

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

DCR Transmission, L.L.C.) **Docket Nos. ER23-2309-001,**
) **ER24-1394-001, and**
) **EL26-34-000**
) **(consolidated)**

**MOTION FOR LEAVE TO FILE ANSWER AND LIMITED ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
NEW ARGUMENT RAISED BY DCR TRANSMISSION, L.L.C.**

The California Independent System Operator Corporation (CAISO)¹ hereby files a motion for leave to file an answer and limited answer² to an argument regarding the CAISO’s policy on the confidential treatment of documents in the competitive solicitation process that DCR Transmission, L.L.C. (DCRT) raises for the first time in the answer (DCRT Answer)³ it submitted in these proceedings on April 13, 2026 to the CAISO’s Request for Interlocutory Appeal and Emergency Request to Suspend Obligation to Respond to Data Request filed on April 10, 2026 (CAISO Interlocutory Appeal Request).⁴ For the

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO Tariff.

² The CAISO files this Limited Answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. For the reasons explained in section I below, the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to submit the Limited Answer.

³ The full title of the DCRT Answer is the Motion for Leave to Answer and Answer of DCR Transmission, L.L.C. to Motions for Interlocutory Appeal and Requests for Emergency Stay of the California Independent System Operator Corporation and the Electricity Transmission Competition Coalition.

⁴ On April 13, 2026, the Motions Commissioner issued a notice stating in relevant part that “CAISO’s obligation to provide a response to [DCRT] Data Request [10.09] . . . is suspended during pendency of the motions for interlocutory appeal. This notice reflects no finding on whether the Motions Commissioner will refer the motions for interlocutory appeal to the full Commission or on the merits of those motions.” *DCR Transmission, L.L.C.*, Notice of Motions Commissioner Suspending Proceeding, Docket Nos. ER23-2309-001, *et al.* (Apr. 13, 2026).

reasons explained below, the Commission should find DCRT's new argument to be meritless.

I. MOTION FOR LEAVE TO FILE LIMITED ANSWER

The CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to respond to the DCRT Answer. Good cause exists for the Commission to grant the requested waiver. This limited answer will aid the Commission in understanding the issues in this proceeding, inform the Commission in its decision-making process, and help to ensure a complete and accurate record in the case.⁵ Therefore, the Commission should grant waiver and accept this limited answer.

II. LIMITED ANSWER

The DCRT Answer mostly rehashes arguments DCRT has previously made in this proceeding.⁶ However, DCRT also makes a new argument that, purportedly, "the CAISO's document retention policies provide that bidding materials submitted during competitive solicitations are no longer treated confidentially once the CAISO has posted its Project Selection Reports providing for an award of a competitive transmission project to a winning Project Sponsor."⁷

DCRT is incorrect. The CAISO's policy on the confidential treatment of documents related to competitive solicitations (CAISO Competitive Solicitation

⁵ See, e.g., *ISO New Eng. Inc.*, 190 FERC ¶ 61,063, at PP 13, 25 (2025); *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,095, at PP 21, 60 (2024); *Midcontinent Indep. Sys. Operator, Inc.*, 189 FERC ¶ 61,065, at PP 17, 23 (2024); *Cal. Indep. Sys. Operator Corp.*, 188 FERC ¶ 61,225, at PP 24, 29 (2024).

⁶ See DCRT Answer at 13-23.

⁷ *Id.* at 23.

Confidentiality Policy), which the CAISO provided in response to Data Request DCRT-CAISO-6.02 and which is reproduced in Attachment A to the DCRT Answer,⁸ states “[t]he [CA]ISO, in its sole and reasonable discretion, will determine whether to treat information as confidential consistent with the [CA]ISO tariff and FERC policy.”⁹ As explained in the CAISO Interlocutory Appeal Request, most details of Project Sponsor bids are submitted to the CAISO subject to confidentiality protections, as those details would be highly useful to transmission project developers and also to counsel and consultants who advise Project Sponsors participating in CAISO competitive solicitations.¹⁰

The CAISO Competitive Solicitation Confidentiality Policy *does not* list details of Project Sponsor bids as being among the “types of information [that] shall not be considered confidential after the [CA]ISO publishes its project sponsor selection report to its website.”¹¹ To be sure, the CAISO Competitive Solicitation Confidentiality Policy lists “information pertaining to any cost containment measures, cost caps, and rate incentives,” which DCRT cites in its Answer,¹² but that is clearly different from information on the details of Project Sponsor bids that remains confidential after the CAISO publishes its Project

⁸ Specifically, as Attachment 15 to that CAISO response.

⁹ CAISO Competitive Solicitation Confidentiality Policy, Section A.

¹⁰ CAISO Interlocutory Appeal Request at 9.

¹¹ See CAISO Competitive Solicitation Confidentiality Policy, Section D (listing the following types of information releasable after the CAISO publishes its Project Sponsor selection report: “(a) the identity of all qualified project sponsors; (b) the high level design for the transmission facilities; (c) information pertaining to the proposed in service dates for the proposed transmission facilities; (d) information pertaining to any cost containment measures, cost caps, and rate incentives; (e) all information that is publicly available; (f) information a project sponsor has consented to release”).

¹² See DCRT Answer at 24.

Sponsor selection report. As CAISO witness Deborah A. Le Vine explained in testimony submitted in this proceeding:

In November 2015, the Federal Energy Regulatory Commission (FERC or the Commission) issued an order regarding the Midcontinent Independent System Operator, Inc.'s (MISO) competitive transmission process, in which the Commission ruled that the binding cost caps and cost containment measures of the selected project sponsor were not confidential information, and MISO could make that information public. *Midcontinent Independent System Operator, Inc.*, 153 FERC ¶ 61,168, at 20 PP 74-75 (2015) (*MISO*). Prior to this *MISO* order, due to confidentiality concerns in its Project Sponsor selection reports, the CAISO did not list with specificity the cost cap and cost containment measures the Approved Project Sponsor had proposed. Instead, the CAISO only generally stated the type of cost containment measures the Approved Project Sponsor had proposed. Following the *MISO* order, the CAISO changed its practice to state with specificity and detail all of the cost caps and cost containment measures the Approved Project Sponsor had proposed.¹³

Thus, consistent with the *MISO* order, the CAISO Competitive Solicitation Confidentiality Policy obligates the CAISO to make summary information on cost containment measures and cost caps non-confidential after it publishes its Project Sponsor selection report, but nothing in the *MISO* order or the CAISO Competitive Solicitation Confidentiality Policy requires the CAISO to release confidential information or proprietary and commercially sensitive details and assumptions underlying Project Sponsor bids. Nor, for the reasons explained in the CAISO Interlocutory Appeal Request, should the Commission require the CAISO to release such information in this proceeding.

¹³ Exh. No. CSO-0601 PUB (Prepared Rebuttal Testimony of Deborah A. Le Vine on Behalf of the California Independent System Operator Corporation) at 11:13-12:4 (filed Mar. 9, 2026) (Le Vine Rebuttal Testimony).

Further, the Approved Project Sponsor Agreements (APSAs) the CAISO has executed with Approved Project Sponsors—and has provided in this proceeding—contain all of the cost cap and cost containment measures applicable to their projects. Thus, the CAISO makes public the specific cost caps and cost containment measures. However, the CAISO does not make public the confidential information underlying those cost caps and cost containment measures. This includes, among other things: special vendor/contractor pricing arrangements; special financing arrangements or relationships a Project Sponsor may have; proprietary bidding/pricing strategies, cost structures, and supplier relationships; confidential or proprietary information from third parties (*e.g.*, engineering data, soil boring analysis, and geological data) that is subject to separate confidentiality protections between the bidder and those third parties; private company financials; capital structure; underlying debt and equity cost assumptions to the extent they are not specifically capped in the bid; a Project Sponsor's risk tolerance level or level of risk adjustments built into its bid; Project Sponsor cost structures; and Project Sponsors' operation and maintenance and other costs and cost advantages to the extent they are not capped in a bid.

