

## DOCKETED

<b>Docket Number:</b>	08-AFC-08A
<b>Project Title:</b>	Hydrogen Energy Center Application for Certification Amendment
<b>TN #:</b>	201314
<b>Document Title:</b>	Response to Application for Confidentiality Project Heat and Material Balance Technical Data
<b>Description:</b>	N/A
<b>Filer:</b>	Janice Titgen
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**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

November 25, 2013

Michael Carroll  
Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626

RE: Application for Confidentiality Project Heat and Material Balance Technical Data  
Hydrogen Energy Power Plant  
Docket No. 08-AFC-8A

Dear Mr. Carroll:

Hydrogen Energy, LLC (Applicant), filed an application for confidentiality seeking confidentiality for project heat and material balance technical data in response to a Staff data request. The submission contains proprietary flow diagrams and tables relating to material emissions from project operations. A public version of the data will be docketed.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "If the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Energy Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets and proprietary information. (Gov. Code, §§ 6254(k), 6254.7, 6254.15 Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

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. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 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.

The application addresses each of these four requirements by stating the following:

*"The specific nature of the advantage"* -The Confidential Record represents a valuable compilation of confidential information related to project operations and heat and material balance information, 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.

*"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.

In addition to trade secrets, Government Code section 6254.15 exempts from disclosure the following types of information:

Corporate 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 locating a facility within California.

In this case the information subject to the confidentiality application relates to the siting of a facility within California.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the report and heat and material balance data confidential. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Based on the above discussion, the Applicant's confidentiality application is granted. The data subject to this confidentiality designation will be kept confidential until the facility is decommissioned, or if the facility is not built, 5 years.

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Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506. If you have any questions concerning this matter, please contact Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Oglesby', with a long horizontal flourish extending to the right.

Robert P. Oglesby  
Executive Director

cc: Docket Unit  
John Heiser, Energy Commission Project Manager  
Gerry Bemis, Energy Commission Staff Air Quality