

DOCKETED

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November 21, 2022

Via Email

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**Application for Confidential Designation – NLCAA 2022 Update Report
Rev2 – Oct. 10, 2022
Docket No.: 13-ATTCP-01**

Dear Michael Scalzo:

The California Energy Commission (CEC) has received National Lighting Contractors Association of America's (NLCAA or applicant) application for confidential designation (TN 246628), docketed October 18, 2022, covering:

PDF file of the 2022 Update Report 2 including required changes to the ATT, ATE and recertification Training Curricula.

The applicant asserts that the document in its entirety consists of proprietary materials considered a trade secret. Further, the application states that the release of portions of the materials is limited to confidential recipients. The materials appear to be training materials in the form of educational PowerPoint presentation slides, submitted in PDF form. The application references Government Code sections 6254(k) and 6276.44, and Evidence Code section 1060. The application requests confidentiality for as long as the testing program is in place. No end date is provided for the testing program.

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 section 6254(k); Evid. Code section 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 section 3426.1(d); See *also* Gov. Code sections 6254(k), 6276, 6276.44; Evid. Code section 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 submission details the 2022 course curriculum developed by the applicant. There would be a significant cost associated with the loss of trade secrets and competitive advantage.

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.

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 authorized 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 applicant's confidentiality application is granted. The information subject to this confidentiality designation will be kept confidential until the applicant's Acceptance Test Technician Certification Program ends. Since this date is unknown, the confidential designation does not have a termination date.

Michael Scalzo
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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 Tanner Kelsey, staff counsel, at tanner.kelsey@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director