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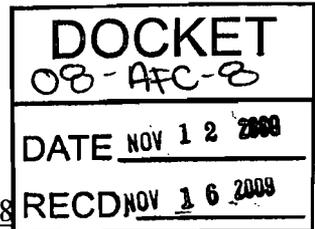
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November 12, 2009

VIA FEDEX

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 08-AFC-08  
1516 Ninth Street, MS-4  
Sacramento, California 95814-5512

File No. 045049-0001



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

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, 1210, and 2505, enclosed herewith for filing please find letters from Michael Carroll to Melissa Jones regarding Applicant's applications for confidential designation of responses to California Energy Commission Staff Data Requests Nos. 28, 64, 81, 82, and 115. Per CEC protocols, five (5) copies of the application letters along with each of the confidential submittals are also enclosed.

Please note that the enclosed application letter (without the confidential materials) was filed today via electronic mail to your attention and to all parties on the attached electronic proof of service list.

Very truly yours,

Paul E. Kihm  
Senior Paralegal

Enclosures

cc: 08-AFC-08 Proof of Service List (w/encl. application letter only, via e-mail and U.S. Mail)  
Michael J. Carroll, Esq. (w/encl.)  
Marc T. Campopiano, Esq. (w/encl.)

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File No. 045049-0001	

November 12, 2009

### VIA FEDERAL EXPRESS

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), Response to California Energy Commission Staff Data Request No. 64**

Dear Ms. Jones:

Hydrogen Energy International, LLC (“Applicant”) has proposed the Hydrogen Energy California Power Plant (08-AFC-8). In support of the Applicant’s response to California Energy Commission Staff Data Request 64, the Applicant has prepared a series of maps that depict sensitive information about potential cultural resources (the “Submitted Record”).<sup>1</sup> Staff requested that this information be submitted under confidential cover.

The Applicant requests that the Submitted Record be designated confidential pursuant to California Government Code § 6254(r), which exempts certain information related to paleontological or cultural resources from disclosure under the California Public Records Act.

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<sup>1</sup> This material is based upon work supported by the Department of Energy National Energy Technology Laboratory under Award Number DE-FE0000663. This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

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The Submitted Record contains sensitive information potentially related to paleontological, archaeological or historical objects, structures, landscapes, resources, or sites of concern to local Native American or other ethnic groups, or resources 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 of looting or damage to the 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) (emphasis added).) This letter establishes a reasonable claim for confidentiality under Gov. Code § 6254(r). The Applicant requests that its application for confidentiality be granted in accordance with the Energy Commission's regulations.

The Applicant requests that the entirety of the Submitted Record be kept confidential indefinitely. 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.

Very truly yours,



Michael J. Carroll  
of LATHAM & WATKINS LLP

cc:

Gregory Skannal, Hydrogen Energy International, LLC  
Asteghik Khajetoorians, BP America, Inc.  
Dale Shileikis, URS Corporation