

DOCKETED

Docket Number:	13-ATTCP-01
Project Title:	Acceptance and Training Certification
TN #:	228993
Document Title:	Letter to National Lighting Contractors Association of America re Application for Confidential Designation
Description:	Response to Application for Confidential Designation, etc.
Filer:	Darlene Burgess
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	7/16/2019 11:39:37 AM
Docketed Date:	7/16/2019



July 16, 2019

Michael Scalzo
National Lighting Contractors Association of America
3301 E Hill Street, Suite 408
Signal Hill, CA 90755

RE: Applications for Confidential Designation for Training Curriculum and Testing Materials for Qualification of Lighting Control Acceptance Test Technician Certification Provider, Docket No. 13-ATTCP-01

Dear Mr. Scalzo:

The California Energy Commission is in receipt of five Applications for Confidentiality submitted on June 27, 2019, on behalf of National Lighting Contractors Association of America (NLCAA) (Applicant). The applications seek confidential designation for the following documents consisting of curriculum and testing material related to its qualifications as a Lighting Control Acceptance Test Technician Certification Provider for 2019 (Confidential Records):

- 1) *NLCAA Application - 13th Amendment, Attachments 1 and 2 and Appendix 1 (Strikeout Versions and Clean Versions), 48 pages - June 26, 2019*
- 2) *2019 Acceptance Testing Forms, 58 pages - June 26, 2019*
- 3) *2019 ATT/ATE Recertification Curriculum, 2019 ATT Course Handbook, ATT/ATE Recertification Course Outline, PPT, Quiz, and Final, 80 pages - June 27, 2019*
- 4) *2019 ATT Course Handbook and Final Test, 392 pages - June 26, 2019*
- 5) *2019 ATE Course Handbook and Final Test, 305 pages - June 26, 2019*

The applications were submitted to docket 13-ATTCP-01 and state they are for Acceptance and Training Certification. They appear to update testing and course material for continued participation in the Lighting Control Acceptance Test Technician Certification Provider Program. (24 Cal. Code Regs., § 10-103-A.)

Michael Scalzo
National Lighting Contractors Association of America
July 16, 2019
Page 2

The Applicant 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 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, 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 including by giving the Applicant a competitive advantage. This value could be diminished or lost if others including competitors were allowed to duplicate the information without consent. Applicant notes if confidentiality were lost, it would incur significant costs recreating the forms and software to ensure compliance.

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

Michael Scalzo
National Lighting Contractors Association of America
July 16, 2019
Page 3

The Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the materials confidential. The information has been developed by 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 applications are 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 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 (916) 645-3953.

Sincerely,

ORIGINAL SIGNED BY:

Drew Bohan
Executive Director

cc: Ralph Lee, Staff Counsel
Docket Unit, California Energy Commission
Joe Loyer, Senior Mechanical Engineer, California Energy Commission,
Standards Compliance Office
Lorraine White, Supervisor, California Energy Commission, Standards
Implementation Office