

DOCKETED	
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April 2, 2020

Mrs. Tamara Dzubay
ecobee
25 Dockside Drive, Suite 700
Toronto, Ontario M5A 0B5

Re: Application for Confidential Designation, Docket No. 19-OIR-01

Dear Mrs. Dzubay:

The California Energy Commission (CEC) is in receipt of ecobee's Application for Confidentiality. Specifically, the applicant seeks confidentiality for the following report submitted in the load management rulemaking:

Eco+ Thermostat Optimization Pilot report, dated November 2019

The application states that the 86 page report contains trade secret information in connection with a robust scientific evaluation of the effectiveness of ecobee's proprietary "eco+" smart thermostat software product. The application also states the trade secret information in the report, related to ecobee's proprietary eco+ algorithms, provides ecobee with a competitive advantage.

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, 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. Howe* (1971) 19 Cal.App.3d 194, 207, citing the Restatement of Torts, vol. 4, § 757, comment b, p.5.)

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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.

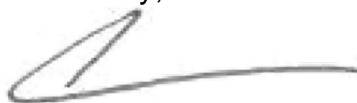
The application addresses these elements stating that publicly disclosing the report would allow competitors to: (1) discern important and commercially sensitive information regarding the operation of ecobee's proprietary eco+ algorithms, potentially enabling them to mimic the eco+ product; (2) develop products tailored specifically to outperform the eco+ product; (3) seek to undermine ecobee's marketing of its eco+ product. The application also states there is no other way for competitors to legitimately acquire or duplicate ecobee's eco+ product other than through their own development efforts. Finally, the application states that the report cannot be disclosed in aggregated form.

The application is clear that confidentiality is being sought for trade secret information contained in the report. The applicant has made a reasonable claim that the law allows the CEC to keep the report from public disclosure. For the reasons above, the request for confidential designation for the report is granted. The information will remain confidential for five years from the date of this letter.

Be advised that persons may petition to inspect or copy records that have been designated as confidential and the executive director may disclose or release records previously designated as confidential in certain circumstances. The procedures and criteria for disclosing or releasing, or raising, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at jared.babula@energy.ca.gov or (916) 651-1462.

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