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Docket Number:	23-OPT-02
Project Title:	Darden Clean Energy Project
TN #:	254593
Document Title:	Appendix M_Socioeconomics Study Feb 2024_Application for Confidential Designation
Description:	Letter requesting confidential designation of values in Table 39 in the Socioeconomics Study for the Darden Clean Energy Project.
Filer:	Becky Moores
Organization:	Intersect Power
Submitter Role:	Applicant
Submission Date:	2/20/2024 5:23:49 PM
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February 20, 2024

**RE: Docket No. 23-OPT-02 – Darden Clean Energy Project Opt-In Application
Request for CEC Determination of Confidentiality of Records – Table 39 of Appendix B
Project Economic and Employment Assumptions of Appendix M Socioeconomics Study.**

Applicant: IP Darden I, LLC and Affiliates c/o Intersect Power, LLC

Address: 9450 SW Gemini Drive, PMB #68743 Beaverton, Oregon 97008-7105

To whom it may concern:

Pursuant to California Code of Regulations, Title 20, Section 2508, IP Darden I, LLC and Affiliates c/o Intersect Power, LLC ("IP Darden"), as applicant for the Darden Clean Energy Project ("Project"), respectfully requests that the California Energy Commission ("CEC") reverse its denial of confidentiality of Table 39 (Total Construction Costs by Component and Option) ("Table 39")¹ of sub-appendix B (Project Economic and Employment Assumptions of Appendix M Socioeconomics Study) ("Appendix B") of IP Darden's Opt-In Application for the Darden Clean Energy Project in Docket 23-OPT-02 submitted on November 7, 2023. IP Darden further requests that the CEC designate Table 39 as confidential to prevent economic harm to IP Darden from its public disclosure.

On November 7, 2023, IP Darden submitted an Application for Confidential Designation to the CEC ("Application") seeking to protect Appendix B in its entirety from disclosure on the basis that it contains trade secrets or that its disclosure would otherwise cause a loss of competitive advantage. IP Darden submitted a confidential unredacted copy of Appendix B together with its Application. On February 6, 2024, IP Darden received a letter from the CEC denying confidentiality for Appendix B on the basis that IP Darden did not make a reasonable claim that Appendix B contains trade secrets or otherwise would cause a loss of competitive advantage under Cal. Code Regs., Title 20 Section 2505(a)(1)(D), and that it is not aware of any economic harm resulting from its disclosure ("Denial").

Under the California Code of Regulations, Title 20, Section 2505(a)(3)(A), a properly filed Application for Confidentiality shall be granted ". . . if the applicant makes a reasonable claim that the [California] Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential." IP Darden has established a reasonable claim under the California Public Records Act that Table 39 contains trade secrets and public disclosure of Table 39 will cause IP Darden a loss of competitive advantage under Cal. Code Regs., Title 20 Section 2505(a)(1)(D) in its Application, and as further detailed herein.

IP Darden will suffer economic harm from public disclosure of IP Darden's estimated and forecasted construction costs per component contained in Table 39 of Appendix B. Disclosure would create a

¹ Table 39 (Total Construction Costs by Component and Option) was mistakenly referenced as Table 40 in IP Darden's Application for Confidential Designation submitted on November 7, 2023.

significant market disadvantage for IP Darden, compromise IP Darden's bargaining position during contract negotiations, provide competitors an advantage, and compromise IP Darden's competitive position in the CAISO power market, potentially resulting in higher energy prices for consumers. Accordingly, IP Darden submits that the CEC should reverse its Denial with respect to Table 39 of Appendix B and confirm that only a redacted version of Appendix B (as submitted by IP Darden via the CEC online portal on February 20, 2024) shall be made publicly available.

The below sets forth a description of the confidential information contained in Table 39 that should be masked, the length of time Table 39 should remain confidential, the reasons confidential treatment is necessary to prevent disclosure of trade secrets and loss of economic advantage, and the steps IP Darden takes to keep the information confidential.

I. Document Title, Date, Description and Identification of Confidential Information

The construction costs contained in Table 39 (Total Construction Costs by Component and Option) in Appendix B Project Economic and Employment Assumptions of Appendix M Socioeconomics Study, October 2023, 5 pp.²

II. Length of Time the Information Should be Kept Confidential

IP Darden hereby requests that the information should be kept confidential indefinitely. This length of time is needed to ensure that IP Darden is not in violation of any of its non-disclosure agreements (“NDAs”) with its commercial partners and to ensure IP Darden's detailed construction cost information remains secure from market participants who could otherwise make competitive use of this information to the detriment of IP Darden and IP Darden's current or future negotiations with counterparties.

III. Justification under the Public Records Act and other Laws for Request of Confidential Treatment

The Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan, ... production data, or compilation of information ..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service ... and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.”³

Under the California Evidence Code, information that is commercially sensitive is also considered a “trade secret.”⁴ 20 C.C.R. § 2505(a)(1)(D) provides for information to be designated as confidential if it “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.”⁵ Pursuant to 20 C.C.R. § 2505(a)(1)(D), set forth in detail below are the commercially sensitive nature of the

² IP Darden requested confidential treatment of Exhibit B in its entirety in IP Darden's Application. However, the commercially sensitive information that will result in economic harm to IP Darden is contained specifically in Table 39. The information contained in Table 39 is also subject to NDAs between IP Darden and third parties. Accordingly, IP Darden requests only confidential treatment of Table 39.

