end of
25 decommissioning.

1 We can, at any time actually, change the amount
2 of the bond by requesting a reevaluation, which has to be
3 done every three years, but we can do it sooner or so can
4 the buyer, and we can get it appraised. And if need be,
5 we can add more money to the bond, if it looks like the
6 five million is inadequate.

7 We think we've done something that no other
8 applicant to this agency has ever done. We don't know of
9 anybody that's ever been required to do this much and now
10 we're being asked to do more. There's a number of plants
11 that you've approved even up in the geysers for companies
12 that don't have anymore assets than the Bottle Rock Power
13 Corporation has.

14 There's lots of Limited Liability Corporations up
15 there. This plant can't be restarted until you consider
16 the application to restart under your regulation 1769(a).
17 And, at that time, if you see a need for additional
18 security, then I suggest you ask the buyer of Bottle Rock
19 Power Company for additional security.

20 Also, the steam field is under the jurisdiction
21 of the County of Lake. The County of Lake is certainly in
22 a position to ask for security in giving a permit for the
23 steam field.

24 So we think there are other alternatives besides
25 trying to hold the former applicant responsible. And

1 we've felt that the five million is adequate. We advised
2 your staff that we were going to go for five million and
3 we've seen no objection until the petition was filed and
4 now we've got a problem.

5 CHAIRPERSON KEESE: Thank you.

6 Mr. Varanini briefly.

7 MR. VARANINI: Thank you, Mr. Chairman. Gene
8 Varanini with Livingston and Mattesich. I represent the
9 Bottle Rock Power Corporation.

10 I think that DWR has made all the important
11 points. I think from our perspective, we would note that
12 virtually all of your approvals for all of your power
13 plants are to Limited Liability Corporations. And these
14 are corporations who know how to protect the corporate
15 veil from their limited liability companies back up the
16 Chain of Command.

17 So you could have \$13 billion and all you've
18 really got on the ground are the assets on the ground and
19 other assets of that Limited Liability Corporation.

20 First of all, there's a set of sureties in place.
21 There's surety to the county. There's surety to the
22 Department of Oil and Gas and surety to the Department of
23 Water Resources. We applaud the three-year adjustment,
24 because the normal three-year adjustment is you transfer,
25 basically, coverage from insurance to the assets of the

1 company itself.

2 So, in that case, as we go forward, we produce
3 power, those assets become part of the surety arrangement
4 as you go forward and the company becomes essentially, if
5 possible, self assured.

6 That's the way it normally works, and I think
7 that, in fact, we did a very detailed estimate ourselves
8 of our exposure. After all, it's our exposure. We're
9 bringing in substantial new capital to get this thing
10 restarted. Our exposure number was about 3.5 million and
11 the Department beat us upside of the head and basically
12 increased the surety bond to the \$5 million amount. I
13 also pointed out on top of the \$5 million there are
14 salvage values, and there are two other surety processes
15 in place.

16 And I think what we want to do is bring 55
17 megawatts of green power on line as quickly as possible.
18 We've got a four-month window. We will be back for your
19 approval, and we hope to have this thing restarted in four
20 months.

21 CHAIRPERSON KEESE: Thank you, Mr. Varanini.

22 Do we have any --

23 COMMISSIONER PERNELL: Mr. Chairman.

24 CHAIRPERSON KEESE: Commissioner Pernell.

25 COMMISSIONER PERNELL: So I can understand this.

1 We have -- you're with the Department of Water Resources,
2 sir.

3 MR. JAMES: Yes.

4 COMMISSIONER PERNELL: And the Department of
5 Water Resources, we're doing an ownership change? You're
6 selling it to the applicant?

7 MR. JAMES: Right.

8 CHAIRPERSON KEESE: The project.

9 COMMISSIONER PERNELL: And staff is recommending,
10 which I think that we need to have some assurances that if
11 the project is not successful, that it will be cleaned up.

12 And so staff is holding the Department of Water
13 Resources or trying -- suggesting that they be liable for
14 the cleanup, if the applicant doesn't complete it.

