

DOCKETED

Docket Number:	13-ATTCP-01
Project Title:	Acceptance and Training Certification
TN #:	232245
Document Title:	CEC Response to NLCAA's Application for Confidential Designation
Description:	N/A
Filer:	Pam Fredieu
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/27/2020 11:41:18 AM
Docketed Date:	2/27/2020



February 27 2020

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

RE: Application for Confidential Designation for Acceptance Testing Forms,
Docket No. 13-ATTCP-01

Dear Mr. Scalzo:

The California Energy Commission (CEC) received your Confidentiality Application (Application) that you filed on January 17, 2020 on behalf of National Lighting Contractors Association of America (NLCAA) (Applicant). You seek confidential designation for the following document that you submitted comprising testing materials (Document):

- 1) *2019 Acceptance Testing Forms, January 17, 2020 – 28 pages*

You requested confidential designation of the Document in its entirety, pursuant to California Code of Regulations, title 20, section 2505, on the grounds that it comprises 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 Application states the Document comprises trade secrets that Applicant provides only to the CEC, consultants for training purposes, and NLCAA approved ATTs and ATEs. Your Application states the Document provides 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 Application states Applicant would incur a "large cost associated with the re-creation of the forms and software to ensure compliance." Your Application states the Document should not be provided to others unless masked in its entirety.

Beyond the bases you identified, it also appears that the Document is similar to the document submitted previously on June 27, 2019, for which the CEC previously granted confidentiality.

You have made a reasonable claim that the law allows the CEC to grant your Application. The Applicant developed the testing forms, 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 Application is 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

Michael Scalzo
February 27, 2020
Page 3

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 any similar document 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,

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a long horizontal stroke that tapers to the right.

Drew Bohan
Executive Director

