

DOCKETED

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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

May 10, 2016

Jack Yapp
Vice President
National Lighting Contractors Association of America
3301 E. Hill Street, Suite 406 – 408
Signal Hill, CA 90755

RE: **Application for Confidential Designation for Lighting Controls
Acceptance Testing Course Material for 2016
Docket No. 13-ATTCP-01**

Dear Mr. Yapp:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of the National Lighting Contractors Association of America (NLCAA) (Applicant). The application seeks confidential designation for the following documents comprising the Lighting Controls Acceptance Testing Course Material for 2016 (Confidential Records):

- 1) *Lighting Control Acceptance Test Technician Course;*
- 2) *Lighting Control Acceptance Test Technician Acceptance Test Technician Employer Course;*
- 3) *NLCAA's Nonresidential Certificate of Acceptance (NRCA) forms: NRCA-LTI-02-A, NRCA-LTI-03-A, NRCA-LTI-04-A, NRCA-LTI-05-A, NRCA-LTO-02-A;*
- 4) *2016 Energy Code Update Online course for Test Technicians;*
- 5) *2016 Energy Code Update Online Course for Test Technician Employer, and*
- 6) *Test Technician and Employer Exams: Test Technician Practice Exam, Test Technician Final Exam, Course Quizzes, and Employer Final Exam.*

The application states that confidentiality is sought for updated testing and course material for continued participation in the Lighting Control Acceptance Test Technician Certification Provider Program.

Applicant notes that it is feasible to disclose the Confidential Records if aggregated with other information or masked to conceal portions of the material. The Confidential Records have been released only to existing students seeking certification as Acceptance Test Technicians through Applicant's developed curriculum.

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 California Energy Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

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, comments 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 addresses these four elements: 1) the Confidential Records were developed over a number of years, following statutory changes and technological advancement; 2) broader public disclosure of the Confidential Records could allow a competitor to duplicate the information and deprive Applicant of a competitive advantage in the market and would degrade the integrity and effectiveness of the certification process; 3) the value of the information exceeds \$150,000; and 4) the information is not available to any other Lighting Control Acceptance Test Technician Certification Provider, and it would take significant time and money to develop a similar program.

Government Code section 6254(g) exempts from disclosure under the California Public Records Act "[t]est questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic

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examination. . . .” In this case, the Confidential Records are acceptance test curriculum materials and test questions which are being supplied to the Energy Commission as part of Applicant’s submission as a Lighting Control Acceptance Test Technician Certification Provider.

The application is clear that confidentiality is being sought for trade secret information related to the Acceptance Test Technician Certification Provider Program. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Records from public disclosure.

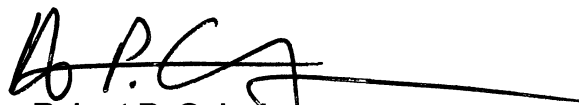
Applicant requests that the information be kept confidential until the updated curriculum and testing materials are accepted by the California Energy Commission. The curriculum and testing materials update have value as trade secret information until the California Energy Commission determines, upon review of the information, whether Applicant may continue to participate in the Lighting Control Acceptance Test Technician Certification Provider Program; therefore, it is appropriate to grant confidentiality until the updated curriculum and testing materials are accepted by the California Energy Commission.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential until the curriculum and testing materials are accepted by the California Energy Commission.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
Joe Loyer, California Energy Commission, Standards Implementation Office,
Senior Mechanical Engineer