15 That's kind of the case here, right?

16 MR. JAMES: That's what I understand the staff
17 wants to do, yes.

18 COMMISSIONER PERNELL: Okay. So I have two
19 thoughts on this. One of them is it's difficult to -- I
20 mean, if I was to put this in a different scenario, and I
21 sold my house to Chairman Keese. And he stayed in it ten
22 years and I had to clean it up and then, you know, the
23 prospective owner comes back on me, so I don't think
24 that's really justified to have someone else liable for
25 something after you sold it.

1 However, I am certainly in agreement with staff
2 that someone has to be liable for the cleanup and that we
3 have to be assured that there's enough revenue in order to
4 do that to make us comfortable that if this project
5 doesn't go forward, that someone would be liable for
6 cleanup, and I would suggest that that someone be the
7 owner, whomever that might be. But that the previous
8 owner be liable, I'm not sure that I'm there.

9 So I would be looking for either some additional
10 bonding capacity or something to ensure that the cleanup
11 will, in deed, happen, but not so much leave it to the
12 Department of Water Resources to be liable for.

13 CHAIRPERSON KEESE: Commissioner Pernell, as I
14 recall, I received in writing, and I heard here, if we're
15 going to require DWR to stay on it, they're off the deal.
16 They withdraw the application for sale. So I think we
17 have to look at it on its face that if we -- we have to
18 look at this as if it is a transfer, we approve it, or we
19 don't approve it.

20 COMMISSIONER MOORE: Mr. Chairman, I think I do
21 understand what Commissioner Pernell is saying. And if my
22 interpretation of this is right, it does satisfy his
23 concerns. So let me iterate what I understand, and I'll
24 make it in the form of a motion. And if I get a second,
25 then we can debate that.

1 I would move that we accept the transfer and
2 accept the offer of liability protection for closure in
3 the form of a bond, as suggested by the applicant, and as
4 the Department of Water Resources has suggested would meet
5 their requirements or it's the equivalent of what they
6 would have to propose or spend in order to clean up.

7 If we accept that, the Department of Water
8 Resources will not be -- the transfer will go ahead and
9 the Department of Water Resources will not be the owner
10 anymore, but we will have a bond of adequate capacity to
11 cover closure and any cleanup that might be there.

12 COMMISSIONER LAURIE: I'll second the motion, Mr.
13 Chair.

14 CHAIRPERSON KEESE: Motion by Commissioner Moore,
15 second by Commissioner Laurie.

16 COMMISSIONER MOORE: On the motion, Mr. Chairman?

17 CHAIRPERSON KEESE: And let me clarify we have a
18 proposed order here, and I believe that what you're
19 saying, and I'll push it so that we understand, this would
20 be the staff motion deleting Section B?

21 COMMISSIONER MOORE: That's right.

22 CHAIRPERSON KEESE: Okay.

23 COMMISSIONER MOORE: That's correct. And Mr.
24 Chairman --

25 CHAIRPERSON KEESE: On the motion.

1 COMMISSIONER MOORE: On the motion, the reason
2 that I believe that motion addresses Commissioner
3 Pernell's question is that it does not leave the trail
4 back to a recalcitrant or reluctant DWR. In fact, it
5 removes them and puts in place a surety bond. And I
6 understand the difficulty that individuals from staff and
7 all the way up to Commissioners have with bonds.

8 I have done a little bit of investigation to find
9 out whether there was an alternative. I can't find one.
10 So in this sense, we have to trust to the market forces
11 that that kind of a posting does cover us.

12 Frankly, I want to stay away from something that
13 involves a disagreement between agencies here, and simply
14 go to the market and say this is a transfer in good faith
15 and I think the money is enough to cover the projected
16 costs of clean up. And I hope, I trust that that answers
17 Commissioner Pernell's questions.

