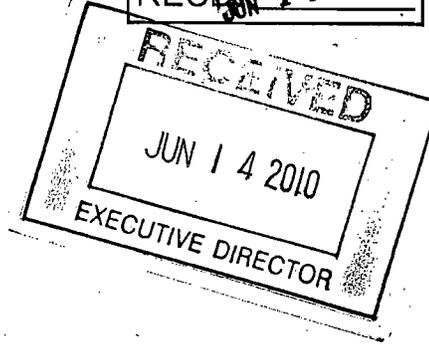
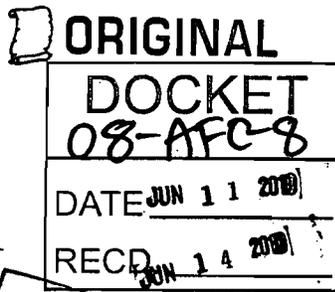


Michael J. Carroll
(714) 755-8105
michael.carroll@lw.com

LATHAM & WATKINS LLP

June 11, 2010



650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Moscow
Barcelona	Munich
Beijing	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Frankfurt	Rome
Hamburg	San Diego
Hong Kong	San Francisco
Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

045049-0001

VIA FEDERAL EXPRESS

COMPLETED

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 Workshop Request No. 18**

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 Workshop Request No. 18, the Applicant has prepared a compact disc (CD) containing “Groundwater Model MODPATH Simulation Files from Appendix O2 of the Revised AFC” and a CD containing “Groundwater Modeling Files from Appendix O2 of the Revised AFC” (combined, the “Submitted Record”). The Applicant requests that the Energy Commission designate the Submitted Record as confidential pursuant to Title 20, California Code of Regulations, § 2505.

In this submittal, 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 Applicant has spent time and resources compiling the information in the Submitted Record and preserving its confidentiality. If this sensitive information became known to the public, the Applicant's competitors could gain access to the information without having to make a commensurate investment, undermining the Applicant's competitive advantage.

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 is valuable to the Applicant and provides a business advantage because the Applicant has spent time and resources compiling the information in the Submitted Record. If this sensitive information became known to the public, the Applicant's competitors could gain access to the information without having to make a commensurate investment, undermining the Applicant's competitive advantage.
- ***"How the advantage would be lost"*** – The advantage described above would be lost if the Submitted Record were no longer confidential because the Applicant's competitors could gain access to the information without having to make a commensurate level of investment, undermining the Applicant's competitive advantage.
- ***"The value of the information to the applicant"*** – The value of the Submitted Record to the Applicant is based on (1) the investment in time and resources that went into developing the Submitted Record, and (2) the Applicant's use of the information for business purposes.

LATHAM & WATKINS LLP

- ***“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 falls under 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 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 because it is maintained as confidential by the Applicant for business purposes. As stated above, the Submitted Record is also a trade secret under California law. In addition, the Submitted Record is information related to the siting of a facility within the state filed with the Energy Commission. As a result, the submitted Record falls under 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) (emphasis added).) The Applicant believes this letter establishes a reasonable claim for confidentiality based on the applicability of Gov. Code § 6254(k) and Gov. Code § 6254.15.

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.

LATHAM & WATKINS^{LLP}

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, Hydrogen Energy International, LLC
Dale Shileikis, URS Corporation

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

In the Matter of:)	Docket No. 08-AFC-08
)	
APPLICATION FOR CERTIFICATION,)	PROOF OF SERVICE
FOR THE HYDROGEN ENERGY)	
CALIFORNIA PROJECT BY HYDROGEN)	(May 10, 2010)
ENERGY INTERNATIONAL, LLC)	
)	
)	

APPLICANT

Gregory D. Skannal

Tiffany Rau

Rick Harrison

Hydrogen Energy International LLC
One World Trade Center, Suite 1600
Long Beach, CA 90831
gregory.skannal@hydrogenenergy.com
tiffany.rau@hydrogenenergy.com
rick.harrison@hydrogenenergy.com

Asteghik Khajetoorians

Senior BP Legal Attorney
BP America, Inc.
6 Centerpointe Drive, LPR 6-550
La Palma, CA 90623
Asteghik.Khajetoorians@bp.com

APPLICANT'S CONSULTANT

Dale Shileikis

Vice President
Energy Services Manager
Major Environmental Programs
URS Corporation
221 Main Street, Suite 600
San Francisco, CA 94105-1917
dale_shileikis@urscorp.com

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

INTERESTED AGENCIES

California ISO

e-recipient@caiso.com

e-mail preferred

INTERVENORS

Tom Frantz

Association of Irrigated Residents

30100 Orange Street

Shafter, CA 93263

tfrantz@bak.rr.com

Babak Naficy

Law Offices of Babak Naficy

Kern-Kaweah Chapter of the Sierra Club

1504 Marsh Street

San Luis Obispo, California 93401

babaknaficy@sbcglobal.net

Timothy O'Connor, Esq.

Environmental Defense Fund (EDF)

1107 Ninth St., Suite 540

Sacramento, CA 95814

toconnor@edf.org

ENERGY COMMISSION

James D. Boyd, Commissioner

Vice Chairman and Presiding Member

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

Sacramento, CA 95814-5512

jboyd@energy.state.ca.us

Jeffrey D. Byron

Commissioner and Associate Member

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

Sacramento, CA 95814-5512

jbyron@energy.state.ca.us

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

Raoul Renaud
Hearing Officer
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
rrenaud@energy.state.ca.us

Kristy Chew
Advisor to Commissioner Boyd
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
kchew@energy.state.ca.us

Rod Jones
Project Manager
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
RJones@energy.state.ca.us

Lisa De Carlo
Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
ldecarlo@energy.state.ca.us

Jennifer Jennings
Public Adviser's Office
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
Publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Paul Kihm, declare that on June 11, 2010, I served and filed copies of the attached:

**LETTERS FROM MICHAEL CARROLL TO MELISSA JONES REGARDING
APPLICATION FOR CONFIDENTIAL DESIGNATION – RESPONSE TO CEC
WORKSHOP REQUEST NO. 18**

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

California Energy Commission (with confidential submittal)

- Transmission by depositing the original plus five copies with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

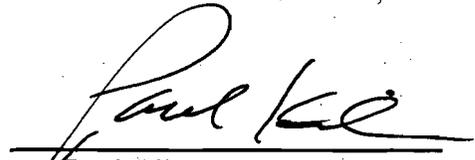
Ms. Melissa Jones
Executive Director
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814

For Service to All Other Parties (without Confidential Submittal)

- Transmission via electronic mail to all email addresses on the Proof of Service list; and
- by depositing one paper copy with the United States Postal Service via first-class mail at Costa Mesa, California, with postage fees thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses **NOT** marked "email preferred."

I further declare that transmission via electronic mail and U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 11, 2010, at Costa Mesa, California.



Paul Kihm