

COMPLETED

LATHAM & WATKINS LLP

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Moscow
Barcelona	Munich
Beijing	New Jersey
Boston	New York
Brussels	Orange County
Chicago	Paris
Doha	Riyadh
Dubai	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

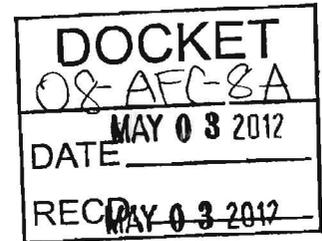
050056-0001

May 3, 2012

VIA FEDERAL EXPRESS

Mr. Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: **Application for Confidential Designation**
Hydrogen Energy California Power Plant (08-AFC-8A)
Paleontological Resources



Dear Mr. Oglesby:

Hydrogen Energy California, LLC (“Applicant”) proposed the Hydrogen Energy California integrated gasification combined cycle facility (08-AFC-8) on July 31, 2008 (“Project”). On May 28, 2009, Applicant filed a Revised Application for Certification (“AFC”) with the California Energy Commission. Applicant is filing an AFC Amendment concurrently with this request (“AFC Amendment”). In connection with the AFC Amendment, Applicant is filing the following confidential technical appendix related to paleontological resources: Appendix O, Paleontological Resources (2 hard copies/3 CDs) (“Submitted Record”).

On behalf of the Applicant, we request that the Submitted Record be designated confidential and be permanently maintained as confidential, pursuant to California Government Code § 6254(r). The Submitted Record contains sensitive information related to paleontological or historical objects, structures, landscapes, resources, sacred places, or sites of concern to local Native Americans or other ethnic groups, or resources or objects described in California Public Resources Code §§ 5097.9 or 5097.993. If the information in the Submitted Record is released to the public, there is a risk that the information could be used to loot, vandalize, or otherwise damage sensitive cultural, archaeological, or paleontological resources.

According to the Energy Commission’s regulations, an application for confidential designation “shall be granted if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential.” (Title 14, California Code of Regulations, § 2505(a)(3)(A).) The Applicant believes this letter

establishes a reasonable claim for confidentiality based on the applicability of Government Code § 6254(r)

Questionnaire: Application For Confidential Designation

To further support Applicant's request, we provide responses to the California Energy Commission's questionnaire regarding applications for confidential designation:

1(a). Title, date and description (including number of pages) of the record for which you request confidential designation.

See attached Submitted Record.

1(b). Specify the part(s) of the record for which you request confidential designation.

Applicant requests confidential designation for the entire Appendix O, Paleontological Resources.

2. State and justify the length of time the Commission should keep the record confidential.

The Submitted Record should be kept confidential indefinitely to protect potential paleontological resources sites. If the descriptions of the locations of the sites are released to the public domain, there is a risk of looting, vandalism or other degradation.

3(a). State the provisions of the Public Records Act or other law that allows the Commission to keep the record confidential, and explain why the provision(s) apply to the record.

The Submitted Record specifically identifies Native American sacred places and, likewise, is protected from disclosure under Section 6254(r) of the Government Code.

3(b). Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the applicant, and the cost or difficulty with which the information could be legitimately acquired or duplicated by others.

The public interest will be served by nondisclosure by preventing looting of the paleontological resource sites described in the Submitted Record. Such looting would preclude scientific study of the sites to obtain data about the paleontological resource areas.

4. State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

Applicant believes the California Energy Commission staff can incorporate a generalized summary of the information contained in the Submitted Record to properly state the basis for its analysis without disclosing information specific enough to facilitate looting. Applicant requests that the Submitted Record not be disclosed even if aggregated with other information or redacted to conceal certain information.

5. *State how the record is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.*

The Applicant has not disclosed any of the subject confidential information to anyone other than its employees, attorneys, consultants, others working as part of the project application before the Energy Commission, or others with a specific need for the information. This information has not been disclosed by the Applicant except on a “need-to-know” basis.

I have been authorized to make this application and certification on behalf of the Applicant. With my signature to this letter, I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge.

Very truly yours,

/s/ Michael J. Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP