

DOCKETED

Docket Number:	16-ENFORCE-02
Project Title:	Confidential Designation Applications + Miscellaneous Documents
TN #:	213784
Document Title:	Response to Vinotemp International Corp.'s
Description:	2012, 2013, 2014 Federal Tax Returns; 2014, 2015 Income Statements; 2014, 2015, 2016 YTD Balance Sheets - See Application TN 213783 - Original Application for Confidentiality, see TN 212967
Filer:	Patty Paul
Organization:	California Energy Commission
Submitter Role:	Commission Staff
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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO. CA 95814-5512

June 6, 2016

Evelyn Kahl
Counsel to Vinotemp International Corp.
16782 Von Karman Avenue, Suite 15
Irvine, CA 90071

RE: Application for Confidential Designation for Financial Information

Dear Ms. Kahl:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Vinotemp International Corporation (Applicant). The application seeks confidential designation for the following documents (Confidential Records):

- 1) *2012 Federal Tax Return;*
- 2) *2013 Federal Tax Return;*
- 3) *2014 Federal Tax Return;*
- 4) *Income Statement Year-End 2014;*
- 5) *Income Statement Year-End 2015;*
- 6) *Balance Sheet Year-End 2014;*
- 7) *Balance Sheet Year-End 2015; and*
- 8) *Balance Sheet Year-to-Date 4.30.2016.*

The application states that confidentiality is sought for financial information submitted to the Energy Commission in connection with enforcement negotiations. Applicant notes that the data could be aggregated if corporate identifying information, such as name or address, is removed; if Applicant is not identified by size, product volume, or other measure; and if Applicant's data is aggregated with the data of all competitors. The Confidential Records have 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, comments b, p.5.)

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, 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) the Confidential Records contain financial information, which, if disclosed, could place a small business such as Applicant at a competitive disadvantage; 2) disclosure of the Confidential Records could signal sales trends to competitors; 3) nondisclosure of the financial information contained in the Confidential Records allows Applicant to remain competitive in securing potential reseller accounts; 4) Applicant's financial statements are maintained by an accounting manager who has exclusive computer access to any sensitive accounting data, which has been shared only with Applicant's Certified Public Accountant, bank representatives (to comply with lending requirements), and government regulatory agencies.

The application is clear that confidentiality is being sought for trade secret information submitted in connection with enforcement negotiations. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Records from public disclosure.

Applicant requests that the information be kept confidential for ten years, due to the fact that the Confidential Records contain personal tax data. The trade secret information has value until sufficient time has lapsed 1) to render the financial information obsolete. Therefore, it is appropriate to grant confidentiality for ten years.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential for ten years from the issuance of this letter.

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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', with a long horizontal stroke extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
Paul Jacobs, California Energy Commission, Assistant Executive Director for
Compliance Assistance and Enforcement
Kevin Bell, California Energy Commission, Senior Staff Counsel