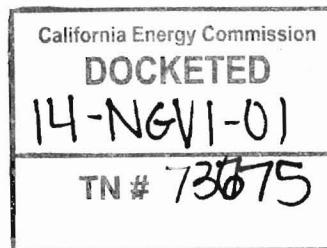


CALIFORNIA ENERGY COMMISSION

516 NINTH STREET
ACRAMENTO, CA 95814-5512
www.energy.ca.gov



September 28, 2011



Kate Kanabay
Horwood Marcus & Berk
500 West Madison Street, Suite 3700
Chicago, Illinois 60661

**RE: Application for Confidential Designation: Specific Data on ARF-4 Buy-Down Incentive Payment Claim Forms and Supporting Invoices
PON-10-604 Natural Gas and Propane Vehicle Program**

Dear Ms. Kanabay:

Thank you for taking the time to provide staff with additional information regarding this application. On September 1, 2011, Autocar, LLC, (Applicant), filed an application for confidentiality. The application seeks confidentiality for certain information contained in the ARF-4 Buy-Down Incentive Payment Claim Form as well as the entire supporting invoices. The information on the ARF-4 form subject to the application includes the following:

- 1) Purchase Price and Purchase Order Number
- 2) All information in the purchaser Information and Certification section of the form

The application seeks confidentiality in perpetuity or until the conclusion of the PON-10-604, April 1, 2013. Generally confidentiality is not granted in perpetuity, but the April 1, 2011 date is a reasonable request.

The application states that the claim forms and invoice data contain confidential trade secrets and commercially sensitive data relating to customer identification and product pricing. The application notes that pricing information could be used by customers and other manufacturers resulting in a competitive disadvantage for the Applicant.

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 customer and price information and Purchase Order Number on the ARF-4 claims form and the entire invoice confidential on the grounds that this data contains trade secrets and proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for harming Applicant's business.

Applicant requests that the information be kept confidential until April 1, 2013 and that the report represents the maximum extent to which information can be aggregated and masked.

For the above reasons, your request for confidential designation of the above listed data is granted. The data will remain confidential until April 1, 2013.

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
Debbie Jones Grants and Loans Office