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California Energy Comm
DOCKETED
08-AFC-8A
TN # 70787
5-10-13

May 7, 2013

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)
Responses To CEC Data Requests Nos. A189-A190

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.

Staff for the California Energy Commission ("CEC") issued certain data requests, including CEC Data Requests Nos. A189-A190, related to Cultural Resources. The attached information provides responses to Data Requests Nos. A189-A190 based on information provided by Occidental of Elk Hills, Inc. (the "Confidential Record").

Applicant requests that the entire Confidential Record be designated confidential and be permanently maintained as confidential pursuant to California Government Code § 6254(r). The Confidential Record contains sensitive information related to cultural, archaeological, paleontological 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 Resources Code §§ 5097.9 or 5097.993. If the information in the Confidential 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, historical and/or paleontological resources.

According to the California 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 Confidential Record.

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

Applicant requests confidential designation for the entire Confidential Record.

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

Applicant requests that the Confidential 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 Confidential Record contains sensitive information related to cultural, archaeological, paleontological 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 Confidential 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, paleontological and/or historical 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 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 Confidential 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 California Energy Commission staff can incorporate a generalized summary of the information contained in the Confidential 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 Confidential 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. It if 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, including Occidental of Elk Hills, Inc. and its employees, attorneys and consultants, and 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,

*/s/ Michael Carroll*

Michael Carroll
of LATHAM & WATKINS LLP