A person who reads material cannot possibly unsee it. Having seen the bidding strategies and relevant confidential material of other Project Sponsors, individuals would be able to advise clients and competitors on bidding strategies that might be successful based on their knowledge of competitor information without ever needing to disclose the specific confidential information on which their knowledge was based. In other words, it gives consultants and attorneys

access to this confidential and commercially sensitive information, as well as granting access to in-house DCRT staff (and the staff of other participants in this proceeding) who may not be competitive personnel now but may be in the future. Requiring release of this confidential and commercially sensitive information will provide a roadmap to competitors as to better enable them to win CAISO competitive solicitations to the disadvantage of the non-party Project Sponsors whose confidential and commercially sensitive information would be disclosed.

DCRT also erroneously claims CAISO witnesses Le Vine and Dr. Martha R. Davis relied on confidential bid information of Project Sponsors other than DCRT in preparing their testimony in this proceeding.¹⁴ In fact, the CAISO witnesses reviewed *DCRT's* bid and APSA with the CAISO to prepare their testimony but only reviewed *the APSAs* of other Project Sponsors—not their bids.¹⁵

Nothing in the CAISO witnesses' testimony or cross-examination in the hearing in this proceeding indicates otherwise. To the contrary, CAISO witness Davis expressly stated on cross-examination that she did not review any bids besides DCRT's.¹⁶ Similarly, CAISO witness Le Vine did not rely on any bids

¹⁴ DCRT Answer at 6-7 & n.27, 10 & n.52, 13, 17-18 & n.77-81.

¹⁵ See *generally* Le Vine Rebuttal Testimony; Exh. No. CSO-0801 (Prepared Rebuttal Testimony of Martha R. Davis, PhD on Behalf of the California Independent System Operator Corporation) (filed Mar. 9, 2026). As these CAISO witnesses indicated, they could glean non-confidential bid information from review of the non-DCRT APSAs alone. See, e.g., Le Vine Rebuttal Testimony at 14:20, 15:2-5 (“These APSAs included either an express inflation adjustment or a cost cap stated in the ‘constant dollars’ of a particular year which then all have a form of base year adjustment or inflation adjustment as agreed to by the CAISO. . . . This shows that the CAISO and other Approved Project Sponsors clearly know how to include wording in their bid that indicates the binding cost cap is subject to a future inflation adjustment.”).

¹⁶ Specifically, in response to the question “[I]s it correct that you did not review the bids of any APSAs other than the DCRT APSA?”, CAISO witness Davis answered “That is correct. The

other than the DCRT bid in preparing her Answering, Cross-Answering, and Rebuttal Testimony in this proceeding.¹⁷ The CAISO is therefore willing to stipulate into the record that its witnesses did not review or rely on these bids and applications in preparing their testimony in this proceeding. The bids and applications DCRT seeks are from entities who are not parties to this proceeding and they are not the bids and applications from the competitive solicitation underlying the proceeding—they pertain to other unrelated competitive solicitations which DCRT did not win going back more than 10 years. The content of these bids and applications from completely different competitive solicitations do not change what DCRT proposed in its bid/application or what was included in the DCRT APSA for the underlying competitive solicitation.

only bid I have reviewed is the DCRT bid.” Transcript for proceeding at 3155:22-3156:1 (Apr. 10, 2026). For ease of reference, the CAISO provides the cited pages of the transcript (which is not yet available on the Commission’s website) as Attachment 1 to this limited answer. Also, when the CAISO filed its Interlocutory Appeal Request, it inadvertently included the transcript in this proceeding for the incorrect day (March 25, 2026) as Exhibit A-1 thereto. The CAISO corrects its error by including the transcript for the correct day (April 6, 2026) as Attachment 2 to this limited answer.

¹⁷ See, e.g., CAISO Interlocutory Appeal Request, Exh. B-1 (Answer of the California Independent System Operator Corporation to Motion to Compel of DCR Transmission, L.L.C.,) at 1-2, 5-6 (Apr. 2, 2026).

III. CONCLUSION

For the foregoing reasons, the Commission should find no merit in the new argument contained in the DCRT Answer.

Respectfully submitted,

Anthony J. Ivancovich
Deputy General Counsel
Sarah Kozal
Senior Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7222
Email: aivancovich@caiso.com
skozal@caiso.com

/s/ Sean A. Atkins
Sean A. Atkins
Bradley R. Miliauskas
Samin Peirovi
Davis Wright Tremaine LLP
1301 K Street, NW
Suite 500 East
Washington, DC 20005
Tel: (202) 973-4200
Fax: (202) 979-4499
Email: seanatkins@dwt.com
bradleymiliauskas@dwt.com
saminpeirovi@dwt.com

Counsel for the California Independent System Operator Corporation

Dated: April 15, 2026

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the above-captioned dockets, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 15th day of April, 2026.

/s/ Daniel Klein

Daniel Klein
Davis Wright Tremaine LLP

Attachment 1

1 A 2991?

2 Q 2991, yes, that's the one.

3 A Okay. I'm stuck in the search looking at the
4 index.

5 PRESIDING JUDGE: You've got to scroll to the
6 top and start the search over again unfortunately.
7 Otherwise, you get stuck in the index.

8 THE WITNESS: That was where I was stuck. Thank
9 you for the tips.

10 PRESIDING JUDGE: You're welcome.

11 THE WITNESS: 2991.

12 BY MR. HALL:

13 Q Yes.

14 A Okay. Very good I'm here.

15 PRESIDING JUDGE: We learn judge tricks when we
16 do this enough times.

17 THE WITNESS: I appreciate that, judge tricks.

18 BY MR. ATKINS:

19 Q So I'm going to ask a question or two about the
20 questioning that runs from about lines 5 through line 17.

21 A Okay. I'm here.

22 Q Great. And at the end of that portion, is it
23 correct that you did not review the bids of any APSAs other
24 than the DCRT APSA?

25 A That is correct. The only bid I have reviewed

1 is the DCRT bid.

2 Q Okay. Did you -- let me ask, why did you decide
3 not to review bids for other APSAs?

4 A It goes back to what I was saying yesterday with
5 respect to if there's ambiguity of intent.

6 And I did not personally have any ambiguity when
7 reviewing the DCRT APSA. But I understand that that may be
8 a question that others have. So in that case, I did review
9 a related extraneous document that was related to the APSA.

10 In the case of the other APSAs that I reviewed
11 and we talked about yesterday, it's a rather large package,
12 so to be clear, the scope of my review was simply to do a
13 word search for words like inflation or, you know, cost
14 cap. And I found -- I found four APSAs. And I did not
15 read those APSAs in their entirety. I looked at those
16 appendix E and specifically the numbered tables at the
17 beginning of those appendix E to see how those were written
18 and to review the terminologies used.

19 I also did not have any ambiguity in reviewing
20 those. And since that was really already pretty far
21 outside of the scope of what I was looking at in my
22 testimony, because I was just looking to see if the DCRT
23 APSA authorized a post-2020 adjustment to its binding cost
24 cap, and if it did, if it included sufficient specificity
25 to do that calculation. That was the purpose of my review.

Attachment 2

Federal Energy Regulatory Commission

Date: April 6, 2026

Volume: 22

Case: In the Matter of: DCR Transmission, L.L.C., Dkt Nos. ER23-2309-001, et al.



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BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

- - - - -	-x	Docket Numbers
IN THE MATTER OF:	:	ER23-2309-001
DCR TRANSMISSION, L.L.C.	:	ER24-1394-001
- - - - -	-x	EL26-34-000
		(Consolidated)

Hearing Room 4
Federal Energy Regulatory
Commission
888 First Street, NE
Washington, DC
Monday, April 6, 2026

The above-entitled matter came on for oral argument,
pursuant to notice, at 10:00 a.m.

BEFORE: HONORABLE JOEL deJESUS
ADMINISTRATIVE LAW JUDGE
APPEARANCES (HERETOFORE NOTED.)

1 P R O C E E D I N G S

2 PRESIDING JUDGE: Let's go on the record.

3 Good morning, everyone. Today is Monday, April
4 6, 2026, and this is in the matter of DCR Transmission,
5 L.L.C., Docket Numbers ER23-2309-001, ER24-1394-001 and
6 EL26-34-000 Consolidated.

7 So the evidentiary hearing is currently still in
8 recess, at least for a couple of days, but I called this
9 oral argument by orders dated March 27, 2026, and April 1,
10 2026, to address two motions of DCRT to compel responses
11 from CAISO.

