

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



November 30, 2015

California Energy Commission

DOCKETED

14-HERS-01

TN # 76410

DEC 01 2015

Mr. Jason Lenzmeier, Executive Director
ConSol Home Energy Efficiency Rating Services, Inc.
5757 Pacific Avenue, Suite 220
Stockton, CA 95207

RE: Response to Application for Confidentiality
ConSol Home Energy Efficiency Rating Services, Inc.
Docket No. 14-HERS-01

Dear Mr. Lenzmeier:

The Energy Commission is in receipt of an application for confidentiality filed by ConSol Home Energy Efficiency Rating Services ("Applicant"). The application requests confidential designation for materials submitted as part of the Applicant's application for approval to become a HERS Provider for Residential Newly Constructed buildings, NSHP, and Alterations to existing buildings under the 2013 Building Energy Efficiency Standards.

Specifically, Applicant requests confidential designation for the following documents:

1. Exhibit I (Customer Service Policies and Procedures)
2. Exhibit J (Testing/Training Protocols and Procedures)
3. Training Curriculum (PowerPoints, Videos, and Manuals)

The application states that the documents are confidential because they contain proprietary trade secrets, disclosure of which would result in Applicant losing 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.)

The 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, section 757, comments b, p.5.) California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the 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, 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. Applicant has described each of these elements as follows:

The specific nature of the advantage: The confidential information is of a technical nature which provides a business advantage over parties without access to the information. The Applicant's curriculum and test was developed for individuals interested in becoming certified as HERS Raters. As other entities can become HERS Rater certification providers, making this information public would impact the Applicant's competitive advantage.

How the advantage would be lost: Time and resources have been spent compiling the information within the confidential records and the value of the information would be significantly impaired if made available to the public.

The value of the information to the applicant: The confidential information is valuable to the applicant because of: (1) the time and resources expended to compile the information; (2) the efforts to maintain the confidentiality of the confidential records; and (3) the use of the information to facilitate ongoing business activities.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others: The confidential information is not readily available on the marketplace and can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

In addition, if test related materials were made public, prospective students could cheat by obtaining testing materials, diminishing the effectiveness of the entire program. The Public Records Act specifically allows for the non-disclosure of test questions, scoring keys and other examination data used to administer various types of examinations. (Gov. Code, section 6254(g))

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the above listed training, testing, customer service materials confidential on the grounds that they are trade secret and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. Access to this information would allow

competitors to derive a business advantage, as they could use this information in product development without the need to spend the time and resources that Applicant invested.

Applicant requests that the information be kept confidential for 3 years. In addition, the Applicant does not believe the information can be aggregated to a level that would allow disclosure.

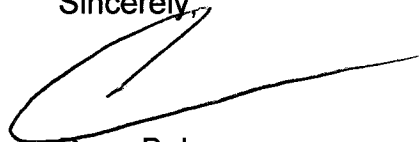
For the above reasons, the request for confidential designation for the training, testing, customer service materials is granted. The information will remain confidential for 3 years from the date of this letter.

Any subsequent submittals can be deemed confidential as specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination.

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 Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Chief Deputy Director

cc: Docket Unit
Lea Haro, Energy Commission Efficiency Division
Suzie Chan, Energy Commission Efficiency Division