

<b>DOCKETED</b>	
<b>Docket Number:</b>	23-OPT-02
<b>Project Title:</b>	Darden Clean Energy Project
<b>TN #:</b>	258576
<b>Document Title:</b>	REV 1 DR PD-1_Application for Confidential Designation
<b>Description:</b>	Letter requesting items submitted for REV 1 DR PD-1 be accepted as confidential
<b>Filer:</b>	Becky Moores
<b>Organization:</b>	Intersect Power
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	8/19/2024 5:46:07 PM
<b>Docketed Date:</b>	8/20/2024



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August 16, 2024

California Energy Commission  
1516 Ninth Street  
Sacramento, California 95814

**RE: Docket No. 23-OPT-02 – Darden Clean Energy Project Opt-In Application for Confidential Designation – Data Request Response to REV 1 DR PD-1**

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 in response to the CEC’s Data Request REV 1 DR PD-1 (“*REV 1 DR PD-1 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 REV 1 DR PD-1 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.)**

REV 1 DR PD-1\_Oxygen Venting Design\_Confidential

August 2024

6 pages

**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.))**

The document in its entirety.



**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 REV 1 DR PD-1 Data Request Response be kept confidential until the commercial operation date of the hydrogen facility of the Project. 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 project components and design elements remain 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 REV 1 DR PD-1 Data Request Response contains trade secrets and public disclosure of REV 1 DR PD-1 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), REV 1 DR PD-1 Data Request Response includes detailed project designs related to the hydrogen facility of the Project , 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 REV 1 DR PD-1 Data Request Response would create a significant market disadvantage for IP Darden, compromise IP Darden's bargaining position during contract negotiations, and provide competitors an advantage, potentially resulting in a material loss of competitive advantage for IP Darden.

**(a) Specific Nature of Competitive Advantage**

The information contained in REV 1 DR PD-1 Data Request Response contains commercially sensitive data and trade secrets, including sensitive and first-of-its-kind design plans for the hydrogen component of the Project. IP Darden's competitive advantage is established through successful negotiations and agreements with a multitude of counterparties, engineering firms, 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, and rely on the fact that the information contained in REV 1 DR PD-1 Data Request Response is proprietary, confidential, and treated as a trade secret. 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 design detail information in REV 1 DR PD-1 Data Request Response would enable counterparties to use the information to advantageously negotiate contracts and bids, and to use the information for engineering and designing competing hydrogen projects in the market, which would lessen IP Darden's negotiating power and competitiveness in the market.<sup>1</sup> A hydrogen facility at the scale and with the specifics of what is outlined in the design detail information in REV 1 DR PD-1 Data Request Response has never been done before. Thus, disclosing these trade secrets and commercially sensitive data would lead to IP Darden's loss of a competitive advantage as a market leader in this space.

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<sup>1</sup> IP Darden submitted a similar confidentiality request in an application for reconsideration for its Table 39 of Appendix B Project Economic and Employment Assumptions of Appendix M Socioeconomics Study, as submitted to the CEC on February 20, 2024. After discussing in a meeting with the CEC on March 5, 2024, the CEC granted the confidentiality request on April 22, 2024, recognizing that if the cost data in Table 39 were made public, IP Darden's competitors would be able to reverse engineer additional details about the Project that would undermine IP Darden's competitive advantage. The information relating to the hydrogen design plans of the Project, as submitted in REV 1 DR PD-1 Data Request Response, hold similar commercial value as proprietary trade secrets; if competitors were to obtain the plans, they could straightforwardly leverage them to adjust their own hydrogen engineering and design plans in order to undermine IP Darden's position. As such, we ask that the CEC treat the information in REV 1 DR PD-1 Data Request Response consistently with how it treated the cost data information in Table 39 by recognizing it as a trade secret and granting this confidentiality request.



**(c) The Value of the Information to IP Darden**

Public disclosure of REV 1 DR PD-1 Data Request Response could harm IP Darden's existing and future commercial opportunities. The confidentiality of REV 1 DR PD-1 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 detailed design information contained in REV 1 DR PD-1 Data Request Response public. 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 REV 1 DR PD-1 Data Request Response could not be legitimately acquired or duplicated by others. 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 REV 1 DR PD-1 Data Request Response is subject to NDAs associated with existing agreements, as described above. IP

**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 REV 1 DR PD-1 Data Request Response cannot be disclosed even if aggregated or masked due to the nature of the detailed engineering design. Any and all details pertaining to detailed design of the hydrogen facility 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.))**



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The information set forth in REV 1 DR PD-1 Data Request Response is kept only for purposes of constructing the hydrogen facility to achieve the commercial operation of the overall Project 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

A handwritten signature in blue ink, appearing to read "SR", is written over a horizontal line.

Simon Ross  
Chief Commercial Officer