

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512**DOCKET****09-OII-1**DATE MAR 03 2010RECD. MAR 16 2010

March 3, 2010

Paul Campbell
Director of Operations and Service
Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL 60179

RE: **Application for Confidentiality**
California State Energy Efficient Appliance Rebate Program
Docket No. 09-OII-1

Dear Mr. Campbell:

On January 28, 2010, Sears Holding Corporation ("Applicant") filed an application for confidentiality, in the above-captioned docket. The application seeks confidentiality for the Applicant's in-kind services letter for California's State Energy Efficiency Appliance Rebate Program (SEEARP), Administered under the American Recovery and Reinvestment Act.

The application claims that the letter contains information, including:

. . . unique and distinct marketing activations and promotions that, if known to Sears competitors, would jeopardize Sears competitive advantage and would provide its competitors with direct visibility into Sears confidential and proprietary marketing and advertising strategies. . . disclosure of this information would result in a loss of revenue, competitive advantage, lessen the return on investment for the dedicated marketing spend, and would endanger Sears' ability to reach target revenue goals. . .

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.) The 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, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the 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, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the above listed information confidential on the grounds that it is proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. As such, your request for confidential determination is granted. Applicant requests that the information be held confidential for the period of at least one year, but not longer than the end of the SEEARP. The letter identified above will remain confidential until March 1, 2011.

Persons may petition to inspect or copy the 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.

Please note that subsequently submitted information can be deemed confidential as specified in this letter without the need for a new application if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination. California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4).

If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

/S/

MELISSA JONES
Executive Director

cc: Docket Unit
Energy Commission Project Manager
Renee' Webster-Hawkins, Energy Commission Counsel