

DOCKETED

Docket Number:	16-ENFORCE-02
Project Title:	Confidential Designation Applications + Miscellaneous Documents
TN #:	221650
Document Title:	Response Application for Confidential Designation for Revised Information Responding to Enforcement Action
Description:	N/A
Filer:	Liza Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/1/2017 9:48:54 AM
Docketed Date:	11/1/2017

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

October 31, 2017

Erik Christensen
President of Hansgrohe Inc.
1490 Bluegrass Lakes Parkway
Alpharetta, GA 30004

RE: **Application for Confidential Designation for Revised Information
Responding to Enforcement Action
Docket No. 16-ENFORCE-02**

Dear Mr. Christensen,

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Hansgrohe Inc. (Applicant). The application seeks confidential designation for additional data submitted in response to Energy Commission Assistant Executive Director Paul Jacobs' letter, dated June 23, 2017 (Confidential Records):

1. October 16, 2017 Explanatory Letter from Morrison Foerster, LLP to Energy Commission Staff;
2. February 10, 2011 Letter from Energy Commission Staff to Grohe America, Inc;
3. Grohe America, Inc. Bloomberg Company Report;
4. Hansgrohe Inc. Bloomberg Company Report; and
5. Constituent Parts Evaluation (Spreadsheet).

The application states that confidentiality is sought for proprietary business information regarding corporate structure and sales figures to provide information to Energy Commission Staff during an ongoing settlement process. The Applicant states that more information is needed to allow for aggregation or masking of the data contained in the Confidential Records.

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, citing 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 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 February 10, 2011 Letter from Energy Commission Staff to Grohe America, Inc does not meet the elements of a trade secret because it may be legitimately acquired by others and does not contain information or data that, if disclosed, would deprive Applicant of any advantage.

However, for the explanatory letter, both Bloomberg Company Reports, and the Constituent Parts Evaluation, the application addresses these four elements: (1) the Confidential Records contain details of ongoing settlement discussions between Applicant and the California Energy Commission, including 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 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 Records from public disclosure, excluding the February 10, 2011 Letter from Energy Commission Staff to Grohe America, Inc.

Applicant requests that the information be kept confidential indefinitely. Protecting information essential to ongoing negotiations is in the public interest. Furthermore, the Confidential Records maintain their trade secret value as long as the information retains validity and market value. Therefore, it is appropriate to grant confidentiality indefinitely.

For the reasons stated above, the request for confidential designation for the Confidential Records is granted in part, as described above. The information will remain confidential indefinitely.

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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,



Drew Bohan
Executive Director

cc: Docket Unit, California Energy Commission
Paul Jacobs, Assistant Executive Director for Compliance Assistance and
Enforcement, California Energy Commission