

DOCKETED

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Project Title:	2019 HERS Providers' Application for the 2019 Building Energy Efficiency Standards
TN #:	240089
Document Title:	CEC Response Letter to CHEERS regarding Confidentiality requests June 16th and July 20th, 2021
Description:	N/A
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October 15, 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 June 16, 2021, and July 20, 2021, covering proprietary and trade secret information related to the CEC's *Home Energy Rating System* (HERS) certification. Confidential designation is sought for the following documents comprising HERS Provider Application Amendments and Revisions:

Application on June 16, 2021:

- HERS Provider Application Amendment – External Digital Data Sources (EDDS) Application with The Energy, dated April 28, 2021, 33 pages.
- HERS Provider Application Amendment – EDDS Application with The Energy, with revisions per Staff comments (redlined version), dated April 28, 2021, 34 pages.

Application on July 20, 2021:

- HERS Provider Application Amendment – EDDS Application with Archon Energy Solutions, dated April 26, 2021, 34 pages.
- HERS Provider Application Amendment – EDDS Application with Archon Energy Solutions, with revised per Staff comments (redlined version), dated July 14, 2021, 36 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, on the grounds that they include trade secrets and proprietary information not available to the public.

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, and also on May 3, 2021, and May 4, 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 applications are hereby granted. Applicant has made a reasonable claim that the law allows the CEC to grant the applications. There is no information to suggest that release of the information would serve a greater public benefit than its protection. As requested, consistent with previous grants of confidentiality for HERS providers, the information will be maintained as confidential for 10 years, until July 20, 2031.

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,

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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 Raj K. Dixit, attorney, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director