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LATHAM & WATKINS LLP

February 25, 2013

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

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File No. 050056-0001



Re: Hydrogen Energy California Power Plant Project (08-AFC-8A) - Clarification Of
Scope Of Request For Confidential Treatment Of Emissions Data Filed With
California Energy Commission

Dear Mr. Oglesby:

The purpose of this letter is to clarify the scope of a prior request for confidential treatment of certain emissions data filed with the California Energy Commission in connection with the Hydrogen Energy California Power Plant Project (Project). That confidentiality request was narrowly tailored to protect certain limited trade secret and proprietary data provided by the vendor of the Project's turbines and related equipment. Applicant is submitting this clarification at the request of the Kern County Planning and Community Development Department.

As background, on August 3, 2012, the Sierra Club issued Data Request No. 24 regarding certain data about the Project's estimated emissions of criteria pollutants, greenhouse gases and toxic air contaminants. Applicant initially objected to the request because it called for the disclosure of certain trade secret and proprietary information from the equipment vendor. The confidential information related to uncontrolled nitrous oxides emissions from the Project's turbine and heat recovery steam generator (HRSG) when combusting hydrogen-rich fuel and natural gas, as well as exhaust gas volume to the HRSG and feedstock dryer stacks. The confidential information represents only a very small portion of the Project's emissions data. The vast majority of the Project's emissions data had been made available to the public and was more than adequate to evaluate the environmental impacts of the Project.

In response to Applicant's objection, the Sierra Club filed a Motion to Compel, and on November 2, 2012, the CEC Committee for the Project issued the *Committee Ruling on Intervenor Sierra Club's Motion To Compel Data Responses* (Committee Ruling) requiring HECA to respond to Sierra Club Data Request No. 24 after entering into a non-disclosure agreement with the Sierra Club. In December 2012, subject to an executed non-disclosure

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agreement, HECA provided emissions spreadsheets, including the confidential information, to the Sierra Club in response to Sierra Club Data Request No. 24 and the Committee Ruling.¹

On January 8, 2013, HECA filed the same emissions spreadsheets provided to the Sierra Club with the CEC with a request that the confidential information be protected as such.² Updated versions of the confidential emissions spreadsheets were provided to the CEC and Sierra Club on January 10, 2013.³ On the same day, HECA docketed with the CEC a non-confidential, public version of the emissions spreadsheets that contained all of the emissions data associated with the Project with the exception of the confidential information.⁴ The CEC approved HECA's confidentiality request on January 23, 2012.⁵

By this letter, Applicant seeks to clarify that the request for confidentiality submitted on January 8, 2013 and approved by the CEC on January 23, 2013 was narrowly tailored to protect only the limited trade secret and proprietary data provided by the vendor of the Project's turbines and related equipment.⁶ All other emissions data is contained in the public version of the spreadsheets docketed on January 10, 2013 and was not covered by the request for confidentiality approved by the CEC.

If you have any further questions about this letter or otherwise, please do not hesitate to contact me at 714-755-8105.

Very truly yours,

/s/ Michael J. Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP

cc: Lorelei H. Oviatt, AICP, Director
Kern County Planning and Community Development Department

Jacquelyn R. Kitchen, Supervising Planner
Kern County Planning and Community Development Department

¹ See CEC docket log for the Project, http://www.energy.ca.gov/dockets/docket_redesign.php?docketNo=08-AFC-8A.html, Docket No. 68791.

² *Id.*, Docket No. 69075.

³ *Id.*, Docket No. 69136.

⁴ *Id.*, Docket No. 69092.

⁵ *Id.*, Docket No. 69231.

⁶ See *id.*, Docket No. 69075.

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

In the Matter of:) Docket No. 08-AFC-08A
)
REVISED APPLICATION FOR) PROOF OF SERVICE
CERTIFICATION FOR THE HYDROGEN)
ENERGY CALIFORNIA POWER PLANT) (February 11, 2013)
PROJECT ("HECA"))
_____)

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HYDROGEN ENERGY CALIFORNIA PROJECT
CEC Docket No. 08-AFC-08A

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HYDROGEN ENERGY CALIFORNIA PROJECT
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HYDROGEN ENERGY CALIFORNIA PROJECT
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HYDROGEN ENERGY CALIFORNIA PROJECT
CEC Docket No. 08-AFC-08A

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on February 25, 2013, I served and filed copies of the attached:

**LETTER FROM MICHAEL CARROLL TO ROBERT OGLESBY RE CLARIFICATION OF
SCOPE OF REQUEST FOR CONFIDENTIAL TREATMENT OF EMISSIONS DATA**

to all parties identified on the Proof of Service List above in the following manner:

California Energy Commission Docket Unit

☒ Transmission via electronic mail to:

CALIFORNIA ENERGY COMMISSION
Attn: DOCKET NO. 08-AFC-08A
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.ca.gov

For Service to All Other Parties

☒ Transmission via electronic mail to all email addresses on the Proof of Service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 25, 2013, at Costa Mesa, California.

/s/ Paul Kihm

Paul Kihm