³ Govt. Code § 6254.7(d); see also, §§ 6254(k) and 6254.15.

⁴ Cal. Evid. Code § 1060; Cal. Civ. Code § 3426.1(d).

⁵ 20 C.C.R. § 2505(a)(1)(D).

information in Table 39 that constitutes trade secrets, the specific nature of the competitive advantage that would be lost through public disclosure of such information, the value of the information to IP Darden, the ease or difficulty with which such information could be legitimately acquired or duplicated by others, and how IP Darden keeps the information in Table 39 confidential.

A. Trade Secrets and Loss of Competitive Advantage

Table 39 contains commercially sensitive information on the estimated and forecasted capital costs for the Project and its many components, including cost information for: PV Solar, BESS, Green Hydrogen Facility, Step-up Substation, Gen-tie, Utility Switchyard and Other Related Costs.

B. Specific Nature of Competitive Advantage

The information contained in Table 39 contains commercially sensitive data and trade secrets. IP Darden's competitive advantage is established through successful negotiations and agreements with a multitude of counterparties, competing developers, and other industry parties, including but not limited to offtake contracts, financing agreements, and capital purchase agreements for technology and equipment. These agreements establish the Project's legitimacy and enable the progression of the Project through key milestones, eventually leading to successful financing, construction, and commercial operations. Favorable terms are achieved through the negotiation process during which counterparties are only made aware of specific Project and cost details that are applicable to that counterparty. IP Darden naturally does not disclose the details of the entire Project's costs to such counterparties. IP Darden takes several steps to ensure this information is preserved through agreements with these counterparties, including executing NDAs regarding its agreements with key partners that are integral to the Project's success and with whom IP Darden maintains strong business relationships.

C. How Competitive Advantage Would Be Lost Through Disclosure

Disclosure of any of the cost information set forth in Table 39, or derivatives of this cost information, would enable counterparties to reverse-engineer expected returns, capital cost components, and other key details of the Project that would lessen IP Darden's negotiating power. If counterparties were internally estimating a materially different amount than what is disclosed, this information would impact and inform their negotiation strategy going forward. Competitors could also leverage this information to secure more favorable agreements for themselves by leveraging the results that IP Darden has achieved, further harming IP Darden's competitive advantage in the renewable energy development industry given the commercial terms already achieved privately. Disclosing these trade secrets and commercially sensitive data would lead to IP Darden's loss of a competitive advantage.

D. The Value of the Information to IP Darden

Public disclosure of Table 39 could harm IP Darden's existing and future commercial opportunities. Preventing public disclosure of this information would ensure counterparties are not able to reverse-engineer any conclusions about the Project's viability and/or progress that IP Darden has not previously disclosed. The confidentiality of Table 39 as requested herein would allow IP Darden to continue to negotiate commercially favorable agreements with a number of counterparties and to operate

the Project in the most commercially competitive manner possible. IP Darden is currently engaged in contract negotiations with potential Project partners and anticipates additional negotiations to continue in the near term. For each of these negotiations, it is paramount that IP Darden is able to maintain its advantage over competitors and that its position is not compromised by making public its key Project costs. Maintaining confidentiality also ensures that no existing agreements are violated due to disclosure of information in violation of an existing NDA, thus avoiding any contractual liability to and/or damage to business relationships with counterparties with whom IP Darden has executed NDAs.

E. The Ease or Difficulty With Which the Information Could Be Legitimately Acquired or Duplicated by Others and How the Information is Kept Confidential by IP Darden

The information set forth in Table 39 could not be legitimately acquired or duplicated by others. IP Darden's Project cost figures have been carefully assembled, leveraging myriad internal resources, including commercial partnerships, existing agreements, proprietary in-house knowledge, and prior project experience. This information is not publicly available and has not been disclosed to anyone other than employees, attorneys or consultants working with IP Darden, and only once such parties have executed NDAs, because IP Darden considers such information to be commercially sensitive, proprietary information, and trade secrets. IP Darden has taken reasonable steps to preserve the confidentiality of this information. The information in question is subject to NDAs associated with existing agreements, as described above. IP Darden ensures that the information contained in Table 39, and all other similar information of commercial value, is kept strictly confidential in perpetuity.

IV. Conclusion

Based on all of the above, Table 39 of Appendix B should be masked and kept confidential pursuant to Title 20, Section 2505(a)(1)(D) because it contains commercially sensitive information, trade secrets and other information that, if disclosed publicly, would cause loss of a competitive advantage and would violate existing NDAs that IP Darden has in place with commercial partners to keep such information confidential. Accordingly, IP Darden respectfully requests that the CEC reverse its Denial and designate Table 39 as confidential indefinitely.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct and complete to the best of my knowledge and I am authorized to make the application and certification on behalf of the applicant.

Sincerely,



Simon Ross
Chief Commercial Officer