

CALIFORNIA ENERGY COMMISSION

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California Energy Commission

DOCKETED
12-BSTD-05

TN # 69507

FEB. 12 2013

February 12, 2013

Jim Gaines
Philips Lighting
Three Burlington Woods Drive
Burlington, MA 01803

RE: **Application for Designation of Confidential Records, California Quality Light Emitting Diode Lamp Specification**
Docket Number 12-BSTD-03

Dear Mr. Gains:

The Energy Commission is in receipt of an application for confidentiality filed by Philips Lighting ("Applicant"). The application requests confidential designation for Applicant's submission of data related to LED lamp performance. Specifically, Applicant requests confidential designation for the following report:

1. *Price/performance and User Studies*

The application states that the report is confidential because the report contains information on Philips proprietary technology and cost and sales data as well as consumer analysis studies related to Philips lamp products. Such information constitutes an innovative trade secret developed by Philips at great expense. The application also notes that disclosure of the report would provide market participants access to competitively sensitive information that would harm Philips and be otherwise unavailable.

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:

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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 report confidential on the grounds that it is trade secret and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. Access to this information would allow competitors to derive a business advantage, as they could use this information to determine their future product development without the need to spend the time and resources that Philips invested. In addition, if competitors obtained the data, Philips' competitive advantage would be lost because competitors could modify their products based on the report's findings.

Applicant requests that the information be kept confidential for 5 years. In addition, the Applicant does not believe the technology information can be aggregated to a level that would allow disclosure.

For the above reasons, your request for confidential designation for the report titled, *Price/performance and User Studies*, is granted. The information/data relating to technology will remain confidential for 5 years from the date of this letter.

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.

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If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. P. Oglesby", with a long horizontal flourish extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Gary Flamm
Owen Howlett