

DOCKETED

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Project Title:	HERS Providers' Application for the 2016 Standards
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Document Title:	Response to greenNet Registry LLC's Application for Confidential Designation for HERS Provider Application for 2016 Standards
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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

June 26, 2017

John P. Carrieri
Managing Member
greenNet Registry LLC
3525 Del Mar Heights Rd. 3370
San Diego, CA 92130

RE: **Application for Confidential Designation for HERS Provider Application for
the 2016 Standards
Docket No. 16-HERS-01**

Dear Mr. Carrieri:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of greenNet Registry LLC and Enalasys Corporation (Applicants). The application seeks confidential designation for the following documents:

1. Exhibit A – greenNet Registry Exhibit List;
2. Exhibit B – greenNet Detailed Response for Title 20, Section 1673 and JA7 requirements;
3. Exhibit C – greenNet Staff Bios;
4. Exhibit D – Registered Agent for Service of Process & Certificate of Organization;
5. Exhibit E – Licensing Agreement;
6. Exhibit F – Certification Statement of Compliance of John Carrieri;
7. Exhibit G – GNR Board Member Partners, Affiliates, Financial Interests;
8. Exhibit H – No Conflict Statement of Relationship Carrieri to Enalasys;
9. Exhibit I – Quality Assurance (QA) Program and Policy;
10. Exhibit J – greenNet Registry Privacy Statement;

11. Exhibit K – greenNet Certificates of Good Standing, WY & CA;
12. Exhibit L – GNR Training 2016 HERS Residential and Non-Residential Prescriptive Alterations;
13. Exhibit M – greenNet Registry Training Reference Guide;
14. Exhibit N – greenNet Registry LLC HERS Rater Agreement;
15. Exhibit O – Field Verification/Diagnostic Testing HERS Rater Training Overview;
16. Exhibit P – greenNet Test Exams Classroom and Challenge;
17. Exhibit Q – greenNet Certified HERS Rater Certificate;
18. Exhibit R – Enalasys TPQCP Training Manual;
19. Exhibit T – James Eric Taylor Declaration;
20. Exhibit U – Enalasys Corporation Good Standing DE & CA;
21. Exhibit V – Enalasys Statement of Compliance; and
22. Exhibit W – Enalasys TPQCP Training Guide, Manuals, Forms, Exams.

Confidentiality is sought for information regarding an application for HERS Providership, containing training materials, rater agreements, certification statements, articles of organization, and responses to required HERS application parameters. The application states that the documents contain names of companies and people and their pertinent addresses as well as copyright materials. The documents cannot feasibly be aggregated.

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 [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 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. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments 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.

For Exhibits A, B, E, G, I, L, M, N, O, P, Q, R, V, W, the application addresses the required four elements: 1) the documents contain copyright materials pertaining to Applicants' HERS Provider curriculum; 2) public disclosure of the documents would allow competitors to access and duplicate Applicants' proprietary materials; 3) Applicant expended resources to ensure the proprietary documents submitted to the California Energy Commission were comprehensive and effective; and 4) the documents have not been disclosed publicly and can only be acquired by a participating student enrolled in Applicants' HERS training course.

Government Code § 6254(g) exempts from disclosure under the California Public Records Act "test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination"

For Exhibits A, B, E, G, I, L, M, N, O, P, Q, R, V, W, the application is clear that confidentiality is being sought for trade secret information, including training materials and exam questions, supplied to the California Energy Commission as part of Applicants' HERS Provider application. Therefore, Applicants have made a reasonable claim that the law allows the California Energy Commission to keep these exhibits from public disclosure.

For Exhibits A, B, I, L, M, N, O, P, Q, R, V, W, Applicants request that the information be kept confidential for four years. Four years allows for the passage of one additional three-year code cycle and one additional year in which providers draft and apply for a

new code. After these four years, information contained in the documents may be outdated and disclosure of the information will pose less of a competitive disadvantage to Applicants. Therefore, it is appropriate to grant confidential designation for four years.

For Exhibits E and G, Applicants request that the information be kept confidential indefinitely. Both exhibits contain value beyond the three year code cycle that does not, under current review, warrant public disclosure. The exhibits contain information regarding intellectual property, business operations, personal information, and sensitive ownership equity information. Therefore, it is appropriate to grant confidentiality indefinitely for Exhibits E and G.

As acknowledged by greenNet Registry LLC in correspondence with California Energy Commission Staff Council, Exhibits C, D, F, H, J, K, T, U do not meet the threshold for confidential designation, because the documents do not contain proprietary material or have previously been disclosed to the public or it is in the public's interest to allow for public disclosure. These documents are not subject to protection from public access and may be made available, as needed.

For the reasons stated above, the request for confidential designation for documents Exhibits A, B, I, L, M, N, O, P, Q, R, V, W is granted for four years and the request for confidentiality for Exhibits E and G is granted indefinitely. Confidential designation is denied for Exhibits C, D, F, H, J, K, T, U, and these documents are not subject to protection from public disclosure by the California Energy Commission.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
James Eric Taylor, Enalasys Corporation
Rashid Mir, California Energy Commission