COMMITTEE HEARING
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:
Complaint Against the Bottle Rock Geothermal Power Plant

Docket No. 12-CAI-04

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

TUESDAY, JANUARY 22, 2013
10:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002
COMMITTEE MEMBERS PRESENT
Karen Douglas, Presiding Member
Robert B. Weisenmiller, Chair and Associate Member

HEARING OFFICER, ADVISORS PRESENT
Paul Kramer, Hearing Officer
Galen Lemei, Advisor to Commissioner Douglas
Jennifer Nelson, Advisor to Commissioner Douglas
Sekita Grant, Advisor to Commissioner Weisenmiller
Eileen Allen, Commissioners' Technical Adviser for Facility Siting

CEC STAFF PRESENT
Kevin W. Bell, Staff Counsel
Camille Remy-Obad, Compliance Project Manager
Chris Marxen, Compliance and Dockets Office Manager

OFFICE OF THE PUBLIC ADVISER
Blake Roberts, Assistant Public Adviser
COMPLAINANT

David Coleman

Donald B. Mooney, Esq.

RESPONDENT/PROJECT OWNER

Samantha Huggins
Bottle Rock Power, LLC

John A. McKinsey, Esq.
Locke Lord LLP

Kristen T. Castaños, Esq.
Stoel Rives LLP

PROJECT LANDOWNER

Robert Francisco
V.V. & J. Coleman LLC

Mark Peterson, Esq.
Eileen Diepenbrock, Esq.
Diepenbrock Elkin LLP

INTERESTED AGENCIES

John Dunnigan, Senior Staff Counsel
Department of Water Resources

ALSO PRESENT

Randall Fung (via WebEx)
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Key: JN = judicial notice to be taken  
     w/d = exhibit withdrawn
## EXHIBITS

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**Key:**
- JN = judicial notice to be taken
- Ref = Refused by the Committee
- w/d = exhibit withdrawn
P R O C E E D I N G S

10:09 a.m.

PRESIDING MEMBER DOUGLAS: So good morning everyone. This is Commissioner Karen Douglas and I am here with our Chair, Bob Weisenmiller, and the Committee to oversee this hearing on the complaint proceeding for Bottle Rock. Our Hearing Officer, Paul Kramer is to my left, to his left is Bob Weisenmiller, Chair of the Energy Commission. On my right my advisors, Galen Lemei and Jennifer Nelson and on Chairman Weisenmiller's left, his advisor Sekita Grant and then Eileen Allen is the technical advisor to all of the siting committees.

At this point let's start with some introductions, beginning with the Complainant.

MR. COLEMAN: David Coleman.

MR. MOONEY: Donald Mooney representing David Coleman.

PRESIDING MEMBER DOUGLAS: Thank you. And the project owner, Bottle Rock Power?

MR. MCKINSEY: John McKinsey. Also here with me as co-counsel is Kristen Castañas who may also speak and then Samantha Huggins, the controller for Bottle Rock Power, is here as the company representative.

PRESIDING MEMBER DOUGLAS: Thank you. And Department of Water Resources?
MR. DUNNIGAN: John Dunnigan, Senior staff counsel with Department of Water Resources.

PRESIDING MEMBER DOUGLAS: Thank you.

What about Department of Conservation, Division of Oil, Gas & Geothermal Resources?

(No response.)

PRESIDING MEMBER DOUGLAS: Okay, nobody here from Department of Conservation.

Lake County, any representatives from Lake County?

(No response.)

PRESIDING MEMBER DOUGLAS: All right. And then Energy Commission staff.

MR. BELL: Kevin W. Bell, senior staff counsel, on behalf of the Energy Commission staff. With me here today are Camille Remy-Obad and Chris Marxen.

PRESIDING MEMBER DOUGLAS: Thank you. And then do we have, let's see, Project Landowner V.V. and J. Coleman represented here? Could you just introduce yourself for the record.

HEARING OFFICER KRAMER: Could you go to the microphone.

MR. PETERSON: Mark Peterson. And with me is Eileen Diepenbrock, counsel for V.V. & J. Coleman LLC and Robert Francisco who is the managing member.

PRESIDING MEMBER DOUGLAS: Thank you.
Public Adviser, Blake Roberts, so the Public Adviser is here.

Are there any other public agencies represented, state, local or federal public agencies?

(No response.)

PRESIDING MEMBER DOUGLAS: Okay. Well with that then I'll turn this over to the hearing officer.

HEARING OFFICER KRAMER: Thank you. The purpose of the hearing today is to take evidence and hear argument relevant to the complaint filed by David Coleman on October 11th of 2012 alleging that the Bottle Rock Project violated conditions of a 2001 Energy Commission Order approving the change of ownership of the project.

We will take public comment after we hear the evidence and the arguments. To help us organize that, if you're in the room with us and wish to make a public comment, if you could fill out one of the blue comment cards that Mr. Roberts is holding up and give it to him, that will help us organize that. And if you're on the telephone we will open up the lines for comments when that time comes, you don't need to fill out a card or anything.

For phone listeners, please mute yourselves, you do that by pressing the star and then 6 on your phone, so that your background noise doesn't make it harder for all of us to hear each other. And if you did need to speak you
could unmute by again pressing star-6. I can mute you as well from the control panel. But if I do it you can't unmute yourself so it's probably better that you take care of your own business, so to speak.

I also wanted to remind people that on WebEx, if you are looking on your computer as well, there is probably a chat window on your screen. I just want to make it clear that if you were to type comments into that chat window those would not be captured in our record so you are going to need to speak them to us or send them in by some other means. But we don't monitor the chat window to pick up comments or testimony for that matter. It's really more of a -- it's a feature we don't use very often except maybe to let people know the status of the hearing or something like that.

So without further adieu we'll start through the agenda.

The first item was to consider any pending motions if there were any. I am unaware of any. Is anyone else aware of any motions we should be discussing?

Okay. As a sort of matter of housekeeping, I wanted to note that when I was going through the exhibits that were submitted, Mr. Mooney, Mr. Coleman gave us Exhibits 6 and 7 but they are both the same. I think it was Exhibit 7 was supposed to be another document but we have
two copies of Exhibit 6 in the record. So I don't know how you want to address that. It may or may not be relevant as we go forward today but I wanted to note that we have a description of Exhibit 7 but so far no copy of it.

MR. MOONEY: Okay, I'll take a look at that. I apologize for that, I'm not quite sure what happened there. And I don't think I have a -- I'm not sure if I have a -- if that's the case I may not have a copy of the May 21, 2009 letter with me.

HEARING OFFICER KRAMER: Okay. Well, again, depending on where this proceeding forks it may or may not be necessary, we'll see.

Also on the Exhibit List that I passed out to the parties just ahead of the hearing, you will see some notes in there that are yellow highlighted. Those are my notes of basically duplications between the exhibits of various parties submitted that we will want to resolve at some point so that we admit only one copy of a particular exhibit. Again, I will just point that out at this point and we will discuss it later in the hearing.

The next topic on the agenda was to confirm the topics and issues to be presented and the order of testimony. You also have as a handout this morning a spreadsheet in which I summarized the estimates for both testimony and cross-examination, the time estimates that is,
and oral argument that the parties gave in their prehearing filings. Again, that's a guide for all of us to see where we are. I note that it only adds up to less than three hours so if we do need to use all that time we appear to have it today.

But the next thing that will help determine the order in what we need to talk about today is the response that Bottle Rock filed on Thursday. Mr. McKinsey or Ms. Castaños -- is that a decent pronunciation.

MR. McKINSEY: Ms. Huggins.

HEARING OFFICER KRAMER: Okay. So tell me if I've got it wrong with this summary. Bottle Rock is requesting that the amount of the bond and insurance, if any, to be held by the project be addressed in an amendment proceeding separate from this today and that today we just focus on whether there was a violation of a condition and what the penalty, if any, would be for that violation. Is that a fair summary of your request?

MR. McKINSEY: Yes that is. And I would only add that it's a little bit broader than that to say that the whole topic of conformity to the 2001 order, to the extent that it says you have to conform to an agreement, that that would be the petition to amend. So it's a little broader than just the question of the decommissioning bond, for instance.
HEARING OFFICER KRAMER: Okay. So then if that, in your mind, is up in the air, whether what the provisions of that old order are, that would leave us with nothing to discuss today, wouldn't it?

