

DOCKETED

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Project Title:	Acceptance and Training Certification
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Document Title:	Response Letter to Application for Confidentiality
Description:	Training Curriculum and Testing Materials for Certification of Mechanical Acceptance Test Technician Certification Provider
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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 10, 2016

Mr. Gregory Partch
California State Pipe Trades Council
1123 L Street
Sacramento, CA 95814

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

Dear Mr. Partch:

The California State Pipe Trades Council (Applicant) filed an application for confidentiality seeking confidentiality for curriculum and testing materials as part of Applicant's efforts to become a Mechanical Acceptance Test Technician Certification Provider. The confidential material consists of the following:

- 1) *Appendix B: Certification Course and Exam Questions*
- 2) *Appendix F: Training for Mechanical Acceptance Test Employers and Exam Questions*

The application also contains a request for two documents labeled as Appendix G to be deemed confidential. One document is 21 pages and titled *National Inspection Testing and Certification Corporation Rules and Procedures of the NITC Personnel Certification Program* and the other is four pages and titled, *Quality Assurance and Accountability*.

Neither document in appendix G can be designated as confidential. The first document is publically available on NITC's webpage. The second document summarizes NITC's quality control, contains links to 12 public websites and does not contain any acceptance testing related materials.

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, comment 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 requirements by stating that the confidential documents represent a valuable compilation of confidential information that will be used by Applicant to train, educate, and certify heating and ventilation professionals in accordance with the energy standards relevant to performing mechanical acceptance testing.

The confidential documents are valuable because they give Applicant an advantage over industry competitors who are not providers. If the confidential documents are disclosed, Applicant's competitive advantage in training industry professionals would be substantially impaired. Significant time and resources have been spent developing the confidential documents. The value of the information could be significantly impaired if made available to the public or competitors in the industry without a commensurate investment of time and resources. The information contained in the confidential documents is not readily available in the marketplace and cannot easily be duplicated without significant time and resources.

Applicant has kept the training program materials confidential and has only been viewed by certain employees of Applicant and those involved with program development. Moreover, if Applicant's Acceptance Testing Program Application is approved, the confidential documents will only be made available to individuals training to become Acceptance Test Technicians and their employers.

In addition, 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.

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.

Based on the above discussion, Applicant's confidentiality application is granted as to Appendix B and F, and denied as to appendix G. The course materials 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 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.

Any subsequent submittals related to program course materials 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.

If you have any questions concerning this matter, please contact Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Joan Walter, Energy Commission Staff
Joe Loyer, Energy Commission Staff