

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

December 16, 2009

Michael Carroll
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa CA 92626**DOCKET****08-AFC-8**DATE DEC 16 2009RECD. DEC 22 2009

RE: **Application for Confidentiality,
Applicant's Response to Staff Data Requests 64 and 81
Hydrogen Energy International, LLC,
Docket No. 08-AFC-8**

Dear Mr. Carroll:

On November 16, 2009, Hydrogen Energy International, LLC, filed two applications¹ for confidentiality on behalf of the Hydrogen Energy California Power Plant ("Applicant"), in the above-captioned docket. The applications seek confidentiality for the Applicant's response to California Energy Commission Staff Data Requests numbers 64 and 81. Those responses include the following:

1. Response to Data Request 64 – Series of maps that depict sensitive information about potential cultural resources.
2. Response to Data Request 81 – email and map which provides information from a search of the University of California Museum of paleontology database and one record of a prior paleontological find.

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 provides for the nondisclosure of archaeological site information and reports. Gov. Code, sec. 6254.10. The Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code, sec. 6254(k).) The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations must be kept confidential in order to preserve them. (16 U.S.C. sec. 470hh.) Non-disclosure of cultural and paleontological resources, such as the information that you have submitted in the Responses to Data Requests, is expressly in the public interest.

Therefore, Applicant's November 16, 2009, confidentiality application for the responses to Data Requests numbers 64 and 81 are granted in their entirety. The records will be kept confidential for an indefinite period.

¹ Applicant submitted a total of five applications for confidentiality; the three applications seeking confidentiality for trade secret information (Response to Staff Data Requests 28, 82, and 115) are determined in a separate letter of determination.

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Any subsequent submittals related to cultural or paleontological resources can be deemed confidential as specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination.

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 Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

/S/

Melissa Jones
Executive Director

cc: Docket Unit
Energy Commission Project Manager