MR. McKINSEY: No, no, we're not -- and, you know, to put it probably better, what we recognized is that there are some core facts that just aren't in dispute between the complainant and the project owner, and I think the other parties, which was that there was a 2001 order, that it has particular language in it. We certainly disagree on, I think, what it might mean. And that second, the agreement was amended.

And so to some extent, you know, we realize that we are trying to do in a complaint proceeding something that the bell has been rung, so to speak, and so one way or another we are going to have to address the question of what to do about the fact that the agreement has been amended.

And it struck us that in the contentious nature of a hearing proceeding I don't think we are really going to get the best analysis of what to do with the project as a whole. And so one way or another the issue is the 2001 order. And ultimately what is at issue is that a lot of things have changed since then but it's never been brought up, it was never addressed. Bottle Rock Power had never brought this forward before and really that should be before
you as a petition to amend.

However, the latter part of what you indicated is completely correct, that we think that by agreeing to the petition to amend portion of this it would allow the Committee to focus on the question of whether or not Bottle Rock Power's conduct was violative of the order and if so what the correct punishment or lack thereof should be. Or finding, for instance.

HEARING OFFICER KRAMER: Okay, does any other party want to comment on the request?

MR. MOONEY: I would like to comment on that, yes.

HEARING OFFICER KRAMER: Go ahead.

MR. MOONEY: I think it's a little bit outrageous for Bottle Rock at this stage to come in and say that these matters should be addressed in a petition to amend. When we had the workshop here staff indicated that the -- and my understanding is also or my recollection is that Bottle Rock also essentially requests that the complaint be treated as if it was a petition to amend and that evidence be submitted as if it was going to be a petition to amend and the staff's notice of the hearing asks for what is the desired outcome. And in terms of -- and Bottle Rock addressed that and had plenty of opportunity to address that.

I think that with -- getting a little bit into the argument here. But with the staff's submission and
Mr. Coleman's submission it became quite evident that Bottle
Rock did not submit sufficient information -- and the
information that was requested and the information that was
brought to Bottle Rock's attention that needed to be
submitted, that was brought to their attention during the
workshop, it's quite evident that they did not -- they did
not meet any kind of burden of proof or standard. And the
information they submitted was wholly inadequate and so
their response to that was to ask for, essentially, leave to
file a petition to amend, and when that was part of the
purpose and the basis of this hearing.

Again, staff indicated and the notice indicated
that this hearing was essentially to be treated as a
petition to amend. And for them at this point in time to
say, oh, well we'd like to do that at a later date, it
essentially -- if the hearing -- if the Committee was to do
that they have essentially wasted a lot of energy and
resources and folks' time by their actions.

HEARING OFFICER KRAMER: Mr. Bell?

MR. BELL: I can say that the revised prehearing
conference statement filed by Bottle Rock did change the way
staff was looking at this, slightly. But I think that
Mr. Mooney is correct in that staff was viewing this
complaint proceeding as an opportunity to use this as a
vehicle to amend the conditions of certification at the
close of this proceeding.

Public Resources Code Section 25534 gives us three sanctioning options where there is a violation of a condition. Those options are: amend the conditions of certification, to revoke certification or define. Now, revocation of certification would be vastly disproportional of the nature of the violations that we have here.

However, staff was looking at this as an opportunity to amend the conditions of certification as a result of Bottle Rock's failure to petition the Commission prior to making the changes that it made. And of course there is the issue of the fine as well. Staff notes that in the revised prehearing conference statement Bottle Rock is now requesting that the Committee direct Bottle Rock to file a petition to amend.

Now, this proceeding isn't an end-all for Bottle Rock. If at the end of this proceeding the Committee opts to accept staff's recommendations and impose those two conditions on Bottle Rock, that wouldn't preclude Bottle Rock from coming back at a later date, at its own convenience, to change those two requirements and to provide sufficient information to justify those changes. Staff does see this as a missed opportunity, however.

HEARING OFFICER KRAMER: In what sense?

MR. BELL: We could have gotten it all done now.
We wouldn't have to come back for a separate petition to amend. We could have used this as a vehicle to change the conditions of certification by either granting Bottle Rock the relief that it wants, which is to do away with those two requirements that were imposed through the 2001 Order; or following staff's recommendations, impose those two conditions that were maintained in the original purchase and sale agreement that Bottle Rock was obligated to abide by.

HEARING OFFICER KRAMER: Any comments from any other party? Mr. McKinsey, did you want to reply?

MR. McKINSEY: I wanted to elaborate on one point. Notwithstanding, Mr. Mooney is correct that we are getting a little bit into the argument side but I don't need to say that we disagree a little bit with the characterization, anyway, that our evidence, for instance, was lacking. But here is the issue.

Procedurally, the procedure for modifying a decision is provided for as a submittal by the project owner requesting a change. And in doing that one example of the nature of that is that they submit a declaration that they agree to abide by those changes.

The dilemma that was preceding in this complaint proceeding is that the authority of the Commission could be to order anything, and least, you know, subject to some interpretations of what provisions of 25534 were invoked and
not. But the problem was that you would then, perhaps, have the same problem you already have, which is now you have a new condition of certification that says to do something that the project owner is not currently doing and cannot see the means of doing so.

And so in a petition to amend proceeding you get a much cleaner presentation of what the project owner indicates are change conditions, what they seek as an order and you get a much more robust, cooperative proceeding where the Commission understands that you are issuing something as a proposed resolution that the project owner can abide by. The Energy Commission has never -- you know, they don't have very many complaints but they have certainly never attempted to replace a petition to amend proceeding.

And candidly, I thought it was a good idea, but the more I looked at how this was unfolding the more I realized it would create more uncertainty afterwards as to financing, as to exactly what the obligations were and weren't, than a clean petition to amend proceeding that adhered to the, to the terms of the, of the amendment process regulation that the Commission adopted.

But Mr. Mooney is correct that this was a fairly late development in my mind set of the issues present and so, I mean, I do apologize that it's caught everybody by surprise. But that doesn't, you know, undermine what I
think is the correct path for the Commission to want to follow to change a project.

HEARING OFFICER KRAMER: Anything further on this point? Okay, we are going to adjourn for at least ten minutes, for planning purposes, to a closed session, in accordance with Government Code Section 11126 subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct. So folks on the telephone, you can hang with us, you could call in in ten minutes. We might not be back by then but I wanted to at least give you a minimum time for your break.

If there is anyone on the phone who wants to get a message about when exactly to come back we can do that if you speak up and either give the -- send the Public Adviser an email. Do you have your BlackBerry, Mr. Roberts? Would that work for the Public Adviser address?

Okay, so the address that is in the notice, just publicadviser@energy.ca.gov. Then he can send you an email when we do come back, precisely. So we will go off the record and into that closed session and see you shortly.

(The Committee adjourned into closed session at 10:29 a.m.)

(The Committee Hearing reconvened at
HEARING OFFICER KRAMER: Okay, we are back on the record. The Committee has emerged from a closed session to discuss the topics and issues to be presented today and it has decided to separate the issues. So the question of any changes to the bonding and insurance requirements will be addressed via the applicant's filing of an amendment request with the Commission.

Mr. McKinsey, do you have any timetable that you are predicting for when that would begin?

MR. MCKINSEY: Not an exact one but as soon as possible. I was just starting to have that discussion this morning to figure out what -- the intent is largely to use the materials that have already been prepared and shape that into the format requirements for a petition to amend, which is fairly much a template we have. I just can't commit to a specific date right now today.

HEARING OFFICER KRAMER: Okay. So that then will leave for today's hearing the question of whether as of today there is a violation of a Commission condition or order. And if one is found, what the appropriate sanction or penalty would be for that, basically leaving the tool of an amendment to that subsequent process.

So with that, the Committee actually had a couple of questions we might as well just put out there to make
sure that they get addressed by testimony if we need any.
Three questions actually.

