

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

In the Matter of:)	Docket No. 12-CAI-04
)	
COMPLAINT AGAINST THE)	
BOTTLE ROCK GEOTHERMAL)	STAFF PREHEARING
POWER PLANT)	CONFERENCE STATEMENT
)	
_____)	

**STAFF PREHEARING CONFERENCE STATEMENT,
DIRECT TESTIMONY, AND EXHIBIT LIST**

I. SUMMARY

On October 11, 2012, David Coleman filed a Complaint pursuant to California Code of Regulations, title 20, section 1237 regarding a recent amendment to the original 2001 Purchase Agreement for the Bottle Rock Power Plant” (Purchase Agreement) between the current owner of the facility, Bottle Rock Power LLC, and the previous owner of the facility, the California Department of Water Resources (DWR).

The complaint alleged that amendment to the Purchase Agreement violated the Commission’s May 30, 2001 Order #01-0530-07 (May 2001 Order) approving the transfer of ownership of the Bottle Rock Power Geothermal Plant from DWR to Bottle Rock Power Corporation. In that order, the Commission approved the transfer of ownership subject to the specific condition that both DWR and Bottle Rock Power LLC would “strictly adhere to the terms of the ‘Purchase Agreement for the Bottle Rock Power Plant.’” That Purchase Agreement required that Bottle Rock Power maintain both a five (5) million dollar closure bond and an Environmental Impairment Insurance Policy of not less than ten (10) million dollars.

On August 29, 2012, Bottle Rock Power LLC and DWR finalized an agreement amending the original Purchase Agreement, which included a settlement agreement with landowners V.V. & J. Coleman, LLC. That agreement deleted the provisions requiring the maintenance of the five million dollar closure bond, and deleted the requirement for an Environmental Impairment Insurance Policy.

Pursuant to section 1237, staff investigated the complaint and concluded that Bottle Rock Power LLC violated the condition imposed on the project owner in the Energy Commission’s May 31, 2001 Order.

II. 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. Operations at the Bottle Rock facility commenced in 1985. By 1990, DWR elected to close the facility due to a lack of steam. 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)].

On April 6, 2001, DWR submitted a Petition to transfer ownership of the Bottle Rock Geothermal Power Plant from DWR to the Bottle Rock Power Corporation.

The Energy Commission approved the Petition for transfer of ownership at a regularly scheduled Business Meeting. In its Order Dated May 30, 2001, the Commission found 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." The Energy Commission's approval was specifically conditioned on compliance with the purchase agreement:

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

The Purchase Agreement included sections 2.4 (Security for Decommissioning and Reclamation Liabilities) and 2.5 (Environmental Impairment Insurance).

Section 2.4 of the Purchase Agreement required Bottle Rock Power Company to deliver a five (5) million dollar surety bond to DWR to ensure that sufficient funds would be available for the eventual decommissioning of the facility, and required that the bond remain in place until five (5) years after completion of all decommissioning. Section 2.4(a) further provided that:

"...if [DWR] receives a complete release of 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 [DWR] of the cost of decommissioning 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."

Section 2.5 of the Purchase Agreement requires that Bottle Rock Power Corporation maintain an Environmental Impairment Insurance policy, with limits on liability in an

amount not less ten million dollars, designating DWR as a co-insured. That section also mandated that the policy must remain in effect at all times during the operation and decommissioning of the power plant, and extends to the associated steam fields.

On December 13, 2006, the Commission approved the change of ownership from Bottle Rock Power Corporation, LLC to Bottle Rock Power LLC, filing an Order to that effect. The Order also changed or deleted some, but not all, Conditions of Certification, and allowed the restart of operations. All other conditions remained in full force and effect, including the condition that Bottle Rock Power LLC strictly adhere to the Purchase Agreement, which required the maintenance of a closure bond and environmental insurance.

On August 29, 2012, Bottle Rock Power LLC and DWR finalized an agreement amending the Purchase Agreement, which included a settlement agreement with landowners V.V. & J. Coleman, LLC. That amendment deleted sections 2.4 and 2.5 from the Purchase Agreement, and provided DWR with a complete release of liability. Bottle Rock Power LLC has indicated that their \$10 million Environmental Impairment Insurance Policy is still in effect for two or three more years. At the end of that time, there will still be a policy in effect, but only for what Bottle Rock Power believes is required, between one and two million dollars.

No Petition to Amend has been filed with the Energy Commission by Bottle Rock Power LLC, seeking to relieve the project owner from the specific requirement to “strictly adhere to the terms of the Purchase Agreement.

III. STAFF’S POSITION

The Energy Commission’s approval of the change in ownership on May 30, 2001 was specifically conditioned on strict adherence to the terms of the Purchase Agreement. The terms of the Purchase Agreement required maintaining both a Bond for Decommissioning and an Environmental Impairment Insurance Policy. That Order, and the condition imposed on the project owner, remains in full force and effect.

