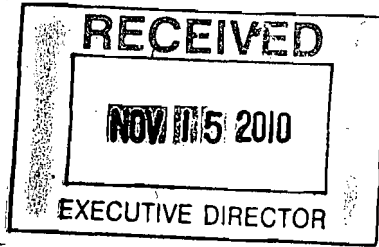


LATHAM & WATKINS LLP



650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925  
Tel: +1.714.540.1235 Fax: +1.714.755.8290  
www.lw.com

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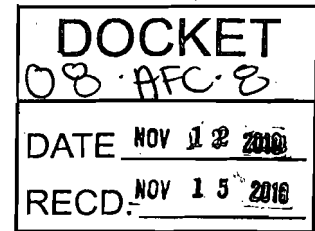
November 12, 2010

**VIA FEDEX**

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

045049-0001

COMPLETED



Re: **Application for Temporary Confidential Designation –  
Hydrogen Energy California Power Plant (08-AFC-8)  
Responses to CEC Data Request Set Three: Nos. 153-157, 160-167, 182-185, and  
187-190**

Dear Ms. Jones:

Hydrogen Energy California LLC (“Applicant”) has proposed the Hydrogen Energy California integrated gasification combined cycle facility (08-AFC-8). In response to the Energy Commission’s Third Set of Data Requests, the Applicant is filing the attached responses to Data Requests Nos. 153-157, 160-167, 182-185, and 187-190 (the “Submitted Record”). The Applicant requests that the Energy Commission temporarily designate the Submitted Record as confidential pursuant to Title 20, California Code of Regulations, § 2505 until such time as the Energy Commission releases Part 2 of the Preliminary Staff Assessment (“PSA”) to the public. In this submittal, we present two independent bases for finding the Submitted Record confidential on a temporary basis 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 expended considerable time and resources compiling the information in the Submitted Record and preserving its confidentiality as part of Applicant's efforts to finalize negotiations for the right-of-ways (ROWs) associated with the project's revised linear features (the "ROW Negotiations"). If this sensitive 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. Impairing the progress of the ROW Negotiations could potentially undermine the feasibility of obtaining the ROWs critical to the HECA project.

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 compiling the information in the Submitted Record and maintaining its confidentiality. Public disclosure of the Submitted Record could materially impair the 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, potentially causing the Applicant to lose a fair bargaining position and suffer economic harm. Impairing the progress of the ROW Negotiations could potentially undermine the feasibility of obtaining the ROWs critical to the HECA project.
- ***"How the advantage would be lost"*** – Any public disclosure of the Submitted Record would substantially and materially impair the Applicant's position in the ROW Negotiations because other parties to the ROW Negotiations could obtain information about the Applicant's business and strategies.
- ***"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 developing the Submitted Record; (2) the Applicant's use of the

information for business purposes related to the ROW Negotiations; and (3) loss of bargaining position if the information becomes public.

- ***“The ease or difficulty with which the information could be legitimately acquired or duplicated by others”*** – The Submitted Record is not readily available on the marketplace, and others could not acquire or duplicate this information. Temporarily maintaining the confidentiality of the Submitted Record is critical to the progress of the ROW Negotiations.

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 confidential corporate proprietary information related to the ROW Negotiations. The Submitted Record is maintained as confidential by the Applicant for business purposes and is a trade secret under California law. Moreover, 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.” (Title 14, California Code of Regulations, § 2505(a)(3)(A).) The Applicant believes this letter establishes two reasonable bases for confidentiality under Gov. Code § 6254(k) and Gov. Code § 6254.15.

The Applicant requests that the entirety of the Submitted Record be kept confidential temporarily until the Energy Commission issues Part 2 of the PSA, after which time the Submitted Record can be disclosed to the public. The Applicant requests that the Submitted Record not be disclosed during the temporary confidentiality period 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.

LATHAM & WATKINS<sup>LLP</sup>

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,



Marc Campopiano  
of LATHAM & WATKINS LLP

Enclosures

cc: Gregory Skannal, HECA LLC (w/o encls.)  
Asteghik Khajetoorians, HECA LLC (w/o encls.)  
Dale Shileikis, URS Corporation (w/o encls.)  
Kathy Rushmore, URS Corporation (w/o encls.)

**STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of: ) Docket No. 08-AFC-08  
)  
APPLICATION FOR CERTIFICATION, ) **PROOF OF SERVICE**  
FOR THE HYDROGEN ENERGY )  
CALIFORNIA PROJECT BY HYDROGEN ) (October 21, 2010)  
ENERGY INTERNATIONAL, LLC )  
)  
)  
\_\_\_\_\_ )

**APPLICANT**

**Gregory D. Skannal**  
**Tiffany Rau**  
**Rick Harrison**  
Hydrogen Energy International LLC  
One World Trade Center, Suite 1600  
Long Beach, CA 90831  
gregory.skannal@hydrogenenergy.com  
tiffany.rau@hydrogenenergy.com  
rick.harrison@hydrogenenergy.com

**Asteghik Khajetoorians**  
Senior BP Legal Attorney  
BP America, Inc.  
6 Centerpointe Drive, LPR 6-550  
La Palma, CA 90623  
Asteghik.Khajetoorians@bp.com