Is the bond that was required by the purchase and
sale agreement that was referred to in 2001 in the
Commission Order, is that still in effect?

And also, is the insurance that was referred to in
that same order and agreement, is that still in effect as of
today, and if it is, when would it expire? Each of those.

And then, the staff proposed condition makes
reference to a closure plan and we were just wondering, has
one ever been prepared? Because we know that in many of our
cases closure plans are only prepared towards the end of a
power plant's life, so we are wondering if one was actually
prepared for this particular project. Perhaps it was during
the time when the project was not running. But that is of
interest to us although it may not be directly relevant, but
then again it may.

So with that, with that we will -- first I'll ask,
do the parties need to -- do they need a minute or two to
organize their thoughts and adjust their presentations?

Seeing none. Mr. Mooney and Mr. Coleman, what
testimony do you wish to offer on the topic of, was there a
violation and if so what the penalty should be?

MR. MOONEY: Well, we have submitted Mr. Coleman's
testimony and I was just going to ask him. In light of the
withdrawal of Bottle Rock's testimony and the direction this has taken, just ask him that he would affirm his testimony.

In terms of whether or not there has been a violation. I think that the information that has been provided to the Board in terms of the exhibits, so what we would like to do is offer our exhibits and then further address those issues through oral argument.

I would note that the questions that the Committee had about is the bond still in effect and is their insurance still in effect, those are really directed probably more towards Bottle Rock. But I would note that at the workshop Mr. Harms, he was asked by me if the bond was still in effect and he acknowledged that the bond had been canceled.

It's my understanding from information probably in the record somewhere that the insurance policy is still in effect but it is my understanding that Mr. Harms admitted at the workshop that the bond was no longer -- that the bond had been canceled after they had entered into the eighth amendment.

HEARING OFFICER KRAMER: Okay, thank you. I don't think the workshop was transcribed so it probably is not written down anywhere. But you are correct that the applicant - the project owner, I can't use the word "applicant" in this case - would be the best source of that information.
MR. MOONEY: But I would move to -- I would offer the exhibits, our Exhibits 1 through 11 that we have submitted. And then with regards to Exhibit 1, we do have a copy of the May 21st, 2009 letter now, I do have a copy of that. That was Exhibit 7 that was duplicative of Exhibit 6. It was correctly identified. That you referenced at the beginning of the hearing.

HEARING OFFICER KRAMER: Okay.

MR. MOONEY: I have copies. If I could hand that out just to have that entered in as well.

HEARING OFFICER KRAMER: You just have one copy?

MR. MOONEY: No, I have multiple, I have multiple copies.

HEARING OFFICER KRAMER: Great. Please provide two for us. And then I'd ask you to docket that today if you can. Send it to Dockets via email and the parties.

MR. MOONEY: Okay.

HEARING OFFICER KRAMER: Do you have electronic copies of that?

MR. MOONEY: I do have an electronic copy of it and I do have a -- It is an item that was already in the docket and it's Docket 79-AFC-4C. And I was also informed that it does have a transaction number and the transaction number is 51637.

HEARING OFFICER KRAMER: Okay. And is that marked
on the copy?

MR. MOONEY: No, I don't believe it's marked on
the copy.

HEARING OFFICER KRAMER: Okay. Okay. Well then
with that information I'll let you know if you need to
resubmit it. Unless you hear from me you won't need to.
So this is Exhibit 7 that Mr. Mooney is passing out.

People who are familiar with my style need to know
that I'm becoming a little more, because I'm getting smarter
I think, becoming a little more careful about what goes into
the record and what doesn't. Mr. Mooney, I'm first going to
ask you if you have any objection to substituting for
Exhibit 4, Exhibit 106, which is a better copy of the
document and it was also optically character recognized,
which means we can word search it.

MR. MOONEY: I have no objection to that.

HEARING OFFICER KRAMER: Okay.

MR. MOONEY: As long as Exhibit 6 is later entered
into the record.

HEARING OFFICER KRAMER: No, 106.

MR. MOONEY: I mean 106, yes.

HEARING OFFICER KRAMER: Yes, it will be. If not
we can come back.

And in the case of the letter from Ms. Cruthers,
Exhibit 5. It sure looked to me like Exhibit 402 is a
better copy of that document.

MR. MOONEY: Again, no objection to that.

HEARING OFFICER KRAMER: Okay. Let's go back to Exhibit 2, the photos that were submitted. Are any of them relevant to the question of a violation of the requirements to have a bond and insurance?

MR. MOONEY: They are to -- well, they are not to the extent -- let me kind of qualify this a little bit. They are not to the extent in terms of the, you know, the strict requirements in terms of, is there a bond requirement, yes, is there a bond, no. But they were provided to give the Committee and the parties a sense of the concerns that are out there. Why there is the need for the bond and such as opposed to, is there an existing bond requirement and has that been complied with. Hopefully that answered your question.

HEARING OFFICER KRAMER: So then they would be much more relevant in the amendment process.

MR. MOONEY: They would probably be more relevant in the amendment process, yes.

HEARING OFFICER KRAMER: Okay. Would you like me to mark down that this was withdrawn by you or refused by the Committee?

MR. MOONEY: We'll withdraw them.

HEARING OFFICER KRAMER: Thank you. And if I ever
have to put all the exhibits on a CD I've just saved about
250 megabytes.

Does any other party object to the entry of Exhibits 1, 3, 6, 7 through 11?

MR. BELL: No objection on behalf of staff?

HEARING OFFICER KRAMER: Then those will be admitted.

(Complainant's Exhibits 1, 3 and 6-11 were admitted into the record.)

HEARING OFFICER KRAMER: Did you have anything more by way of testimony, Mr. Mooney?

MR. MOONEY: Nothing by way of testimony.

HEARING OFFICER KRAMER: Thank you. We'll come back to you on cross-examination after we have heard from the other direct testimony.

Project Owner/Respondent, you had listed Mr. Harms, Mr. McKinsey, but I guess he wasn't able to be with us today?

MR. MCKINSEY: That's correct.

HEARING OFFICER KRAMER: So do you have anything else you want to offer by way of testimony?

MR. MCKINSEY: No.

HEARING OFFICER KRAMER: You want to go through your exhibits now?

MR. MCKINSEY: Sure.
HEARING OFFICER KRAMER: Exhibit 103, I think Exhibit 200 is a better copy of the decision.

MR. McKINSEY: We withdraw our Exhibit 103, we certainly can see that.

(Respondent's Exhibit 103 was withdrawn.)

HEARING OFFICER KRAMER: Did you get a chance to compare Exhibits 104 and 105 with Exhibit 601 from Lake County?

MR. McKINSEY: You know, we did not compare them. At least on the cover page they portend to be the same document.

HEARING OFFICER KRAMER: Okay. We'll keep that one in and then maybe leave the Lake County ones out then. And then on Exhibit 110. The Department of Water Resources submitted all the pieces. Basically you have the purchase agreement and then seven of the eight amendments to the agreement all in one document and they broke them out into their Exhibits 401 and then 403 through 409. And theirs I think were a little more readable.

MR. McKINSEY: Yes, I agree, their copies were cleaner and probably present a better copy to use.

HEARING OFFICER KRAMER: Okay, so we'll go with theirs.

And then Exhibit 112, the settlement agreement and release of claims. That was included in DWR's Exhibit 410,
which was a combination of the settlement agreement and the larger, recent, latest amendment to the purchase and sale agreement. So we'll go with 410, is that okay?

MR. McKINSEY: Yes, that's fine.

HEARING OFFICER KRAMER: Let's see. Exhibit 102, that just relates to the amount of -- the estimate of costs of decommissioning. So that is no longer relevant given the bifurcation, is it?

MR. McKINSEY: Correct.

HEARING OFFICER KRAMER: Are you withdrawing that one?

MR. McKINSEY: Yes, Bottle Rock Power withdraws 102.

HEARING OFFICER KRAMER: Okay. And would the same argument go for the photographs?

MR. McKINSEY: I was waiting for that, yes.

HEARING OFFICER KRAMER: 101, are you withdrawing that?

MR. McKINSEY: Yes, we withdraw 101 as well.

