

DOCKETED

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August 13, 2019

Michael Scalzo
National Lighting Contractors Association of America
3301 East 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 Energy Commission is in receipt of four Applications for Confidentiality submitted on July 19, 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) *ATT ATE Recertification Course Curriculum* (82 pages)
- 2) *2019 ATE Course Handbook* (308 pages, including *Part 1 of 2*, 75 pages and *Part 2 of 2*, 233 pages)
- 3) *2019 ATT Course Handbook* (164 pages, including *Part 1 of 3*, 77 pages and *Part 2 of 3*, 87 pages)
- 4) *NLCAA Update Report* (10 pages)

As a preliminary matter, the Applicant filed three of these applications to replace applications the Applicant previously filed June 27, 2019, which were granted July 16, 2019. Please note that the information submitted under this application appears substantially similar to information that was previously designated as confidential. Information submitted to the Energy Commission can be deemed confidential without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if the Applicant files a certification under penalty of perjury that the new information is substantially similar to the information previously granted confidentiality.

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The present applications were submitted to docket number 13-ATTCP-01 regarding the Acceptance Test Technician Certification Provider (ATTCP) program.

The Applicant states the course 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. (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 also states that the course materials are of significant value, which could be diminished or lost if others, including competitors, were allowed to duplicate the information without consent. In addition, if confidentiality were lost, the Applicant would incur significant costs recreating the material 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,

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scoring keys, and other examination data used to administer various types of examinations. (Gov. Code § 6254(g).)

The Applicant has made a reasonable claim that the law allows the Energy Commission to keep the materials confidential. The information has been developed by the 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 ATTCP 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 ralph.lee@energy.ca.gov, or (916) 645-3953.

Sincerely,



Drew Bohan
Executive Director

cc: Ralph Lee, Staff Counsel