**APPLICANT'S CONSULTANT**

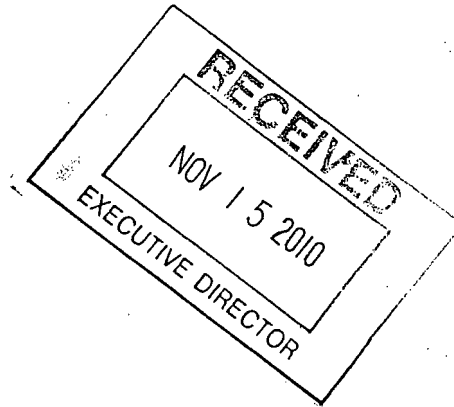
**Dale Shileikis**  
Vice President  
Energy Services Manager  
Major Environmental Programs  
URS Corporation  
One Montgomery Street, Suite 900  
San Francisco, CA 94104-4538  
dale\_shileikis@urscorp.com

**LATHAM & WATKINS** LLP

650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925  
Tel: +1.714.540.1235 Fax: +1.714.755.8290  
www.lw.com

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November 12, 2010

045049-0001

**VIA FEDEX**

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

**COMPLETED**

Re: **Application for Confidential Designation –  
Hydrogen Energy California Power Plant (08-AFC-8)  
Responses to CEC Data Request Set Three: Nos. 191 and 193 (figures)**

Dear Ms. Jones:

Hydrogen Energy International, LLC (“Applicant”) has proposed the Hydrogen Energy California Power Plant (08-AFC-8). In support of the Applicant’s response to California Energy Commission Staff Data Request Set Three, the Applicant prepared the attached Figure 191-1, which is a map containing total dissolved solids data (2000 to 2010) for the project and surrounding area in Kern County, California. Applicant also prepared Figure 193-1 which is a map containing data related to the estimated zone of benefit for the project and surrounding area in Kern County, California. Both figures collectively are referred to herein as the “Submitted Record.” The Applicant requests that the Energy Commission 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 Submitted Record is a trade secret because it is a compilation of information that Applicant has attempted to keep secret. (See *Uribe, supra*, 19 Cal. App. 3d at 206-207; *Whyte, supra*, 101 Cal. App. 4th at 1454.) The Submitted Record was obtained in part based on consultation with the Buena Vista Water Storage District (BVWSD) and contains information related to well and groundwater data that is confidential and proprietary in nature.

The Energy Commission regulations require an applicant requesting confidentiality for a trade secret to 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 was obtained in part based on consultation with the BVWSD and contains information related to well and groundwater data that is confidential and proprietary in nature. The Submitted Record is valuable to the Applicant because the Applicant has spent time and resources compiling the information in the Submitted Record and maintaining its confidentiality.
- ***"How the advantage would be lost"*** – Public disclosure of the Submitted Record could materially impair the Applicant's investment because the value of the compilation of information relies in part on its confidentiality.
- ***"The value of the information to the applicant"*** – The value of the Submitted Record to the Applicant is based on the investment in time and resources that went into developing the Submitted Record.

- ***“The ease or difficulty with which the information could be legitimately acquired or duplicated by others”*** – The Submitted Record is not readily available on the marketplace and cannot be easily acquired or duplicated.

For the reasons provided above, the Submitted Record is a trade secret under California law and thus falls squarely 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 was obtained in part based on consultation with the BVWSD and contains information related to well and groundwater data that is confidential and proprietary in nature. 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.” (Title 14, California Code of Regulations, § 2505(a)(3)(A).) The Applicant believes this letter establishes two reasonable bases for confidentiality under Gov. Code § 6254(k) and Gov. Code § 6254.15.

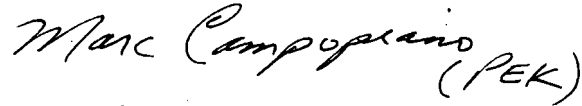
The Applicant requests that the entirety of the Submitted Record be kept confidential indefinitely. The Applicant requests that the Submitted Record not be disclosed even if aggregated with other information or redacted to conceal certain information. The Applicant has not disclosed any of the subject 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.



LATHAM & WATKINS LLP

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,



Marc T. Campopiano  
of LATHAM & WATKINS LLP

Enclosures

cc: Gregory Skannal, Hydrogen Energy California, LLC (w/o encls.)  
Asteghik Khajetoorians, BP America, Inc. (w/o encls.)  
Dale Shileikis, URS Corporation (w/o encls.)

**STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:	)	Docket No. 08-AFC-08
	)	
APPLICATION FOR CERTIFICATION,	)	<b>PROOF OF SERVICE</b>
FOR THE HYDROGEN ENERGY	)	
CALIFORNIA PROJECT BY HYDROGEN	)	(October 21, 2010)
ENERGY INTERNATIONAL, LLC	)	
	)	
	)	
	)	

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**APPLICANT**

**Gregory D. Skannal**  
**Tiffany Rau**  
**Rick Harrison**  
Hydrogen Energy International LLC  
One World Trade Center, Suite 1600  
Long Beach, CA 90831  
gregory.skannal@hydrogenenergy.com  
tiffany.rau@hydrogenenergy.com  
rick.harrison@hydrogenenergy.com

**Asteghik Khajetoorians**  
Senior BP Legal Attorney  
BP America, Inc.  
6 Centerpointe Drive, LPR 6-550  
La Palma, CA 90623  
Asteghik.Khajetoorians@bp.com

**APPLICANT'S CONSULTANT**

**Dale Shileikis**  
Vice President  
Energy Services Manager  
Major Environmental Programs  
URS Corporation  
One Montgomery Street, Suite 900  
San Francisco, CA 94104-4538  
dale\_shileikis@urscorp.com