

DOCKETED	
Docket Number:	22-HERS-01
Project Title:	2022 HERS Provider Applications for the 2022 Building Energy Efficiency Standards
TN #:	262225
Document Title:	CEC Response to GSR's Application for Confidentiality- HERS-Ex B5 & D1
Description:	N/A
Filer:	Marianna Brewer
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	3/18/2025 9:34:17 AM
Docketed Date:	3/18/2025



March 18, 2025

Via Email

Jonathan Johnson
CEO and Technical Director
National Energy Testing Institute, Inc., *dba*: Golden State Registry
430 Villa Point Dr.
Newport Beach, California, 92660
jon@gsregistry.org

Application for Confidential Designation: Golden State Registry Docket No.: 22-HERS-01

Dear Jonathan Johnson:

On February 24, 2025, the California Energy Commission (CEC) received Golden State Registry's (applicant or GSR) application for confidential designation (TN 261954), covering the following documents:

- Ex B5 – Quality Assurance Compliance
- Ex D1 – Registry Capabilities

The applicant states that these documents should be kept confidential in their entirety for a term of six years. The applicant identifies proprietary business information and trade secrets as the basis for confidentiality and because the application will be distributed or considered in closed session. GSR is applying to become a Home Energy Rating System (HERS) Provider under approval of the CEC. The applicant states that the documents have not been disclosed to any person other than the applicant staff and contractors.

Confidentiality Claims

The applicant claims confidentiality under Government Code section 7929.200(b), which in part involves records for distribution or consideration under a closed session. This is not applicable and thus this application will be considered under other confidentiality provisions.

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.)

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* – GSR has invested a substantial amount of time and resources into its application, training materials, testing documents and procedures, and software systems.
2. *How the advantage would be lost* – The disclosure of this information would provide valuable information to any existing or future competitor. It would provide competitors an unfair advantage in duplicating GSR’s work.
3. *The value of the information to the applicant* – No specific dollar amount indicated. GSR again notes that it has invested a substantial amount of time and resources into these programs and data.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – GSR states that because the documents in these proceedings are digital in nature, it is very simple to acquire this information and duplicate it into various forms. GSR states that the documents have not been disclosed to any person other than GSR staff and contractors.

Discussion by Document Description

Organizations that are interested in becoming a HERS Provider must submit an application in accordance with California Code of Regulations, Title 20, Sections 1670-1675 (HERS Regulations) and Title 24, Parts 1 and 6 (Energy Code). The application is required to include complete copies of all rating procedures, manuals, handbooks, Rating System descriptions, and training materials (Cal. Code Regs., tit. 20, § 1674), including Ex B5 – Quality Assurance Compliance and Ex D1 – Registry Capabilities.

The applicant has made a reasonable showing that the information referenced above should be maintained as confidential as proprietary business information or trade secrets. The data from Ex B5 and Ex D1 contains information from applicant's HERS Provider application, training materials, testing documents and procedures, and software systems that is not public, and has the potential for economic advantage.

Executive Director's Determination

For the reasons stated, the applicant's request for confidential designation is granted. Material will be kept confidential for a period of six years, or two additional code cycles, to be consistent with previous similar confidentiality determinations for the applicant (TN 249122). This period is appropriate because it ensures that Golden State Registry's HERS Provider application and testing and educational materials will be confidential while in use. After two additional code cycles, the risk of harm from these documents being publicly available is diminished since Golden State Registry will have submitted two new applications to be certified as a HERS Provider and refined or altered their testing/education material.

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 releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508. Related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

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

Sincerely,



Drew Bohan
Executive Director