

DOCKETED	
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May 31, 2024

Via Email

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**Application for Confidential Designation
Perkins Renewable Energy Project
Docket No. 24-OPT-01**

Dear Emily Capello:

The California Energy Commission (CEC) has received the IP Perkins, LLC, IP Perkins BAAH, LLC, and Affiliates c/o Intersect Power, LLC's (applicant) Application for Confidentiality (TN 254474), dated February 15, 2024, covering the following information:

- Appendix R - Perkins Solar Economic Impact Report (Appendix R)

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."

Discussion

The applicant states that Appendix R should be kept confidential because it includes local and non-local workforce estimates, worker compensation estimates, annual economic impact estimates, local and county tax revenue estimates, and construction cost information. The applicant claims that Appendix R should be kept confidential indefinitely due to confidential agreements between the applicant and third parties, as well as due to the competitive nature of the renewable development industry.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; 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, §§ 7927.705, 7930.005, 7930.205; 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), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

1. *The specific nature of the advantage* – The information provides total estimated construction costs per component and is a trade secret due to the private and confidential nature of applicant's agreement(s) with external parties.
2. *How the advantage would be lost* – Disclosure may cause a loss of competitive advantage to the applicant as competitors could gain insights into pricing that is reflected in their estimates. Competitors would be able to utilize this information to further their own negotiations with third parties, using applicant's data as leverage.
3. *The value of the information to the applicant* – Public disclosure of estimated cost(s) and/or pricing would negatively impact their competitive advantage to negotiate and secure agreements with contractors, financiers, offtakers, and other industry parties.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The data cannot be disclosed even if aggregated or masked due to the nature of capital costs, all details pertaining to capital cost are considered a trade secret. The record is kept only for internal budgeting and forecasting purposes and is not ever disclosed to a person other than an employee or contractor(s) working on behalf of the company.

Although the applicant is alleging that confidentiality should be granted for trade secrets, Appendix R contains a broad assessment of housing, wages, and employment trends in Yuma and Imperial County. The applicant's assertion of trade secrets for construction component costs does not adequately address concerns of confidentiality for the entirety of the document. The applicant has not made a reasonable claim that the information entirely contained in Appendix R contains trade secrets that would result in the loss of competitive advantage. However, the CEC acknowledges the need for confidentiality for Table 4-1: Perkins Solar Capital Construction Budget, to prevent reverse engineering (Table 4-1), as well as to specific numerical references to Table 4-1 in Appendix R.

The CEC informed the applicant our intention to deny the Appendix R in part, and grant confidentiality for the component cost table. In a meeting with the applicant on May 23,

2024, the applicant stated that they accepted that Table 4-1 was to be granted confidentiality while the rest of Appendix R is to be made public.

Executive Director's Determination

Confidentiality is granted only for Table 4-1 in Appendix R and specific numerical references to Table 4-1 in Appendix R. Within 14 days of the date of this letter, please file a redacted Appendix R, excluding Table 4-1, in docket No. 24-OPT-01 to ensure public access.

You may request that the CEC determine the confidentiality of records for which the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director