

DOCKETED

Docket Number:	14-NGVI-01
Project Title:	PON-13-610 NaturalGas Vehicle Incentives Program
TN #:	210706
Document Title:	Response to Application for Confidentiality
Description:	Payment Claim Information related to Autocar, LLC
Filer:	Sabrina Savala
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	3/14/2016 12:18:18 PM
Docketed Date:	3/14/2016

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
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March 10, 2016

Kate Kanabay
Horwood Marcus & Berk Chartered
500 West Madison Street Suite 3700
Chicago, IL 60661

**RE: Application for Confidential Designation for Payment Claim
Information Related to Autocar, LLC
Natural Gas Vehicle Incentive Project (NGVIP)
Docket No. 14-NGVI-01**

Dear Ms. Kanabay:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Autocar, LLC (Applicant). The application seeks confidential designation for Payment Claim Information (section 2) of any Natural Gas Vehicle Incentive Payment Claim Form (Form ARF-3) which specifically names Applicant or any Applicant model. The request for confidentiality extends to substantially equivalent data found in related sales documentation.

The application states that confidentiality is sought for trade secret information and commercially sensitive data relating to product pricing, current sales, and purchaser identification. Under section 2 of Form ARF-3, a vehicle purchaser seeking participation in the Natural Gas Vehicle Incentive Project (NGVIP) must submit the following information related to the vehicle for which an incentive is sought: vehicle identification number (VIN), model year, make, model, gross vehicle weight rating (GVWR), California Air Resources Board (ARB) Executive Order, ARB engine family, final price paid for vehicle, and government incentives in final price. Applicant notes that no feasible method of aggregating or masking information in Form ARF-3 could be identified and that the information has not been disclosed publicly.

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 California Energy 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.) 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, comment 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, an application shall state: (1) the specific nature of the advantage; (2) how the advantage would be lost; (3) the value of the information to an applicant; and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these four elements: (1) section 2 contains product pricing and current sales information which is highly competitive and confidential in Applicant's industry; (2) the disclosure of pricing information, sales information, and other commercially sensitive data in section 2 would allow a competitor manufacturer in the industry to match the disclosed information with Applicant, which would provide the other manufacturer with a competitive advantage; (3) maintaining confidentiality of pricing and sales information allows Applicant to remain competitive in the industry; and (4) the information cannot be legitimately acquired or duplicated by others.

The application is clear that confidentiality is being sought for trade secret information related to product pricing, current sales, and purchaser identification. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the information from public disclosure.

Applicant requests that the information be kept confidential in perpetuity. However, in previous applications requesting confidential designation by the California Energy Commission, Applicant agreed to allow substantially similar information to be held confidential only until the end of a solicitation period under the incentive program. Applicant has not provided additional justification to suggest the information contained in section 2 of ARF-3 requires the California Energy Commission to undertake the burdensome task of maintaining confidential designation in perpetuity. Therefore, it is appropriate to grant confidentiality until the conclusion of NGVIP, administered by the University of California, Irvine (UCI), for the sales information.

For the reasons stated above, the request for confidential designation is granted for any Form ARF-3 indicating Applicant or any Applicant model under section 2 and for any equivalent data in sales documentation. The information will remain confidential until the conclusion of NGVIP, as administered by UCI.

While the California Energy Commission will maintain the confidence of the sales information consistent with the terms of this letter, public disclosure of the confidential information by others participating in the NGVIP rebate program, such as Applicant, the purchaser, or UCI, will terminate the California Energy Commission's designation of confidentiality.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. 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.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. P. Oglesby', followed by a long horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Andre Freeman, Energy Commission Supervisor, Medium- and Heavy-Duty
Vehicle Technology Unit