12 First motion was filed on March 26, 2026, and
13 the second was filed April 1, 2026.

14 I wanted to hear arguments from ETCC, who filed
15 an answer on April 2 opposing the March 26 motion, and
16 CAISO, who filed an answer on April 2 opposing both motions
17 as well as a supplement filed on April 3.

18 So I plan to discuss a couple of administrative
19 matters related to recommencing our hearing after the oral
20 argument. And per my March 27 and April 1 orders, we are
21 meeting in person at the Commission in Hearing Room 4,
22 where we'll be conducting our evidentiary hearing when it
23 resumes on Wednesday.

24 As usual, the record will include this -- our
25 court reporter's transcript of these proceedings, along

1 with the exhibits I admit.

2 Please, for those of you on the Teams, do not
3 record the Teams discussion.

4 Let me see here, looking around the room. I
5 don't see California Public Utilities Commission. Are they
6 online?

7 MS. GHAFARIAN: Yes, your Honor. We're online.
8 We will be there on Wednesday, but we're flying out
9 tomorrow so we couldn't be here for the oral argument.

10 PRESIDING JUDGE: Good morning, Ms. Ghaffarian.

11 MS. GHAFARIAN: Good morning.

12 PRESIDING JUDGE: Okay. Are there any counsel
13 here who need to make an appearance who hasn't made one
14 yet? I'm not hearing any.

15 Is someone from LS Power Grid here?

16 MR. ROBICHAUD: Yes, your Honor.

17 PRESIDING JUDGE: All right. And you are?

18 MR. ROBICHAUD: Josh Robichaud.

19 PRESIDING JUDGE: Hello. So I understand by
20 letter dated April 3, 2026, LS Power Grid, and I'll quote,
21 "moves to answer the March 31, 2026, motion to compel filed
22 by DCR Transmission, L.L.C." And that's under Accession
23 Number 2026-043-5150. And that letter also indicated that
24 Mr. Robichaud would be present today at the oral argument
25 to address any questions or concerns during this

1 proceeding.

2 My concern, Mr. Robichaud, frankly, is that LS
3 Power Grid is not a party to these consolidated
4 proceedings, so I don't believe you have standing to make
5 the motion or appear before this Court, so I'm going to
6 deny the motion.

7 It's a public proceeding, so you're welcome to,
8 you know, stay in the back as long as you don't disrupt the
9 discussions. But that's at least my ruling on the motion
10 that you submitted. Thank you very much.

11 MR. ROBICHAUD: Understood. Thank you.

12 PRESIDING JUDGE: All right.

13 Let's get to what we're here to talk about
14 today, and that's the oral argument. I'm going to list out
15 several pleadings that were submitted for my consideration.
16 I just want to make sure that I haven't missed anything,
17 especially some of the things that came in at the 11th
18 hour, actually probably less than seven hours, right, or --
19 so I've got a motion to compel the California Independent
20 System Operator Corporation to respond to DCR Transmission,
21 L.L.C.'s 10th set of data requests, requests for shortened
22 answer period, requests for oral argument, all on April 1,
23 2026, and requests for expedited consideration filed March
24 26, 2026.

25 I also have an opposition of electricity

1 transmission competition coalition for request for
2 shortened answer period on motion to compel. That was
3 filed in October, Numbers ER23-29-000 et sequi em,
4 ER24-1394-000 et sequi em and EL26-34-000, that was filed
5 March 27, 2026.

6 I have an errata to motion to compel that was
7 filed by the company on March 27, 2026.

8 I also have a motion to compel the California
9 Independent System Operator Corporation to respond to DCR
10 Transmission, L.L.C.'s revised 11th set of data requests,
11 request for shortened answer period, request for
12 consolidated oral argument, on April 6, a request for
13 expedited consideration, which was filed March 31, 2026.

14 Next I have California Independent System
15 Operator Corporation -- answer of California Independent
16 System Operator Corporation to motions to compel of DCR
17 Transmission, L.L.C., Docket Number ER23-2309-000.

18 Actually, I think on the face of the pleading,
19 the subdockets were blanked out, but these are the
20 dockets -- subdockets that the secretary filled in. And
21 get to that in a minute.

22 But that's ER23-2309-000, ER24-1394-000, and
23 EL26-34-000, which was filed on April 2.

24 Next, I have an opposition of electricity
25 transmission competition coalition to motion to compel

1 CAISO's production of unrelated competitive bids,
2 supporting materials, and subsequent contracts.

3 Again, I'm going to read off the docket numbers
4 that the Secretary assigned this to, Docket Numbers
5 ER23-2309-000, ER24-1394-000, EL -- and EL26-34-000. And
6 that was filed April 2 as well.

7 I also have a motion of the California
8 Independent System Operator Corporation to supplement
9 answer to motion to compel of DCR Transmission, L.L.C. and
10 for shortened answer period. ER23-2309-000, ER24-1394-000,
11 ER26-34-000 filed April 3.

12 And then I have a couple of supplemental
13 responses, so I have supplemental responses to -- actually,
14 since some of those came late, they didn't make it into my
15 script. Give me a second here.

16 So I have supplemental response to
17 DCR-CAISO-10.09 PRIV and PUB -- PRIV HC and PUB versions of
18 that.

19 I have a supplemental response to
20 DCR-CAISO-11.07, a supplemental response to DCR-CAISO-11.08
21 PRIV and PUB versions of that. And then I also have a
22 second supplemental response to DCR-CAISO-11.07, which came
23 in at various times yesterday.

24 That's what I have to consider today. I am
25 aware that there are a couple of competing pleadings on the

1 joint witness list, which I'm not going to address today,
2 so we'll talk about that on Wednesday. But I just was
3 inundated with materials to prep for this weekend, and I
4 just didn't have a chance to do that.

5 So of the I'm going to say eight -- seven
6 pleadings and the supplemental responses, do I have
7 everything that I need for this oral argument?

8 MR. HALL: Your Honor, we were going to suggest,
9 if it was helpful, to actually bring some APSAs up on the
10 screen to explain some of our positions.

11 MR. ATKINS: Your Honor, I object to this. They
12 are certainly entitled to, you know, make oral argument on
13 the scope of their motions, but it does appear to me that
14 to go through and provide additional arguments on the basis
15 of APSAs is really an attempt on the eve of oral argument,
16 not even the eve, after our oral argument is already
17 underway, to supplement their motions to compel.

18 PRESIDING JUDGE: I'm going to -- I'm going to
19 try to avoid going into closed session if I have to,
20 Mr. Hall.

21 MR. HALL: Okay. Okay.

22 PRESIDING JUDGE: Let's see if we can make our
23 arguments without resorting to actual APSA text, if we can.

24 MR. HALL: Okay. Okay.

25 PRESIDING JUDGE: But, again, do I have all the

1 pleadings I need to consider?

2 MR. ATKINS: From the CAISO's perspective, you
3 do, your Honor.

4 PRESIDING JUDGE: And I'm assuming that no other
5 participant submitted any answers. I didn't see any.

6 Unlike my usual course, if I sense that there's
7 general consensus around an oral argument, I'll allow
8 parties to make answers here at the oral argument. That
9 was not the case for this oral argument.

10 So what I've got is what I've got. But I
11 recognize that Cal ISO actually asked indulgence to present
12 arguments at this oral argument in addition to its answer,
13 and I'm not going to allow that, just like I won't allow
14 DCR to make additional arguments to supplement their
15 motion.

16 I mean, the deadlines were the deadlines. I
17 tried to balance everyone's interests in terms of getting
18 responses in, and trying to get a ruling as quickly as I
19 could.

20 MR. ATKINS: And, your Honor, understood.

21 A clarifying question, if I may?

22 PRESIDING JUDGE: Sure.

23 MR. ATKINS: Would we be permitted to address
24 the supplemental data responses we provided yesterday and
25 last evening to explain our efforts to narrow the scope of

1 the contested issues?

2 PRESIDING JUDGE: Yeah, you will. And I'm
3 probably going to ask the company if any of those responses
4 change their position on whether they want to press the
5 motion to compel.

6 But my plan is to step through, just like we did
7 the last oral argument on a motion to compel, I'm going to
8 step through each of the objections one by one, and then
9 I'm going to step through each data request that's at
10 issue, see if they're still at issue and then ask my
11 questions about the ones that are still at issue.

