

DOCKETED

Docket Number:	16-ENFORCE-02
Project Title:	Confidential Designation Applications + Miscellaneous Documents
TN #:	220916
Document Title:	Hansgrohe Inc.'s Application for Confidential Designation
Description:	Confidential spreadsheet containing trade secret information
Filer:	Dustin Charles Elliott
Organization:	Morrison & Foerster LLP
Submitter Role:	Applicant Representative
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APPLICATION FOR CONFIDENTIAL DESIGNATION

(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

All confidential filings: Individual documents may not exceed 30 MB¹ or be password protected.² The application must be a separate document from the confidential materials. The application itself is not confidential and is a public record. The application will be reviewed and acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a))

If you have questions, contact the Docket Unit at (916) 654-5076 or email: docket@energy.ca.gov.

Existing proceedings: Applications for confidentiality and the confidential documents must be uploaded directly to the Docket Unit through the e-filing system. Paper copies or CDs do not need to be submitted. Links to the e-filing system are provided on most proceeding webpages labeled **"Submit e-filing."** Alternatively, go to: <http://www.energy.ca.gov/e-filing/index.html>. Registration is necessary the first time documents are uploaded. Once registration is complete, to submit a confidential filing click on **Quick Actions** from the **DASHBOARD** and select **Submit Confidential e-filing** from the dropdown list. The application must be uploaded first followed by one or more confidential files.

Filings not associated with any proceeding: Applications for confidentiality and the confidential materials must be submitted directly to the **Docket Unit** in paper form or on a CD, but not by email. Two copies must be submitted, on separate media if electronic, each marked with a descriptive title and "Confidential." (§ 1208.1)

TO: Energy Commission Docket Unit

Applicant: Hansgrohe Inc.

Address: 1490 Bluegrass Lakes Parkway, Alpharetta, Georgia 30004

Phone and E-mail: (415)268-7346 tedmister@mofo.com

Proceeding or Project Name: 16-enforce-02

Docket Number: 16-enforce-02

- 1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data seeking a designation of confidentiality must be included with this application.**

Hansgrohe confidential business information in response to CEC Asst. Exec. Director Paul Jacobs' letter of June 23, 2017.

- 1(b). Specify the part(s) of the information or data for which you request confidential designation.

The entire spreadsheet and accompanying explanatory letter are confidential.

¹ Contact the Docket Unit if you cannot reduce the size of your file.

² If you wish to protect the files while in transit, you may combine them in a password-protected .zip file..



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- 2. State and justify the length of time the Energy Commission should keep the information or data confidential.

Protecting trade secret information essential to ongoing negotiations is in the public interest; therefore, it is appropriate to grant confidentiality indefinitely.

- 3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

Applicable here is Gov. Code § 6254(k): "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Evid. Code § 1060 provides the pertinent privilege: "the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it." Hansgrohe's data are trade secrets under Civ. Code § 3426.1.

- 3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The PRA makes certain types of records exempt from disclosure. When the California legislature passes a law that exempts certain types of records from disclosure (like trade secrets), then the Energy Commission will treat those types of records as exempt from disclosure. (See California Government Code Section 6254, et seq.). The information here is trade secret because it "(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." (§ 3426.1, subd. (d).) Disclosing the data would allow for extrapolation of Hansgrohe's customers, confidential wholesale pricing, and market share in California. Competitors might use this information to undercut Hansgrohe.

- 4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

Hansgrohe cannot take a generic position on what masking or aggregation might make the data disclosable. We would need to know more about the form an aggregation or masking might take to respond to this question.

- 5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

Hansgrohe data regarding unit sales and revenues are never made public. Such data are not disclosed outside the company except to auditors and limited employees of Hansgrohe's corporate parents. Hansgrohe holds information such as that being submitted here, on secure computer servers, with limited employee access even within Hansgrohe. The only instance in which the submitted information has been disclosed outside of Hansgrohe and its corporate family is to counsel and the Commission in connection with this enforcement action.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: 8/25/17
Signed: [Signature]



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CALIFORNIA ENERGY COMMISSION

Name (print or type): Erik Christensen
Title: (print or type) President
Representing: Hansgrohe Inc.

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.