In its Prehearing Conference Statement filed on January 7, 2013, Bottle Rock Power LLC makes three assertions regarding its obligations under the 2001 Order. First, that the Order did not establish an obligation to maintain a decommissioning bond, and that no Condition of Certification required such security. Second, that the recent agreement deleting the requirement for the Bond is itself consistent with the Order. Lastly, the circumstances and conditions regarding the ownership of the facility have changed which justify the elimination of the requirement for the Bond. These assertions are addressed below.

- a) **The Energy Commission's May 30, 2001 Order conditioned the approval of the transfer of ownership of the facility on strict adherence to the 'Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease,' which included the maintenance of Decommissioning Bond and an Environmental Impairment Insurance Policy of not less than \$10 Million.**

In its Prehearing Conference Statement, Bottle Rock Power LLC notes that neither the 1980 Final Decision nor the 2006 Order authorizing the restart of the facility requires a decommissioning Bond or adherence to a purchase agreement. However, Bottle Rock Power LLC's Prehearing Conference Statement ignores the plain language of the Energy Commission's May 30, 2001 Order, the specific condition it placed on the project owner, and the justifications for that Order.

In that Order, the Energy Commission mandated that "[t]he parties shall strictly adhere to the terms of the "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease". That Purchase Agreement included sections 2.4 (mandating Security for Decommissioning and Reclamation Liabilities) and 2.5 (mandating Environmental Impairment Insurance). The intent of the Energy Commission in placing this condition on the project owner was to ensure that there would be sufficient assurances that the eventual closure and decommissioning of the facility, and any necessary environmental cleanup, would be addressed.

The expectation that both the Closure Bond and the Environmental Impairment Insurance would be maintained was made evident at the May 30, 2001 Business Meeting. On that date, Attorney for DWR Bob James told the Commission:

*"We believe that we've gotten adequate security. We have an appraisal of which we base the five million. We're getting ten million dollars worth of environmental insurance to do any environmental cleanup. **All of those will be enforced until at least decommissioning is completed. The bond actually goes five years after the end of decommissioning.**" [May 30, 2001 Commission Business Meeting Transcript, p.86, Emphasis added]*

Bottle Rock Power, LLC is simply incorrect in its assertion that a Decommissioning Bond was not required as a condition of approval of the transfer of ownership by the Energy Commission. Staff further notes that Bottle Rock Power, LLC has made no assertion regarding the requirement for the maintenance of an Environmental Impairment insurance policy in an amount not less ten million dollars as required in the 2001 Order.

- b) **The deletion of sections 2.4 and 2.5 from the original "Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease" Agreement violated specific condition of the Energy Commission's May 30, 2001 Order.**

Bottle Rock Power, LLC is correct that Order 01-0530-07 does not prohibit future amendments. In fact, staff notes that the language contained in section 2.4 contemplates circumstances in which the requirement for the maintenance of the Decommissioning Bond may be modified. However, those circumstances were not entirely met prior to the deletion of section 2.4, and there is nothing in the record justifying the deletion of section 2.5.

Section 2.4 of the Purchase Agreement required Bottle Rock Power Company to deliver a five million dollar surety bond to DWR to ensure that sufficient funds would be available for the eventual decommissioning of the facility, and required that the bond remain in place until five years after completion of all decommissioning. Section 2.4(a) further provided that:

“...if [DWR] receives a complete release of 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 [DWR] of the cost of decommissioning 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.”

Here, the August 29, 2012, agreement between Bottle Rock Power LLC and DWR provided DWR with a complete release of liability, and deleted sections 2.4 and 2.5 from the Purchase Agreement. Bottle Rock Power has not, however, provided any support for the elimination of the Decommissioning Bond as required under section 2.4. While it would be consistent for Bottle Rock Power LLC to “adjust the amount of the bond to the amount of an independent engineering estimate,” that section also required that such an estimate be approved by DWR, and that it meets the requirements of the Energy Commission (as well as any other regulatory agency with jurisdiction). The latest independent engineering estimate, which was neither approved by DWR nor submitted to the Energy Commission prior to the elimination of the Decommissioning Bond, shows an estimated decommissioning cost of \$2.242 Million: it is important to note that the latest estimate does *not* support the “adjustment” of the Decommissioning Bond to \$0 by the elimination of section 2.4.

