

APPLICATION FOR CONFIDENTIAL DESIGNATION
(20 CCR SECTION 2505)

Applicant: ecobee Inc. Ltd. (“ecobee”)

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Proceeding or Project Name: Load Management Rulemaking

Docket Number: 19-OIR-01

1. Title, date, and description of the information or data for which a confidential designation is being requested.

ecobee seeks a confidential designation for the accompanying Eco+ Thermostat Optimization Pilot report (“the Report”), dated November 2019, which is 86 pages. The Report contains trade secret information in connection with a robust scientific evaluation of the effectiveness of ecobee’s proprietary “eco+” smart thermostat software product, as discussed further below. ecobee respectfully requests confidential designation of the entire Report, which contains trade secret information throughout that cannot be protected without redacting an overwhelming portion of the substance of the report.

2. Description of the period for which confidentiality is being requested.

ecobee requests that the information indicated be kept confidential for an indefinite term, as the document contains proprietary, trade secret information that will provide ecobee with a competitive advantage for an unknown length of time, depending on the evolution of the smart thermostat market and smart thermostat technologies.

3. Discussion of the provisions of the Public Records Act (Gov. Code § 6250 et seq.) or other law warranting confidential treatment.

The Public Records Act allows state agencies to withhold “records the disclosure of which is exempted or prohibited pursuant to federal or state law” Gov. Code § 6254(k). Relevant federal and state laws include the Uniform Trade Secrets Act, Civ. Code § 3426 *et seq.*, which prohibits the disclosure of trade secrets against the owner’s will, as well as the trade secret privilege under Evid. Code § 1060, which provides that the owner of trade secret has the right to refuse to disclose the secret, and to prevent others from disclosing it. California courts have traditionally defined a trade secret as “any formula, pattern, device or compilation of information which is used in one’s business, and which gives [the business] . . . 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.

The report contains and discusses detailed, time-differentiated information regarding the impacts of ecobee’s proprietary eco+ algorithms and features on customer energy usage, as well as the

third party author's methodology for evaluating and verifying those savings. Accordingly, ecobee states in compliance with 20 CCR § 2505(a)(1)(D) regarding confidential designation of trade secrets that publicly disclosing the Report would undermine ecobee's competitive advantage because it would allow competitors to: (1) discern important and commercially sensitive information regarding the operation of ecobee's proprietary eco+ algorithms, potentially enabling them to mimic or better compete with the eco+ product; (2) develop products tailored specifically to outperform ecobee's eco+ product; and/or (3) seek to undermine ecobee's marketing of its eco+ product. Any of these scenarios would harm the value of ecobee's eco+ software and ecobee's ability to realize the value of that software in the market. There is no other way for competitors to legitimately acquire or duplicate ecobee's eco+ product functions and evaluation methodology other than through their own development efforts.

4. Statement as to whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.

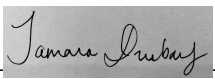
The information for which confidential treatment is requested cannot be disclosed in aggregated form. As discussed above, redaction to remove proprietary trade secret information would require concealment of an overwhelming portion of the document, making that approach impracticable.

5. Statement as to how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

ecobee's approach to preserving the confidentiality of the Report, which it has followed to date and will continue to follow, is to disclose this document only to: (1) its own employees; (2) the contractor that prepared the report, subject to contractual confidentiality obligations; (3) legal counsel, subject to applicable privileges and contractual protections against disclosure; (4) government regulators with oversight over relevant areas of ecobee's business, subject to applicable legal protections regarding disclosure of trade secret information; and (5) other third parties subject to non-disclosure agreements. Accordingly, a confidential designation from the Commission is necessary to maintain the existing protections that ecobee has put in place to prevent disclosure to its competitors.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: 1/24/2020

Signed: 
Tamara Dzubay
Regulatory Affairs Manager
ecobee