

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

In the Matter of:)	Docket No. 12-CAI-04
)	
)	STAFF RESPONSE TO
BOTTLE ROCK GEOTHERMAL)	BOTTLE ROCK POWER LLC'S
POWER PLANT)	APPEAL OF THE COMMITTEE'S
)	DECISION SUSTAINING THE
)	COMPLAINT

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 between the current facility owner, Bottle Rock Power LLC, and the previous facility owner, the California Department of Water Resources (DWR).

On January 22, 2013, the Committee assigned to hear the above entitled matter conducted a hearing to determine whether there had been a violation of the 2001 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).

During the January 22, 2013, hearing, counsel for Bottle Rock Power, LLC, stipulated that, as of September 2012, no bond to secure the cleanup of the Bottle Rock Power Plant was in place. Counsel for Bottle Rock Power, LLC, further stipulated that the Environmental Remediation Policy was still in effect until sometime in 2014 or 2015. Finally, counsel for Respondent stipulated that there was no closure plan or other engineering study to determine the costs to wind down operations at the Bottle Rock Power Plant.

After considering the parties' arguments and evidence, the Committee concluded that Bottle Rock Power LLC violated the terms and conditions of its permit to operate by failing to have the surety bond in the amount of \$5 million. Bottle Rock Power LLC now appeals the findings and decision of the Committee sustaining the Complaint.

Staff hereby opposes the appeal of the Committee's findings and decision in the above entitled matter, and respectfully request that the Energy Commission affirm the Committee's findings and decision.

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. 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.

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. On May 30, 2001, Pursuant to title 20, California Code of Regulations, section 1769(b), the Commission approved the Petition for transfer of ownership. In its Order, 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, as explicitly set forth in the Commission's Order:

"Having considered staff's recommendations 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 BRP 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".

The "Purchase Agreement for Bottle Rock Power Plant and Assignment of Geothermal Steam Field Lease" included section 2.4, which required Bottle Rock Power Company to deliver a five million dollar 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." [Emphasis added]

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 provision requiring the maintenance of the five million dollar closure bond.

On October 11, 2012, David Coleman filed a Complaint pursuant to California Code of Regulations, title 20, section 1237 regarding the August 29 amendment to the original 2001 Purchase Agreement.

On January 22, 2013, the Committee conducted a hearing to determine whether there had been a violation of the 2001 Order. During the January 22, 2013, hearing, counsel for Bottle Rock Power, LLC, stipulated that, as of September 2012, no bond to secure the cleanup of the Bottle Rock Power Plant was in place. (01/22/13 RT 27:7-10; 29:4-7.) Counsel for Bottle Rock Power, LLC, further stipulated that there was no closure plan or other engineering study to determine the costs to wind down operations at the Bottle Rock Power Plant. (*Id.* at RT 27:16-25; 28:1-11)

After considering the parties' arguments and evidence, the Committee concluded that Bottle Rock Power LLC violated the terms and conditions of its permit to operate by failing to have the surety bond in the amount of \$5 million as required by the Energy Commission's May 30, 2001 Order. Bottle Rock Power LLC (Appellant) now appeals the findings and decision of the Committee sustaining the Complaint.

II. ARGUMENT

Appellant makes a several curious arguments in their request for relief, all beginning with the premise that Energy Commission's 2001 Order does not require a bond be maintained for the Bottle Rock Power Plant. The instant appeal challenges two specific findings of the Committee:

1. The original purchase contract was incorporated by reference into the 2001 Order to define performance requirements and its terms are to be treated as Conditions of Certification for the Bottle Rock Power Plant.

3. Bottle Rock Power, LLC, is in violation of its license for failing to maintain the \$5 million bond required by the 2001 Order.

