

DOCKETED

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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

May 10, 2017

Michael Scalzo
Executive Director
National Lighting Contractors Association of America
3310 East Hill Street, Unit 408
Signal Hill, CA 90755

RE: **Application for Confidential Designation for Acceptance Testing
Forms
Docket No. 13-ATTCP-01**

Dear Mr. Scalzo:

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 Nonresidential Certificate of Acceptance (NRCA) forms (Confidential Records):

- 1) *NRCA-LTI-02-A;*
- 2) *NRCA-LTI-03-A;*
- 3) *NRCA-LTI-04-A;*
- 4) *NRCA-LTI-05-A;*
- 5) *NRCA-LTO-02-A;*
- 6) *Acceptance Untested Areas; and*
- 7) *Summary Sheet.*

Confidentiality is sought for materials for continued participation in the Lighting Control Acceptance Test Technician Certification Provider Program. Applicant notes that it is not feasible to disclose the Confidential Records unless masked to conceal format and trade secrets are not compromised. The Confidential Records have been released only to Acceptance Test Employers and Technicians and to consultants for training purposes.

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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, 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 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) there would be a large cost associated with the re-creation of the forms and software if compromised; 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.

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 indefinitely. However, in previous applications requesting confidential designation by the California Energy Commission, Applicant agreed to allow substantially similar information to be held

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confidential until the updated curriculum and testing materials are accepted by the California Energy Commission. Applicant has not provided additional justification to suggest the information contained the Confidential Documents requires the California Energy Commission to undertake the burdensome task of maintaining confidential designation in perpetuity. 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.

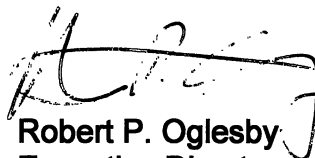
For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential until the curriculum and testing materials are accepted by the California Energy Commission.

Please note that the information submitted under this application is substantially similar to information that was previously designated as confidential. Information submitted to the California Energy Commission can be deemed confidential without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4) if you file a certification under penalty of perjury that the new information is substantially similar to the information previously granted confidentiality.

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