

STATE OF CALIFORNIA
**Energy Resources Conservation
and Development Commission**

California Energy Commission DOCKETED 12-CAI-04
TN # 69177 JAN. 17 2013

In the Matter of the)
)
COMPLAINT AGAINST THE)
BOTTLE ROCK GEOTHERMAL)
POWER PLANT (79-AFC-4C))

Docket No. 12-CAI-04

**DAVID COLEMAN'S SUPPLEMENTAL
PRE-HEARING STATEMENT RELATED TO THE
JANUARY 22, 2013 COMMITTEE HEARING**

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STATE OF CALIFORNIA

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Complainant David Coleman submits the following Supplemental Pre-Hearing Statement responding to the Pre-Hearing Statements submitted by California Energy Commission Staff, Bottle Rock Power, LLC (BRP), Department of Water Resources, County of Lake, and V.V. & J Coleman, LLC.

A. Bottle Rock Power Failed to Provide Sufficient Information and Evidence to Support its Proposed Modification to the Commission’s May 2001 Order

Mr. Coleman joins in the Staff’s conclusions that Bottle Rock Power failed to provide sufficient information to the Committee. To that end, Mr. Coleman provides the following supplemental statement regarding BRP’s failure to provide sufficient information.

BRP has been less than forthcoming to the Committee. For example, BRP failed to produce a copy of the Eighth Amendment to the Purchase Sale Agreement. (See Exhibit 410 (DWR provided a copy of the Amendment).) The very document that deletes sections 2.4 and 2.5 of the April 2001 Purchase Sale Agreement. BRP also failed to produce the Purchase Power Agreement (PPA) that it relies upon for the Project.

As pointed out in Mr. Coleman’s Pre-Hearing Statement, BRP submitted a

severely redacted Amended Lease that omitted critical information such as the “put sum”, the operation of the project, and the term of the lease. (See Exhibit 111.) Without an unredacted Amended Lease, neither the Committee nor the parties can evaluate the Project and potential costs associated with decommissioning and reclamation of the Project site.

BRP’s testimony and Pre-Hearing Statement also directly contradicts and the Pre-Hearing Statement submitted by V.V. & J Coleman, LLC. In its Pre-Hearing Statement, BRP states:

The Project Owner has not implemented or established a “reduced scope of decommissioning,” rather, the decommissioning of the Bottle Rock Power Plant (“Project”) is to be determined in the future pursuant to several conditions of certification. (BRP Pre-Hearing Statement at p. 2.)

BRP attempts to have the Committee believe that there is no reduced scope of decommissioning when that was one of the primary bases for BRP and Coleman, LLC entering into an Amended Lease. In contrast to BRP’s Pre-Hearing Statement, Coleman, LLC’s Pre-Hearing Statement goes into great detail about the reduced scope of decommissioning.

Geothermal Lease and Agreement, dated February 25, 1975 (the “Original Lease”), required that the original project owner “so nearly as practicable restore the areas affected by such termination or abandonment to the condition in which they were prior to the commencement of its operations hereunder.” (Ex. 300 at ¶16(b)). However, the Landowner and Bottle Rock Power, LLC (the “Project Owner”) have agreed to amend the Original Lease to, in part, reduce the scope of the required decommissioning in favor of a more general scope, as outlined in Exhibit B attached to the Amended and Restated Geothermal Lease and Agreement (Ex. 111, the “Amended Lease”). The reduced scope of decommissioning agreed to in the Amended Lease allows the Project Owner to leave certain structures and infrastructure on the subject property. This includes the turbine building, the nearby standby generator building and certain roads that will be identified at the time of decommissioning. The Landowner agreed to this reduced scope of decommissioning due to the practical difficulties that would be involved in restoring the property to its prior condition. For example, the existing roadways on portions of the property would be difficult to remove and their removal may cause more damage than good. (V.V. & J Coleman, LLC Pre-Hearing Statement.)

BRP needs to be forthcoming to the Committee and the parties what will be the scope of decommissioning, especially in light of the fact that the BRP's estimates for decommissioning have significantly decreased since 2008. (Compare Exhibit 102 with Exhibits 8 and 9.)

