

DOCKETED

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Via Email

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**Application for Confidential Designation: ATE Recertification
Certification Course Curriculum - Docket No. 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 June 29, 2022, covering:

NLCAA 2022 ATT/ATE Recertification Course Curriculum - 303 pages
PDF file of the 2022 ATT/ATE Recertification Course Curriculum

The applicant asserts that the document in its entirety consists of proprietary materials considered a trade secret. Further, the application states that releasing portions of the materials is limited to confidential recipients. The materials appear to be training materials as represented. The entire document includes some information that is available publicly, but not in association with other information as assembled by the applicant. The application references Government Code sections 6254(k) and 6276.44, and Evidence Code section 1060.

A properly filed Application for Confidentiality shall be granted under 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.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); *See also* Gov. Code, §§ 6254(k), 6276, 6276.44; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), further 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 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 each of these four requirements by stating:

The specific nature of the advantage – The materials, by remaining confidential, provide a competitive advantage for the applicant.

How the advantage would be lost – The advantage would be lost if competitors obtained their proprietary training materials, copied them, and taught the same course at a lower price.

The value of the information to the applicant – No dollar value, but time and money were spent developing the materials, and students pay to receive the materials, creating a revenue source.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – It is not released in its entirety except to students and confidential recipients.

The applicant has made a reasonable claim that the document contains trade secrets, as defined, and that the Public Records Act authorizes the CEC to keep the record confidential pursuant to California Code of Regulations, title 20, section 2505(a)(3)(A).

Executive Director's Determination

For the reasons stated, the 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 under 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 confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without applying by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any procedural questions concerning this application for confidential designation, please contact Kari Anderson, Staff Counsel, at kari.anderson@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director