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LATHAM & WATKINS LLP

June 11, 2012

Mr. Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: **Application for Confidential Designation**
Hydrogen Energy California Power Plant (08-AFC-8A)
Cultural Resources Data Submittal

Dear Mr. Oglesby:

Hydrogen Energy California, LLC ("Applicant") proposed the Hydrogen Energy California integrated gasification combined cycle facility (08-AFC-8) on July 31, 2008 ("Project"). On May 2, 2012, Applicant filed an Amended AFC and a new Docket number, 08-AFC-8A, was assigned. In connection with the AFC Amendment, Occidental of Elk Hills, Inc. filed a *Cultural and Paleontological Resources Survey for Modified Alignment of CO2 Supply Line*, which was included as Attachment B of Appendix A-2. California Energy Commission ("CEC") staff requested the following information regarding Occidental's report:

- Figure 2, Cultural Resource Site Locations Adjacent to Proposed Pipeline (2 hard copies, 3 CDs)
- Appendix A, Site Records (1 hard copy, 3 CDs [on the same CD as Figure 2]) – (152 pages of records)

Based on staff's request, Applicant hereby submits the requested information, which is collectively referred to herein as the "Submitted Record." Applicant requests that the entire Submitted Record be designated confidential and be permanently maintained as confidential, pursuant to California Government Code § 6254(r).

The Submitted Record contains sensitive information related to cultural, archaeological or historical objects, structures, landscapes, resources, sacred places, or sites of concern to local Native Americans or other ethnic groups, or resources or objects described in California Public

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Resources Code §§ 5097.9 or 5097.993. If the information in the Submitted Record is released to the public, there is a risk that the information could be used to loot, vandalize, or otherwise damage sensitive cultural, archaeological, and/or paleontological resources.

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 Government Code § 6254(r).

Questionnaire: Application For Confidential Designation

To further support Applicant's request, we provide responses to the California Energy Commission's questionnaire regarding applications for confidential designation:

1(a). Title, date and description (including number of pages) of the record for which you request confidential designation.

See description above of the Submitted Record.

1(b). Specify the part(s) of the record for which you request confidential designation.

Applicant requests confidential designation for the entire Submitted Record.

2. State and justify the length of time the Commission should keep the record confidential.

Applicant requests that the Submitted Record be kept confidential indefinitely to protect potential sensitive cultural, archaeological, and/or paleontological resources sites. If the descriptions of the resources or locations of the sites are released to the public, there is a risk of looting, vandalism or other degradation.

3(a). State the provisions of the Public Records Act or other law that allows the Commission to keep the record confidential, and explain why the provision(s) apply to the record.

The Submitted Record contains sensitive information related to cultural, archaeological and/or historical objects, structures, landscapes, resources, sacred places, and/or sites of concern to local Native Americans or other ethnic groups, or resources or objects described in California Public Resources Code §§ 5097.9 or 5097.993. If the information in the Submitted Record is released to the public, there is a risk that the information could be used to loot, vandalize, or otherwise damage sensitive cultural, archaeological, and/or paleontological resources.

3(b). Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the applicant, and the cost

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or difficulty with which the information could be legitimately acquired or duplicated by others.

The public interest will be served by nondisclosure by preventing looting, vandalism or other degradation of the cultural, archaeological, and/or paleontological resources described in the Submitted Record. Such looting, vandalism or other degradation would preclude cultural, archaeological, historic or religious study of the resources or sites.

4. *State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.*

Applicant believes the CEC staff can incorporate a generalized summary of the information contained in the Submitted Record to properly describe the basis for its analysis without disclosing information specific enough to allow looting, vandalism, or other degradation. Applicant requests that the Submitted Record not be disclosed even if aggregated with other information or redacted to conceal certain information.

5. *State how the record is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.*

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, 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.

Very truly yours,


Michael J. Carroll
of LATHAM & WATKINS LLP