18 If it doesn't, I probably would be prepared to
19 withdraw the motion.

20 COMMISSIONER PERNELL: Well, that goes along,
21 way. Yes, sir.

22 COMMISSIONER LAURIE: Mr. Chairman, if I may.

23 CHAIRPERSON KEESE: Commissioner Laurie.

24 COMMISSIONER LAURIE: I am respectful and I have
25 concurrence with the concerns expressed by Mr. Najarian.

1 I don't look at it as DWR selling it. I look at it as the
2 State of California selling it. They just happen to have
3 a different first name than we do, so the State, either
4 one way or the other, will bear some degree of ethical, if
5 not legal, responsibility should things go upside down.

6 I'm fully aware of the problematic nature of
7 seeking to enforce a bond. In my career, I've sought to
8 do so many times, and I find the process to be rigorous.
9 I know of no viable substitute for that. You can't do
10 cash. You can't do letter of credit, which is based on
11 cash. I think alternatives are simply not available. And
12 the bottom line, I think as a matter of public policy,
13 it's in the best interests of the State to have the
14 transfer go through. And for that I, as a commissioner,
15 am willing to bear the risk.

16 CHAIRPERSON KEESE: Thank you. We have a
17 motion --

18 COMMISSIONER PERNELL: Mr. Chairman, on the
19 motion.

20 CHAIRPERSON KEESE: Commissioner Pernell.

21 COMMISSIONER PERNELL: Two other concerns. One
22 of them is the bonding company itself, and I raise this
23 because I was reading in the paper about a bonding company
24 for a golf course that, you know, was a shell.

25 So I would recommend that the bonding company be

1 not only licensed, but actually checked out to make
2 sure --

3 COMMISSIONER LAURIE: It would have to be a --

4 COMMISSIONER PERNELL: -- it is a legitimate
5 bonding company.

6 And the other one is, and I'll address this to
7 staff, whether or not they feel that the \$5 million bond
8 is sufficient for cleanup?

9 MR. NAJARIAN: Thank you, I want to take that
10 opportunity to clarify certain remarks that were made.
11 Staff has never contested that \$5 million bond. We're not
12 asking to add to that amount. I want to make that real
13 clear..

14 Our concern is that the vehicle for the funding,
15 i.e. the bond, and the administration of those proceeds, I
16 mean, I can look forward. I can think about the logistics
17 of all that. And it might sound fairly straightforward
18 upfront, but I can imagine what would be involved should a
19 worst case situation unfold, so that's what we're bringing
20 to the table, not the amount.

21 CHAIRPERSON KEESE: Thank you. And I would say
22 in that regard, I did hear DWR indicate that they would
23 use their best efforts in enforcing that. I think, if you
24 would, it would be helpful to us if we would receive that
25 in writing.

1 MR. NAJARIAN: Yes.

2 CHAIRPERSON KEESE: And it probably will be
3 important as we proceed, because if we approve this
4 transaction Bottle Rock will be back in front of us in
5 another four months. I think it would be appropriate if
6 you would give us that in writing.

7 Do we have -- Commissioner Laurie.

8 COMMISSIONER LAURIE: Mr. Chairman, I want to
9 make sure my position is clear again. I agree with Mr.
10 Najarian.

11 If we too enforce the bond, it's going to be our
12 responsibility to do something with it. I think that
13 would be a challenge. I think that will be a difficult
14 thing to do. And I think we'll be a mess.

15 I am voting for the name change to allow it to go
16 forward. Simply in balancing the State's interests, I
17 think it's simply the better thing to do. And I fully
18 respect the problems that we will encounter should an
19 enforcement against the bond be necessary.

20 CHAIRPERSON KEESE: Thank you.

21 All in favor?

22 (Ayes.)

23 CHAIRPERSON KEESE: Opposed?

24 Adopted five to nothing.

25 SECRETARY McCANN: Mr. Chairman, we need to take

ATT. 2 Purchase Agreement.

