

DOCKETED

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April 13, 2022

Via Email

Brianna Kadar
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**Application for Confidential Designation:
National Lighting Contractors Association of America 2021 ATTCP Annual
Report, Attachment 3
Docket 13-ATTCP-01**

Dear Brianna Kadar:

The California Energy Commission (CEC) has received the National Lighting Contractors Association of America's (NLCAA) application for confidential designation, dated March 23, 2022, for Attachment 3 of the 2021 ATTCP Annual Report. Confidential designation is sought for the following document (Attachment 3):

Attachment 3, pages 10-20, of the National Lighting Contractors Association of America 2021 ATTCP Annual Report, Quality Assurance Breakdown by ATT (Desk Audit and Field Inspection to date numbers begin in 2020)

The application states that Attachment 3 should be kept confidential in its entirety for the existence of the Acceptance Testing Technician Certification Provider (ATTCP) certification program. The application identifies one basis for confidentiality: loss of competitive advantage with no legal citation provided.

Confidentiality Claim

Loss of Competitive Advantage

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 [California] Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential." The 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 of a loss of competitive advantage, the application shall state: 1) the specific nature of the advantage, 2) how the advantage would be lost, 3) the value of the information to the applicant, and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

NLCAA is an ATTCP. An ATTCP provides certification, training, and oversight for Acceptance Testing Technicians (ATTs) and Acceptance Testing Employers (ATEs). ATTs perform acceptance testing for nonresidential lighting controls and systems, which is a verification process that lighting controls and systems in the new construction of nonresidential buildings conform with the requirements of the 2019 Building Energy Efficiency Standards. California Code of Regulations, title 24, section 10-103.1 describes the training, certification, and reporting requirements for an ATTCP. Section 10-103.1(d)(1) requires an ATTCP to submit to the CEC an annual report that includes, among other things, quality assurance procedures and accountability activities. Section 10-103.1(d) does not contain any provisions related to the confidential designation of the annual report. Additionally, section 10-103.1(c)(3)(G) does require an ATTCP in its application to the CEC to provide an explanation of how it maintains an accurate public record of the certification status for all ATTs and ATEs that the ATTCP has certified.

The application for confidential designation states that Attachment 3 contains the testing and oversight data for all NLCAA ATTs and, if the public had access to the data in Attachment 3, it could “sway” who a member of the public would want to do their acceptance testing. The application states that this could directly harm or benefit specific ATTs’ business opportunities. The application states that Attachment 3 could be publicly disclosed if masking is done to conceal the ATT name and certification number associated with the data. The application further states that the data in Attachment 3 is only disclosed to NLCAA-approved volunteers, the NLCAA board of directors, and the CEC.

Attachment 3 contains quality assurance information specific to individual ATTs related to the testing and oversight data that is required to be submitted to the CEC as part of an ATTCP’s annual report. In its application, NLCAA has not provided 1) a citation and discussion of the provisions of the California Public Records Act or other law that allows CEC to keep the record confidential and 2) the information required to show a loss of competitive advantage. (California Code of Regulations, title 20, section 2505(a)(1)(D)). Therefore, NLCAA has not made a reasonable claim that the California Public Records Act or other law authorizes the CEC to exempt Attachment 3 from public disclosure as a loss of competitive advantage.

Executive Director's Determination

Based on the applicant's claim and a review of Attachment 3, the applicant has not made a reasonable claim under the law that authorizes the granting of confidentiality status. Thus, the CEC will not keep confidential Attachment 3, and the CEC may disclose it.

You may request that the CEC determine the confidentiality of records that the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

Be advised that under the California Code of Regulations, title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under the California Code of Regulations, title 20, section 2507, 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 for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set in the California Code of Regulations, title 20, sections 2506-2507.

If you have any procedural questions regarding this application for confidential designation, please contact Jennifer Baldwin, senior attorney, at jennifer.baldwin@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director