

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

California Energy Commission

DOCKETED**13-ATTCP-1**

TN 72722

FEB 26 2014

February 18, 2014

Jack Yapp
NLCAA
3301 East Hill Street #406
Signal Hill, CA 90755

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

Dear Mr. Yapp:

The National Lighting Contractors Association of America (Applicant) filed an application for confidentiality seeking confidentiality for curriculum and testing materials as part of the Applicant's efforts to become a Lighting Control Acceptance Test Technician Certification Provider. The confidential material consists of training modules addressing various technical areas an Acceptance Technician would need to demonstrate competence in before being certified as well as software designed to simplify documentation between the Applicant and the Energy Commission.

The Application states the materials consist of proprietary trade secret information that should be held as confidential.

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.)

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 states that the materials subject to the application were developed over a number of years based on tracking changes to the energy codes and technology. The materials are valued at over \$150,000.00 and that value could be lost if others had access to the information. In addition it took considerable time and effort to develop the materials and that release of them will allow others to capitalize on that work without having to incur the expense of time and money.

Beyond the basis identified by the Applicant, it also appears that 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. 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 curriculum 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, the Applicant's confidentiality application is granted. The data 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.

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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
Chris Olvera, Energy Commission Staff
Tav Commins, Energy Commission Staff