

DOCKETED

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CALIFORNIA ENERGY COMMISSION

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June 8, 2015

Mr. Shaun Moore
Corporate Vice President
One AMD Place
Sunnyvale, CA 94088

RE: **Application for Designation of Confidential Records**
Docket Number 14-AAER-2

Dear Mr. Moore:

The Energy Commission ("Commission") is in receipt of an application for confidentiality filed by AMD ("Applicant"). The application requests confidential designation for Applicant's submission of data related to the Commission's computer energy efficiency rulemaking. Specifically, Applicant requests confidential designation for the following document:

1. *PowerPoint presentation comprised of proprietary technical data and designs.*

The application states that the presentation is confidential because the report contains information on AMD's proprietary technology including detailed descriptions of AMD's roadmap of future processors, including descriptions of proprietary processor designs, features and estimated performance metrics. The application also notes that disclosure of the information be highly competitively injurious to AMD's position in the technology marketplace.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "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." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

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. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.) California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 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.

The application has addressed all four elements stating that the development of central processing units and graphic processing units requires the investment of hundreds of millions of dollars. Disclosure of the confidential data and intellectual property would allow competitors to gain an advantage or make up a shortcoming in their own products which would be highly damaging to AMD's market position. AMD's primary business is the creation of trade secrets and intellectual property for the design of microprocessors, therefore the information is a core asset of the company. Finally, there are only two other companies in the world that manufacture similar products making legitimate acquisition or duplication by others extremely difficult.

Applicant has made a reasonable claim that the law allows the Commission to keep the above identified power point presentation confidential on the grounds that it is trade secret and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. Access to this information would allow competitors to derive a business advantage, as they could use this information to determine their future product development without the need to spend the time and resources that AMD invested. In addition, if competitors obtained the data, AMD's competitive advantage would be lost.

Applicant requests that the information be kept confidential for 10 years. In addition, the Applicant does not believe the technology information can be aggregated to a level that would allow disclosure.

For the above reasons, your request for confidential designation for the PowerPoint presentation is granted. The information/data will remain confidential for 10 years from the date of this letter.

Be advised that persons may appeal this confidentiality designation. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

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If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read "R. P. Oglesby", with a long, sweeping horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Ken Rider