

DOCKETED

Docket Number:	23-OPT-02
Project Title:	Darden Clean Energy Project
TN #:	255283
Document Title:	23-OPT-02_Darden_DR-SOCIO-7_Confidentiality Request
Description:	Request for confidentiality of response to data request DR SOCIO-7
Filer:	Becky Moores
Organization:	Intersect Power
Submitter Role:	Applicant
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March 22, 2024

California Energy Commission
1516 Ninth Street
Sacramento, California 95814

**RE: Docket No. 23-OPT-02 – Darden Clean Energy Project Opt-In Application
Application for Confidential Designation – Data Request Response to DR SOCIO-7**

To whom it may concern,

Pursuant to California Code of Regulations, Title 20, Section 2505, IP Darden I, LLC and Affiliates c/o Intersect Power, LLC ("IP Darden"), as applicant for the Darden Clean Energy Project ("Project"), hereby submits an Application for Confidential Designation ("Application") to the California Energy Commission ("CEC") requesting that the CEC designate the information IP Darden is submitting to the CEC with this Application¹ ("DR SOCIO-7 Data Request Response") as confidential on the basis that it contains trade secrets or that its disclosure would otherwise cause a loss of competitive advantage. IP Darden further requests that the CEC designate the DR SOCIO-7 Data Request Response as confidential to prevent economic harm to IP Darden from its public disclosure.

1. Contact Information (20 CCR 1208.1.)

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

Proceeding Name: Darden Clean Energy Project

Docket Number: 23-OPT-02

2. Title, date, and description (including number of pages) of the information or data for which you request confidential designation. (20 CCR 1208.1.)

DR SOCIO-7 Data Request Response (1 page), dated January 2024, submitted in response to "Attachment B: Title 20, Data Requests" of the CEC's December 11, 2023 "Determination of Incomplete Application and Request for Information for the Darden Clean Energy Project" in Docket 23-OPT-02. DR SOCIO-7 Data Request Response includes estimates for the property taxes generated during an operational year of the Project.

3. Specify the part(s) of the information or data for which you request confidential designation. (If the data is in charts or spreadsheets, highlighting is sufficient.) (20 CCR 2505(a)(1)(B.))

¹ The attached information, titled "DR SOCIO-7 Data Request Response," is being supplied in response to "Attachment B: Title 20, Data Requests" of the CEC's December 11, 2023 "Determination of Incomplete Application and Request for Information for the Darden Clean Energy Project" in Docket 23-OPT-02, received by IP Darden in response to IP Darden's application filed on November 10, 2023.



IP Darden requests that the dollar amounts of the average costs per year in property tax that the Project is expected to generate over a typical operating year be redacted and designated as confidential.

4. State and justify the length of time the CEC should keep the information or data confidential. The term requested must be relevant to the stated basis for confidentiality. (20 CCR 2505(a)(1)(C.))

IP Darden requests that DR SOCIO-7 Data Request Response 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 estimated capital and operational cost estimates, pricing information, and forecasted economic standing 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 contractors, financiers, offtakers, and other industry parties.

5. State the provision(s) of the California Public Records Act or other law that allows the CEC to keep the information or data confidential and explain why the provision(s) apply to that material. (See Gov. Code, §§ 7920.000-7930.215.) (20 CCR (a)(1)(D.))

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 DR SOCIO-7 Data Request Response contains trade secrets and public disclosure of DR SOCIO-7 Data Request Response will cause IP Darden a loss of competitive advantage under Cal. Code Regs., Title 20 Section 2505(a)(1)(D) in its Application.

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.”

Under the California Evidence Code, information that is commercially sensitive is also considered a “trade secret.” 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.”

Pursuant to 20 C.C.R. § 2505(a)(1)(D), DR SOCIO-7 Data Request Response includes estimates for the property taxes generated during an operational year of the Project, which include IP Darden’s estimated capital and/or operational cost(s) and/or pricing information and reflect IP Darden’s forecasted economic standing, all of which is commercially sensitive information, trade secrets and other information that, if disclosed publicly, would cause loss of a competitive advantage.



6. If the applicant believes that the information or data should not be disclosed because it contains trade secrets or its disclosure would otherwise cause a loss of a competitive advantage, the application also shall state: (20 CCR (a)(1)(D.))

Disclosure of the information contained in DR SOCIO-7 Data Request Response would create a 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.

(a) Specific Nature of Competitive Advantage

The information contained in DR SOCIO-7 Data Request Response 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.

(b) How Competitive Advantage Would Be Lost Through Disclosure

Disclosure of any of the cost information in DR SOCIO-7 Data Request Response, or derivatives of this cost information, would enable counterparties to reverse-engineer expected returns, capital cost components, or 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.

(c) The Value of the Information to IP Darden

Public disclosure of DR SOCIO-7 Data Request Response 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 DR SOCIO-7 Data Request Response 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.

(d) The Ease or Difficulty With Which the Information Could Be Legitimately Acquired or Duplicated by Others

The information set forth in DR SOCIO-7 Data Request Response could not be legitimately acquired or duplicated by others. IP Darden's estimates for property taxes include capital and operational cost figures that 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 this information. The information set forth in DR SOCIO-7 Data Request Response is subject to NDAs associated with existing agreements, as described above. IP Darden ensures that the information contained in DR SOCIO-7 Data Request Response, and all other similar information of commercial value, is kept strictly confidential in perpetuity.

7. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions. State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why. (20 CCR 2505(a)(1)(E.))

The information set forth in DR SOCIO-7 Data Request Response cannot be disclosed even if aggregated or masked due to the nature of capital and operational costs figures that are included in estimated property taxes. Any and all details pertaining to capital and operational costs are considered a trade secret and a significant component of IP Darden's competitive advantage in the industry.

8. State how the information or data is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred. (20 CCR 2505(a)(1)(F.))

The information set forth in DR SOCIO-7 Data Request Response is kept only for internal budgeting and forecasting purposes and is not ever disclosed to a person other than an employee, attorney or consultant 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.



Certification

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.

IP Darden I, LLC

DocuSigned by:

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By: Simon Ross, Chief Commercial Officer