

DOCKETED

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Document Title:	Response to NLCAA's Application for Confidential Designation for Training Curriculum and Testing Materials
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December 18 , 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, Docket No. 13-ATTCP-01

Dear Mr. Scalzo:

The California Energy Commission (CEC) received ten Confidentiality Applications (Applications) that you filed on November 12-13, 2019 on behalf of National Lighting Contractors Association of America (NLCAA) (Applicant). You seek confidential designation for the following documents that you submitted comprising training curriculum and testing materials (Documents):

- 1) *2019 Recertification Course Curriculum, PDF File of the ATT/ATE Recertification Course Outline, PPT, Quiz, and Final [P1 of 2], 12/12/19 – 52 of 85 Pages*
- 2) *2019 Recertification Course Curriculum, PDF File of the ATT/ATE Recertification Course Outline, PPT, Quiz, and Final [P2 of 2], 12/12/19 – 33 of 85 Pages*
- 3) *2019 Update Report 2, PDF File of the 2019 Update report 2 including required changes to the ATT, ATE and recertification Training Curricula, 12/12/19 – 12 Pages*
- 4) *2019 ATE Course Handbook Parts 1 and 2, PDF File of the ATE Course Handbook and Final Test [P2 of 2], 11/12/19 – 208 of 275 pages*
- 5) *2019 ATT Course Handbook Part 1-3, PDF File of the ATT Course Handbook and Final Test [P3 of 3], 11/12/19 – 189 of 358 Pages*
- 6) *2019 ATE Course Handbook Parts 1 and 2, PDF File of the ATE Course Handbook and Final Test [P1a of 2], 11/12/19 – 11 of 275 Pages*
- 7) *2019 ATE Course Handbook Parts 1 and 2, PDF File of the ATE Course Handbook and Final Test [P1b of 2], 11/12/19 – 55 of 275 pages*
- 8) *2019 ATT Course Handbook Part 1-3, PDF File of the ATT Course Handbook and Final Test [P1 of 3], 11/12/19 – 64 of 358 pages*
- 9) *2019 ATT Course Handbook Part 1-3, PDF File of the ATT Course Handbook and Final Test [P2a of 3], 11/12/19 – 51 of 358 Pages*

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10) 2019 ATT Course Handbook Part 1-3, PDF File of the ATT Course Handbook and Final Test [P2b of 3], 11/12/19 – 54 of 358 pages

You requested confidential designation of each of the Documents in their entirety, pursuant to California Code of Regulations, title 20, section 2505, on the grounds that they comprise trade secrets.

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 [CEC] to keep the record confidential.” The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, §§ 6254(k), 6276.44; see also Evid. Code, § 1060; Civ. Code, § 3426.1.)

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.

Your Applications state the Documents comprise trade secrets that Applicant provides only to applicants and the CEC. Your Applications state the Documents provide Applicant with a competitive advantage, which would be lost if others including competitors obtained unauthorized access and were allowed to copy it. If lost, your Applications state Applicant would incur a large cost. Your Applications state the Documents should not be provided to others unless masked in their entirety.

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Beyond the bases you identified, it also appears that if the Documents were made public, it would allow prospective students to cheat by obtaining testing materials which would diminish 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).)

You have made a reasonable claim that the law allows the CEC to grant your Applications. The Applicant developed the training and study materials in the Documents for its members and contractors for training, which contain information that is not public. There is no information to suggest that release of the information would serve a greater public benefit than its protection.

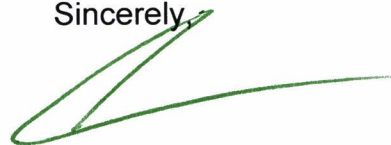
Based on the discussion above, the Applicant's confidentiality Applications are granted. The information subject to this confidentiality designation will be kept confidential until the Acceptance Test Technician Certification Program ends.

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the Executive Director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, or raising, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

In the future, you may request confidentiality for similar documents without submitting an application by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Ralph Lee, attorney, at ralph.lee@energy.ca.gov or (916) 645-3953.

Sincerely,



Drew Bohan
Executive Director