12 So if you all had planned some sort of grand
13 opening statement or something like that, I don't need
14 that. I did spend all weekend reading these things.

15 You all get extra credit if you actually snuck
16 in actual Easter eggs into these pleadings, but I didn't
17 catch any. But that's my plan.

18 Let me run through a couple of other points
19 about the pleadings before we get into the merits of the
20 arguments.

21 First, seems to be some confusion about the
22 docket numbers, so I'll just make clear, the only dockets
23 that I have jurisdiction over are Docket Numbers
24 ER23-2309-001, Docket ER24-1394-001, and Docket
25 EL26-34-000.

1 So I did pull whatever was filed, even if they
2 weren't in those subdockets, on the assumption that you all
3 wanted me to consider those, but I'm not making rulings
4 with respect to subdockets 000 or 002. You know, if you
5 want to press those, I think 002 is the rehearing docket,
6 at least DCRT's rehearing docket. I don't know if there's
7 going to be another rehearing docket in this case.

8 And 000 was the settlement docket, so I'm not --
9 I don't have anything to do with that subdocket. So I'd
10 ask that you caption your pleadings accordingly.

11 Mr. Engleman, first question for you on the
12 pleadings is I just wanted to confirm, so you answered the
13 March 26 motion, but you did not answer the March 31
14 motion?

15 MR. ENGLEMAN: That is correct, your Honor.

16 PRESIDING JUDGE: Okay. Thank you.

17 And, Mr. Atkins, the April 3 supplement was
18 styled as a motion. To me it seemed like a late answer to
19 the March 26 motion, since the deadline was April 2, but it
20 was an early answer to the March 31 motion.

21 For completeness, I'm going to consider it a
22 timely answer to the March 31 motion and not as a motion.

23 I'm going to ask CAISO and DCRT if they have any
24 objection to that so I don't have yet another motion to
25 consider.

1 MR. ATKINS: Your Honor, the April 3 filing
2 provides information from affected third parties that is
3 relevant to 10.09, so the March 26 motion to compel.

4 Your Honor, I'd respectfully request that you
5 take that into account. We have -- you know, I think there
6 will be a significant due process issue in a proceeding
7 where essentially DCRT is seeking confidential information
8 from all of their competitors in the CAISO planning process
9 and there is no forum to provide information that those
10 competitors provided under an accelerated time frame.

11 We provided it as quickly as we could, but, your
12 Honor, I'd just request that that be taken into account
13 with respect to both the March 26 and the March 31 motion.

14 PRESIDING JUDGE: Okay. I'm not going to
15 compartmentalize my brain. I'm going to consider it one
16 way or the other. The only question is whether I need to
17 wait 15 days for an answer period from the company.

18 So let me ask the company, do you want to wait
19 15 days to address the supplement, or can we address it
20 now? Are you prepared to address it at this oral argument?

21 MR. HALL: Yes, your Honor, we are. Let's
22 address it today.

23 PRESIDING JUDGE: Okay. All right.

24 So just so we're clear, it's coming in. I'm
25 going to treat it as if it was a timely answer, and we'll

1 just address it on the merits. Okay.

2 One last question. I'm going to address it to
3 this side of the room.

4 Are the basic facts about when DCRT propounded
5 the discovery requests, when CAISO objected, when the meet
6 and confer efforts were stated, are those in dispute or do
7 we have to step through each step in the history of this
8 argument?

9 MR. ATKINS: Your Honor, I guess subject to
10 certain understandings, I do not believe there is a
11 dispute. I think the -- all objections were filed on a
12 timely basis. I think the motions to compel were on a
13 timely basis, and we are not objecting to that, you know,
14 under the relatively expedited time frame for discovery
15 during this limited period.

16 I believe everybody met their deadlines, and
17 these are, although we wish they were not being presented
18 to you on the eve of the hearing, I think these are all
19 timely and properly before you.

20 I don't know if DCRT counsel would agree with
21 those assumptions.

22 PRESIDING JUDGE: Counsel? I mean, you wrote
23 the pleading so I assume you agree with how this all played
24 out.

25 MR. HALL: Correct. As outlined in our log,

1 your Honor.

2 PRESIDING JUDGE: Yes. All right. If I have to
3 write an order on this, I will follow the dates and steps
4 in the communications logs attached to the two motions.

5 I did have a question again for you,
6 Mr. Engleman. It appears that from the March 31 motion
7 that ETCC did not attend the March 31 meet and confer on, I
8 guess, the 11th set of data requests; is that correct?

9 MR. ENGLEMAN: That is correct.

10 PRESIDING JUDGE: Okay. Just wanted to confirm
11 that. Thank you.

12 Okay. So as I said, I'd like to step through
13 each of the objections first and then go through each of
14 the disputed data requests or data responses. And just for
15 people sort of following along, I've broken them down into
16 six objections generally.

17 So first I want to cover overbreadth and
18 relevance, combine those really two objections into a
19 single category of objections.

20 Then I'll address vagueness, undue burden, then
21 custody, then the privilege objections, and then I'll
22 finish off with the confidentiality objections that CAISO
23 raised -- well, actually, ETCC and CAISO raised in
24 connection with the California ISO tariff.

25 MR. ATKINS: Your Honor, may I ask a clarifying

1 question on that?

2 Where would the arguments regarding beyond the
3 scope of the limited discovery period fall under that
4 organization?

5 PRESIDING JUDGE: The very first one,
6 overbreadth.

7 MR. ATKINS: The very first one, got it. Thank
8 you, your Honor.

9 PRESIDING JUDGE: Any other questions before we
10 begin?

11 And like I said, I've read everything, and I
12 don't need opening statements, so I'm just going to start
13 off by asking questions. And I'll start with the company
14 on overbreadth.

15 So, Mr. Hall, did the parties have a written
16 agreement as to the scope of these two rounds of discovery?

17 MR. HALL: No, your Honor, certainly nothing
18 that would limit the scope of discovery in the way that
19 CAISO has characterized it.

20 PRESIDING JUDGE: Did they have an oral
21 agreement, do you know?

22 MR. HALL: No.

23 PRESIDING JUDGE: All right. So, I mean, the
24 only evidence I have for the agreement is the phrase, which
25 came in the February 4 motion to extend the procedural

1 schedule, limited discovery on new rebuttal testimony.

2 MR. HALL: Correct, your Honor.

3 PRESIDING JUDGE: And did the company and the
4 Intervenors have an understanding as to what limited meant
5 in that context?

6 MR. HALL: Your Honor, our understanding of the
7 discovery for that three-week period related to questions
8 related to issues raised in the documents we called new
9 rebuttal. We in no way, shape or form ever contemplated or
10 agreed to an interpretation where the word "new" somehow
11 pertained to only -- only limited discovery to new issues
12 raised in those documents.

13 So our interpretation is basically reflected in
14 our requests, and we in no way, shape, or form are agreeing
15 to limit our questions to new issues that were specific to
16 the documents we just happened to call in the rebuttal
17 testimony.

18 PRESIDING JUDGE: So let me just sort of parse
19 that out. One way to read the word "limited" just means
20 sort of the time frame, and we only had a couple weeks or
21 four weeks to do all of the discovery. That's not what you
22 all meant by limited; right?

23 MR. HALL: Correct, your Honor.

24 PRESIDING JUDGE: Okay. And it's got to mean
25 something. So it can't be a fishing expedition, it has to

1 be somehow tied to --

2 MR. HALL: Tied to the issues submitted or
3 discussed in the documents referred to as rebuttal
4 testimony, correct, your Honor.

5 PRESIDING JUDGE: Okay. And then the last thing
6 is you all filed another motion to extend the final
7 deadline for the data requests.

8 MR. HALL: Correct.

9 PRESIDING JUDGE: You described two tranches of
10 discovery, which I didn't write into the procedural
11 schedule because I didn't think it was appropriate. But I
12 didn't see anything in there that touched on what the --

13 MR. HALL: Absolutely not, your Honor.

14 PRESIDING JUDGE: -- word "limited" meant or the
15 scope of discovery.

16 MR. HALL: Absolutely not, your Honor.

17 PRESIDING JUDGE: All right. That's all I have
18 for you. Let me start over with the CAISO.

19 Do you agree with Mr. Hall's responses,
20 Mr. Atkins?

21 MR. ATKINS: It will not be surprising I do not.

22 I would suggest Mr. Hall's interpretation reads
23 out of the language that was agreed to both the words
24 "limited" and the word "new."

