

DOCKETED	
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Project Title:	2022 Field Verification and Diagnostic Testing OIR Proceeding
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October 2, 2023

Via Email

Jennifer Brazell
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**Application for Confidential Designation: Field Verification and Diagnostic Testing OIR Proceeding
Docket No. 22-BSTD-03**

Dear Jennifer Brazell:

The California Energy Commission (CEC) received CalCERTS, Inc.'s ("applicant") Application for Confidentiality, dated July 31, 2023 (TN 251390), covering the following data:

- Quality Assurance Data in Support of Conducting Blind Quality Assurance (QA)

The applicant requests that the above document be kept confidential for a minimum of ten years, or an additional two code cycles. The applicant identifies proprietary information and trade secrets as the basis for confidentiality. The applicant states that there is no feasible method of aggregating the information and that the information has been protected from public disclosure. The applicant also states that the "document contains confidential information about specific raters" which qualifies as personnel information.

Confidentiality Claims

Proprietary Business Information and Trade Secrets

An application for confidential designation 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 Commission to keep the record confidential." The executive director's determination made in response to an application for confidential designation is subject to a reasonableness standard. It is the applicant's burden to make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705, 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Discussion

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) as follows:

1. *The specific nature of the advantage* – Applicant has invested years into designing its Quality Assurance Program and disclosure would provide a significant competitive advantage.
2. *How the advantage would be lost* – The disclosure of this data would provide valuable information to any existing or future competitor.
3. *The value of the information to the applicant* – No specific dollar amount indicated. Applicant notes that it has invested a substantial amount of time into creating the registry and processes.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The data is not disclosed publicly and is treated as confidential by the applicant. Per Applicant, the information cannot be disclosed in aggregate form.

The applicant has made a reasonable claim that its document, containing Data in Support of Conducting Blind QAs, is exempt from disclosure as business proprietary or trade secrets. The materials are confidential for a period of ten years, or two additional code cycles.

Executive Director's Determination

On the basis of trade secrets, confidentiality is approved for the document referenced above.

Be advised that under the California Code of Regulations, title 20, 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.

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Under the California Code of Regulations, title 20, section 2507, the executive director may disclose, or release records previously designated as confidential in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set in the California Code of Regulations, title 20, sections 2506 to 2507.

If you have questions, please email confidentialityapplication@energy.ca.gov.

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