Staff also questions whether the reduced decommissioning estimate of \$2.242 Million adequately reflects the actual costs of eventual decommissioning. Several vital decommissioning activities were not included in the estimate, including: engineering or compaction of backfill; all utility and electrical isolation; the removal, transportation, disposal and handling of hazardous wastes and materials; well closures; re-grading for storm water run-off control; below grade demolition work (if any); and the decontamination and cleaning of plant processes, the estimate of which does not include decontamination, cleaning, sampling, testing, or other hazardous waste or handling, transportation, disposal, or processing costs. Without the estimated costs for

these activities, there is insufficient information to justify the adjustment of the decommissioning bond as allowed for in the original Purchase Agreement. Staff further notes that Bottle Rock Power, LLC offers no argument or evidence justifying the elimination of the requirement for the maintenance of liability insurance in an amount not less ten million dollars as set forth in section 2.5 of the Energy Commission's May 2001 Order.

Bottle Rock Power LLC failed to petition the Energy Commission for relief of its obligations under the condition imposed by the Energy Commission in its May 30, 2001 Order. Additionally, absent an independent engineering estimate justifying adjustment (or the elimination) of the decommissioning bond as provided for in section 2.4 of the original Purchase Agreement, Bottle Rock Power LLC violated the terms of that Order by eliminating that section. Further, there has been no justification proffered regarding the elimination of the Environmental Impairment Insurance Policy in an amount not less ten million dollars as required in section 2.5.

- c) **Insufficient information has been provided to conclude that conditions have changed sufficiently to justify modification of Bottle Rock Power LLC's decommissioning obligations as originally set forth in the Energy Commission's May 30, 2001 Order with respect to the maintenance of a Decommissioning Bond and an Environmental Impairment Insurance Policy of not less than ten (10) million dollars.**

Recent actions of Bottle Rock Power LLC violated the condition imposed by the Energy Commission's May 30, 2001 Order. The intent of the Commission in requiring the maintenance of a Decommissioning Bond was to ensure that the eventual closure and decommissioning of the facility, and the necessary environmental cleanup, would be addressed. In light of the information provided by Bottle Rock Power LLC through this complaint proceeding, Energy Commission staff notes that the underlying concerns regarding the financial stability of the project owner may be less pronounced than at the time of approval of the original Purchase and Sale Agreement in 2001. However, the assertions regarding Bottle Rock Power LLC's ability to adequately close and decommission the facility remain unsupported by the evidence introduced in this proceeding.

Staff notes that Brian Harms, the President and General Manager for the Bottle Rock Geothermal Power Plant, has represented that the recent performance history of the Bottle Rock Power Plant demonstrates a level of operational reliability that was not present at the time that the Energy Commission approved the purchase of the facility by the (then) Bottle Rock Power Corporation. Additionally, Mr. Harms asserts that the parent companies that own Bottle Rock Power LLC, U.S. Renewables Group and Riverstone, have extensive portfolios of energy business, demonstrating the potential for a level of financial stability that was not possessed by the previous owner (Bottle Rock Power Corporation) at the time of the purchase of the facility from DWR. However, aside from these assertions made by Mr. Harms, Bottle Rock Power LLC has provided nothing to date that supports that the eventual decommissioning of the facility and the

attendant environmental cleanup will be fully addressed. Therefore, until such time that Bottle Rock Power provides such information, staff cannot conclude that the circumstances have changed to justify the elimination of the requirement for a decommissioning bond going forward.

As to the requirement that Bottle Rock Power LLC maintain an Environmental Impairment Insurance policy of not less than \$10 Million, no additional information has been provided demonstrating a change in circumstances justifying the deletion of this requirement.

IV. STAFF RECOMMENDATIONS

The Energy Commission's May 30, 2001 Order included a condition that required the project owner to "strictly adhere to the terms of the 'Purchase Agreement for the Bottle Rock Power Plant and Assignment of Geothermal Lease.'" Those terms required the maintenance of a Decommissioning Bond, as well as the maintenance of an Environmental Impairment Insurance Policy of not less than \$10 Million. The August 29, 2012 agreement between Bottle Rock Power LLC, DWR, and V.V. & J. Coleman LLC deleted those specific requirements. When Bottle Rock Power LLC entered into that agreement, it violated the condition specified in the Energy Commission's May 30, 2001 Order.

California Public Resources Code section 25534 provides in relevant part:

- (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:
- (2) Any significant failure to comply with the terms or conditions of approval of the application, as specified in the commission's written decision.
- (3) A violation of this division or any regulation or order issued by the Commission under this division.

Energy Commission Staff make the following recommendations:

- a) **Amend the Conditions of Certification to include Proposed Condition of Certification COM-1 (2013) requiring the maintenance of Decommissioning Bond.**

Bottle Rock Power LLC has offered insufficient information to justify the elimination of the obligation to maintain a Decommissioning Bond. Therefore, staff offers the following proposed Condition of Certification.

COM-1 (2013) FINANCIAL ASSURANCE for Closure and Decommissioning

To ensure that the project owner closes the facility according to the CPM-approved Closure Plan, the project owner shall obtain a surety bond as financial assurance guaranteeing satisfactory performance of all closure and long-term site maintenance activities.

