

DOCKETED

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Description:	N/A
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August 12, 2022

Via Email

Tiffany Meyers
NEBB
8575 Grovemont Circle
Gaithersburg, Maryland 20877
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**Application for Confidential Designation - NEBB Title 24 ATTCP Program
Docket No. 13-ATTCP-01**

Dear Tiffany Meyers:

The California Energy Commission (CEC) has received NEBB's (NEBB or applicant) application for confidential designation, dated June 29, 2022, docketed June 30, 2022, covering:

NEBB 2022 ATT NRCA MCH03 A, NEBB 2022ATT NRCA MCH05 A, NEBB 2022ATT NRCA MCH 20a H, NEBB 2022ATT NRCA MCH 20b H, NEBB 2022ATT NRCA MCH 20c H, NEBB 2022ATT NRCA MCH 20d H, NEBB 2022ATT NRCA MCH 21 H, NEBB 2022ATT NRCA MCH 22 A, NEBB 2022ATT NRCA MCH 23 A, NEBB 2022ATT NRCA MCH 19 A, NEBB 2022 ATE Training 2022, total 509 pages

The applicant asserts that these proprietary materials should be considered a trade secret: 2022 ATE Updated training materials (works for sale) and 2022 ATT Updated training materials (works for sale).

The application states that portions of the materials are copyrighted. All of the materials appear to be training materials as represented. The application references Government Code sections 6254(k) and 6276.44, and Evidence Code section 1060, and asserts that the protection of their trade secret qualifies as a basis to designate the material confidential under CEC rules.

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 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 each of these four requirements by stating:

The specific nature of the advantage – The materials, by remaining confidential, allow the applicant to sell the information.

How the advantage would be lost – The advantage would be lost if competitors obtained their proprietary training materials for free.

The value of the information to the applicant – No dollar value, but the curriculum was developed and made available online for a fee at considerable effort and expense to NEBB.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – The information is provided only to students who pay a fee to NEBB and agree to maintain the confidentiality of the materials, and as necessary to trainers.

The applicant has made a reasonable claim that the documents contain 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 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 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