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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO. CA 95814-5512

April 18, 2016

Thomas R. Meyer
The ESCO Group
651 S. Walnut Ave., Suite D, #35
New Braunfels, TX 78130

**RE: Application for Confidential Designation for Automated Audits and
Desk Audits
Docket No. 13-ATTCP-01**

Dear Mr. Meyer:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of The ESCO Group (Applicant). The application seeks confidential designation for details of "Automated Audits" and "Desk Audits" (Confidential Test Data).

Applicant serves as the Non-Residential Data Registry for the Mechanical Acceptance Test Technician Certification Provider (ATTCP) Program. The application states that confidentiality is sought for trade secret data inputs which provide a system of quality assurance, a required element of the ATTCP Program Registry. The Confidential Test Data provide notice of anomalies in technicians' submissions of Non-Residential Mechanical Acceptance Test Forms.

Confidential designation is sought only for those items marked "Automated Audits" and "Desk Audits" in the document submitted in conjunction with the Application; the remainder of the document is standard language from the forms completed by certified technicians. Applicant states that there is no feasible method aggregating the Confidential Test Data which would allow for disclosure without serious harm and that the Confidential Test Data have not been disclosed publicly.

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 California 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, comments 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 application addresses these four elements: 1) the Confidential Test Data is the core of the required quality assurance system; 2) public disclosure of the Confidential Test Data would neutralize Applicant's ability as the Non-Residential Data Registry to monitor the accuracy of the data submitted by technicians; 3) the quality assurance system is a required element of the Mechanical ATTCP Program, as articulated in the Recommended Conditions of Approval for the "Mechanical Acceptance Test Technician Certification Provider Application: NEBB" (CEC-400-2015-045); and (4) Applicant has not disclosed the Confidential Test Data to anyone outside the Applicant's project team, and Applicant's internal procedures require that the information be marked and treated as confidential.

The application is clear that confidentiality is being sought for trade secret information related to the quality assurance system required for the Mechanical ATTCP Program. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Test Data from public disclosure.

Applicant requests that the information be kept confidential for three or four revisions of the Building Energy Efficiency Standards Non-Residential Compliance Manual. The Confidential Test Data is closely linked to the content of the Compliance Manual, which is updated every three years. Because there may be only minor differences between sequential versions of the Compliance Manual, it may, in fact, take three to four cycles of revision for the Confidential Test Data to lose its value as trade secret information. Therefore, it is appropriate to grant confidentiality until 2027, which allows for confidential designation of the Confidential Test Data through four revisions of the Compliance Manual.

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For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential until 2027, after four revisions of the Building Energy Efficiency Standards Non-Residential Compliance Manual.

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 Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Oglesby', with a long horizontal flourish extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Joe Loyer, California Energy Commission, Standards Implementation Office,
Senior Mechanical Engineer