HEARING OFFICER KRAMER: Okay. So then we have remaining to be offered Exhibit 100, 104 through 109.

MR. MOONEY: It is my understanding that they withdrew Mr. Harms' testimony in their submittal.

HEARING OFFICER KRAMER: Did you say you --

MR. McKINSEY: No, no. We withdrew bringing him
here as a witness but it wasn't our intent to withdraw any of our testimony.

HEARING OFFICER KRAMER: Okay. So, Mr. Mooney, are you objecting to Exhibit 100?

MR. MOONEY: Well we don't have the opportunity to cross-examine him on it.

MR. BELL: Nor does staff.

HEARING OFFICER KRAMER: Mr. McKinsey, do you want to argue in favor?

MR. MCKINSEY: Well, I guess to some extent if there are certain portions of his testimony that a party felt they had some particular cross-examination that we might be able to simply agree to withdraw those portions of it. I think his testimony is relevant, in particular to the conduct of the project owner during this time period. In other words, that the project owner did indeed negotiate with the California Department of Water Resources to amend the agreement.

MR. MOONEY: If I may read from their revised supplemental statement, it says the witness was withdrawn. So I am not sure how you could submit testimony of a witness that's been withdrawn. It says: "To the extent that any witnesses were identified in Bottle Rock's direct testimony submitted January 4, 2013, such witnesses have been withdrawn."
MR. McKinsey: It may have been our nomenclature but what we intended was witnesses to present at the hearing for live testimony.

Hearing Officer Kramer: So, Mr. Mooney, which specific portions of that testimony would you be wanting to cross-examine regarding?

Mr. Mooney: I'd probably have to go back and look. And quite frankly, it really affected how I prepared for today's hearing. When I was told that Mr. Harms' testimony had been withdrawn I didn't, I didn't spend the weekend preparing to cross-examine Mr. Harms.

Mr. Bell: And on behalf of staff I have to admit I also abandoned my efforts to prepare for cross-examination of Mr. Harms and enjoyed a three-day weekend in Disneyland with my family instead.

Mr. Mooney: And quite frankly, I am not sure how you withdraw a witness but then submit their testimony. That seems like trying to do an end-around around the rules and the procedures.

Hearing Officer Kramer: Well then --

Mr. McKinsey: And --

Hearing Officer Kramer: Mr. McKinsey, go ahead.

Mr. McKinsey: And I think that -- I completely understand the concerns of both the staff and the complainant and so I was trying to just verify -- I think
procedurally what I'd really like is to have a few minutes, perhaps, and then we can come back to this, but I'm hoping I can agree to withdraw this as testimony. A substantial amount of the information about what occurred is in what is essentially our argument and it is really an interpretation of what occurred, I don't think we are disputing what happened. And so I just want to verify that, that I am not leaving a hole by conceding this but I may be able to do that.

HEARING OFFICER KRAMER: How long would that take you?

MR. McKINSEY: A few minutes.

HEARING OFFICER KRAMER: Okay, we'll go off the record for two minutes.

(Off the record at 11:16 a.m.)

(On the record at 11:20 a.m.)

HEARING OFFICER KRAMER: Mr. McKinsey?

MR. McKINSEY: Thank you, Hearing Officer Kramer.

The project owner withdraws Exhibit 100, the testimony of Mr. Harms.

HEARING OFFICER KRAMER: Thank you. So then -- Let me ask you about 104 and 105, are those relevant at this point to the violation or not question?

MR. McKINSEY: No they're not.

HEARING OFFICER KRAMER: You want to withdraw
those as well?

MR. McKinsey: Yes, the project owner withdraws Exhibits 104 and 105.

Hearing Officer Kramer: And then would 108 and 109, the Lake County zoning designations and code be in the same situation?

MR. McKinsey: Yes, that's correct. We withdraw, the project owner withdraws Exhibits 108 and 109.

Hearing Officer Kramer: Okay. So then what I have left is 111 -- let me work forwards. 106, 107 and 111. Does anyone object to the admittance of those three exhibits?

MR. Bell: Not on behalf of staff?

MR. Mooney: No.

Hearing Officer Kramer: Thank you.

(Respondent's Exhibits 106, 107 and 111 were admitted into the record.)

Hearing Officer Kramer: Next up. Are you going to finish your testimony then, Mr. McKinsey?

MR. McKinsey: Well technically I wasn't testifying.

Hearing Officer Kramer: I mean the offering of evidence.

MR. McKinsey: Yes. You know, the questions you asked I thought could easily be addressed simply as
argument. But I'm not sure how comfortable -- I mean, the Committee is asking the questions so they could decide if they wanted them answered as testimony per se.

HEARING OFFICER KRAMER: But we do need to at least stipulate or something to the existence or non-existence of the bond and the insurance.

MR. McKINSEY: The project owner can stipulate to that the bond was indeed withdrawn upon the completion of the amendment so that there is not a bond in place at this time.

And they can stipulate that the insurance policy -- I don't know the exact expiration but it was a five year insurance policy and it is still in effect for at least two more years. The best guess is it's in '14 or '15 is when the insurance policy would expire.

And on the closure plan question, the project owner doesn't have any knowledge of a closure plan being prepared. It would have been prepared by Department of Water Resources between '97 and 2000 if it was prepared but it would presumably have been in the dockets. I've never seen it. But that was in anticipation of closure. And the purchase essentially stopped that process moving forward and instead it became a purchase by a new project owner. So the project owner does not believe one was prepared. But DWR may be also able to address that one.
PRESIDING MEMBER DOUGLAS: Let me just ask one follow-up question. Was the engineering estimate or analysis done?

MR. McKinsey: During the purchase process one engineering attempt was made to provide the estimate and that's where the $5 million bond number came from. But I think everybody concedes it was a pretty rough edge of the envelope attempt to put something out there and not to a specific decommissioning criteria with bids and quotes or anything that you might normally try to do to pin down costs when you're trying to finance or plan for.

HEARING OFFICER KRAMER: First, regarding the stipulation. Do the other parties stipulate to Mr. McKinsey's proposal that the bond has been canceled and that the insurance is still in effect at least until 2014.

MR. BELL: Based on the information available to staff we would be willing to stipulate to those two.

HEARING OFFICER KRAMER: Mr. Mooney?

MR. MOONEY: We would be willing to stipulate with regards to the bond. You know, quite frankly in the record I haven't seen anything about, you know, the date of the insurance policy. So that being the date or when it would expire. That being said, I will, you know, take counsel at his word that that is, in fact, the case and so stipulate. But if that turns out to be different then I think the
parties should be notified.

    HEARING OFFICER KRAMER: Okay. Mr. McKinsey, do you know when the bond was canceled?

    MR. MCKINSEY: No, but let me ask if our representative does. Early September is the estimate.

    HEARING OFFICER KRAMER: Of 2012?

    MR. MCKINSEY: Correct.

    HEARING OFFICER KRAMER: Okay. Thank you for proposing that stipulation. Mr. Dunnigan, did you have any disagreement with the stipulation?

    MR. DUNNIGAN: No, no disagreement.

    HEARING OFFICER KRAMER: Okay. Then let's move on to our next party and that would be Commission staff. You only had cross examination listed in your statement but you've heard a couple of the questions. So let me ask if staff is aware of any closure plan that was prepared during the life of this project?

    MR. BELL: No, that wasn't a matter that we addressed by itself, staff was looking at the closure plan in relation to the bond requirement. We felt that the relevance of a closure plan has to do with the amount of bond that's required by the 2001 order.

    We do note that there was a closure estimate prepared based on what was submitted in October of 2011 by an organization known as Plant Reclamation, which Bottle
Rock was relying on to try to in some way justify the elimination of the bond. That closure plan staff felt was insufficient to justify that change or any change.

So the closure plan by itself in a vacuum I don't think was a relevant factor here. It's only as it relates to the amount of the bond requirement. Now eventually staff is going to have to deal with the closure plan towards the end of life, the life of the project, but I don't think that's before us now.

HEARING OFFICER KRAMER: So the only reason it would be relevant today was to try to come up with a number for the bond?

