

**DOCKETED**

<b>Docket Number:</b>	23-OPT-02
<b>Project Title:</b>	Darden Clean Energy Project
<b>TN #:</b>	255850
<b>Document Title:</b>	CEC's Response Letter to Application for Confidential Designation, dated 2-20-24
<b>Description:</b>	N/A
<b>Filer:</b>	Ngoc Tran
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	4/22/2024 1:38:27 PM
<b>Docketed Date:</b>	4/22/2024



April 22, 2024

**Via Email**

Simon Ross  
Becky Moores  
IP Darden I, LLC  
c/o Intersect Power, LLC  
9450 South West Gemini Drive, PMB #68743  
Beaverton, Oregon 97008-7105  
[simon.ross@intersectpower.com](mailto:simon.ross@intersectpower.com)  
[becky.moores@intersectpower.com](mailto:becky.moores@intersectpower.com)

**Application for Confidential Designation: Darden Clean Energy Project  
Docket No. 23-OPT-02**

Dear Simon Ross and Becky Moores:

On February 20, 2024, the California Energy Commission (CEC) received the IP Darden I, LLC and Affiliates c/o Intersect Power, LLC's (applicant) request for a reversal of the CEC's decision denying confidentiality (TN 254593) for the following document:

- Table 39 - Total Construction Costs by Component and Option (Table 39) of sub-appendix B (Project Economic and Employment Assumptions of Appendix M Socioeconomics Study) (Appendix B).

On November 7, 2023, the applicant sought confidentiality indefinitely for Appendix B in its entirety (TN 253046). In the CEC's response letter dated February 6, 2024 (TN 254357), the CEC denied the application due to a longstanding requirement that Appendix B data be disclosed, the applicant's failure to make a reasonable claim that the Appendix B report contains trade secrets, and that disclosure would cause a loss of competitive advantage under California Code of Regulations, title 20, section 2505(a)(1)(D).

In the application for reconsideration, the applicant is seeking confidentiality of the data contained in Table 39 of Appendix B, as opposed to confidentiality for Appendix B in its entirety. The applicant asserts that it will suffer economic harm from public disclosure of the data contained in Table 39 of Appendix B. It claims that pricing information within Table 39 is commercially sensitive and could be used by competitors to gain advantages in contract negotiations and claims that competitors could use the data to reverse-engineer expected returns, capital cost components, and other details of the Project. Further, the applicant claims that confidentiality is necessary to maintain compliance with its non-disclosure agreements with commercial partners.

The CEC and the applicant discussed the previous denial and the applicant's request for reversal in a meeting on March 5, 2024. In this meeting, the applicant reiterated their

argument that confidentiality was warranted due to trade secrets, strict non-disclosure agreements, commercially sensitive information, and competitive disadvantages.

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 applicant publicly provided an estimate of total project investment in its section of net economic benefits (TN 252965, Attachment A). The CEC believes that the information previously provided by the applicant is sufficient for CEC staff to conduct its socioeconomic analysis without revealing Table 39 data. The applicant has met its burden in its claims of confidentiality and commercially sensitive information.

### **Executive Director's Determination**

The applicant has made a reasonable claim that the Table 39 data in Appendix B can be maintained as confidential indefinitely. Specifically, it has made a reasonable claim that pricing information within Table 39 is commercially sensitive and could be used by competitors to gain advantages in contract negotiations. It has reasonably claimed that competitors could use the Table 39 data to reverse-engineer expected returns, capital cost components, and other details of the Project. Therefore, the CEC grants confidentiality, reversing its previous decision of denial.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email [confidentialityapplication@energy.ca.gov](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director