

## DOCKETED

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| <b>Docket Number:</b>   | 16-MISC-02  |
| <b>Project Title:</b>   | The Chicago Faucet Company  |
| <b>TN #:</b>            | 213789  |
| <b>Document Title:</b>  | Response Letter to The Chicago Faucet Company's Application for Confidential Designation                            |
| <b>Description:</b>     | Study Results for "Monitoring of Biological Growth in a Model Sensor Faucet System, dated May 2015" - See TN 213787 |
| <b>Filer:</b>           | Patty Paul  |
| <b>Organization:</b>    | California Energy Commission  |
| <b>Submitter Role:</b>  | Commission Staff  |
| <b>Submission Date:</b> | 9/26/2016 11:19:36 AM   |
| <b>Docketed Date:</b>   | 9/26/2016   |

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

July 6, 2016

David Vagasky  
The Chicago Faucet Company  
2100 South Clearwater Dr.  
Des Plaines, IL 60018

RE: **Application for Confidential Designation for Chicago Faucets Study Results**

Dear Mr. Vagasky:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of The Chicago Faucet Company (Applicant). The application seeks confidential designation for *Monitoring of Biological Growth in a Model Sensor Faucet System* (Confidential Record).

The application states that confidentiality is sought for the test method, collected data, and conclusions of a study funded by Applicant. Applicant states that there is no feasible method of aggregating the test data contained in the Confidential Record which would allow for disclosure without serious harm and that the Confidential Record has not been disclosed publicly.

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.)

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.)

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

The application addresses these four elements: 1) the data contained in the Confidential Record is proprietary information gathered from internally developed protocol and subsequent testing, and was used to develop a unique product line specific to healthcare plumbing; 2) public disclosure of the Confidential Record would allow competitor companies to copy the protocol and testing, and so develop similar products without many of the development costs; 3) the testing was undertaken by Applicant at a cost in excess of \$100,000; and 4) a limited number of copies of the Confidential Record have been released to business partners, only after the execution of a non-disclosure agreement.

The application is clear that confidentiality is being sought for a trade secret testing protocol and the resulting data collected from running tests. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential for five years, which is the time frame of existing non-disclosure agreements regarding the Confidential Record. An earlier release of the information contained in the Confidential Record would compromise the value of these existing non-disclosure agreements; therefore, it is appropriate to grant confidentiality for five years.

For the reasons stated above, the request for confidential designation for the entire Confidential Record is granted. The information will remain confidential for five years from the date of this letter.

While the California Energy Commission will maintain the confidence of the information consistent with the terms of this letter, public disclosure of the confidential information by others who have received the study results will terminate the California Energy Commission's designation of confidentiality.

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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 Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,

A handwritten signature in black ink, appearing to read 'RPO', with a long horizontal flourish extending to the right.

Robert P. Oglesby  
Executive Director

cc: Docket Unit, California Energy Commission  
Kristen Driskell, California Energy Commission, Appliances and Outreach and  
Education Office  
Sean Steffensen, California Energy Commission, Appliances and Outreach and  
Education Office