MR. BELL: That's correct. There had been some numbers passed around. I know Mr. McKinsey noted that back in 2001, at that time there was a back of the envelope estimate. I do note that Mr. Najarian, who sat in the seat of Mr. Marxen, had a figure closer to $10 million that the Commission rejected and accepted the $5 million representation of the project owner then. Since that time different amounts have been put forth. At one point DWR had suggested, I believe in a letter and correct me if I'm wrong on the date but around 2009, that the number could be closer to $20 million. I'm not sure what that was based on at the time.

There was talk about how much the total
decommissioning for this facility would be. So when we're talking about a decommissioning plan, really the staff sees that as relevant to the question of the amount of the bond and not whether or not a decommissioning plan should be put forth prior to the project eventually being decommissioned.

HEARING OFFICER KRAMER: Was that, by chance, one of your exhibits, Mr. Mooney?

MR. MOONEY: Yes it was my exhibit, I believe it was exhibit -- I want to say it -- I want to say it was Exhibit 8. I know it was one of our exhibits. And we also put in there, just to kind of follow up on that, a couple of our exhibits also had estimates that were submitted by Bottle Rock to DWR back in 2007/2008. And that's where we came up with the figure, I think it was $9 million-plus dollars for decommissioning and reclamation.

HEARING OFFICER KRAMER: Okay, it's not exhibit 8 because that was from Bottle Rock to DWR.

MR. McKINSEY: Well that could be it, actually. What Mr. Mooney is referring to is there was a dialogue going on and an exchange of various positions on the decommissioning costs, and so it could have been in that letter.

HEARING OFFICER KRAMER: No, actually I found it --

MR. MOONEY: Actually it's probably either 9 or --
HEARING OFFICER KRAMER: It's 10.

MR. MOONEY: -- either probably 9 or 10.

HEARING OFFICER KRAMER: No, it is 10, I'm looking at it on my screen.

MR. MOONEY: It was the second page of that Exhibit 10 where they came up with the -- after having reviewed the various submittals of Bottle Rock to DWR they were critical of it and came up with their $20 million figure.

HEARING OFFICER KRAMER: Okay, thank you. Your exhibits, Mr. Bell?

MR. BELL: Yes. In reviewing the other exhibits that had been offered by the other parties staff had two exhibits that it wished the Committee to take judicial notice of. There are other exhibits as well but staff did not want to offer duplicative documents into evidence.

HEARING OFFICER KRAMER: Okay. I note that the description on Exhibit 200 has changed from your filing. I think for some reason it was -- it had an error. It was, in fact, the original Commission decision. We can just take official notice of that since it's a Commission document.

MR. BELL: Yes.

HEARING OFFICER KRAMER: And Exhibit 201 was the best copy of the transcript of the May 2001 business
meeting. Are you offering that?

MR. BELL: Yes.

HEARING OFFICER KRAMER: Is there any objection to admitting Exhibit 201, which is the transcript of the May business meeting?

Seeing none that is admitted.

(Staff's Exhibit 201 was admitted into the record.)

HEARING OFFICER KRAMER: The Coleman Trust.

Mr. Peterson, you did not have any testimony. And I don't know if you want to offer anything in lieu of what's transpired today but you did have one exhibit, which was the geothermal lease agreement from 1975.

MR. PETERSON: We would withdraw that as not relevant.

HEARING OFFICER KRAMER: Thank you. And then we have the Department of Water Resources. And we have agreed with Mr. McKinsey, I believe, that Exhibits 401 and 403-409 are going to substitute for his exhibit 110.

And then we agreed with Mr. Coleman that Exhibit 402 is the better copy -- I'll change the description so it's more informative, of the letter from Catherine Cruthers to our Chairman informing the Commission that the agreement between DWR and Bottle Rock was being amended.

I don't really think we need to have Exhibit 400,
it's just a certification of the record. And if the parties agree that the documents come in that's not important at this point.

MR. DUNNIGAN: I'll withdraw that.

HEARING OFFICER KRAMER: Thank you. So then we have Exhibits -- and then let's see. Also with Mr. McKinsey we agreed that 410 was a better copy of his 112. So is there any objection to admitting Exhibits 401 through 410?

(No response.)

HEARING OFFICER KRAMER: Seeing none they are admitted.

(Department of Water Resources' Exhibits 401 through 410 were admitted into the record.)

HEARING OFFICER KRAMER: Lake County had two exhibits. Exhibit 602 is a copy of the bonds for their site. They're described as for the Bottle Rock Power site. Do we have anyone from Lake County on the phone?

(No response.)

HEARING OFFICER KRAMER: Mr. McKinsey, perhaps you can answer. These bonds, are they still in effect?

MR. MCKINSEY: They are. But we would also suggest that -- we have already, I think, the project owner's version of the use permit, at least the larger dynamic. But both of those I think at this point would also be irrelevant to the proceeding.
HEARING OFFICER KRAMER: Okay, so having nobody to refuse them we will refuse them on the Committee's stead.

That does raise a question though, which is, are these bonds in favor of Lake County meant to satisfy any obligation to provide bonds for the Energy Commission or are they for a separate purpose?

MR. McKINSEY: They are for a separate purpose and separate permits.

HEARING OFFICER KRAMER: And that's the use permits on the steam fields?

MR. McKINSEY: That's correct.

HEARING OFFICER KRAMER: Which are a different property than the property upon which the power plant is constructed.

MR. McKINSEY: They're a different portion of the property, that's correct.

HEARING OFFICER KRAMER: Okay. Okay, I think we have dealt with all the exhibits. I apologize for the intensity of my focus, but we have discovered at times when we have boxes of materials that are irrelevant it can produce various management and legal headaches that we are trying to avoid.

So now let's turn around to cross-examination.

Oh, Mr. Dunnigan, are you aware of any closure plan that was produced for this project?
MR. DUNNIGAN: No, I'm not, I am not aware of a closure plan. As I recall it was done with the -- there was discussion with the original manager, Mr. Suess, for which a closure plan was not developed. And so nothing bear fruition from that.

HEARING OFFICER KRAMER: Okay, thank you.

Mr. Mooney, any cross-examination?

MR. MOONEY: I don't think there's any witnesses to cross-examine.

HEARING OFFICER KRAMER: It's a formality, just going down my list.

MR. MOONEY: (Laughs) So no.

HEARING OFFICER KRAMER: Thank you. Mr. McKinsey.

MR. MCKINSEY: The project owner has no cross-examination either.

HEARING OFFICER KRAMER: Staff?

MR. BELL: No.

HEARING OFFICER KRAMER: Okay. So now we have reached the time for argument. Why don't we go down in the same order as the testimony. Mr. Mooney.

MR. MOONEY: Thank you. With kind of the change of the scope of the hearing I'll attempt to address those issues that are before the Committee this morning and try not to get into the areas that we talked about in terms of how the document should be or the order should be amended.
We believe that it's quite clear that there was an obligation under the existing order in 2001 to comply with the agreement or to comply with the provisions of the purchase of sale agreement, specifically Sections 2.4 and 2.5. In 2.5 they still have their environmental compliance but they -- well, they still have their insurance policy. But then amendment that they have entered into takes away that obligation or at least the obligation with DWR.

With some of the information that was also in the staff exhibit in terms of the transcript it was quite clear back in 2001 when the Commission was approving the order that they wanted to ensure that there would be sufficient insurance and sufficient bonding to address the closure down the road.

And Bottle Rock knew that. We think in the exhibits that we have provided, the correspondence between Bottle Rock and its representatives and the Department of Water Resources, they were aware that any changes to the bonding requirement would need to go to the Commission. There was correspondence that they said, well, we'll certainly need to go to the Commission with regards to this.

But instead they just went ahead and canceled -- they entered into the agreement, canceled their bond, without any real official notice or permission, I should say. They did send a letter saying, we're thinking about
entering into this agreement, but they didn't come and ask the Commission's approval to do away with the bond requirement. They just did it on their own. We think it is quite clear that that is a violation of the 2001 order.

What we would like to see done is that the Commission enforce the order, a requirement to clarify -- that the provisions in the 2001 order that remain, there should be strict compliance with this purchase agreement. That that included Sections 2.4 and 2.5. That they needed to, prior to making any changes to those provisions that they needed to come to the Commission and ask for permission to be relieve of those obligation under Sections 2.4 and 2.5, which they did not.

