

DOCKETED

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Document Title:	CEC Response Letter to Application for Confidential Designation
Description:	Response Letter to California State Pipe Trades Council
Filer:	Darlene Burgess
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Docketed Date:	10/18/2019



October 18, 2019

Mike Layton
California State Pipe Trades Council
1121 L Street, Suite 207
Sacramento, CA 95814

RE: Application for Confidential Designation for Updated Training and Study Materials, Docket No. 13-ATTCP-01

Dear Mr. Layton:

The California Energy Commission (CEC) received your Application for Confidentiality (Application) that you filed on October 1, 2019, on behalf of California State Pipe Trades Council (Applicant). You seek confidential designation for the following documents submitted comprising updated training and study materials (Documents):

- 1) *2019 Contractor Training - Training for Mechanical Acceptance Test Employers under Title 24 - 62 pages*
- 2) *2019 NITC Certification Handbook - NITC Title 24 Certification Handbook for Contractors and Technicians - 25 pages*
- 3) *2019 Title 24 Student Manual - UA Title 24 Mechanical Acceptance Test Technician Certification Course - 429 pages*

You requested confidential designation of each of the Documents in their entirety, pursuant to California Code of Regulations, title 20, section 2505 on the grounds that they include proprietary training and trade information distributed only to United Association members and signatory contractors. You state that the information cannot be aggregated. Your Application requested that the Documents remain confidential indefinitely, but in a separate email you agreed and confirmed that it would be sufficient to designate the Documents as confidential until the Acceptance Test Technician Certification Program ends.

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

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authorizes the [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, §§ 6254(k), 6276.44; see also Evid. Code, § 1060; Civ. Code, § 3426.1.)

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.

Your Application states the Documents include proprietary training and trade information, which were developed at the expense of the Applicant and the Training Programs of UA California Locals. Your Application also states that the Documents are provided only to United Association members and their signatory contractors for training and not otherwise distributed or disclosed.

You have made a reasonable claim that the law allows the CEC to grant your Application. The Applicant developed the training and study materials in the Documents for its members and contractors for training, which contain information that is not public. There is no information to suggest that release of the information would serve a greater public benefit than its protection.

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 Acceptance Test Technician Certification Program ends.

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the Executive Director may disclose or release records previously designated as confidential in certain circumstances, and the

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CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. 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.

In the future, you may request confidentiality for similar documents without submitting an application by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

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,



Drew Bohan
Executive Director