

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

California Energy Commission

**DOCKETED****13-ATTCP-01**

TN 72379

NOV 26 2013

November 26, 2013

Thomas Enslow  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall Suite 350  
Sacramento, CA 95814

RE: Training Curriculum and Testing Materials for Certification of  
Mechanical Acceptance Test Technicians.  
Docket Number: 13-ATTCP-01

Dear Mr. Enslow:

The National Energy Management Institute Committee (Applicant) filed an application for confidentiality seeking confidentiality for curriculum and testing materials as part of the Applicant's efforts to become a Mechanical Acceptance Test Technician Certification Provider. The confidential material consists of training modules addressing various technical areas an Acceptance Technician would need to demonstrate competence in before being certified.

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 and proprietary information. (Gov. Code, §§ 6254(k), 6254.7, 6254.15, Evid. Code, § 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, § 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.

The application addresses each of these four requirements by stating the following:

*"The specific nature of the advantage"* – The confidential record is of a technical nature which provides a business advantage over parties without access to the information. The curriculum and test was developed for individuals interested in becoming certified as Acceptance Test Technicians. 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 Record and the value of the information could be significantly impaired if made available to the public.

*"The value of the information to the applicant"* -The Confidential Record is valuable to the Project because of the: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the Confidential Record; and (3) 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 Record is not readily available on the marketplace and can only be obtained with a significant investment of time and money.

Beyond the basis identified by the Applicant, it also appears that if the materials were made public it would allow prospective Acceptance Test Technicians to cheat by obtaining testing materials and 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 § 6254(g))

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the curriculum and testing materials confidential. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. In addition public release of the materials may compromise the training and technician certification program.

Based on the above discussion, the Applicant's confidentiality application is granted. The data subject to this confidentiality designation will be kept confidential until the Acceptance Test Technician Certification Program ends.

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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 blue ink, appearing to read 'R. Oglesby', with a long horizontal flourish extending to the right.

Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Chris Olvera, Energy Commission Staff  
Tav Commins, Energy Commission Staff