We agree with staff's recommendation that there should be a penalty imposed, a civil penalty of $10,000. We think that's appropriate. We think it is particularly appropriate in light of the fact that, as I said earlier, there was correspondence between DWR and Bottle Rock about the need to go before the Commission prior to doing this, prior to taking this action and they just sidestepped the Commission.

So in addition we think that an order from the Commission, since the bond has been canceled, that any order from the Commission not only direct the reinstatement of the bond but put a time frame on when that bond should be
reinstated. We did not say that in our prehearing statement in terms of asking for a time line but my experience is an order such as this should come -- should have a date certain on when there should be compliance.

The other thing, since -- this is all kind of murky now because DWR has, through this eighth amendment, has attempted to absolve itself of its obligations under the purchase agreement. And part of the bonding requirements was that there be a estimate provided in terms of what the bonding requirements should be and then DWR was to sign off on that. And as indicated by some of the correspondence and I think it was as Mr. Kramer pointed out, Exhibit 10, DWR had some various concerns about what the bonding requirements should be.

So we believe that the Commission's order should not only direct the reinstatement of the bond but that a decommissioning estimate that was required to be submitted under 2.4 to DWR be submitted to the commission or to Commission staff for review and that upon that review there may need to be an adjustment of the bonding requirement.

Now again, this has gotten a little murky because DWR no longer has any -- well, I would say they still do but they may argue that they no longer have any contractual obligation to do that review. So the Commission's order should either direct DWR to do that review, or in the
absence of DWR doing that review of what the bond requirement should be, I would think that the best entity to do that review would be Commission staff.

And then -- and since there has -- under Section 2.4 and under the prior purchase agreement, the purchase agreement, there was an obligation of Bottle Rock to be submitting this, I believe it was on annual basis and apparently it has not be submitted other than this October 2011 one that is no longer in evidence here. It hasn't been submitted.

So we would also ask that the Commission's order directing compliance with the 2001 order also set a date certain as to when the decommissioning estimate costs would be submitted. We would think that two to three months would be an appropriate time frame for that. And then the order should reflect that the bond may be adjusted accordingly based upon that decommissioning estimate. Thank you.

HEARING OFFICER KRAMER: Thank you. Mr. McKinsey, would you prefer to go last or now?

MR. MCKINSEY: I can go now.

HEARING OFFICER KRAMER: Okay.

MR. MCKINSEY: I think that probably the most important difference of opinion between the project owner and Mr. Mooney's comments would be the concept that it was quite clear that there was a particular obligation. And in
fact I think the biggest problem that allowed this to happen was that back in 2001, which was a very busy time for the Energy Commission, what happened and what got adopted wasn't very clear and it didn't make its way into the Energy Commission's normal regulatory compliance framework.

And I am not trying to fault any of the parties back then, and in fact I was working for Bottle Rock at the time on this transaction, it simply is what happened. And it's an example that you have to be incredibly careful when choosing language and wording to ensure that somebody can look at something a week, a month, a year or in this case 11 years later, and know what they were supposed to do or not supposed to do.

The order was internally inconsistent and that was because it used a term "the parties." And just by starting with that direction that the parties shall conform, it was inconsistent. Because by definition, by releasing the order and by issuing it they were removing one of those two entities, the California Department of Water Resources, that would have been a party. And so a very precise order back then would have been to direct the project owner to not only adhere to this document but to treat it as an Energy Commission order in and of itself.

It also could have done what I think Mr. Mooney was suggesting it did but it didn't, which is to say, and
specifically shall maintain a bond in accordance with 2.4 or insurance in accordance with 2.5. All it said was to adhere to an agreement.

And I explain this not to suggest that this wouldn't have been a lot better had a petition to amend been submitted in September but if we actually look at the rest of the language in that order it says, strictly adhere to the terms of the agreement. And yet the California Department of Resources documents that they have submitted indicate that in that case there should have been nine or ten, or at least eight, petitions to amend submitted already because it has been amended eight times. It was amended several times after that day in May.

And that reflects part of why this wasn't a great order. It didn't make its way as a condition of certification with very expressed language, with annual reporting and verification requirements like the Energy Commission uses for conditions of certification. And as a result it frankly was lost in a fog of time. And back in that fog of time it had some ambiguous language.

And I explain this only to one point and that is that the project owner today had no intent of violating an order, and quite the opposite, was very determined to, and still is, to operate the project in conformity with all environmental laws, permits and approvals. And undertook
this negotiation with the state of California, the Department of Water Resources, with a complete good-faith intent to resolve and change an agreement without any intent to violate a condition or an order by the Energy Commission. And that goes particularly important to the nature of the finding by the Commission. If, for instance, there was evidence of parties conspiring to deceive the Commission. If that was the case then perhaps you could see the intent of trying to censure or penalize the project owner. But in this case what you really have, it was open and it wasn't hidden, it was even disclosed in advance to the Commission. And even, I think, the Commission didn't react to it for the very same reason, that it wasn't codified into the compliance matrix with all the other conditions of certification for this project at all. There was no condition of certification that required a bond requirement. There are conditions of certification that address decommissioning and closure like most projects have. And so as this has unfolded the project owner has agreed, in particular, to submit a petition to amend so that this can be addressed carefully as to what needs to be done in the future. But as to what occurred in the past, the project owner did not engage in the type of conduct that should be penalized or punished and indeed it literally was
an innocent mistake.

I can also tell you that I was involved in the communications through portions of the decade that has passed with DWR in negotiations around the bond requirement. And the actual position of DWR had been expressed at some points that, isn't this something that might require approval, but it was never actually agreed by both parties, let alone one of them Instead it was one of those thoughts, well, we need to make sure that the Energy Commission doesn't have any issues with what we do.

But again, the fog of time can get in the way here. It took many, many years to get to the point that DWR was able to get to today to satisfy themselves that in this present day they were able to get a complete release and that the state of California no longer had any concerns over liability and the other things that drove the need for the bond in the first place.

And I think you'll hear from the Department of Water Resources a very similar story and explanation, that this was indeed an intent to do what was in the interest of the state of California, without any knowledge that that order could have been interpreted to suggest that what they were doing was a violation. And that ten year history of repeated amendments set that up for that occurrence today.

And I only say this because I have seen the
evolution of this client for 11 to 12 years. I have seen it go from what was, indeed, a newly formed corporation with one person behind it, Ron Suess and his vision to bring the Bottle Rock Power Plant back to fruition. I have seen it go from that to a mature, experienced and professionally managed entity that looks the same as all of my other clients before the Energy Commission in terms of maintaining a compliance matrix for all of their permits and approvals and a determination to adhere to them. Tremendously improved professional standards; all the things that needed to be in place were done.

And as I've watched that unfold I know that this is a huge importance to them, that they do not want the Energy Commission to label them as having engaged in conduct that would merit a fine or censure because their conduct was well-intended and was in the open and was engaged in the very same state that the Energy Commission is a department of, that also the Department of Water Resources.

And so the $10,000 number is not the issue as much as the fact that it would be a fine and that it would be announcing that the project owner had done something that was violative of their permit in a situation where they were not given and not handed the type of clear, concise instructions and order and notice that they should have been provided in 2001. And again, the project owner is not
conceding the need, because it is the right resolution to go forward, but does not feel that their conduct merits punishment.

HEARING OFFICER KRAMER: Thank you.

MR. MOONEY: If I may just comment?

HEARING OFFICER KRAMER: Let's go around first.

MR. MOONEY: Well, it was more of, it was more in the form of an objection.

HEARING OFFICER KRAMER: Okay, go ahead.

MR. MOONEY: This in terms of Mr. McKinsey's comments bordered on testimony about the company, the qualification and the compliance, as opposed to argument. That's all.

HEARING OFFICER KRAMER: Overruled, I think it was appropriate rhetorical contents for that kind of argument.

Staff. Mr. Bell.

MR. BELL: First I do want to respond to one issue, which is that of notice and then I'll go on to the heart of staff argument.