2.4 Security for Decommissioning and Reclamation Liabilities. Buyer agrees to provide security in the form of a surety bond on or before the Closing Date from a firm acceptable to Seller in the initial amount of Five Million Dollars (\$5,000,000). Said security is to provide a guarantee of payment of any sums required to meet Buyer's obligations under Section 7.1 (e) of this Agreement. Said security shall consist of a surety bond which meets the following requirements:

- (a) Said surety bond shall be issued by an admitted surety insurer, as defined in subdivision (a) of Section 995 of the Code of Civil Procedure and substantially in the form of the attached Exhibit D.

Said security shall not be construed as a limitation on any obligation of Buyer to indemnify Seller. Said security shall be delivered to Seller at Closing.

Every third year after Closing, or more often at the option of Seller or Buyer, Buyer shall submit to Seller for Seller's approval an independent engineering estimate of the cost to meet the obligations of Sections 7.1 (e) of this

Agreement. If such estimate (as approved by Seller) exceeds Five Million Dollars (\$5,000,000 U.S.), the Buyer shall promptly increase the security to cover the amount of the estimated cost plus twenty-five percent (25%). Buyer may reduce the amount of security to the estimated cost plus twenty-five percent (25%) if such estimated cost (as approved by Seller) has been reduced below the previous approved estimate by twenty-five percent (25%) or more. Such reduction shall provide that the amount of the security is at least twenty-five percent (25%) above the current approved estimate of cost. This security

shall remain in place until five (5) years after completion of all decommissioning at which time Buyer may terminate it, and any funds remaining shall be the property of Buyer, provided, however, if Seller receives a complete release of all liability under the Francisco Steam Field Lease, then Buyer may adjust the amount of the bond to the amount of an independent engineering estimate approved by Seller of the cost to decommission the Plant and Steam Field required to meet the requirements of the California Energy Commission, the County of Lake and any other regulatory agency with jurisdiction.

- (b) Not more than once in any one year, upon 48 hours advance written notice by Seller to the Buyer, Seller may inspect the leasehold premises to determine whether or not there is any substantial hazardous substance contamination on the property from the operation of the Power Plant or Steam Field or any related facilities. If Seller finds any such contamination, Seller may require Buyer to cease any operations causing such contamination and to clean-up and remedy all such contamination in accordance with applicable legal standards. Seller shall not incur any liability as a result of the findings of any such inspection, regardless of whether or not it discovers any such contamination, notifies Buyer of the discovery any such contamination, or takes or fails to take any action with respect to such contamination that it discovers. No such inspection by Seller shall relieve the Buyer of any liability for any contamination hereunder or at law.

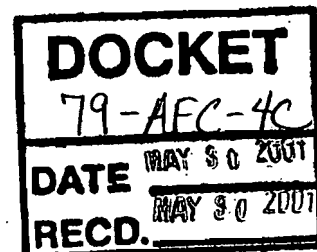
- (c) The provisions of the first paragraph of this Section 2.4 notwithstanding, at closing and on a temporary basis, not to exceed one year, Buyer may elect in its discretion to substitute a letter of credit as the security required by this Section 2.4, provided, however;
- (i) said letter of credit shall be in the same amount and shall have substantially the same terms and conditions as those specified above for the surety bond,
 - (ii) the form and content must be approved prior to closing and as a condition precedent to closing by Seller, and
 - (iii) the issuer of the letter of credit must be approved prior to closing and as a condition precedent to closing by Seller.
 - (iv) if for any reason the surety bond required by this Section has not been secured by the time of the termination of the temporary letter of credit, Buyer shall immediately commence to deposit 10 percent of its gross revenue each and every month into an escrow account to be established with an escrow agent acceptable to Seller and on terms and conditions to be approved by Seller as the required security. Said deposits shall continue until said escrow account has on deposit Five Million Dollars (\$5,000,000 U.S.) at which time further deposits will cease. Provided, however, said escrow account shall be subject to the same adjustment provisions provided above for the surety bond. If the amount of required security is increased above the Five Million

Dollars (\$5,000,000 U.S.), Buyer shall deposit additional funds in the escrow account at the same rate specified above until the new limit is reached. If the amount of security required is reduced to an amount less than Five Million Dollars (\$5,000,000 U.S.). Buyer may withdraw from the escrow account the difference between the required security amount and the Five Million Dollars (\$5,000,000 U.S.) amount: Buyer may at anytime substitute the above described surety bond in place of the escrow account and may then withdraw all funds from the escrow account.

