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March 4, 2011

VIA FEDEX

Ms. Melissa Jones
Executive Director
California Energy Commission
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DOCKET

08-AFC-8

DATE Mar 03 2011

RECD. Mar 07 2011

Re: **Application for Confidential Designation:**
Hydrogen Energy California Power Plant (08-AFC-8)
Responses to Data Request Nos. 222-224, 227, 229, 231, 234, 235 and 243

Dear Ms. Jones:

Hydrogen Energy California LLC ("Applicant") has proposed the Hydrogen Energy California Power Plant Project (08-AFC-8), an integrated gasification combined cycle facility ("Project"). On November 22, 2010, California Energy Commission ("CEC") Staff issued Data Request Set 4 (Data Request Nos. 219-244). Although Data Request Set 4 is directed to the Applicant, the Data Requests pertain primarily to the related Occidental of Elk Hills, Inc. ("Oxy") enhanced oil recovery project ("EOR Project"), and for that reason, Applicant is relying on Oxy for responses.

The responses to Data Request Set 4 include both non-confidential and confidential responses related to Oxy's EOR Project, which have been separated into two separate filings. The non-confidential responses have been docketed and served on the parties. Confidential responses to Data Request Nos. 222-224, 227, 229, 231, 234, 235 and 243, including but not limited to a report by David H. Merchant, entitled "Geologic Storage Options for CO2 Sequestration of Carbon Dioxide, Elk Hills Field," dated June 2006, are attached to this filing (the "Submitted Record"). Applicant, on its own and on behalf of Oxy, requests that the CEC designate and maintain the Submitted Record as confidential pursuant to Title 20, California Code of Regulations, § 2505. 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 represents a valuable compilation of confidential information related to Oxy's EOR Project. Information in the Submitted Record is not available to the public but is maintained as confidential by the parties. Applicant's or Oxy's competitors cannot readily obtain the information on the open market without making a commensurate investment of time and/or resources as the Applicant or Oxy. (See *Uribe, supra*, 19 Cal. App. 3d at 206-207; *Whyte, supra*, 101 Cal. App. 4th at 1454.) Time and resources have been spent compiling the information within the Submitted Record and the value of the information would be significantly impaired if made available to the public. The Applicant and Oxy would also lose their competitive advantage if its competitors could access the information. Public disclosure could chill similar sharing of business confidential information, making permitting of energy projects more difficult.

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 represents a valuable compilation of confidential information related to Oxy's EOR activities. Information in the Submitted Record is not available to the public. Applicant's and Oxy's competitors cannot readily obtain the information on the open market without making a commensurate investment of time and/or resources as the Applicant. The Submitted Record was intended to be confidential by Oxy and the Applicant.
- ***"How the advantage would be lost"*** – Time and resources have been spent compiling the information within the Submitted Record and the value of the

information would be significantly impaired if made available to the public. The Applicant and Oxy would also lose their competitive advantage if competitors could access the information. Public disclosure could chill similar sharing of business confidential information, making permitting of energy projects more difficult.

- ***“The value of the information to the applicant”*** – The Submitted Record represents a valuable compilation of confidential information related to the Oxy EOR activities. The Submitted Record is valuable to the Applicant and Oxy because of their: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the Submitted Record as business confidential materials; and (3) use of the information to facilitate the development of the Project.
- ***“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 can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

For the reasons provided above, the Submitted Record is a trade secret under California law and qualifies for 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 and trade secrets that are being provided to the CEC for the purpose of locating a facility within California. The Submitted Record represents a valuable compilation of confidential and proprietary information related to Oxy’s EOR activities. The proprietary information in the Submitted Record is not available to the public but is maintained as confidential by the applicable parties. As a result, it qualifies for 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).) The Applicant believes this letter establishes a reasonable claim for confidentiality based on the applicability of either Gov. Code § 6254(k) and Gov. Code § 6254.15.

The Applicant requests that the entirety of the Submitted Record be kept confidential indefinitely to protect the trade secret and proprietary information within the Submitted Record. 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.

Best regards,



Marc Campopiano
of LATHAM & WATKINS LLP

Enclosure

cc: Gregory Skannal, HECA LLC
Asteghik Khajetoorians, HECA LLC
Dale Shileikis, URS Corporation
Kathy Rushmore, URS Corporation
Elliott Heide, Oxy