

CALIFORNIA ENERGY COMMISSION

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California Energy Commission

**DOCKETED
13-BSTD-04**

TN 72406

DEC. 12 2013

December 12, 2013

Adrienne Thomle
Honeywell Facility
1985 Douglas Drive N
Golden Valley, MN 55422

RE: **Application for Designation of Confidential Records, JADE Economizer Control System Request for Title 24 Certification**
Docket Number 13-BSTD-04

Dear Ms. Thomle:

The Energy Commission is in receipt of an application for confidentiality filed by Honeywell ("Applicant"). The application requests confidential designation for Applicant's submission of data related to Title 24 certification. Specifically, Applicant requests confidential designation for the following document:

1. *Request for California Title 24 Certification JADE™ Economizer Control System*

The application states that the document is confidential because it contains trade secrets, disclosure of which would result in Honeywell losing a competitive advantage. Specifically, Honeywell requests that the entire certification request be kept confidential to avoid or limit "knock off" competitors from copying the system functions of Honeywell's controller. Honeywell has invested in research and development of the JADE controller to meet the specific requirements of California Building Standards under Title 24.

The application also notes that the submitted information is not publicly available and, if the JADE data were made public and accessible to Honeywell's competitors, those competitors could use it to reverse engineer Honeywell's product or better engineer a competitive product, severely impacting Honeywell's ability to recover its research and development investment costs.

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.

In this case Applicant has developed a product, through cost and effort, to comply with California's Building Standards. If the information were to be publically released competitors could utilize the data to copy and develop their own product without the upfront costs. The Applicant's business advantage would be lost.

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 in product development without the need to spend the time and resources that Applicant invested.

Applicant requests that the information be kept confidential for 3 years. In addition, the Applicant does not believe the information can be aggregated to a level that would allow disclosure.

For the above reasons, the request for confidential designation for the document titled, *Request for California Title 24 Certification JADE™ Economizer Control System*, is granted. The information/data will remain confidential for 3 years from the date of this letter.

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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.

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

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Martha Brook
Joe Loyer