First, Bottle Rock Power asserts that the Committee's finding that the bond requirement is a condition of the project license is inaccurate, and asserts that the 2001 Order does not require a closure bond be maintained for the facility. These assertions ignore the plain language of the Energy Commission's 2001 Order, which provided that the approval of the transfer of ownership was:

“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".
[Emphasis added]

As set forth above and in the Committee's findings, that Purchase Agreement included the requirement to maintain a closure bond. Staff agrees with Appellant that the Committee is guided in its interpretation of the 2001 Order by standard rules of construction. If language is clear and explicit, and does not involve an absurdity, the language of a writing is to govern its interpretation. (*Estate of Careaga* (1964) 61 Ca1.2d 471, 475 (citing Civ. Code § 1638) (distinguished on other grounds by *Newman v. Wells Fargo Bank* (1996) 14 Ca1.4th 126).)

The Energy Commission approved the transfer of ownership on a specific condition. That condition required the parties to strictly adhere to the Purchase Agreement. That Purchase agreement included the requirement to maintain a \$5 million closure bond. That requirement to maintain a \$5 million closure bond provided for an opportunity for the parties to adjust the amount of the closure bond to an amount justified by an independent engineering estimate required to meet the requirements of the Energy Commission.¹ The Commission's clear and explicit language in the 2001 Order leaves no doubt as to how that Order should be interpreted, or as to the intent of the Commission or the obligations of the parties.

Appellant further argues that if the Energy Commission intended to require a bond as a condition of the license, it could have done so. This argument assumes that the Energy Commission did not require that a closure bond be maintained. However, as found by the Committee, and as demonstrated through the evidence in this proceeding, that is precisely what the Commission did in issuing the 2001 Order.

Lastly, in support of its request for relief, Appellant also offers that the Purchase Agreement was amended seven times prior to the August 29, 2012 amendment which is the subject of the complaint proceeding, yet the Committee is only taking issue with the latest amendment. The Committee pointed out that there is nothing in the record that indicates that either Bottle Rock Power LLC or DWR notified the Energy Commission of the seven prior amendments. Most importantly, none of the seven amendments impacted the types of issues that would normally mandate the filing of a petition to amend pursuant to Section 1769; that is, the design, operation, or performance requirements of a geothermal power plant. Rather, those previous amendments were focused exclusively on an extension of the closing date for the transaction, and were thus non-substantive. On the other hand, the August 29 amendment that is the subject of this proceeding does directly relate to the issue of proper decommissioning of a power plant - an area well within the Energy Commission's jurisdiction - an issue that was the focus of the discussion in the May 30, 2001 Business Meeting from which the Order issued.

¹ It is important to note that Bottle Rock Power LLC has stipulated that no such independent engineering estimate was prepared to justify the adjustment, let alone the elimination of the \$5 million bond in a manner that would meet the requirements of the Energy Commission.

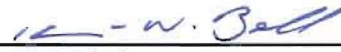
The Commission should give the words their primary and general acceptance. Where an ambiguity exists, the entire record relating to a judgment may be examined to determine the judgment's scope and effect. (*People v. Landon White Bail Bonds* (1991) 234 Cal.App.3d 66, 76.) Here, however, there is no ambiguity to the words "[t]he parties shall strictly adhere to the terms of the Purchase Agreement," as the language is clear and explicit. Likewise, the terms of that Purchase agreement included the clear and unambiguous requirement that a closure bond be maintained. Having considered all of the evidence and arguments of the parties, as well as the applicable statutes, regulations, and case law, the Committee's Findings in this matter are correct.

IV. CONCLUSION

Based on the foregoing, staff respectfully requests that the Energy Commission AFFIRM the Findings, Decision, and Order of the Committee in the above entitled matter.

Date: February 28, 2013

Respectfully Submitted,



KEVIN W. BELL
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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DECLARATION OF SERVICE

I, Pamela Fredieu declare that on March 1, 2013, I served and filed copies of the attached "STAFF RESPONSE TO BOTTLE ROCK POWER LLC'S APPEAL OF THE COMMITTEE'S DECISION SUSTAINING THE COMPLAINT", dated February 28, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at: <http://www.energy.ca.gov/sitingcases/bottlerock/documents/index.html#cai-04>.

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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: March 1, 2013

_____/s/_____
Pamela Fredieu
Legal Secretary