

DOCKETED	
Docket Number:	18-AAER-08
Project Title:	Federally Exempted Linear Fluorescent Lamps
TN #:	223828
Document Title:	Response Letter to NEMA for Application for Confidential Designation
Description:	N/A
Filer:	Liza Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	6/15/2018 11:26:55 AM
Docketed Date:	6/15/2018

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

June 15 , 2018

Alex Boesenberg
National Electrical Manufacturers Association
1300 N. 17th Street, 9th floor
Rosslyn, VA 22209

RE: Application for Confidential Designation Docket Number 18-AAER-08

Dear Mr. Boesenberg:

The California Energy Commission (Commission) is in receipt of an Application for Confidentiality submitted on behalf of the National Electrical Manufacturers Association (NEMA) (Applicant). The application seeks confidential designation for a spreadsheet titled "Summary for High CRI four foot T12 Lamps" dated May 24, 2018. (Spreadsheet).

The application states that confidentiality is sought for the data which represents aggregated shipment data from manufacturers for certain four foot T12 lamps. The data was collected specifically to assist the Commission during the pre-rulemaking proceeding.

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

Mr. Alex Boesenberg

June 15, 2018

Page 2

ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these four elements: (1) the Spreadsheet has not been publicly disclosed and is subject to NEMA's antitrust compliance policy as well as non-disclosure agreements with third-parties; (2) the Spreadsheet contains data which provides NEMA with a competitive advantage over other entities which also track such data; (3) disclosure of the data would eliminate the competitive advantage. In addition, NEMA spent time and money to specifically collect this data as it is not readily available; and (4) disclosure would allow other entities to receive the benefit of the data without having to spend time or money to collect this data.

The Applicant has made a reasonable claim that the law allows the Commission to keep the Spreadsheet from public disclosure. Applicant requests that the information be kept confidential for five years, until June 30, 2023.

For the reasons stated above, the request for confidential designation for the Spreadsheet is granted. The information will remain confidential for five years.

Be advised that a petition may be filed 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 Jared Babula, senior attorney, at (916) 651-1462.

Sincerely,



Drew Bohan
Executive Director

cc: Docket Unit
Jared Babula, Senior Attorney
Kristen Driskell, Manager, Appliances Office