

DOCKETED

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Project Title:	Acceptance and Training Certification
TN #:	229383
Document Title:	Letter to Tiffany Suite re Application for Confidential Designation
Description:	N/A
Filer:	Darlene Burgess
Organization:	California Energy Commission
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August 13, 2019

Tiffany Suite
National Environmental Balancing Bureau
8575 Grovemont Circle
Gaithersburg, MD 20877

**RE: Application for Confidential Designation for Training Materials for
Qualification of Mechanical Acceptance Test Technician Certification
Provider, Docket No. 13-ATTCP-01**

Dear Ms. Suite:

The Energy Commission is in receipt of an Application for Confidentiality submitted on July 12, 2019, on behalf of the National Environmental Balancing Bureau (NEBB) (Applicant). The application seeks confidential designation for the following documents consisting of curriculum and testing material related to its qualifications as a Mechanical Control Acceptance Test Technician Certification Provider for 2019 (Confidential Records):

- 1) *Changes from 2016-2019 Mechanical Acceptance Test Forms (33 pages)*
- 2) *2019 NRCA-MCH-04b-A - 2019 Air Distribution Duct Leakage Training Materials (41 pages)*
- 3) *2019 NRCA-MCH-19-A - 2019 Occupied Standby Acceptance Training Materials (21 pages)*

The application was submitted to docket number 13-ATTCP-01 regarding the Acceptance Test Technician Certification Provider (ATTCP) program.

The Applicant states the materials consist of proprietary trade secret information that should be held as confidential. The Applicant secures the information on secured servers and releases the information only to vendors and applicants under a confidentiality agreement. The Applicant notes that it is not feasible to aggregate or mask the information without substantial harm.

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

Tiffany Suite
August 13, 2019
Page 2

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, § 6254(k); Evid. Code, § 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, 207-208, from the Restatement of Torts, vol. 4, § 757, comment b, p. 5.)

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 Applicant states that the materials are of significant value by being not generally known because they are “provided to applicants once they have paid the costs associated with training and testing.” This value could be diminished or lost if others were allowed “free access to NEBB’s proprietary materials” because “it would likely provide the end-viewer with insight as to the nature of the exam questions and format of the training materials.” The Applicant states that the information is of significant value to it because it “was developed with considerable effort” and “converted into an on-line/on-demand format at considerable expense to NEBB.” NEBB maintains the information “on a secured server in NEBB’s office” and it shares it only “under protection of a confidentiality agreement.”

Beyond the basis identified by the Applicant, it also appears that if the materials were made public, prospective students could 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).)

Tiffany Suite
August 13, 2019
Page 3

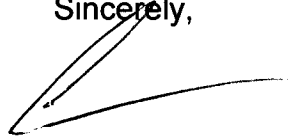
The Applicant has made a reasonable claim that the law allows the Energy Commission to keep the materials confidential. The information has been developed by the Applicant, contains information that is not public, has the potential for economic advantage, and public release of the materials may compromise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

Based on the discussion above, the Applicant's confidentiality application is granted. The information subject to this confidentiality designation will be kept confidential until the ATTCP program ends.

Be advised that persons may petition to inspect or copy records that the Energy Commission has 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 Ralph Lee, Staff Counsel, at ralph.lee@energy.ca.gov or (916) 645-3953.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", written over a horizontal line.

Drew Bohan
Executive Director

cc: Ralph Lee, Staff Counsel