25 So he essentially insofar as the CAISO and other

1 participants' rebuttal testimony addressed all the
2 contested issues in this proceeding, he would say there is
3 no limitation whatsoever on the scope of discovery, other
4 than perhaps a temporal one. And I respect that as not --
5 or I respectfully submit that's not a reasonable reading of
6 the motions.

7 PRESIDING JUDGE: Well, let me ask you,
8 Mr. Atkins, did the parties have a written agreement as to
9 the scope of the two rounds of discovery?

10 MR. ATKINS: Well, your Honor, in particular
11 with regard to the third-party bid information, I would
12 point to the March 10 motion, which DCRT joined.

13 On page 7 is the statement "specifically, the
14 active participants have agreed that this modified
15 discovery will be limited to written data requests," which
16 respectfully could be included to narrative data requests,
17 "and responses thereto, and that no depositions or
18 subpoenas that may otherwise be available pursuant to rules
19 404 and 409 will be exercised."

20 PRESIDING JUDGE: So that sounds like an
21 agreement as to the form of the requests, but I don't know
22 that it talks about the substance of the scope of the
23 requests.

24 MR. ATKINS: I would submit, your Honor,
25 essentially, they are seeking confidential third-party

1 information, which but for the fact that the ISO has
2 custody of it, subject to confidentiality provisions of the
3 ISO tariff, is only available through a subpoena.

4 And I would say that it is the intent of the
5 language that is written in that motion, it would be to
6 limit the discovery of that information.

7 PRESIDING JUDGE: Well, you have custody of that
8 information.

9 MR. ATKINS: We do have custody of -- we have
10 custody of at least some of the responsive information.

11 PRESIDING JUDGE: So don't our discovery rules
12 allow us to access materials that are in a participant's
13 possession?

14 MR. ATKINS: Subject to -- subject to
15 appropriate balancing when that is highly competitive
16 information, subject to other tests, subject to relevance
17 and other limitations, yes, your Honor, I'd agree with
18 that.

19 PRESIDING JUDGE: Okay. So, I mean, I think
20 what you're telling me is there -- I mean, I've got two
21 words, right, limited and new, that describe the scope.
22 But I don't have a meeting of the minds as to how the
23 participants interpret those two words.

24 MR. ATKINS: Yes. Your Honor, I would submit
25 also evidence in terms of the interpretation of the terms,

1 if it was an open-ended discovery, it would be
2 multilateral. Instead, it was very narrowly drafted to be
3 limited to new information presented on rebuttal testimony.

4 Of course in this circumstance, DCRT is going
5 to -- but, your Honor, I'd suggest the interpretation says
6 there's no meeting of the minds and allows them to ask
7 questions on anything, including issues that were well
8 presented prior to rebuttal testimony, essentially means
9 there is no limitation whatsoever.

10 I don't think there is any reasonable reading of
11 the words "limited to new rebuttal testimony" that would be
12 so open-ended to allow DCRT unlimited carte blanche and to
13 prevent any of the other participants in this proceeding
14 from asking any discovery whatsoever during this period.

15 PRESIDING JUDGE: So your witnesses have
16 unlimited carte blanche to put whatever they want in the
17 rebuttal testimony, but the company doesn't have the same
18 flexibility to probe the statements in their rebuttal
19 testimony?

20 MR. ATKINS: Our witnesses are permitted to
21 respond to their last round of testimony, which is not
22 carte blanche. It is limited to that.

23 In the course of responding to prior
24 discovery -- I'm sorry, in the course of responding to
25 prior testimony, our witnesses are permitted to reiterate

1 positions they took during the period of general discovery
2 in this case, without opening that up to a new round of
3 discovery.

4 PRESIDING JUDGE: I don't see it. I mean yeah,
5 I mean, I think I've said on the record a few times before
6 this that I believe the Commission's discovery rules are
7 pretty broad, very broad. That's the default.

8 I mean, if the parties intended to limit that
9 discovery, they should have done so more explicitly than
10 just putting in the two words.

11 But I'll hear you out if there's anything else
12 that you have to convince me that there was an agreed-upon
13 limitation, I'll hear it.

14 But what I've got is two words, limited and new.

15 MR. ATKINS: Yeah. And, your Honor, I guess I
16 would suggest that an interpretation of those words that
17 says there is in fact no limitation only for one party is
18 not a fair reading of those words.

19 PRESIDING JUDGE: Okay. I mean, new doesn't
20 actually modify discovery; right? It was intended to
21 modify rebuttal testimony?

22 MR. ATKINS: I believe that's correct, your
23 Honor.

24 PRESIDING JUDGE: So it's limited discovery on
25 the new rebuttal testimony, whatever the scope of that is.

1 MR. ATKINS: Yeah. I think that's right, your
2 Honor. Yep.

3 PRESIDING JUDGE: Okay. All right. Well, I'll
4 take it under advisement, but I have what I need on that
5 argument.

6 I'll just ask, do you want to make one last
7 pitch on either side on overbreadth and relevance? I mean,
8 I have -- I have your pleadings so you don't need to repeat
9 the arguments in your pleadings. But I think I know where
10 I'm going to go with this one.

11 MR. ATKINS: Your Honor, if I could -- okay,
12 your Honor. Yes.

13 PRESIDING JUDGE: All right. Let's move to
14 vagueness.

15 Mr. Hall, CAISO asserted vagueness I believe
16 with respect to all of 10.9a -- or 10.9, so a, b and c, and
17 they asserted vagueness as to 11.07d.

18 We went through this back in November. Did the
19 company discuss alternate language in the meet and confer
20 on those data requests?

21 MR. HALL: Your Honor, I -- subject to Sean
22 checking me, okay, in terms of 10.09, two things. One, in
23 terms of the bidding information, CAISO compiled the -- a
24 bid, okay -- actually, this is public, the DesertLink
25 bidding material which was used at trial to cross Mr. Reed.

1 And then they also produced in CSO-0006 our bidding
2 material.

3 So there were two examples in our mind of
4 packaged-up bidding documents that we think scope out the
5 types of documents we were looking for.

6 PRESIDING JUDGE: Mr. Hall, my question was did
7 you discuss alternate language in the meet and confers?

8 MR. HALL: I --

9 PRESIDING JUDGE: I'm not really interested in
10 what's in your mind.

11 MR. HALL: Yeah, I think -- I think we
12 discussed, okay, the fact that this -- forms of this
13 information had been presented by CAISO in the case.

14 PRESIDING JUDGE: Okay.

15 MR. HALL: But no, we did not discuss
16 alternative language.

17 PRESIDING JUDGE: Okay. And that's only as to
18 10.9a.

19 MR. HALL: Correct.

20 PRESIDING JUDGE: The examples that you're
21 talking about.

22 MR. HALL: Correct.

23 PRESIDING JUDGE: So with respect to bidding
24 materials provided by the CAISO, you're saying that you
25 didn't provide alternate language or explain what you meant

1 by that?

2 MR. HALL: I am very confident that we explained
3 what we meant. However, no, we did not discuss alternative
4 language.

5 PRESIDING JUDGE: Okay. I was going to bring
6 this up when I talk to CAISO, but I'll just note on 10.9b,
7 the objection was with respect to the phrase "all bidding
8 materials."

9 I thought that the "provided by CAISO," while
10 that's not vague, seemed like a strange way to ask the
11 question.

12 Let me just confirm with you, Mr. Hall, did you
13 really -- are you really only interested in materials
14 provided by the CAISO and not responses to the CAISO?

15 MR. HALL: No, your Honor. We were looking for
16 information consistent with the packaging of CSO-0006. So
17 we were looking for bids submitted by parties, and then the
18 responses in a narrative between the parties to supplement
19 and finalize the bid packages.

20 PRESIDING JUDGE: Okay. But that's not how you
21 wrote your data request.

22 MR. HALL: Understood, your Honor.

23 PRESIDING JUDGE: Okay.

24 MR. ATKINS: Your Honor, if I could interrupt
25 for a minute, I don't want to let too much time pass.

1 I believe we actually, and I believe
2 inadvertently DCRT counsel may have revealed some
3 privileged information on the public record, and I just --
4 I don't know if we should go off the record to discuss
5 that.

