

DOCKETED

Docket Number:	23-OPT-02
Project Title:	Darden Clean Energy Project
TN #:	259210
Document Title:	CEC Response Letter Darden's App for Confidential Designation - Design
Description:	N/A
Filer:	Marianna Brewer
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	9/18/2024 3:03:17 PM
Docketed Date:	9/18/2024



September 18, 2024

Via Email

Becky Moores
IP Darden I, LLC
c/o Intersect Power, LLC
9450 SW Gemini Drive, PMB #68743
Beaverton, Oregon 97008-7105
becky.moores@intersectpower.com

**Application for Confidential Designation for Data Request Response to REV 1
DR PD-1
Docket No. 23-OPT-02**

Dear Becky Moores:

The California Energy Commission (CEC) has received an application for confidentiality from IP Darden I, LLC and Affiliates c/o Intersect Power, LLC (applicant) (TN258576), filed August 19, 2024, covering the following data:

- Oxygen Venting Design and specifications submitted in response to the CEC's Data Request REV 1 DR PD-1 (6 pages).

In Data Request Response to REV 1 DR PD-1, the applicant has provided a design document that identifies the oxygen vent locations, their height, and other data related to oxygen venting. The oxygen vents would be used to remove the excess oxygen created from the electrolysis of water into oxygen and hydrogen. The CEC asked for this information in order to determine whether oxygen venting will be conducted in a manner that poses a hazard of fire/explosion enhancement or a significant risk/hazard to workers.

The application states that Data Request Response to REV 1 DR PD-1 should be designated confidential to preserve confidentiality of the applicant's trade secrets and to protect sensitive information related to the design of energy infrastructure. The application states the documents should be granted confidentiality under the California Public Records Act, referencing Government Code sections 7927.605(a), 7927.705, Evidence Code section 1060, and Civil Code section 3426.1(d). The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code § 7922.000.) To support this position, the application claims that it is in the public's interest to have nondisclosure of this information to ensure industry competitiveness and maintain trade secrets. According to the applicant, disclosure of this information, including detailed, first-of-its-kind designs, of

the proposed hydrogen production facility, and the identity of the design vendor, would create a significant market disadvantage for the applicant, compromise the applicant's position during contract negotiations, and provide competitors an advantage.

Confidentiality Claims

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 Commission to keep the record confidential."

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, 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), provides 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.

Discussion

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

- 1) *The specific nature of the advantage* – The information contains commercially sensitive project design trade secrets.
- 2) *How the advantage would be lost* – Disclosure of this information would lead to the applicant's loss of a competitive advantage by enabling counterparties and

industry competitors to replicate first-of-its kind designs and other key details of the Project; and lessen the applicant's negotiating power and market competitiveness.

- 3) *The value of the information to the applicant* – Engineering information has independent economic value from not being generally known to the public or applicant's competitors who can obtain economic value from its disclosure. Release of design information could negatively affect the applicant's market standing and negatively impact future contract negotiations. The applicant also risks liability by breaking its non-disclosure agreements with third party business partners if the information is released.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* –The information could not be legitimately acquired or duplicated by others. The applicant's detailed design information for the project's energy infrastructure has not been disclosed publicly.

Executive Director's Determination

The applicant has made a reasonable claim that the Oxygen Venting Design and specifications submitted in response to the CEC's Data Request REV 1 DR PD-1 can be maintained as confidential until the commercial operation date of the hydrogen facility of the Darden Clean Energy Project. As such, the applicant's request for confidential designation is granted.

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.

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

Sincerely,



Drew Bohan
Executive Director