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California Energy Commission DOCKETED 08-AFC-8A
TN # 68584 NOV. 19 2012

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 08-AFC-8A
)	
AMENDED APPLICATION FOR)	OBJECTIONS AND REQUESTS FOR
CERTIFICATION FOR THE HYDROGEN)	ADDITIONAL TIME TO RESPOND TO
ENERGY CALIFORNIA POWER PLANT)	SIERRA CLUB DATA REQUESTS SET 2
PROJECT)	(98 THROUGH 131)
)	

On October 30, 2012, Intervenor Sierra Club issued Data Requests Set No. 2 (Nos. 98 – 131) for the Hydrogen Energy California Power Plant Project (“HECA”). On behalf of Hydrogen Energy California, LLC (“Applicant”), we hereby object to certain of the data requests, as specified below. Applicant also requests a 45-day extension to Sierra Club Data Request 109 to provide time for HECA to prepare the necessary information for the response.

Objections

Sierra Club Data Requests 102

Applicant objects to Data Request 102 because the requested information would be very burdensome to produce and the information would not materially benefit the environmental review process. CEQA requires a good faith analysis of potential environmental impacts from a project. *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 392 (1988). Absent a compelling rationale to the contrary, which has not been presented, it would be unreasonable to require the Applicant to produce this burdensome quantity of information. *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners*, 18 Cal. App. 4th 729, 741, 742 (1993) (“level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason’”).

Sierra Club Data Requests 120 and 122

Applicant objects to Data Requests 120 and 122 because Applicant does not have the requested information and it would be very burdensome to produce. Furthermore, the requested information is unrelated to the environmental analysis of HECA. The Data Requests would require the Applicant to investigate activities at unrelated facilities and speculate about potential safety risks. This is not required under CEQA. CEQA requires a good faith analysis of potential environmental impacts associated with the proposed project. *See Laurel Heights Improvement Ass'n, supra*, 47 Cal. 3d at 392. CEQA does not require a project applicant to research every possible scenario raised by a member of the public or project opponent, such as investigating and evaluating events or activities at unrelated facilities. *See In re Bay-Delta etc.*, 43 Cal. 4th 1143, 1163 (2008) (“An EIR need not consider every conceivable alternative to a project”). Nor would the requested information shed any light on HECA’s ability to comply with applicable laws, ordinances and standards (“LORS”) as proposed.

HECA’s AFC and various responses to Data Requests, including Applicant’s responses to Sierra Club Data Requests 55-58, provide extensive information about flares associated with HECA. The information presented by HECA more than exceeds what is required to complete a CEQA and LORS compliance analysis and constitutes a good faith disclosure of potential impacts. *See Ballona Wetlands Land Trust v. City of Los Angeles*, 201 Cal. App. 4th 455, 475 (2011) (“The analysis need not be exhaustive, but it must be reasonably complete and reflect a good faith effort at full disclosure”). Absent a compelling rationale to the contrary, which has not been presented, it would be unreasonable to require the Applicant to produce this burdensome quantity of information without a commensurate benefit to the environmental review process. *Al Larson Boat Shop, supra*, 18 Cal. App. 4th at 741-742 (“level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason’”).

Sierra Club Data Requests 123, 124 and 125

Applicant objects to Data Requests 123, 124 and 125 because the requested information is unrelated to the analysis of potential environmental impacts and LORS compliance associated with HECA. The Data Requests call for economic and financial information that are not tied to the evaluation of environmental impacts or LORS compliance. CEQA does not require an evaluation of economic or social impacts unless such impacts would result in a reasonably foreseeable environmental impact, which is not the case here. *See Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173, 1182 (2005). Moreover, Data Requests 123, 124 and 125 ask for proprietary, business confidential information that would result in business harm to HECA without a commensurate benefit to the review process. It would be unreasonable to require HECA to disclose this information without a clear requirement under CEQA, which is not the case here. *See Al Larson Boat Shop, Inc., supra*, 18 Cal. App. 4th at 741-742 (“level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason’”); *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155, 172 (2011) (“[CEQA] requires an EIR only for those aspects of a project likely to have significant environmental effects”).

DATED: November 19, 2012

Respectfully submitted,

/s/ Marc T. Campopiano

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Counsel to Applicant

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

In the Matter of:)	Docket No. 08-AFC-08A
)	
REVISED APPLICATION FOR)	PROOF OF SERVICE
CERTIFICATION FOR THE HYDROGEN)	
ENERGY CALIFORNIA POWER PLANT)	(October 8, 2012)
PROJECT ("HECA"))	
_____)	

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HYDROGEN ENERGY CALIFORNIA PROJECT
CEC Docket No. 08-AFC-08A

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CEC Docket No. 08-AFC-08A

DECLARATION OF SERVICE

I, Susan V. Low, declare that on November 19, 2012, I served and filed copies of the attached:

**APPLICANT'S OBJECTIONS AND REQUESTS FOR ADDITIONAL TIME TO
RESPOND TO SIERRA CLUB DATA REQUESTS SET 2 (98 THROUGH 13)**

to all parties identified on the Proof of Service List above in the following manner:

California Energy Commission Docket Unit

Transmission via electronic mail to:

CALIFORNIA ENERGY COMMISSION
Attn: DOCKET NO. 08-AFC-08A
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

For Service to All Other Parties

Transmission via electronic mail to all email addresses on the Proof of Service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 19, 2012, at Costa Mesa, California.

/s/ Susan V. Low

Susan V. Low