6 PRESIDING JUDGE: Let's go off the record. I
7 guess I'll mute the Teams, at least until we figure out
8 what we're going to do about this. Off the record.

9 (Discussion off the record.)

10 PRESIDING JUDGE: Back on the record.

11 Sorry, folks on the Teams, I muted you.

12 Actually, Chad, could you go out and grab
13 Mr. Robichaud?

14 So we went off the record briefly because
15 Mr. Atkins alerted me to the possibility of a company name
16 that was discussed in the session before we went off the
17 record that is -- and that name is treated as privileged
18 information.

19 I'm going to instruct the court reporter to
20 strike that language, unless --

21 MR. HALL: Your Honor, I am looking at the
22 public version of CSO-0601, page 14, line 7, the identity
23 of that entity is identified.

24 MR. ATKINS: Your Honor, give me a second to get
25 my copy out.

1 PRESIDING JUDGE: Okay. Let's not mention the
2 name until we get this resolved.

3 MR. ATKINS: I'm sorry, can you give me the
4 reference again?

5 MR. HALL: Page 14, 0601, line 7. Maybe that
6 should have been redacted, in which case -- but it's
7 publicly stated now.

8 MR. ATKINS: That is a reference that should
9 have been redacted, your Honor.

10 PRESIDING JUDGE: So it's a bigger issue than
11 just correcting today's record.

12 MR. HALL: It is, your Honor. I will concede
13 that counsel has pointed us to --

14 PRESIDING JUDGE: I'll ask all counsel not to
15 reference the names, and we'll just reference exhibit
16 numbers for now. We will not strike the name that was
17 referenced earlier today, but I guess this is my plug,
18 we're going to start off Wednesday talking about privilege,
19 so let's add that to the list of things that we're going to
20 talk about Wednesday.

21 But for purposes of this oral argument, please
22 refrain from mentioning company names.

23 All right. I'm back on vagueness, unless
24 there's anything else. Let me just make sure, Mr. Hall,
25 I've -- Mr. Atkins, you're still standing. Is there

1 something else we need to --

2 MR. ATKINS: No.

3 PRESIDING JUDGE: Let me just look through. So
4 the only thing I'll ask the company about vagueness is with
5 respect to 11.07d, which CAISO objected was vague, unduly
6 burdensome and overbroad.

7 CAISO answered that one anyway, notwithstanding
8 its objection, so they must have made a good-faith attempt
9 to interpret the data requests.

10 MR. HALL: Your Honor, if this is in reference
11 to materials that came in last night, which I have not
12 had -- I have not had the time or the ability to review, I
13 think actually CAISO's response to this data request is
14 that they don't have communications for the APSAs because
15 they destroyed them under their document retention policy.

16 Sean, is that -- is that --

17 MR. ATKINS: That is an accurate statement, yes.
18 Yes.

19 MR. HALL: So I think what their response is is
20 that they don't have these documents because they are
21 destroyed under a retention policy.

22 PRESIDING JUDGE: I mean, I guess all I was
23 going to ask you is whether you could defend the data
24 request as not being vague.

25 MR. HALL: Correct, your Honor. We have -- we,

1 DCRT, have provided hundreds of thousands of documents
2 relative to e-mail communications and draft APSAs. So on
3 vagueness, no, we would stick by this as being pretty
4 clear, particularly a year into this case.

5 PRESIDING JUDGE: And I assume the fact that
6 they answered it shows that --

7 MR. HALL: They understood it.

8 PRESIDING JUDGE: -- they understood the meaning
9 of it.

10 All right. And we'll get to the individual data
11 requests and responses after we go through all the
12 objections.

13 Mr. Atkins, let me ask you, on each of these,
14 10.9a, b, c, and 11.7d, did you discuss alternate language
15 with DCRT or your interpretation of the requests or your
16 good faith interpretation of the requests?

17 MR. ATKINS: To the best of my recollection,
18 your Honor, we did not discuss specific alternate language,
19 but we did discuss the concepts.

20 I would say with regard to 10.09, really the
21 vagueness objection related to 10.09b with respect to all
22 bidding material provided by the ISO.

23 I will -- my recollection is that I still had
24 some confusion on that point. The March 26 motion to
25 compel I believe actually provided some more clarity of

1 what they had in mind, and I will say that information is
2 all publicly available information on the CAISO Web site,
3 if it is as they reference in their March 26 motion to
4 compel.

5 PRESIDING JUDGE: So, Mr. Atkins, I don't find
6 any of the requests vague, the ones you objected to, but we
7 can talk about 10.09b when we get to it.

8 MR. ATKINS: I will also note, we had a
9 discussion just a moment ago I believe about 11.07b. I do
10 not believe that is the subject of a motion to compel. I
11 believe their motion to compel, and Mr. Hall can confirm
12 this, with regard to 11.07 was limited to a, c and d.

13 MR. HALL: Correct. Correct, your Honor.

14 PRESIDING JUDGE: That's right.

15 MR. ATKINS: Okay.

16 PRESIDING JUDGE: Did we say b somewhere in the
17 course of --

18 MR. ATKINS: I thought there was a discussion a
19 moment ago about 11.07b.

20 PRESIDING JUDGE: I don't have any live
21 transcript in front of me.

22 MR. ATKINS: To the extent that it is, I would
23 make that observation. To the extent I misheard, please
24 disregard.

25 PRESIDING JUDGE: Okay. Last call, do you have

1 anything to convince me that these are vague? Reading
2 10.09b to further --

3 MR. ATKINS: I don't believe, your Honor, we are
4 pursuing the objections on vagueness at this point.

5 PRESIDING JUDGE: Okay. Thank you. All right.

6 Undue burden. I want to do this without going
7 into closed session, but let me start with the company.

8 Your March 26 motion mentions that counsel for
9 DCRT and counsel for CAISO communicated regarding DCRT's
10 proposal to resolve the dispute by reducing the number of
11 projects subject to DCRT-CAISO-10.09. And then it says
12 counsel for DCRT sends the proposal -- proposed list to
13 counsel for CAISO with a request to respond by 10:30 a.m.
14 Eastern Daylight Time on March 25, 2026.

15 Again, without talking about specific company
16 names, was that list the same list as on page 24 and 25 of
17 your motion to compel?

18 MR. HALL: It is, your Honor.

19 And we've, based on further communications, we
20 have additional ideas that we may want to get to at some
21 point on other sponsored contracts. But yes, what is
22 listed at the end of the pleading is what I spent to
23 Mr. Atkins.

24 PRESIDING JUDGE: Let me just make a comment
25 about the confidentiality.

1 So all the names are listed in 24 and 25, the
2 motion -- March 26 motion. But Mr. Reed's rebuttal
3 testimony on page 38 to 39, which I think was the genesis
4 of this request, I thought we reached an agreement to blank
5 out -- to redact the company names.

6 So I'm a little lost as to how to deal with --

7 MR. HALL: So actually, your Honor, I think what
8 we agreed to during trial was that to the extent a sponsor
9 was tied to a particular term, okay, that would be
10 redacted. But the names of the projects are all publicly
11 available and included in sponsor reports that are
12 construction reports that CAISO hosts on its Web site.

13 PRESIDING JUDGE: You mean a term like whether
14 the APSA has a cost cap?

15 MR. HALL: Yes, your Honor, and that's --

16 PRESIDING JUDGE: So doesn't that violate that
17 principle by listing them out in a data -- motion to compel
18 responses about cost caps?

19 MR. HALL: The subject of the request is all
20 sponsor bids executed by the CAISO on the referenced table.
21 Not all of them actually have cost caps, your Honor, but I
22 understand your point.

23 PRESIDING JUDGE: Okay. But a asks for cost cap
24 information; right?

25 MR. HALL: Actually, what it asks for is bids,

1 please provide all sponsored bids or applications.

2 PRESIDING JUDGE: I'm sorry, we talked over each
3 other. I don't have the request in front of me so give me
4 a second.

5 c references cost caps.

6 MR. HALL: Right. So it's -- right. But to the
7 extent something has a cost cap.

8 PRESIDING JUDGE: Okay. Out of the 18 projects
9 listed on Mr. Reed's list, 24 and 25 narrow that to nine
10 projects; is that right?

11 MR. HALL: Yes.

12 PRESIDING JUDGE: And I note that at least two
13 of those projects don't have cost caps in them. So again,
14 I know the scope of 11.07 is broader, but it strikes me
15 that the import of this request relates to cost cap
16 information and the application of cost caps.

17 So can we further narrow this list down to
18 seven?

19 MR. HALL: I am prepared to list out six or
20 seven contracts, your Honor, if you would like -- I can't
21 provide -- yes, yes, we --

22 PRESIDING JUDGE: We already know which two
23 don't have cost caps because we had extensive
24 cross-examination of Mr. Reed about that where he admitted
25 that two of the projects listed don't have cost caps.

1 MR. HALL: Your Honor, are you asking me for a
2 list of APSAs we would like to focus on, in effect?

3 PRESIDING JUDGE: No, I'm asking about the lists
4 in your pleading.

5 MR. HALL: Okay.

6 PRESIDING JUDGE: And whether it's necessary to
7 ask for information about all nine of those projects when
8 only seven of them have cost caps.

9 MR. HALL: Yeah, so for one of them in
10 particular, your Honor, the reason we're interested in it
11 is -- let me pull up the list.

12 Okay. So during trial, we had discussion about
13 Mr. Reed's table and several project sponsor contracts not
14 including cost cap. And I think what we -- what we came
15 back with in follow-up and redirect is a clarification that
16 the reason why those contracts are relevant is that
17 notwithstanding cost caps, CAISO is taking the position
18 that there's certain language required in the bids for
19 purposes of inflationary analysis or an exclusion.

20 So from -- and this really kind of goes to the
21 heart of the motion to compel.

22 So the reason why we've identified these
23 contracts is that there have been either statements, direct
24 or indirect, that the bidding process include CAISO's
25 preferred terms perhaps or exclusive terms for exactly the

1 types of exclusion -- the argument exists in our APSA.

2 Regardless of if there's a cost cap, if there is
3 language about a permitting exclusion and CAISO believes
4 that that language is superior to ours or is more clear,
5 we'd like to see that to test, one, to compare it to what
6 we have and, two, to test CAISO's assumptions.

7 Does that answer your question?

8 PRESIDING JUDGE: Not really.

9 Again, I'm looking at 10.9.

10 MR. HALL: Okay.

11 PRESIDING JUDGE: And look, I think the company
12 did a great job trying to narrow the scope to address the
13 undue burden objection. I'm just suggesting that you could
14 have narrowed the scope even further, since at least 10.9
15 seems to be about APSAs with cost caps.

16 We can get to 11.7 where you sort of throw up
17 the gates on that, but at least with respect to 10.9, isn't
18 it -- am I misreading 10.9?

19 MR. HALL: c refers to cost caps, but the
20 request for the bidding applications -- the request for the
21 bids is to test -- let me give you an example.

22 In her testimony, CAISO witness Davis on page
23 27, I believe, references several APSAs and argues that
24 there are two key requirements for unlocking an
25 inflationary analysis. We looked at those APSAs, and we

1 don't think that the APSAs she cite satisfies her own
2 standard.

3 There have been multiple places where in her
4 rebuttal where Ms. Le Vine references different types of
5 exclusions, for example permitting exclusions, that she
6 believes should have been framed out in, you know, bidding
7 documents and has indicated the words and expressions that
8 people -- that different sponsors use in their bidding
9 documents that aren't present in ours that disqualify what
10 we want, regulatory compliance exclusions among others.

11 So while c actually may reference cost caps,
12 we're actually looking for discussion about all the
13 different exclusions we have in appendix E, your Honor.

14 PRESIDING JUDGE: Again, I think I had
15 understood that these were in response to Ms. Le Vine's
16 testimony about the application of cost caps.

17 So again, I want to separate out 10.09 from
18 11.07. Again, looking at your March 26 motion, it seems
19 like --

20 MR. HALL: We would be most interested -- yes,
21 while they are all relevant, yes, we would be most
22 interested in the cost cap APSAs.

23 PRESIDING JUDGE: Now, I understand you came
24 around later and asked for a larger universe of APSAs and
25 bidding materials associated with APSAs. But I'm just

1 trying to help the CAISO out on the undue burden and just
2 point out that the 10.09 at least is limited to five -- or
3 seven projects.

4 MR. HALL: Correct, your Honor, yes.

5 PRESIDING JUDGE: All right. Well, I'll ask do
6 you propose any similar limitation on 11.07 or at least not
7 ask for everything?

8 MR. HALL: Well, so I do have a list of
9 contracts we are -- and associated bidding materials we
10 were particularly interested in, your Honor.

11 PRESIDING JUDGE: How many are there?

12 MR. HALL: Six or seven.

13 PRESIDING JUDGE: Six or seven. So in addition
14 to the nine?

15 MR. HALL: No. No, no. There is overlap in
16 what we have at the end of our first motion to compel, and
17 then I think we add in one or two for a total of seven.
18 And this is to address both the 10th set and the 11th set.

19 PRESIDING JUDGE: So let me just make sure I
20 understand. So there are -- between the 10th set and the
21 11th set, there are seven projects that you're asking
22 about?

23 MR. HALL: Most interested in. And to the
24 extent we wanted to limit burden, we'd be willing to focus
25 on that set, the six or seven.

1 PRESIDING JUDGE: Okay. Let me -- I think
2 that's all I have for you on undue burden, Mr. Hall.

3 Mr. Atkins, let's see. Let me first start off
4 confirming that your undue burden objection related only to
5 10.09a, b and c and 11.07d; is that right?

6 MR. ATKINS: That's d as in delta?

7 PRESIDING JUDGE: Yes.

8 MR. ATKINS: I think that's fair, your Honor.

9 PRESIDING JUDGE: Okay. And, I mean, you did
10 have a general objection 8 that said that you objected to
11 all the requests to the extent they were -- they're overly
12 broad or unduly burdensome. But I'll just put my side
13 comment in.

14 As a former Trial Staff person, when I was on
15 Trial Staff, I hated general objections. And as a
16 Presiding Judge, I hate them even more because they really
17 don't tell me anything.

18 But to the extent they're overly broad or unduly
19 burdensome, you would specify that in your specific
20 objections; right?

21 MR. ATKINS: I think that is generally true.

22 I mean, the undue burden, I mean, essentially,
23 they are prior to talking about narrowing it, although the
24 narrowing still covers a broad territory, I mean, they are
25 seeking information on a wide range of competitor info.

1 The burden, I suppose, if they limit it from the
2 19 in Mr. Reed's table to a subset is arguably less. I
3 think the burden also has got to be considered in the
4 context of the time frame and opportunity to request this
5 information during general discovery.

6 This is all occurring at a time when we were
7 responding to nine sets of discovery requests from DCRT and
8 numerous other obligations we had. And frankly, it is
9 occurring at a time when the relevant people who are
10 involved, the CAISO transmission planning staff, are all
11 completing two competitive solicitations where they need to
12 be finalized in the month of April.

13 PRESIDING JUDGE: So I would ask you about the
14 nine sets. Did you have nine sets of data requests during
15 the limited recess discovery period that we're talking
16 about?

17 MR. ATKINS: Yes. Yeah, your Honor, we had just
18 during this -- I believe during the entire general
19 discovery period, DCRT sent nine sets of data requests 1
20 through 9. During this period, we received the 10th
21 through 18th sets.

22 PRESIDING JUDGE: Okay. So how many requests
23 are we talking about in total?

24 MR. ATKINS: So a number of the requests were --
25 had parts as much as a dozen, so hundreds. I don't have a

1 specific number.

2 PRESIDING JUDGE: Okay. That's fine. I wasn't
3 aware. I mean, we probably got copies of all of them, but
4 I wasn't reading them all.

5 Let me ask about -- you mentioned that CAISO
6 staff had other obligations. I mean, isn't that true of
7 all respondent company staffs? I mean, they're always busy
8 doing other things. Why should I take that into account?

9 MR. ATKINS: Your Honor, in this case, we are a
10 not-for-profit entity. We operate under a, you know,
11 relatively minimal staffing, and outside counsel because of
12 ratepayer concerns.

13 So the resources that the CAISO has to bring to
14 bear are not equivalent to the resources that, say, DCRT
15 has to -- can bring to it.