- 2.5 Environmental Impairment Insurance Buyer shall at or prior to the Closing have purchased a policy of liability insurance, substantially in the form attached as Exhibit E which insures Seller and Buyer against all legally insurable liability referred to in Section 7.1(e) and 7.1(f) herein (excluding fines) ("Environmental Policy"). Said Environmental Policy shall not be, and shall not be construed to be, a limitation on any obligation of Buyer to indemnify Seller. Seller, its officers and employees shall be designated as co-named insureds on the Environmental Policy. The Environmental Policy's limits of liability shall not be less than ten million dollars (\$10,000,000 U.S.). Such policy shall include, but not be limited to the following: (a) a provision that the insurer give a minimum of forty-five (45) days notice to Seller of any termination of coverage, (b) Buyer is the first named insured and is responsible for all reporting and premium payment obligations under the policy, (c) payment of all deductibles under the policy is the sole obligation of the first named insured, (d) that this contract between Buyer and Seller is listed as an "Insured Contract." An original

copy of the binder for such Environmental Policy shall be provided to Seller at Closing as a condition on precedent to closing, and an original copy of this policy shall be provided to Seller as soon as it is available. Said insurance shall be in effect at all times during operation and decommissioning of the Purchased Assets (or any part of thereof) and all facilities on the premises covered by the Francisco Steam Field Lease (the "Leased Premises"), including wells and gathering systems. Seller will not be responsible for payment of any premiums, assessments or deductibles on or under the Environmental Policy. In the event the insurance expires or is terminated Buyer shall provide to Seller at least thirty (30) days prior to such termination an original a copy of a new insurance policy that will be effective upon or prior to termination of the policy being terminated with coverage as provided herein. Should the Purchased Assets (or any material portion thereof) or the Leased Premises be transferred to another person or entity, the transferee(s) will be required to assume the Buyer's obligation to provide the foregoing insurance. If the Buyer or its transferee(s) fails to provide the foregoing insurance, Seller may, at its option, and without limiting such other rights as it may have, file suit to compel Buyer and/or such transferee(s) to provide or pay for such insurance, and compel or seek reimbursement from Buyer for any loss, damage or expense resulting therefrom.

2.6 Environmental Site Assessment. Prior to closing Buyer will contract with a qualified, independent consultant acceptable to Seller for an environmental site assessment satisfactory to Seller of the Bottle Rock Power Plant and Francisco Steam Field to determine what if any hazardous materials are present on the property. Seller shall reimburse Buyer for one-half of the



STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 79-AFC-4C
)	Order No. 01-0530-07
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. Suess, 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

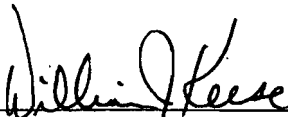
Having considered staff's recommendation and comments from the parties and all submitted documents, the Commission hereby approves the transfer of ownership of the Bottle Rock Power Plant from the California Department of Water Resources to Bottle Rock Power Corporation subject to the following condition:

- (a) The parties shall strictly adhere to the terms of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease".

Dated: _____

5/30/01

State of California
Energy Resources Conservation
And Development Commission



WILLIAM J. KEESE
Chairman

AUG 3 2012

Robert Weisenmiller, Chairman
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

Amendment to Purchase Agreement for the Bottle Rock Power Plant and Geothermal Steam Lease

This memo is to advise your agency that the Department of Water Resources (DWR) is planning to amend the "Purchase Agreement for the Bottle Rock Power Plant and the assignment of Geothermal Steam Lease," dated April 5, 2001 by the deletion of Sections 2.4 and 2.5 in exchange for a release of any liability of DWR to Bottle Rock Power or the owners of the geothermal steam.

We have enclosed a copy of the contract so that you may evaluate any potential effects on your agency by this proposed amendment.

If you have any comments please e-mail me at ccrothers@water.ca.gov or contact me by phone.

Original Signed By

Cathy Crothers
Chief Counsel
(916) 653-5613

cc: Chris Marxen
California Energy Commission
Compliance Office
1516 Ninth Street
Sacramento, California 95814

County of Lake
Attention: Department of Public Works
255 N. Forbes Street
Lakeport, California 95453

Enclosure

BJames:LBoosalis
S:\JAMES, BOB\Correspondence\Bottle Rock\9045 memo R Weisenmiller CA Energy Commission Bottle Rock Am.doc



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
Courthouse - 255 N. Forbes Street
Lakeport, California 95453
Telephone 707/263-2221 FAX 707/263-2225

August 28, 2012

Ms. Cathy Crothers
Chief Counsel
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

**Subject: Amendment to Purchase Agreement for the Bottle Rock Power Plant
and Geothermal Steam Lease**

Ms. Crothers:

The County of Lake Community Development Department has reviewed the proposed Amendment to Purchase Agreement for the Bottle Rock Power Plant and Geothermal Steam Lease. The County is opposed to this amendment because we are not confident that adequate funds or securities exist elsewhere to guarantee the eventual decommissioning and reclamation of the site in the future.

Bottle Rock Power, LLC (BRP) is a limited liability corporation whose power plant is operating at a fraction of its rated capacity. They have not started construction on an approved steam field expansion project that was approved approximately 20 months ago. Further, BRP's Use Permit for the existing steam field will expire next year if not renewed and there may be disagreement between BRP and the County concerning the need for the previous Use Permit to be renewed. While the County remains supportive of BRP's operations and hopes that they will be a successful long term operation, these factors do not illustrate the type of strong situation that the County would like to see when a project sponsor is requesting to assume more liability.

Please contact me with any questions or concerns regarding this issue.

Regards,

Will Evans,
Assistant Resource Planner

CALIFORNIA ENERGY COMMISSION1516 Ninth Street
Sacramento, California 95814Main website: www.energy.ca.gov**Form CEC-108: SERVICE ON THE CHIEF COUNSEL****PURPOSE OF THIS FORM:**

Energy Commission regulations found in Title 20 of the California Code of Regulations set forth three instances in which petitions or requests must be filed with or served on the Chief Counsel. The Chief Counsel has designated the Dockets Office as his agent for accepting service or filing of the following documents. The documents identified in this form will be deemed filed with or served on the Chief Counsel on the date they are docketed, provided this completed form is docketed with them. This form is your instruction to the Docket Office staff to serve your document on the Chief Counsel. You may **use this form** to initiate a proceeding under any of the three sections (Section 1231, Section 1720, and Section 2506), **cut and paste** the information below into an email, or **type the information below** into an email that accompanies your document to the Docket Office. The email address for the Dockets Office is docket@energy.ca.gov. The mail address is 1516 9th Street, MS-4, Sacramento, CA 95814.

Filer's Name: David ColemanTitle of document to be served: Complaint concerning Bottle Rock PowerThis document relates to docket #: 79-afc-4cPlease check only one of the following boxes:**Section 1231:** I am filing a **complaint or request for investigation**. Please file my document with the Chief Counsel.**Section 1720:** I am filing a **petition for reconsideration of a decision or order** within 30 days after the decision or order is final. Please file my document with the Chief Counsel.**Section 2506:** I am serving a **petition to inspect or copy confidential records**. Please serve my document on the Chief Counsel.

This form is available at the Docket Unit counter and on the Energy Commission website at www.energy.ca.gov/commission/chief_counsel/docket.html. Please see the Instructions that accompany this form for more information.

IF YOU NEED ASSISTANCE COMPLETING THIS FORM, PLEASE CONTACT
THE COMMISSION'S PUBLIC ADVISER AT (800) 822-6228, or (916) 654-4489
or EMAIL: PUBLICADVISER@ENERGY.CA.GOV