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<b>Project Title:</b>	Tire Efficiency Order Instituting Information Proceeding
<b>TN #:</b>	252938
<b>Document Title:</b>	CEC's Response Letter re September 28, 2023 Confidentiality Application
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November 3, 2023

## Via Email

Tracey Norberg  
U.S. Tire Manufacturers Association  
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### **Application for Confidential Designation Replacement Tire Efficiency Proceeding Docket No. 20-TIRE-01**

Dear Tracey Norberg:

The California Energy Commission (CEC) has received the U.S. Tire Manufacturers Association's (applicant) application for confidentiality, filed September 28, 2023 (TN 252427). On October 18, 2023, applicant clarified by email that it intends the application to cover the information that was filed concurrently with the application, as follows:

- An Excel file containing 8,586 rows of the following 18 columns of tire data (A through R): USTMA Record #; 3PMS; Prefix; Section Width; Aspect Ratio; R; Rim Diameter; Suffix; Load Category (LL, SL, etc.); Load Index; Load Range; Speed Symbol; Tread depth >18/32" (Y/N); European Network Aligned Value RRC (kg/T); Graph-Type [passenger, CUV/SUV, light truck, etc.]; Tread\_Type [summer, all-season, etc.]; Segment\_Type [touring, performance, etc.]; and Speed\_Group. The Excel file is 233 pages as filed in the docket.
- An Excel file containing data analysis based on the tire data and seven sheet tabs, including Graphs and summaries, Test data, Final calculations, CEC test data, Raw data, Test data frequency, Market data. The Excel file is 538 pages as filed in the docket.

The applicant states that the Excel files comprise proprietary business trade secrets that are exempt from disclosure under Government Code section 7927.705, Civil Code section 3426 et seq., Evidence Code 1040, and United States Code, title 18, section 1836. The applicant requests that the Excel files in its entirety be kept confidential indefinitely.

An application for confidential designation 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 [California Energy] Commission to keep the record confidential." The executive director's determination

made in response to an application for confidential designation is subject to a reasonableness standard. The applicant must make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines “trade secret” as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, 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 addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – The applicant is an association of tire manufacturing companies that are in direct competition with one another. The data is a confidential compilation applicant’s members’ confidential tire performance data and analysis. However, the “CEC test data” sheet tab, contained in applicant’s Excel file containing data analysis, merely recites the CEC’s own data, which the CEC previously published in the docket for this proceeding on March 2, 2023 (TN 055418), and thus is public.
- 2) *How the advantage would be lost* – The applicant states that the data is competitively valuable and that companies would obtain an unfair economic advantage by gaining access to the manufacturing and performance data about competitors' products.
- 3) *The value of the information to the applicant* – The applicant as a trade association benefits from the confidentiality of the data because it allows applicant to collect and analyze data from its members to identify avenues to improve tire safety and performance. But its members will share data only on assurance that the applicant will keep the data confidential.

- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The applicant asserts that the tire data is not generally known, and it is not shared with the applicant's own member companies or the public. The applicant states it has shared the information with regulatory agencies only when the agency agrees to maintain confidentiality. Beyond what is in the application, absent data sharing, the only method to obtain a compilation of tire information is significant investment of research and testing.

The applicant has made a reasonable claim that the tire data, and the analyses based on that data, are exempt as trade secrets, with the caveat that the information in the "CEC test data" sheet tab, contained in the Excel file containing data analysis, is already public and cannot be deemed confidential. The applicant addresses the four elements identified in California Code of Regulations, title 20, section 2505(a)(1)(D), in summary form, stating that its members may be harmed by the loss of confidentiality because competitors can use this data to derive economic value by gaining access to the manufacturing and performance data about competitors' products. The applicant is under no obligation to provide the tire data to the CEC and has stated its intent to do so only if this application for confidential designation is granted.

#### **Executive Director's Determination**

For these reasons, the applicant's application for confidential designation is approved. Confidentiality is granted for the entirety of the two Excel files indefinitely.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email [confidentialityapplication@energy.ca.gov](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director