BRP also failed to provide sufficient information regarding the proposed scope of decommissioning. As pointed out in the Staff's Pre-Hearing Statement, the Plant Reclamation's estimate submitted by BRP, fails to address numerous matters regarding decommissioning. At the December 18, 2012 Workshop, Commission Staff informed BRP of significant flaws in Plant Reclamation's October 2011 decommissioning estimate. Despite being put on notice of the significant flaws in the Plant Reclamation's estimate, BRP submitted the Plant Reclamation's October 2011 estimate with no modifications and no explanation regarding the flaws in the estimate. BRP simply ignored the concerns raised by Staff and submitted an estimate that fails to provide the required information. (See Exhibit 102.) Moreover, it should be noted that BRP failed to identify any witness that can provide direct testimony regarding Plant Reclamation's estimate. Therefore, Staff and the parties have no ability to cross-examine the person that prepared the estimate. As such, the Staff and the parties cannot delve into the assumptions and basis for Plant Reclamation's estimate of \$2,242,000.

Brian Harms' direct testimony makes numerous statements with no evidentiary support. For example, Mr. Harms' direct testimony states that BRP has a new PPA for 20 years. BRP, however, failed to submit the PPA. Without the PPA, the Committee and the parties cannot evaluate the PPA and confirm the terms of the PPA.

Mr. Harms also states that the "Project must expand its output to ensure meeting performance obligations pursuant to the PPA." (Exhibit 100.) BRP offers absolutely no evidentiary support for this statement. Again, BRP failed to submit a copy of the PPA. BRP's failure to provide the PPA prevents the Committee and the parties from evaluating Mr. Harms' statement.

Mr. Harms' testimony also states that BRP has no debt at this time. (*Id.*) BRP offers no financial statement or any other form of financial documentation to support this statement. Mr. Harms further states that the "bond obligation was an obstacle to further investment in the BRPP to allow for expansion." (*Id.*) BRP offers no evidence that the bond obligation has prevented BRP from expanding the Project. It should be noted that BRP was able to reinvest in the Project and restart the Project with the bond obligation in place.

BRP also claims that a confidentiality agreement between BRP and V.V. & J Coleman, LLC prevents BRP from full disclosure of the Amended Lease. BRP, however, fails to provide a copy of any confidentiality agreement to substantiate Mr. Harms' statement. Moreover, nothing in the Amended Lease indicates that there is a confidentiality agreement preventing the release of an unredacted copy of the lease. (See Exhibit 111.)

Mr. Harms also states that BRP, LLC is owned by U.S. Renewable Group and Riverstone. (Exhibit 100.) BRP, however, fails to provide any assurance or evidence that either of these companies has agreed to be liable and responsible for any and all costs associated with decommissioning and reclamation of the site if BRP cannot meet its regulatory and statutory obligation for decommissioning and reclamation.

B. Mr. Coleman Joins in Staff's Recommendation for Imposition of a Civil Penalty

Mr. Coleman joins in with and agrees with Staff's recommendation that the Committee impose civil penalties pursuant to Public Resources Code section 25534(b). The civil penalty is particularly appropriate since BRP was aware of the requirement to seek the Commission's approval prior to entering into the Amendment and prior to Bottle Rock's cancellation of the bond and environmental insurance policy. (See Exhibits 6 and 7.) BRP was clearly put on notice that any modification to the Agreement effecting the bond and environmental insurance requirements required the

Commission's approval. BRP simply ignored this requirement and proceeded without obtaining the Commission's approval. Moreover, Bottle Rock has since cancelled the bond and never notified the Commission nor sought the Commission's approval.

Dated: January 17, 2013

Respectfully submitted,

LAW OFFICE OF DONALD B. MOONEY

By Donald B. Mooney
Donald B. Mooney
Attorney for David Coleman

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Proof of Service

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DECLARATION OF SERVICE

I, Donald B. Mooney, declare that on January 17, 2013, I served and filed copies of the attached **DAVID COLEMAN'S SUPPLEMENTAL PRE-HEARING STATEMENT RELATED TO THE JANUARY 22, 2013 COMMITTEE HEARING**, dated January 17, 2013. This document is accompanied by the most recent Proof of Service list, which I copied from the web page for this project at: <http://www.energy.ca.gov/sitingcases/bottlerock/documents/index.html#cai-04>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, as appropriate, in the following manner:

For service to all other parties and filing with the Docket Unit at the Energy Commission:

 X I e-mailed the document to all e-mail addresses on the Service List above and personally delivered it or deposited it in the US mail with first class postage to those parties noted above as "hard copy required"; **OR**

 Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: January 17, 2013

Donald B. Mooney
Donald B. Mooney