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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

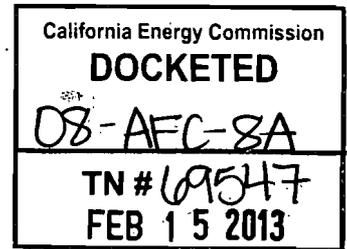
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February 14, 2013

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)



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 2, 2012, Applicant filed an Amended AFC and a new Docket number, 08-AFC-8A, was assigned. On February 5, 2013, the San Joaquin Valley Air Pollution Control District (“SJVAPCD”) issued its Preliminary Determination of Compliance, S-1121903 (“PDOC”) for the Project pursuant to SJVAPCD Rule 2201, Section 5. On behalf of the Applicant, we hereby file the PDOC, which contains confidential information regarding the Project’s emissions (“Confidential Record”). In a separate filing, Applicant will docket a non-confidential version of the PDOC for public review.

On behalf of the Applicant, we request that the entirety of the Confidential Record be permanently maintained as confidential by the CEC for the reasons described below. We present two independent bases for finding that the Confidential Record is confidential and exempt from disclosure under the California Public Records Act: (1) California Government Code § 6254(k) (trade secrets); and (2) Government Code § 6254.15 (proprietary information).

A. The Confidential Record is Confidential Under Gov. Code § 6254(k) as a Trade Secret

The Applicant requests that the Confidential Record be designated confidential pursuant to California Government Code § 6254(k), which exempts trade secrets from disclosure under the California Public Records Act. Under controlling law expressed in *Uribe v. Howie*,

19 Cal. App. 3d 194, 206-207 (1971):

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. (Emphasis added.)

To determine whether certain information is a trade secret, one must evaluate whether the matter sought to be protected is information (1) which is valuable because it is unknown to others, and (2) which the owner has attempted to keep secret. *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1454 (2002). The Confidential Record represents a valuable compilation of confidential information related to the Project's emissions, which includes business confidential vendor data.

Under CEC regulations, when requesting a trade secret be deemed confidential, an application must provide: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others. *See* Title 20, California Code of Regulations, § 2505(a)(1)(D). Accordingly, the Applicant attests to the following:

- ***“The specific nature of the advantage”*** – The Confidential Record represents a valuable compilation of confidential information related to the Project's emissions, which includes business confidential vendor data about the Project equipment emissions.
- ***“How the advantage would be lost”*** – Time and resources have been spent compiling the information within the Confidential Record and the value of the information could be significantly impaired if made available to the public or Project competitors without a commensurate investment of time and resources.
- ***“The value of the information to the applicant”*** – The Confidential Record is valuable to the Project because of the: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the Confidential Record; and (3) use of the information to facilitate ongoing business activities.
- ***“The ease or difficulty with which the information could be legitimately acquired or duplicated by others”*** – The Confidential Record is not readily available on the marketplace.

For the reasons provided above, the Confidential Record is a trade secret under California law and qualifies for the exemption in Gov. Code § 6254(k).

B. Government Code § 6254.15 – Proprietary Information

Gov. Code § 6254.15 exempts the following types of information from disclosure under the California Public Records Act:

[C]orporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

The Confidential Record contains corporate proprietary information and trade secrets that are being provided to the CEC related to locating a facility within California. Thus, the Confidential Record qualifies for the exemption under Gov. Code § 6254.15.

C. Questionnaire: Application For Confidential Designation

To further support Applicant's request, we provide responses to the CEC'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 description above of the Confidential Record.

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

Applicant requests confidential designation for the entire Confidential Record.

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

Applicant requests that the Confidential Record be kept confidential indefinitely to protect the trade secrets and proprietary information described above.

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.

We present independent bases for finding the Confidential Record confidential and exempt from disclosure under the California Public Records Act: (1) Gov. Code § 6254(k) (trade secrets); or (2) Gov. Code § 6254.15 (proprietary information). If the information in the Confidential Record is released to the public, the value and benefit of the trade secrets and proprietary information could be impaired.

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.

See description above in Section 1 regarding trade secrets. For the reasons provided above, the Confidential Record is a trade secret under California law and qualifies for the exemption in Gov. Code § 6254(k).

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 CEC can incorporate a generalized summary of the information contained in the Confidential Record to properly describe the basis for its analysis without disclosing information specific enough to impair value of the trade secrets or proprietary 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, or others with a specific need for the information.

D. Summary of Basis For Confidentiality Request

According to the CEC'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 either Gov. Code § 6254(k) or Gov. Code § 6254.15.

