

DOCKETED	
Docket Number:	13-ATTCP-01
Project Title:	Acceptance and Training Certification
TN #:	247882
Document Title:	CEC Response to NLCAA's Application for Confidentiality - 11-3-22
Description:	N/A
Filer:	Patty Paul
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	12/2/2022 9:38:58 AM
Docketed Date:	12/2/2022



December 2, 2022

Via Email

Mario Martinez
National Lighting Contractors Association of America
3301 East Hill Street, Suite 408
Signal Hill, California 90755
mscalzo@nlcaa.org
mmartinez@nlcaa.org

**Application for Confidential Designation – NLCAA 2022 NRCA Forms – Nov
3, 2022
Docket No.: 13-ATTCP-01**

Dear Mario Martinez:

The California Energy Commission (CEC) has received National Lighting Contractors Association of America's (NLCAA or applicant) application for confidential designation (TN 247270), docketed November 3, 2022, covering the following 2022 NLCAA forms:

Demand Response Lighting Control Acceptance Document; Institutional Tuning PAF Acceptance Document; Outdoor Lighting Control Acceptance Test; Shut-Off Lighting Control Acceptance Document; Automatic Daylighting Control Acceptance Document.

The applicant asserts that the documents in their entirety consist 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 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.

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 – This submission details applicant’s full Acceptance Test Technician (ATT) and curriculum outlines and ATT lab processes. If compromised there would be a large cost associated with the loss of their trade secrets and competitive advantage. If a competitor was able to access their protected materials, they could duplicate the materials and teach the same courses at a lower cost because they would not have to spend the money developing the materials, order of teaching, and specific methods.

How the advantage would be lost – Providing unauthorized access to their course materials could lead to the documents being duplicated without consent.

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 - Competitors could duplicate all or part of applicant’s curriculum.

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 applicant's 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 Ashneil Randhawa, Graduate Legal Assistant, at ashneil.randhawa@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director