Mr. McKinsey stated that this had been done out in the open and that staff had been placed on -- the Commission had been placed on sufficient notice of the changes that were being proposed and that simply is not correct. There was a letter addressed to Chairman Weisenmiller from Department of Water Resources advising that Department of
Water Resources and the project owner were proposing changes to the original purchase and sale agreement by deleting Sections 2.4 and 2.5 and attached a copy of that agreement for the Chairman's consideration.

However, the letter didn't say what the changes were. The letter didn't say the changes involved the deletion of the obligation to maintain a closure bond or environmental impairment insurance policy and the attached document didn't include those two provisions that had been deleted. Additionally, 11 days after that document was sent to Chairman Weisenmiller, Department of Water Resources signed off on the agreement; 28 days later the agreement became final. The information that we have before us is that negotiations had been happening between DWR, the project owner, and V.V. and J. Coleman LLC for at least six months. So to say that the Commission or that Commission staff were placed on notice and that this was being done in the open, is simply incorrect. Okay.

The Energy Commission's May 30, 2001 order placed a condition on the project owner, a specific condition 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 that August 29, 2012
agreement that eliminated those two requirements, it violated the conditions set forth in the Energy Commission's May 30, 2001 order.

Under Public Resources Code Section 25534 we have three sanctioning options for a violation of the Commission's orders or conditions. And that is, as I stated earlier, to amend the conditions of certification, to revoke certification, or to issue a fine.

Revocation is not warranted by the facts here.

As to amending the conditions. Right now we still have a valid order in effect from 2001 stating that the project owner shall abide by the terms of that original purchase and sale agreement. That agreement has been amended without Commission approval to delete two provisions. Those provisions are the maintenance of a decommissioning bond in an amount to be determined and the maintenance of an environmental impairment insurance policy. Those provisions, because of the actions taken by the project owner, do not exist.

The circumstances here warrant imposing condition on the project owner to abide by those two original provisions. Staff has recommended language for the Committee and the Commission to consider that would impose two new conditions on the project owner that are, in effect, those conditions that the project owner was required to
abide by. Staff has proposed condition COM-1-2013, Financial Assurance for Closure and Decommissioning, and condition COM-2-2013, Environmental Impairment Insurance Policy. If the Committee accepts staff's recommendations the project owner would be in the same position that they are or should be now in maintaining those two items that the Commission ordered back in 2001.

If the Commission chooses not to accept that we will be in limbo, in effect, up until the time that the project owner comes forward with enough information to justify the deletion of those two provisions that were required under the 2001 order.

Turning to a fine. Again, 25534 provides that a fine can be imposed. The largest fine that the Commission could consider would be $75,000 plus $1,500 per day for each violation with an upper limit of $50,000. Thus the total the Commission could order, aggregate amount, would be $125,000.

In determining the amount of the fine 25534 subdivision (e) instructs that we can consider the nature, circumstances, extent and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect to the ability to continue in
business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other such matters as justice may require.

As to the nature of circumstances, extent and gravity of the violation or violations, staff notes that in mitigation there -- there has been no environmental effects as of yet because of the project owner's actions. There has been no harm to the environment, no harm to health or human safety because of their actions. And also the project owner does appear amenable to at least presenting information that would justify the deletion of these sections.

However, the project owner was on notice based on some documentation that has been provided and entered into the record based on letters between the project owner and DWR that Commission approval should be sought, the amount of decommissioning would be much more than what was presented by the project owner. And also the information relied on by the project owner, while not intentionally misleading, did exclude much of the items that would be considered appropriate for decommissioning.

Additionally, the amount that the project owner came up with to justify the elimination of the closure bond of over $2 million still doesn't get them to zero. Which if you look at the terms of the original purchase and sale
agreement, any elimination of the bond or reduction or increase in the amount of the bond had to be justified by a closure plan and that simply didn't happen.

Whether the violation is susceptible to removal or resolution staff does believe that ultimately it will be, either by the imposition of conditions of certification that would from here on out memorialize the project owner's obligations; or by possibly at some future date, the removal of those obligations by the project owner. But for that we are going to need more information to justify the elimination of both the closure bond and the environmental impairment insurance policy.

Also a factor in mitigation that the Commission staff has taken into consideration. Even though the project owner has eliminated the written requirement for a environmental impairment insurance policy of less than $10 million they do, in fact, based on information provided, still have that environmental impairment insurance policy in place, at least for a couple more years. The information provided by Mr. Harms is that at that time Bottle Rock was planning on unilaterally reducing that amount to $2 million. Again, that's information that Bottle Rock at some future date will be able to come forward with to justify the elimination of that. Or as circumstances may present themselves, not come forward with that information.
The cost to the state in staff time that it's taken to pursue the violations brought forth are not inconsiderable. That's a part of our job and that's what we are here to do. But that's something that the Committee can take into consideration in assessing a fine.

And with respect to the violator, the ability to pay, amongst other things. One of the reasons that the project owner feels that they shouldn't have to have the environmental impairments insurance policy and the closure bond in place is that the project owner, based on the representations that have been made throughout these proceedings, are in a much better financial place now than the original purchaser of the property from DWR in 2001. Not to use that against them but, well, they are now in a better position to pay than they were back in 2001.

The effect on the ability to continue business. voluntary removal or resolution efforts undertaken, prior history of violations. I think the record on those facts speak for themselves. The project owner is willing, I think at some point, based on representations made, to come forward with information justifying what they believe will justify the deletion of these requirements. But we will have to take a look at that when the information comes in.

Taking everything as a whole, staff feels that a lower amount of a $10,000 fine based on the violation of the
Commission's 2001 is sufficient. It will send a message to the project owner that they can't operate contrary to the orders of the Commission without prior Commission approval and without prior justification.

HEARING OFFICER KRAMER: A question for you.

MR. BELL: Yes.

HEARING OFFICER KRAMER: Your proposed conditions were written, I assume, with the intention that these would be, in effect, the amendment that staff recommended.

MR. BELL: Yes. Just because the project owner has not availed themselves of the opportunity to use this as a vehicle to change the original 2001 order, staff hasn't given up on that idea. In fact, those two provisions that the project owner eliminated no longer exist out of that purchase and sale agreement, that purchase and sale agreement has been amended without Commission approval. So instead of staying in limbo without those two provisions, staff is recommending that the Committee impose those on the project owner. You can consider that to be punitive or you can consider that to be corrective at this point, but that is staff's recommendation.

I do want to add one more thing and that is, I understand that the project owner is or has planned to come forward with a petition to amend to try to justify the deletion of these provisions or a modification of these
provisions. The language that staff proposed in COM-1-2013 regarding the closure bond would require that within 120 days following adoption of the condition of certification -- now the language that was proposed here was prior to the project undertaking the position that they want to come forward with a separate petition to amend in another proceeding.

If the Committee wanted to in some way modify that language that would stay in position of COM-1-2013 for a certain amount of time to allow the project owner to come forward with their petition to amend or wanted to accept the language in there, giving the project owner the 120 days to either provide the information required to file a petition to amend I think that's a path forward that might work for everybody.

HEARING OFFICER KRAMER: Now I'm just wondering, in a way we're talking about freezing the status quo until an amendment is processed which might change the requirements. So if the Committee found that the requirements remained in place would it be more appropriate that we simply repeat what was in the original purchase and sale agreement --

MR. BELL: We can.

HEARING OFFICER KRAMER: -- for the time being?

MR. BELL: We can, if the Committee finds that
mere status quo is sufficient. However, Mr. McKinsey himself a moment ago, and staff agrees with this but to a lesser extent. The original 2001 order could have been more artfully done. Rather than saying that you shall strictly adhere to the provisions of this purchase and sale agreement as the condition upon which that change of ownership was approved the Commission could have adopted additional, separate conditions of certification outside of that order.

In fact, if that was before us today that's what staff would recommend and that's where our recommendation comes now. In effect the language that we have here is changed slightly from what was required in Sections 2.4 and 2.5 that were deleted but I think it adequately and accurately reflects what the Commission's intent was in 2001. Not just based on the language in the order and in the language of the original purchase and sale agreement, but on the assurances that the Commission acted on, based on what was contained in the business meeting transcript when it approved that order.

