

DOCKETED

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CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512



June 29, 2018

Gregg Achman, VP Engineering Standards
Hearth & Home Technologies
7571 215th Street West
Lakeville, MN 55044

RE: Application for Confidential Designation Docket Number 18-AAER-06

Dear Mr. Achman:

The California Energy Commission (Commission) is in receipt of an Application for Confidentiality submitted on behalf of Hearth & Home Technologies (Applicant). The application seeks confidential designation for the following:

California sales by model and forecasted sales.

The application states that confidentiality is sought for the data that represents proprietary business information including product state level sales, forecasted state sales and product price ranges. The data was collected specifically to assist the Commission during the hearth products 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. Gregg Achman

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

The application addresses these four elements: (1) the data consists of sales and price information as well as forecasted sales; (2) disclosure of the data could impact future sales and provide leverage to those negotiating agreements with the Applicant; (3) the data has value because it allows competitors and vendors to gain insight into the Applicant's business and costs; (4) the data has not been publicly disclosed and would be difficult to generate without inside knowledge.

The Applicant has made a reasonable claim that the law allows the Commission to keep the data confidential for seven years, until June 30, 2025. The data can be made public if the subject data is aggregated with the same data reported to the Commission by other manufacturer's.

For the reasons stated above, the request for confidential designation for the data is granted. The information will remain confidential for seven 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