

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov

**DOCKET****08-AFC-8A**

DATE MAY 16 2012

RECD. MAY 16 2012

May 16, 2012

Michael J. Carroll  
Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626

Re: **Application for Confidentiality,  
Linear Facilities  
Hydrogen Energy California, LLC,  
Docket No. 08-AFC-8A**

Dear Mr. Carroll:

On May 2, 2012, Hydrogen Energy California, LLC, ("Applicant"), filed an application for confidentiality in the above-captioned docket. The applicant seeks temporary confidentiality for the proposed location of the project's linear facilities. The application states that there are currently ongoing negotiations related to obtaining the right of ways for linear facilities. Public disclosure of the submitted record could materially impair the Applicant's efforts to obtain the right of ways and the Applicant to lose a fair bargaining position and suffer economic harm. Impairing the progress of the ongoing negotiations could potentially undermine the feasibility of obtaining the necessary right of ways which are critical to the project.

The application states that the information, particularly as it relates to the right of way 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 right of way negotiations progress because other parties to the negotiations could obtain information about the Applicant's business and strategies related to the negotiations...

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:

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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.)

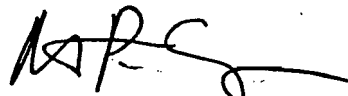
California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall 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 the conclusion of the negotiations. As such, your request for confidential determination is temporarily granted, until the right of way negotiations have ended. It is your responsibility to inform us when you have concluded negotiations.

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 Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Robert Worl