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EXECUTIVE DIRECTOR

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Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: **Application for Confidential Designation –**
Hydrogen Energy California Power Plant (08-AFC-8)
Response to SJVAPCD Request for HAPS and VOC Information

Dear Ms. Jones:

Hydrogen Energy International, LLC (“Applicant”) has proposed the Hydrogen Energy California Power Plant (08-AFC-8). On May 2, 2010, the Applicant provided the San Joaquin Valley Air Pollution Control District (“SJVAPCD”) certain requested information related to Hazardous Air Pollutants (“HAPS”) and Volatile Organic Compounds (“VOC”) to facilitate the SJVAPCD’s BACT determination for the project (the “Submitted Record”). The Submitted Record contains information considered by the vendor, General Electric, to be confidential and trade secret. The SJVAPCD agreed to maintain the confidentiality of the Submitted Record as a trade secret pursuant to SJVAPCD Rule 1030, as demonstrated by the attached letter to the Applicant on April 19, 2010.

The Applicant requests that the Energy Commission also designate the Submitted Record as confidential pursuant to Title 20, California Code of Regulations, § 2505. In this submittal, we present two independent bases for finding the Submitted Record confidential and exempt from disclosure under the California Public Records Act: (1) California Government Code § 6254(k) (trade secrets); or (2) Government Code § 6254.15 (proprietary information).

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

The Applicant requests that the Submitted 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 Applicant has spent time and resources compiling the information in the Submitted Record and preserving its confidentiality. The information gives the Applicant an advantage over its competitors because its competitors do not have access to the information without providing a comparable level of compensation. The information is considered trade secret and confidential by the vendor, General Electric, and the information is only supplied to the Applicant under a license agreement that prohibits disclosure. The SJVAPCD agreed to maintain the confidentiality of the Submitted Record as a trade secret pursuant to SJVAPCD Rule 1030, as demonstrated by the attached letter to the Applicant on April 19, 2010.

Under Energy Commission 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 Submitted Record is valuable to the Applicant and provides a business advantage because the Applicant has spent time and resources obtaining the information in the Submitted Record. If this confidential and trade secret information became known to the public, the Applicant's competitors could gain access to the information without having to make a commensurate investment, undermining the Applicant's competitive advantage. The information is considered trade secret and confidential by the vendor, General Electric, and the information is only supplied to the Applicant under a license agreement with the vendor that prohibits disclosure. The SJVAPCD agreed to maintain the confidentiality of the Submitted Record as a trade secret pursuant to SJVAPCD Rule 1030, as demonstrated by the attached letter to the Applicant on April 19, 2010.

- ***“How the advantage would be lost”*** – The advantage described above would be lost if the Submitted Record were no longer confidential because the Applicant’s competitors could gain access to the information without having to make a commensurate level of investment, undermining the Applicant’s competitive advantage.
- ***“The value of the information to the applicant”*** – The value of the Submitted Record to the Applicant is based on (1) the investment in time and resources that went into obtaining the Submitted Record, and (2) the Applicant’s use of the information for business purposes. The confidential nature of the information is also valuable to the Applicant because of the license agreement with the vendor for the information which prohibits disclosure.
- ***“The ease or difficulty with which the information could be legitimately acquired or duplicated by others”*** – The Submitted Record is confidential trade secret information and is maintained as such by the vendor. The information is not available unless provided by the vendor. Thus, others could not easily acquire or duplicate this information without making a comparable investment as the Applicant.

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

2. *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 Submitted Record contains corporate proprietary information because it is maintained as confidential by the Applicant for business purposes. As stated above, the Submitted Record is also a trade secret under California law. In addition, the Submitted Record is information related to the siting of a facility within the state filed with the Energy Commission. As a result, the submitted Record falls under the exemption in Gov. Code § 6254.15.

3. *Summary of Basis For Confidentiality Request*

According to the Energy Commission’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.”

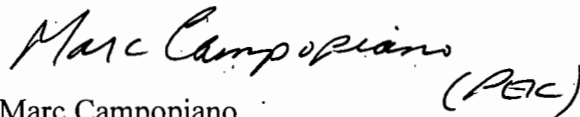
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(Title 14, California Code of Regulations, § 2505(a)(3)(A) (emphasis added).) The Applicant believes this letter establishes a reasonable claim for confidentiality based on the applicability of Gov. Code § 6254(k) and Gov. Code § 6254.15.

The Applicant requests that the entirety of the Submitted Record be kept confidential indefinitely. The Applicant requests that the Submitted 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 Energy Commission, or others with a specific need for the information. This information has not been disclosed by the Applicant except on a "need-to-know" basis.

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 cursive script that reads "Marc Campopiano". To the right of the signature, the initials "(PEIC)" are written in a similar cursive style.

Marc Campopiano
of LATHAM & WATKINS LLP

cc: Gregory Skannal, Hydrogen Energy International, LLC
Asteghik Khajetoorians, Hydrogen Energy International, LLC
Dale Shileikis, URS Corporation