

DOCKETED

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April 28, 2021

Jennifer Brazell
CalCerts Inc.
31 Natoma Street, Suite 120
Folsom, California 95630

RE: Application for Confidential Designation, CalCerts Inc. Quality Assurance Report, Docket 19-HERS-01

Dear Jennifer Brazell:

The California Energy Commission (CEC) is in receipt of CalCerts Inc.'s (applicant) Applications for Confidentiality covering proprietary and trade secret information related to the CEC's Home Energy Rating System (HERS) certification. Specifically, confidentiality is sought for the:

- 1) 2019 Annual Quality Assurance Report.
- 2) 2020 Annual Quality Assurance Report.

The applications note the reports are required as part of the applicant's operation obligations and contain specific proprietary processes and trade secrets. The reports include information on active raters, field reviews and complaint reports. The complaint reports further include the names and addresses of those providing complaints. The applications note that information for which confidential designation is sought is maintained as confidential by the applicant and only provided to relevant raters.

The applications state that if the proprietary information is masked and protected, it is possible for some information to be disclosed if aggregated.

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 CEC to keep the record confidential." The

California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, sections 6254(k) and 6254.15; Evid. Code, section 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, citing the Restatement of Torts, vol. 4, section 757, comment b, p.5.)

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 applications address these elements stating the information should be kept confidential because: 1) the information is not otherwise publicly available or readily discoverable in the form or detail provided; 2) the information is market sensitive and constitutes trade secrets in terms of disclosing applicants' Quality Assurance program and methodology for the program; and 3) the release of this information may result in loss of competitive advantage against competitors. In addition, some of the information contained in the complaint reports may constitute personal information in the form of name and contact information of those making complaints.

For these reasons, the request for confidential designation is granted for both the 2019 and 2020 Quality Assurance reports. As requested, the reports will be maintained as confidential for 10 years, until January 1, 2030.

For future quarterly reports that are substantially similar, the applicant may follow the simplified process set forth in the California Code of Regulations, Title 20, section 2505(a)(4).

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or

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releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, Title 20, sections 2506-2508.

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at jared.babula@energy.ca.gov or (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director