

DOCKETED

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**CALIFORNIA
ENERGY COMMISSION**



September 17, 2019

Ann M. Grottveit
Dorcy International Inc.
2700 Port Road
Columbus, Ohio 43217

**RE: Application for Confidential Designation for Proprietary Information
Including Trade Secrets, Docket No. 16-ENFORCE-02**

Dear Ms. Grottveit:

The California Energy Commission (CEC) received the Application for Confidentiality (Application) that you filed on March 8, 2019, on behalf of Dorcy International (Applicant). You seek confidential designation of the following documents (Confidential Information):

- i. Letter of explanation
- ii. CYC-1080 spot lamp Bill of Material, dated October 5, 2018
- iii. Schematics of old 1080 V.5, dated 2017-11-02, and of 1080 high efficiency version, dated 2018-8-02—both schematics filed together

You submitted the Confidential Information to help the Applicant resolve a deficiency violation. You requested confidential designation of the Confidential Information pursuant to California Code of Regulations, title 20, section 2505 on the grounds that it includes valuable corporate proprietary information including trade secrets relating to the design and manufacturing of the Applicant's products.

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 [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, §§ 6254(k), 6254.15; Evid. Code, § 1060; see also Civ. Code, § 3426.1.)

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, comment b, p. 5.) For example, customer lists and detailed sales data would fit easily within this definition.

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant filing an application 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.

Your Application states the Confidential Information contains valuable trade secret information, which has not been disclosed to any person other than specific employees and legal counsel. Your Application also states that disclosure of the Confidential Information would result in a loss of competitive advantage and would jeopardize the Applicant's business because the Applicant's viability depends on maintaining a competitive edge in designing and manufacturing its products.

Finally, your Application states that this information should be held as confidential indefinitely, and that there is no way to aggregate the information. However, your Application states the CEC may disclose the general description of the changes made to the Applicant's products that is set forth in your introductory letter, but only to disclose that the Applicant updated the previous model with a higher efficiency charging board. Your Application also states that all information contained in the attachments to the letter, as well as the specific process of alteration, should remain confidential.

The Applicant has made a reasonable claim that the law allows the CEC to grant your Application for Confidentiality. The Confidential Information was developed by the Applicant, contains information that is not public, and has the potential for economic advantage. There is no information to suggest that release of the information would serve a greater public benefit than its protection.

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Based on the discussion above, your Application for Confidentiality is granted. The information is subject to this confidentiality designation indefinitely.

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the Executive Director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, or raising, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

If you have any questions concerning this matter, please contact Ralph Lee, staff counsel, at ralph.lee@energy.ca.gov or (916) 645-3953.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director

cc: Ralph Lee, staff counsel