HEARING OFFICER KRAMER: Would I be wrong to read the purchase and sale agreement, specifically Section 2.4, to say that they are going to provide a $5 million bond. And if DWR is satisfied about its liability concerns then its the option of the project owner to increase or decrease it after they prove that a new number is supported by an
analysis.

MR. BELL: Correct. Staff does note, and I think we said that in our prehearing conference, that the plain language of Section 2.4 does contemplate that Section 2.4 could some time in the future be modified or possibly even deleted. But other circumstances had to take place based on the language in Section 2.4 that simply did not take place.

HEARING OFFICER KRAMER: Okay. Any other questions? Thank you.

MR. BELL: And actually the suggestion that I think that you've intimated out here that the Committee could simply require future and ongoing compliance with Section 2.4 and 2.5 is a possibility. Staff's intent was to make things as clear as possible as to exactly what the obligations are of the project owner going forward.

HEARING OFFICER KRAMER: Okay, thank you. The Coleman Trust, do you have anything by way of oral argument? You didn't say you did in your statement. I'm sorry, the LLC.

MR. PETERSON: No.

HEARING OFFICER KRAMER: Okay, they are saying no, for the tape.

You didn't indicate any need for argument, Mr. Dunnigan.

MR. DUNNIGAN: Yes I did, I requested 20 minutes.
HEARING OFFICER KRAMER: I'm sorry, you're right. I did not capture it for some reason. Go ahead.

MR. DUNNIGAN: First I would like to address Mr. Mooney's oral argument as well as mention in his prehearing statement that DWR was aware that we needed permission from the Commission to amend the agreement and he cites Exhibit 6 as factual evidence for that. And if you look at Exhibit 6 that's clearly not the case. Nowhere does it say that we acknowledge that we needed permission to amend the agreement, simply that if there were to be a release from the Energy Commission that DWR would wish to be released as well, so I would like to clarify that.

Secondly, I'd like to address Mr. Bell's comment that they were not given sufficient notice. There is no requirement for the Department of Water Resources to receive permission from the Energy Commission. However, recognizing that this eighth amendment, we've amended it seven times previously. Recognizing that this eighth amendment did have some effect we sent to the Energy Commission, to Chairman Weisenmiller, as well as Mr. Marxen and the County of Lake in advisement of what we wished to do. In fact, we mentioned that we've enclosed a copy of the contract so that you may evaluate any potential effects on your agency by this proposed amendment. That was sent on August 3rd, 2012. Our first response that we received from the Energy Commission
Commission was 60 days later on the 2nd of October so I just wish to address the comment that Mr. Bell made that they had not received notice.

The Department of Water Resources accomplished this amendment within the law and was consistent with the Commission's 2001 order. In fact, the eighth amendment is the eighth time that this purchase agreement has been amended; and each of those times the Department of Water Resources along with Bottle Rock LLC entered into an agreement and it was ratified by the Department of General Services. And there was specific language in the purchase agreement which allows us to do just that, it's Section 10.14 and it addresses amendments specifically. And it's very short and I'll just very briefly:

"Buyer and seller can only enter into an instrument in writing, executed by buyer and seller and approved by the California Department of General Services."

We have done this eight times and it is consistent with law and is consistent with the very language in the purchase order which this Commission approved.

It is also consistent with the public contract code. Public Contract Code 10335 allows for the parties to amend contracts, which is also certified by Department of General Services. And when these contracts are submitted to
General Services the original agreement as well as all previous amendments are submitted as well. So they have as their requirement the complete package before them before they ratify a given amendment.

As I mentioned this is the eighth such time. In no previous instance has anyone complained or suggested in any way that the Department of Water Resources was unable to process an amendment.

In fact, this particular amendment was contemplated, if you will, when the Commission granted the purchase agreement, in Section 2.4 it was explicit, if seller receives a complete release of liability on the Francisco Steam Field Lease then buyer may adjust the amount of an independent engineering estimate that we could amend the amendment. It took 11 years for the parties to reach that point between Bottle Rock, the landowners and DWR where there was a mutual agreement in place that allowed for that release of liability. It took 11 years for what was contemplated in the original purchase agreement to come to fore.

There is nothing in 2.4 that requires that as a precondition of that release and amendment that there be another bond in place. If there is a continuing requirement for a bond, DWR has no position on it, that's not within our authority to exact bonding requirements upon it. But within
2.4 it granted DWR the ability to and it was foreseen that this eventuality could come to pass. When the opportunity came we did the amendment just as it was foreseen. There was nothing within that section that precluded our ability from proceeding, nor was there any precondition that was necessary in order for DWR to proceed.

The amendment was done properly, it has the support of all the parties. I should also say that the liability release is not specific to DWR, the liability release from the landowners, V.V. and J. Coleman, it also releases the state of California. It's very inclusive and releases the state of California and its agencies and Department of Water Resources from liability from any action that they may have against the Department or the State of California.

So DWR was within its authority to amend the purchase agreement as it has done seven previous times. The specific instance was foreseen at the time that the purchase agreement was approved and was properly done within its authority. Thank you.

HEARING OFFICER KRAMER: Thank you. As far as I know Lake County is not with us nor is the Division of Oil and Gas at the Department of Conservation.

So that concludes the argument. Does anyone on the panel have any questions for any of the parties?
Okay. Okay. The next item on the agenda was a briefing schedule. The Committee does not see any need for briefing but we'll let the parties speak to the issue if they feel that some issue needs to be briefed.

Seeing none we'll move on to -- did you have something? No.

Are there any other matters related to the complaint that the parties wish to bring to our attention at this point?

Okay. That brings us then to the time for public comment, where members of the public and other interested persons and entities may speak up to three minutes regarding a matter that appeared on this agenda. Do we have anyone -- we have no blue cards. Do we have anyone in the room who wishes to make a public comment?

Do we have anyone on the telephone? And I'll give you just a second to unmute yourselves. Again, that's star-6 if you want to do so.

Last call for public comment.

MR. FUNG: Yes, hello?

HEARING OFFICER KRAMER: Okay, please state your name and spell it for us, please, so the court reporter will properly record it in the transcript.

MR. FUNG: Yes. My name is Randall Fung, F-U-N-G, and I live at 8195 High Valley Road, close proximity to
Bottle Rock Power. I'm a neighbor down the road from Bottle Rock.

HEARING OFFICER KRAMER: Go ahead with your comment.

MR. FUNG: Yes. We are very concerned as neighbors that the closure be completed in a proper manner. And we are very worried that if DWR is absolved of its commitment to the closure that nobody will be there to clean up. V.V. and J. is an LLC and if they can't afford to do the cleanup then who will? The County of Lake is assuming no responsibility on this by virtue of their absence. We're dealing with the County on their level as well about the closure. And we see that -- I'm a neighbor that lives there and we see that the power plant is basically living on fumes.

And at some point within -- they were -- about the permit for the expansion. It's been two years. We see them not going forward into an expansion. So we see that closure is close by and we would really like somebody to take care of this. We don't think that absolving anybody of their liability of closure helps the environment. That's my comments.

HEARING OFFICER KRAMER: How do you spell your first name?

HEARING OFFICER KRAMER: Okay, thank you for your comment.

MR. FUNG: Thank you.

HEARING OFFICER KRAMER: Is there anyone else on the phone who wishes to make a public comment?

Okay, we'll close the public comment then.

Okay, we are going to go into a closed session.

And we'll give you a time certain about when we'll return and that time is 1:30. So on the telephone, we will leave the WebEx up so you can stay on the line or call back right before 1:30. Those in the room, you have a chance for lunch. We'll be going into a closed session, again, under Government Code Section 11126 subdivision (c)(3), which allows a state body, including a delegated committee such as this, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct. So we will see you at 1:30 and we are off the record.

(The Committee adjourned into closed session at 10:29 a.m.)

(The Committee Hearing reconvened at 1:34 p.m., reported no action was taken in closed session and immediately adjourned. The next Committee action will be in the form of a written decision.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Hearing; that it was thereafter transcribed. I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of January, 2013.

________________________________________
JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

________________________________________
RAMONA COTA, CERT**478

January 25, 2013