

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 10, 2010

Michael Carroll
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa CA 92626**DOCKET****08-AFC-8**

DATE FEB 10 2010

RECD. FEB 11 2010

RE: **Application for Confidentiality,
Applicant's Response to Staff Data Request 64(F)
Hydrogen Energy International, LLC,
Docket No. 08-AFC-8**

Dear Mr. Carroll:

On January 11, 2010, Hydrogen Energy International, LLC, filed an applications for confidentiality on behalf of the Hydrogen Energy California Power Plant ("Applicant"), in the above-captioned docket. The application seeks confidentiality for the Applicant's response to California Energy Commission Staff Data Request number 64(F). Applicant's response includes Figure 64-1(f), which Applicant states "depicts sensitive information about identified cultural resources on U.S. Geological Survey maps (the "Submitted Record")."

The application further states:

. . . the Submitted Record contains sensitive cultural resources information related to paleontological, archaeological or historical objects, structures, landscapes, resources, or sites of concern. . . 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 the sensitive cultural resources.

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 resources, such as the information that you have submitted in the Response to Data Request 64(F), is expressly in the public interest.

Therefore, Applicant's January 11, 2010,, confidentiality application for the response to

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Data Request number 64(F) is granted in its entirety. The record will be kept confidential for an indefinite period.

Any subsequent submittals related to cultural 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