Within one-hundred-twenty (120) days following the adoption of this Condition of Certification, and periodically updated every five (5) years thereafter, (in conjunction with Closure Plan and Cost Estimate update(s) or at the time of an unplanned closure event), the project owner shall submit, for CPM review and approval, financial assurance in the form of a surety bond guaranteeing performance of closure as specified in the then-current Closure Plan. To ensure the accuracy of the most recent Cost Estimate, to be used in the surety bond, the CPM may require an independent, third-party review of said Estimate.

b) Amend the Conditions of Certification to include Proposed Condition of Certification COM-2 (2013) requiring the maintenance of an Environmental Insurance Policy of not less than \$10 Million.

Bottle Rock Power LLC has offered no information that justifies the elimination of the obligation to maintain an Environmental Impact insurance policy. Therefore, staff offers the following proposed Condition of Certification:

COM-2 (2013) Environmental Impairment Insurance

The project owner shall maintain an Environmental Impairment Insurance Policy of not less than \$10,000,000 at all times, up to and including a five (5) year period immediately following closure and decommissioning of the facility.

With 120 days of the adoption of this Condition, the project owner shall provide to the CPM a copy of the Environmental Impairment Insurance Policy for review approval. Every five (5) years, the project owner shall submit for review by the CPM an updated copy of Environmental Insurance Policy

c) Impose a Fine of \$10,000

California Public Resources Code section 25534, subsection (b) provides for the imposition of a civil penalty. That section reads:

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any

civil penalty shall be imposed in accordance with Section 25543.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars (\$50,000).

In its Order Dated May 30, 2001, approving the transfer of ownership to the new owner, the Commission found 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.” The Commission’s approval included a specific condition that mandated compliance with the purchase agreement:

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

Staff remains concerned that Bottle Rock Power, LLC continues to take the position in this proceeding that no Energy Commission condition required maintenance of a bond or adherence to the Purchase Agreement, and that the settlement agreement entered into on August 29, 2012 was not in conflict with the Energy Commission’s May 30, 2001 Order, despite information presented to the contrary. The Energy Commission’s 2001 Order imposed a specific condition that the Bottle Rock Power LLC “strictly adhere to the terms of the original “Purchase Agreement.” Bottle Rock Power LLC violated that condition when, without prior Energy Commission approval and without justification, it deleted sections 2.4 and 2.5 of that agreement.

Based on the foregoing, staff therefore recommends the imposition of a \$10,000 fine for the violation of the condition in the Energy Commission’s 2001 Order.

V. WITNESSES

Staff does not intend to offer testimony, rebuttal or direct, based on the information that has been presented to date. Staff requests, based on the information provided by Bottle Rock Power LLC, 15 minutes to cross examine witness Brian Harms. Staff reserves the right to call witnesses in rebuttal at such time that additional evidence or testimony is brought forth. Staff will be available to respond to any questions from the committee assigned to hear this matter during the course of the hearing.

VI. ORAL ARGUMENT

Staff respectfully requests 10 minutes for oral argument.

VII. STAFF EXHIBIT LIST

The following table identifies all exhibits staff intends to present at the hearing for consideration by the committee. All exhibits have been previously Docketed in the Bottle Rock licensing and compliance proceedings (79-AFC-4 and 12-CAI-04), and are identified by their docket log number, date, and subject.

Staff hereby requests that the hearing officer assigned to this matter take judicial notice of the documents below.

Exhibit #	Docket Log #	Date	Subject
200	20552	5/30/2001	Commission Order Approving Ownership Transfer
201	68949	5/30/2001	Business Meeting Transcript

VIII. CONCLUSION

The Energy Commission's May 30, 2001 Order placed a condition on the project owner to "strictly adhere" to the terms of the Purchase Agreement. That condition required the maintenance of a Decommissioning Bond, as well as the maintenance of an Environmental Impairment Insurance Policy of not less than \$10 Million. When Bottle Rock Power LLC entered into the August 29, 2012 that eliminated those requirements, it violated the condition set forth in the Energy Commission's May 30, 2001 Order.

Bottle Rock Power LLC violated the Commission's specific condition regarding the maintenance of a closure bond. Bottle Rock Power has failed to provide sufficient information to demonstrate that circumstances have changed that would justify deleting that requirement. Additionally, as to the requirement of an Environmental Insurance Policy, Bottle Rock Power has presented nothing to justify its deletion. Based on the foregoing, staff respectfully recommends that the committee adopt the recommendations contained herein.

Date: January 11, 2013

Respectfully Submitted,

/s/ Kevin W. Bell
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Senior Staff Counsel



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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*IN THE MATTER OF THE
COMPLAINT AGAINST THE
BOTTLE ROCK GEOTHERMAL POWER PLANT*

Docket No. 12-CAI-04
*PROOF OF SERVICE
(12/21/2012)*

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