

<b>DOCKETED</b>	
<b>Docket Number:</b>	13-ATTCP-01
<b>Project Title:</b>	Acceptance and Training Certification
<b>TN #:</b>	235630
<b>Document Title:</b>	Response Letter to NLCAA re Application for Confidential Designation
<b>Description:</b>	N/A
<b>Filer:</b>	Liza Lopez
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	11/16/2020 4:59:02 PM
<b>Docketed Date:</b>	11/16/2020



November 13, 2020

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

RE: Application for Confidential Designation for Request for Approval of COVID Measures, Docket No. 13-ATTCP-01

Dear Mr. Scalzo:

The California Energy Commission (CEC) received the Confidentiality Application (application) filed on August 19, 2020 on behalf of National Lighting Contractors Association of America (NLCAA) (applicant). The applicant seeks confidential designation for the following document comprising a request for approval of COVID measures applicable to the applicant's certification program (document):

- 1) *NLCAA COVID Measures Request, August 18, 2020 - 7 pages*

The applicant requested confidential designation of the document in its entirety, pursuant to California Code of Regulations, Title 20, section 2505, on the grounds that it includes proprietary training and trade information. However, in an email dated October 8, 2020, on which you were copied, NLCAA program director, Brianna Kadar, agreed to limit NLCAA's request for confidentiality to only the second page of the Document, and for only the duration of the CEC's Acceptance Test Technician Certification Provider program.

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.

The application is based in part on the confidentiality of trade secrets, and it states that the applicant only provides the document to the CEC, consultants, and NLCAA Staff. The application also states that the document provides specific information about how the applicant's field inspections would be conducted, and that a release of that information would decrease the integrity of its audits.

As agreed in the October 8, 2020 email described above, the applicant has made a reasonable claim that the law allows the CEC to grant the application as to the second page of the document. The applicant developed its audit procedure, which contains information that is not public. Further, any release of the information would decrease the integrity of the applicant's audit procedure. 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 as to the second page of the document. 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

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releasing, filing, 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](mailto:ralph.lee@energy.ca.gov) or (916) 645-3953.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", enclosed in a thin black rectangular box.

Drew Bohan  
Executive Director