

DOCKETED

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Project Title:	2019 HERS Providers' Application for the 2019 Building Energy Efficiency Standards
TN #:	241099
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December 30, 2021

Via Email

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**THREE APPLICATIONS FOR CONFIDENTIAL DESIGNATION:
CHEERS HERS Provider Application Amendments, DOCKET 19-HERS-01**

Dear Austin Grove:

The California Energy Commission (CEC) received a total of three applications for confidential designation submitted by the California Home Energy Efficiency Rating System [CHEERS] (applicant) -- one on November 19, 2021, and two on December 10, 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 (collectively, CHEERS Data Documents):

- 1. A letter dated November 2, 2021, and received November 19, 2021, to Deputy Director Michael Sokol of the CEC and two attachments responding to staff questions concerning External Digital Data Sources (EDDS) security and interactions between the BOSS system and various CHEERS data registries.*
- 2. A letter dated and received December 10, 2021, to Deputy Director Michael Sokol of the CEC and one attachment concerning EDDS security and interactions between the BOSS system and various CHEERS data registries as an addendum to Sections JA7.8.3.1 and JA7.8.2.2 of the November 19, 2021, application.*
- 3. A letter dated November 2, 2021, and received December 10, 2021, to Deputy Director Michael Sokol of the CEC and two attachments concerning EDDS security and interactions between the Compass system and various CHEERS data registries.*

The applications state that the CHEERS Data Documents should be kept confidential in their entirety, pursuant to Title 20, California Code of Regulations,

sections 1674(b) and 2505, on the grounds that the CHEERS Data Documents include trade secrets and proprietary information not available to the general public.

A properly filed Application for Confidentiality shall be granted under 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 Commission to keep the record confidential.” The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code section 6254(k); 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. Howie* (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.

The applications state that the CHEERS Data Documents contain proprietary information that is not available to the general public. The applications state the applicant has spent hundreds of thousands of dollars to create the information. Specifically, the applications state that CHEERS Data Documents concern security practices regarding secured data exchange and storage (password policies, code testing, communication protocols, system backups, etc.) regarding the interaction between registries of CHEERS data and the BOSS system and Compass system. The applications further state that the proprietary information is such that aggregation would not be enough protection for the CHEERS Data Documents, and that, if the CHEERS Data Documents were to be released, it could significantly harm CHEERS's ability to keep its users and their information, as well as CHEERS's own information, secure.

Based on the above, the applicant has made a reasonable claim that the law authorizes the CEC to keep the CHEERS Data Documents confidential as trade

secrets and proprietary information. The applicant's requests for confidential designation for the CHEERS Data Documents are granted for 10 years, consistent with previous grants of confidentiality for HERS providers, and will be maintained until December 10, 2031.

Be advised that under Title 20, California Code of Regulations, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's Chief Counsel. Under Title 20, California Code of Regulations, section 2507, 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 for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in Title 20, California Code of Regulations, sections 2506-2507.

You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the Executive Director 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 Jennifer Baldwin at jennifer.baldwin@energy.ca.gov.

Sincerely,

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

Drew Bohan
Executive Director