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March 16, 2011

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DOCKET
08-AFC-8
DATE 2-28-11
RECD. 3-22-11

VIA FEDEX

ORIGINAL

File No. 045049-0001

COMPLETED

CONFIDENTIAL

Ms. Kimberly Van Vorst
Office Services Supervisor II
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

Re: Hydrogen Energy California Project: Docket No. 08-AFC-08

Dear Ms. Van Vorst:

Per your request, attached please find six (6) unencrypted copies of a CD containing confidential materials previously submitted to the CEC on March 1, 2011. A copy of the application for confidential designation letter is attached hereto.

Should you have any questions, please do not hesitate to give me a call.

Very truly yours,

Paul E. Kihm
Senior Paralegal

Enclosures

cc: Michael J. Carroll, Esq. (w/o encls.)
Marc T. Campopiano, Esq. (w/o encls.)

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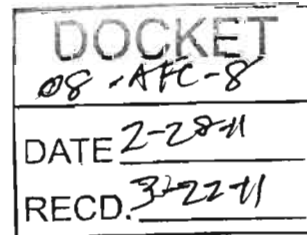
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February 28, 2011

VIA FEDEX

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)
CAISO Interconnection Study Report Phase II

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"). In accordance with the Federal Energy Regulatory Commission (FERC)-approved Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window, the California Independent System Operator ("CAISO") has prepared an Interconnection Study Report Phase II, dated July 30, 2010, for the Project and other members of the cluster, which includes the following appendices (collectively, the "Submitted Record"):

- CAISO Transition Cluster Phase II Report (July 30, 2010) (redacted):
 - Appendix A – Q300 Phase II Report (includes six attachments) (redacted):
 - Attachment 1 – Generator Machine Dynamic Data
 - Attachment 2 – Dynamic Stability Plots
 - Attachment 3 – Preliminary Protection Requirements
 - Attachment 4 – Delivery Assessment Results
 - Attachment 5 – Allocation of Network Upgrades for Cost Estimates (excluded)
 - Attachment 6 – Results from Operational Studies

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- Appendix B – Contingency Lists for Outages
- Appendix C – Delivery Assessment Results
- Appendix D – Steady State Power Flow Plots
- Appendix E – Short Circuit Calculation Study Results

Sensitive cost information that is not related to the CEC's technical analysis has been redacted from the Submitted Record. Specifically, sensitive cost information to the Applicant, other members of the cluster, CAISO, and PG&E was redacted from the CAISO Transition Cluster Phase II Report and the Appendix A Q300 Phase II Report. Appendix A, Attachment 5, Allocation of Network Upgrades for Cost Estimates, was not included for the same reason.

Applicant 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 to the Applicant, other members of the cluster, CAISO, and PG&E related to the FERC-approved Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window. Information in the Submitted Record is not available to the public but is maintained as confidential by the parties because of sensitive technical and cost information. Applicant'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 other members of the cluster, CAISO, and PG&E. (*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.

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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 information that is maintained as confidential by the Applicant, other members of the cluster, CAISO, and PG&E because of sensitive technical and cost information. Information in the Submitted Record is not readily available to the public. The Submitted Record is intended to be confidential.
- ***“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, other parties in the cluster, CAISO and PG&E maintain the Submitted Record as confidential because of sensitive cost and technical information, the disclosure of which would cause a loss of business advantage.
- ***“The value of the information to the applicant”*** – The Submitted Record represents a valuable compilation of confidential information related to the FERC-approved Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window. The Submitted Record is valuable because of the: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the Submitted Record; 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

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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 the FERC-approved Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window. The Submitted Record qualifies for the exemption in Gov. Code § 6254.15.

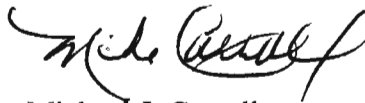
3. Summary of Basis For Confidentiality Request

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." (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) or 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.

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,



Michael J. Carroll
of LATHAM & WATKINS LLP

Enclosure

cc: Gregory Skannal, HECA LLC
Aniekan Udobot, HECA LLC
Mark Goodman, HECA LLC
Asteghik Khajetoorians, HECA LLC
Dale Shileikis, URS Corporation