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December 17, 2021

Via Email

Ann Carlson
Chief Counsel
National Highway Traffic Safety Administration
W41-227
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: LG Energy Solution Michigan, Inc. – Request for Confidential
Treatment for its Final Response to the September 21, 2021
Information Request – PE20-016

Dear Ms. Carlson:

This letter serves as the request for confidential treatment by LG Energy Solution Michigan, Inc. ("LGES") with respect to the enclosed documents, which are being submitted in further response to the Agency's September 21, 2021 Information Request in the above-referenced investigation. (A separate request for confidential treatment was submitted on November 19, 2021, with respect to LGES's initial response.)

In accordance with 49 C.F.R. Part 512.5, LGES is submitting the confidential portions of its response with the file names and content of these files marked "CONFIDENTIAL BUSINESS INFORMATION." These files contain detailed customer information, production data, and analyses of alleged fire incidents. Also enclosed is a Certificate in Support of Confidentiality. To facilitate social distancing due to COVID-19, NHTSA is treating electronic submissions, using email or secure File Transfer Protocol (FTP), as an acceptable method for submitting confidential business information. See <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>. Because LGES is submitting this information via email, the request includes a single file as the confidential copy of the response.

As set forth below, LGES requests confidential treatment for the enclosed materials on the grounds that they contain trade secrets and/or confidential, proprietary information that is closely held by LGES and would likely subject LGES to substantial harm if disclosed. See 49 C.F.R. § 512.3(c)(1) and (2); *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (FOIA Exemption 4 protects information that "is customarily kept private, or at least closely held,

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by the person imparting it"); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("commercial or financial matter is 'confidential' . . . if disclosure of the information is likely to . . . cause substantial harm to the competitive position of the person from whom the information was obtained."); *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (a trade secret is a "secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort"); *Center for Auto Safety v. Nat'l Hwy. Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000), *remanded for further proceedings*, 244 F.3d 144 (D.C. Cir. 2001) (air bag specifications representing "years of research and development and enormous financial investment" not subject to FOIA disclosure).

LGES requests confidential treatment for the information provided in the following categories:

- **Detailed Customer and Production Information**

- LGES's response to Request No. 1 contains detailed customer and production information detailing the production volumes by year and broken down by specific customers. The information also includes the detailed customer contact information, part numbers, manufacturing locations, and locations where parts were shipped. This data, if publicly disclosed, would reveal to LGES's competitors sensitive information regarding LGES's customers, production capacity, sales volumes and sales trends, and would allow competitors to estimate LGES's revenues by customer.

- **Detailed List of Alleged Field Incidents and LGES's Assessment**

- LGES's response to Request Nos. 10 and 11 contains descriptions of alleged fire incidents, including LGES's assessment of the cause and effect of each alleged incident. Competitors could use this information to gain insight into the field performance of LGES's products and LGES's processes for monitoring, investigating, and evaluating field incidents. They could then leverage this information to improve their own products and processes, and to gain a competitive advantage in dealing with vehicle manufacturer customers.

The information identified above is the product of LGES's development efforts and involved significant financial investment, and it is "customarily kept private" and "closely held" by LGES. *See Food Marketing Institute v. Argus Leader Media*, *supra*. As the Agency is aware, the automotive industry is highly competitive and closely guards against public disclosure of such



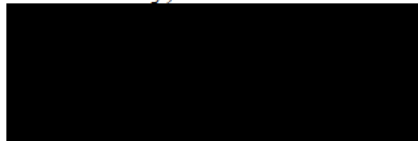
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information. Disclosure of this information would compromise LGES's position by, among other things, reducing or eliminating its competitors' investment of time and resources in developing its own customer information, as well as provide valuable competitive insight into LGES's field monitoring activities, product performance, and investigation processes. Accordingly, LGES requests that this information be granted confidential treatment under *National Parks* for an indefinite period of time.

Please contact me if you have any questions or need additional information.

Sincerely,



CHG:krb
Enclosures

cc: Tanya Topka (NHTSA ODI)
Sharon Yukevich (NHTSA ODI)
Sean A. Hays (NHTSA ODI)
Daniel Rabinovitz (NHTSA NCC)
Hye Jin Lee (LGES)
Julia A. Hatcher (Latham & Watkins)

Certificate in Support of Request for Confidentiality

I, Hye Jin Lee, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am the Legal Manager of LG Energy Solution Michigan, Inc. ("LGES MI") and I am authorized to execute this certificate on behalf of LGES MI and LG Energy Solution, Ltd. ("LGES").
- (2) I certify that the information accompanying this confidential treatment request is confidential and proprietary and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. § 552(b)(4).
- (3) I hereby request that the information be protected indefinitely.
- (4) This certification is based on the information provided by the responsible LGES and LGES MI personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside LGES or LGES MI.
- (5) Based upon that information, to the best of my knowledge, information and belief, LGES and LGES MI do not customarily release this information to the public. Further, the information for which confidential treatment is being sought has never been released or become available outside LGES or LGES MI, with exception of being shared within the scope of confidential customer-supplier relationships.
- (6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside LGES or LGES MI because of unauthorized or inadvertent disclosure (except as stated in paragraph 5).
- (7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of December, 2021.

Hye Jin Lee
Legal Manager
LG Energy Solution Michigan, Inc.