

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

California Energy Commission

DOCKETED**13-ATTCP-01**

TN 73063

MAY 29 2014

May 29, 2014

Tom Meyer
NEBB
8575 Grovemont Circle
Gaithersburg, Maryland 20877

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

Dear Mr. Meyer:

The National Environmental Balancing Bureau (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 and exam material addressing various technical areas an Acceptance Technician would need to demonstrate competence in before being certified. Specifically the application seeks confidential designation for the Power Point training found on pages 66-329 of the Acceptance Test application and exam items and scoring keys found on pages 330-338. By way of email to staff dated May 28, 2014, the Applicant is withdrawing the introductory pages, 1-65, of the Acceptance Test application from the Application for Confidentiality.

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.)

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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:

"The specific nature of the advantage" – The training and exam material cost thousands of dollars and hundreds of hours to develop. The material is of a technical nature which provides a business advantage over parties without access to the information. The curriculum and test were 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 training and exam material 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 training and exam materials are valuable to the Applicant because of the: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the materials; 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 materials not readily available on the marketplace and can only be obtained with a significant investment of time and money.

If the materials were made public prospective Acceptance Test Technicians 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 § 6254(g))

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the training 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.

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Based on the above discussion, the Applicant's confidentiality application is granted. The Power Point training material will be confidential until presented as part of the Applicant's training of employers and technicians. The exam material subject to this confidentiality designation will be kept confidential for three years.

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 'R. P. Oglesby', with a long horizontal flourish extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Tav Commins, Energy Commission Staff