

DOCKETED

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October 30, 2020

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

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

Dear Mr. Scalzo:

The California Energy Commission (CEC) received the Confidentiality Application (application) that you filed on June 2, 2020, on behalf of the National Lighting Contractors Association of America (NLCAA) (applicant). You seek confidential designation for the following documents comprising updated training, testing, and application materials (documents):

- 1) Update Report and 2019 Acceptance Testing Forms - 30 pages

You requested confidential designation of the documents in their entirety, pursuant to California Code of Regulations, Title 20, section 2505, on the grounds that they include proprietary testing and trade information.

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, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 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, section 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 the applicant provides only to the CEC, consultants for training purposes, and NLCAA approved acceptance test technicians and acceptance test employers. 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.

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 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, filing, reviewing, and acting upon such petitions or motions are set

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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 black ink, appearing to read "Drew Bohan", enclosed within a thin black rectangular border.

Drew Bohan
Executive Director