The Applicant requests that the entirety of the Confidential Record be kept confidential indefinitely to protect the trade secret and proprietary information within the Confidential Record. The Applicant requests that the Confidential Record not be disclosed even if aggregated with other information or redacted to conceal certain information. 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 CEC, or others with a specific need for the information.

LATHAM & WATKINS^{LLP}

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,

A handwritten signature in black ink, appearing to read "Michael Carroll". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael Carroll
of LATHAM & WATKINS LLP

**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)	(February 11, 2013)
PROJECT ("HECA"))	
_____)	

APPLICANT

Marisa Mascaro
SCS Energy LLC
30 Monument Square, Suite 235
Concord, MA 01742
mmascaro@scsenergylc.com

Tiffany Rau
2629 Manhattan Avenue, PMB# 187
Hermosa Beach, CA 90254
Trau@heca.com

George Landman
Director of Finance and Regulatory Affairs
Hydrogen Energy California, LLC
500 Sansome Street, Suite 750
San Francisco, CA 94111
glandman@heca.com

APPLICANT'S CONSULTANT

Dale Shileikis
Vice President
Energy Services Manager
Major Environmental Programs
URS Corporation
One Montgomery Street, Suite 900
San Francisco, CA 94104-4538
dale_shileikis@urscorp.com

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

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Marni Weber
Department of Conservation
Office of Governmental and Environmental Relations
(Department of Oil, Gas & Geothermal Resources)
801 K Street MS 2402
Sacramento, CA 95814-3530
Marni.Weber@conservation.ca.gov

INTERVENORS

California Unions for Reliable Energy
Thomas A. Enslow
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814
tenslow@adamsbroadwell.com

Tom Frantz
Association of Irrigated Residents
30100 Orange Street
Shafter, CA 93263
tfrantz@bak.rr.com

Andrea Issod
Matthew Vespa
Kern-Kaweah Chapter
Of the Sierra Club
85 Second St, Second Floor
San Francisco, California 94105
andrea.issod@sierraclub.org
matt.vespa@sierraclub.org

Timothy O'Connor, Esq.
Environmental Defense Fund (EDF)
1107 Ninth St., Suite 540
Sacramento, CA 95814
toconnor@edf.org

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

George Peridas

Natural Resources Defense Council
111 Sutter Street, 20th Fl.
San Francisco, CA 94104
gperidas@nrdc.org

Benjamin McFarland

Kern County Farm Bureau, Inc.
801 South Mt. Vernon Avenue
Bakersfield, CA 93307
bmcfarland@kerncfb.com

Chris Romanini

HECA Neighbors
P.O. Box 786
Buttonwillow, CA 93206
roman93311@aol.com

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

ENERGY COMMISSION STAFF

Robert Worl

Project Manager
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
robert.worl@energy.ca.gov

John Heiser

Associate Project Manager
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
john.heiser@energy.ca.gov

Lisa De Carlo

Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
lisa.decarlo@energy.ca.gov

ENERGY COMMISSION – PUBLIC ADVISOR

Blake Roberts

Assistant Public Adviser
CALIFORNIA ENERGY COMMISSION
publicadviser@energy.ca.gov

OTHER ENERGY COMMISSION PARTICIPANTS

(Listed for convenience only. After docketing, the Docket Unit will provide a copy to the persons listed below):

Karen Douglas

Commissioner and Presiding Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
karen.douglas@energy.ca.gov

Andrew McAllister

Commissioner and Associate Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
andrew.mcallister@energy.ca.gov

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

Raoul Renaud

Hearing Advisor
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
raoul.renaud@energy.ca.gov

Galen Lemei

Advisor to Presiding Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
galen.lemei@energy.ca.gov

Jennifer Nelson

Advisor to Presiding Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
jennifer.nelson@energy.ca.gov

David Hungerford

Advisor to Associate Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
david.hungerford@energy.ca.gov

Patrick Saxton

Advisor to Associate Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
patrick.saxton@energy.ca.gov

Eileen Allen

Commissioner's Technical Advisor
For Facility Siting
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
eileen.allen@energy.ca.gov

DECLARATION OF SERVICE

I, Paul Kihm, declare that on February 14, 2013, I served and filed copies of the attached:

APPLICATION FOR CONFIDENTIAL DESIGNATION

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

California Energy Commission Executive Director (with confidential submittal)

- Transmission by depositing the original plus five copies with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

Mr. Robert Oglesby
Executive Director
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814

California Energy Commission Docket Unit (without Confidential Submittal)

- 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.ca.gov

For Service to All Other Parties (without Confidential Submittal)

- 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 February 14, 2013, at Costa Mesa, California.



Paul Kihm