

DOCKETED	
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June 3, 2021

Via email

Austin Grove
CHEERS
1610 R Street, Suite 200
Sacramento, California 95811
Agrove@cheers.org

**Application for Confidential Designation, CHEERS HERS Provider
Application Amendments, Docket 19-HERS-01**

Dear Austin Grove:

The California Energy Commission (CEC) received the confidentiality applications submitted by CHEERS (applicant) on May 3, 2021 and May 4, 2021, covering proprietary and trade secret information related to the CEC's Home Energy Rating System (HERS) certification. By email on May 21, 2021, you clarified that the confidential designation is sought for the following documents comprising HERS Provider Application Amendments:

Submission on May 3, 2021:

- HERS Provider Application Amendment – EDDS Application 1 revised per Staff comments, dated April 28, 2021, 30 pages.
- HERS Provider Application Amendment – EDDS Application 1 revised per Staff comments (redlined version), dated April 28, 2021, 30 pages.

Submission on May 4, 2021:

- HERS Provider Application Amendment – EDDS Application 2 revised per Staff comments, dated April 26, 2021, 27 pages.
- HERS Provider Application Amendment – EDDS Application 2 revised per Staff comments (redlined version), dated April 26, 2021, 30 pages.

The applicant is requesting confidential designation of these documents in their entirety, pursuant to California Code of Regulations, Title 20, sections 1674(b) and 2505,¹ on the grounds that they include trade secrets and proprietary information not available to the general public.

¹ The applicant refers to California Code of Regulations, title 20, section 2025 but that section's relevance is not apparent from the applications.

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 corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.)

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, 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.

Here, the application states that the information should be kept confidential because the applicant has kept it confidential, so it is not publicly available. Previously, the CEC has granted confidential designation for similar documents from the applicant, including documents the applicant submitted on January 19, 2021 and January 25, 2021, which the current documents serve to update, as you stated in your email on May 21, 2021. The application states that the proprietary information is such that aggregation would not be enough protection for the information.

Based on the discussion above, the applicant's confidentiality application is hereby granted. You have made a reasonable claim that the law allows the CEC to grant the application. There is no information to suggest that release of the information would serve a greater public benefit than its protection. As requested, the reports will be maintained as confidential for 10 years, until July 1, 2031.

Austin Grove
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For these reasons, the request for confidential designation is granted for the 2021 EDDS Application for the CHEERS API.

Be advised that persons may petition to inspect or copy records that the CEC has 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 releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

In the future, you may request confidentiality for any similar document without submitting an application by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Ralph Lee, attorney, at ralph.lee@energy.ca.gov or (916) 776-3408.

Sincerely,



Drew Bohan
Executive Director

cc: Ralph Lee, Attorney
California Energy Commission