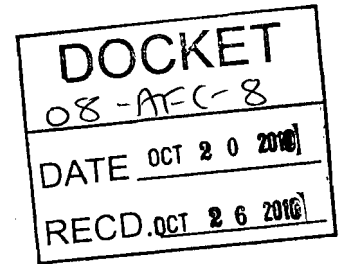


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

October 20, 2010

Marc Campopiano
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626



Re: **Application for Confidentiality,
Linear modifications/Trade Secrets
Hydrogen Energy International, LLC,
Docket No. 08-AFC-8**

Dear Mr. Campopiano:

On August 30, 2010, Hydrogen Energy International, LLC, filed an application for confidentiality on behalf of the Hydrogen Energy California Power Plant ("Applicant"), in the above-captioned docket. The application states that modifications have been proposed to the water, and natural gas linears of the proposed project. Applicant seeks confidentiality for the information regarding the linear modifications and revisions to associated descriptions and assessments that were previously presented in the Revised Application for Certification (the "Submitted Record").

The application states that the information, particularly as it relates to the right of way (ROW) negotiations is confidential as a trade secret and as proprietary information. Specifically, the application claims:

. . . the Submitted Record is valuable to the Applicant and provides a business advantage because the Applicant has spent time and resources compiling the information. . . Public disclosure of the Submitted Record could materially impair Applicant's position as the ROW Negotiations progress because other parties to the ROW Negotiations could obtain information about the Applicant's business and strategies related to the ROW Negotiations, potentially causing the Applicant to lose a fair bargaining position and suffer economic harm.

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. (Gov. Code, § 6254(k); 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.)

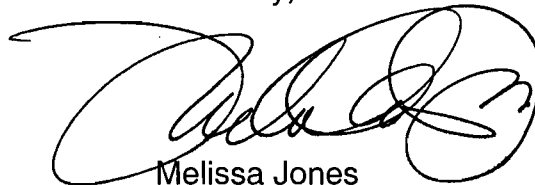
California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall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

Applicant has made a reasonable claim that the law allows the Commission to keep the above listed information confidential on the grounds that it is proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the information be temporarily designated as confidential, until such time as the Energy Commission issues Part 2 of the PSA. As such, your request for confidential determination is temporarily granted, until such time as the Energy Commission's Revised Staff Assessment becomes publicly available.

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,

A handwritten signature in black ink, appearing to read 'Melissa Jones', enclosed within a large, circular scribble.

Melissa Jones
Executive Director

cc: Docket Unit
Energy Commission Project Manager