

## DOCKETED

<b>Docket Number:</b>	16-ENFORCE-02
<b>Project Title:</b>	Confidential Designation Applications + Miscellaneous Documents
<b>TN #:</b>	213795
<b>Document Title:</b>	Response to Application for Confidentiality - QC Manufacturing, Inc.
<b>Description:</b>	N/A
<b>Filer:</b>	Sabrina Savala
<b>Organization:</b>	California Energy Commission
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<b>Docketed Date:</b>	9/26/2016

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

September 26, 2016

Dane Stevenson  
QC Manufacturing, Inc.  
43352 Business Park Drive  
Temecula, CA 92590

RE:           **Application for Confidential Designation for QC Manufacturing  
Settlement Communication  
Docket No. 16-ENFORCE-02**

Dear Mr. Stevenson:

The California Energy Commission is in receipt of an Application for Confidential Designation submitted on behalf of QC Manufacturing, Inc. (Applicant) The application seeks confidential designation for the "Confidential Settlement Communication" letter dated September 19, 2016 from Rick Rothman of Morgan Lewis, on behalf of Applicant, to Paul Jacobs of the California Energy Commission and two attachments (Confidential Records).

The application states that confidentiality is sought for a confidential settlement communication which contains information related to settlement offers and issues, as well as confidential business information. Applicant states that there is no feasible method for aggregating the Confidential Records to protect the value of the materials and that 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 [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 details of ongoing settlement discussions between Applicant and the California Energy Commission, which include cost and sales data; 2) public disclosure of such details could negatively impact ongoing negotiations and harm Applicant's business interests; 3) the Confidential Records facilitate the exchange of information needed for ongoing settlement discussions and for avoiding litigation; and 4) the Confidential Records have only been disclosed to Applicant's employees and legal representation and cannot be legitimately obtained by others.

The application is clear that confidentiality is being sought for trade secret information related to ongoing settlement discussions involving information of commercial value. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential permanently. Protecting information essential to ongoing negotiations is in the public interest; therefore, it is appropriate to grant confidentiality indefinitely.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential indefinitely.

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.

Dane Stevenson  
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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 flourish extending to the right.

Robert P. Oglesby  
Executive Director

cc: Docket Unit, California Energy Commission  
Paul Jacobs, California Energy Commission  
Kirk Oliver, California Energy Commission