16 Frankly, your Honor, evidence of that is our two
17 folks versus the table.

18 So we do think that for a not-for-profit entity
19 that is operated for the benefit of consumers in California
20 and the west, resource constraints are relevant.

21 PRESIDING JUDGE: But as a not-for-profit
22 entity, you have the ability to pass through your costs
23 through your tariff; right?

24 MR. ATKINS: Subject to being mindful of costs
25 passed onto ratepayers and limiting expenditures on staff.

1 PRESIDING JUDGE: But you're not suggesting that
2 I should have separate rules for for-profit and
3 not-for-profit entities in terms of discovery?

4 MR. ATKINS: No, your Honor, I am simply
5 suggesting that when you assess the issue of burden, you
6 assess it on the context of the facts of the specific
7 circumstances. I think the resource availability of a
8 respondent is one of the factors you can consider. I also
9 think you can consider the relatively expedited time frame.

10 Your Honor, I submit, and I have heard your
11 perspective on it, but I submit the intended limited scope
12 of this discovery is also relevant for the burden issue as
13 well.

14 PRESIDING JUDGE: Okay. And let me move on.

15 In raising your undue burden objection, did you
16 comply with Rule 410(b) by providing a description of
17 approximate number of documents that would have to be
18 produced and a summary of information contained in such
19 documents?

20 MR. ATKINS: We have not, your Honor. We have
21 not even had an opportunity to assess that as of now.

22 PRESIDING JUDGE: Okay. Let's just sort of go
23 to the scope of the request. I mean, even if they were all
24 18, and I'm still sticking with 10.09, I mean, the company
25 limited it to nine projects. And if I leave out the two

1 projects that don't have cost caps, now we're down to
2 seven.

3 And I'll just note, and this is public, in
4 Exhibit CDN-0025, at least two of those projects indicated
5 that they had four e-mails in what they call the preaward
6 supplemental communications, and then another one only had
7 zero e-mails.

8 So looking at pages 5 and 8 of Exhibit CDN-0025.

9 MR. ATKINS: Your Honor, may I have a moment to
10 review that?

11 PRESIDING JUDGE: Sure.

12 MR. ATKINS: Your Honor, my apologies. Can we
13 get that reference one more time?

14 PRESIDING JUDGE: I thought it was Exhibit
15 CDN-0025, the deficiency response of NextEra. I mean,
16 since it's a public document, we can name names. I mean, I
17 thought I saw that Suncrest attached four or five e-mails,
18 and then a couple of pages later, they responded that
19 Estrella had no supplemental preaward communication.

20 MR. ATKINS: And, your Honor, I'll just point
21 out, that was a response NextEra provided I believe in
22 November 2015 so more than a decade ago. So I don't think
23 we could rely upon that by itself.

24 PRESIDING JUDGE: I understand that. My only
25 point is it can't be a lot of discussion -- or what was the

1 phrase in the data request, bidding material? If we're
2 talking seven or even 18 projects, that's seven or 18 bids.
3 And then, I mean, let's just sort of do what you should
4 have done under 410(b).

5 How many e-mails do you think on average each
6 project sent? Actually, it's actually since it's bidding
7 material provided by the CAISO, we're only talking about
8 e-mails outgoing from the CAISO.

9 Are we talking 100? 1000? Even if it's 1000,
10 you know, 18,000 e-mails doesn't sound to me to be a lot.

11 MR. ATKINS: Your Honor, I think it's mostly a
12 matter of reviewing the materials. But I do think this is
13 worth clarifying.

14 10.09b, they have stated that what they are
15 seeking is, in essence, the competitive solicitation
16 materials and functional specifications. I believe that's
17 set forth in there. So that helped us with the vagueness
18 issue.

19 But I believe I am assuming that the
20 interpretation of 10.09b is consistent with the statement
21 in their March 26 motion.

22 PRESIDING JUDGE: Well, that makes it even less
23 burdensome; right?

24 MR. ATKINS: Yes. And, your Honor, again, the
25 objections were on burden, and I still think the effort to

1 review all of our files creates burden. All of this I
2 think is against the backdrop of both it being beyond the
3 scope and perhaps the most important issue at this point,
4 the effort to seek third-party confidential information
5 when those parties have objected to the provision of that
6 information.

7 So as we were discussing these with DCRT, we had
8 to consider all of the scope of our objections. We were
9 not siloing them one by one.

10 So, for example, their proposal to narrow the
11 scope of information they are seeking did not make the
12 confidentiality issue go away.

13 PRESIDING JUDGE: I understand that. I mean, we
14 talked about scope issue, and I think you heard where I'm
15 coming from on that.

16 MR. ATKINS: I do hear it, your Honor.

17 PRESIDING JUDGE: You'll hear where I'm coming
18 from with respect to confidentiality. But, you know, four
19 purposes of my writing an order on this -- on these
20 motions, I have to analyze them individually.

21 MR. ATKINS: And all I will say again, your
22 Honor, is I think the undue burden is in the context of the
23 untimeliness of the requests and scope of other efforts
24 that the ISO was undertaking and our limited resources.

25 PRESIDING JUDGE: Okay. But, I mean, again, not

1 to harp on 410(b), but there's a specific showing that the
2 regulations require for undue burden objections.

3 So I think I have what I need on undue burden.
4 I think I got Mr. Atkins's last pitch on it. But is there
5 anything else that I need to know to consider on that?

6 Mr. Hall?

7 MR. HALL: Your Honor, just one thing. The
8 implication that DCRT is being unreasonable by submitting
9 data requests to CAISO, I just want to note one thing.

10 During the functional equivalent period in
11 December when we submitted our rebuttal testimony and then
12 were answering questions through December 23, we responded
13 to 380 specific questions and produced thousands of
14 documents.

15 I'm just noting that for the record, and I'll
16 let it go.

17 PRESIDING JUDGE: Okay. Thank you.

18 Mr. Atkins, do you want to respond to that? You
19 don't have to. I was just trying to get some clarity
20 around your statement about the nine requests.

21 MR. ATKINS: I assume, Mr. Hall, those were
22 coming from four participants?

23 MR. HALL: Multiple parties -- well, actually,
24 now that you raise that question, it's coming -- multiple
25 participants. I think you guys sent us, one set was -- I

1 think 180 questions with subparts.

2 So I understand Mr. Atkins's point. Everybody
3 is working hard, your Honor. But we were in no way, shape
4 or form unreasonable in what we requested both in terms of
5 scope and the amount. And I'll leave it at that.

6 PRESIDING JUDGE: All right. You both made your
7 statements on the record, so I'm not sure any of it is
8 relevant to my consideration of undue burden.

9 MR. HALL: Sure, sure.

10 PRESIDING JUDGE: But thank you for clarifying
11 that.

12 Actually, I thought we were done with this
13 issue, but I did have one other question for CAISO, and
14 that is on page 8 of the answer, this is the April 2
15 answer, CAISO said it is unduly burdensome and prejudicial
16 to wait until the last minute.

17 Not exactly sure where the prejudicial comment
18 fits within the objections, but since it's in the same
19 sentence as unduly burdensome, might as well ask you here,
20 what did you mean by prejudicial?

21 MR. ATKINS: I believe it was in the context of
22 burden, your Honor.

23 PRESIDING JUDGE: Okay. I still don't
24 understand what the prejudice is. Do you want to explain
25 that further or should we move on?

1 MR. ATKINS: I do think in the context of the
2 confidentiality of third-party information, there is
3 certainly prejudice to competitors of DCRT. But I don't
4 have an explanation further than that.

5 PRESIDING JUDGE: But not prejudice to CAISO?

6 MR. ATKINS: Only insofar as it imposed an
7 unreasonable burden in the context of the facts of the
8 situation.

9 PRESIDING JUDGE: Okay. And we've talked about
10 burden I think enough. But let's move on to the custody
11 objection.

12 So I mean, this is kind of in the same bucket
13 that I have with general objections. CAISO objected to
14 10.09 and 11.07, to the extent that they seek documents not
15 within CAISO's custody, control, or possession.

16 Let me ask the company first, did you ask for
17 any documents that are not within CAISO's custody, control,
18 or possession?

19 MR. HALL: No, we did not.

20 PRESIDING JUDGE: Okay. Let me ask CAISO, are
21 there documents that you think are responsive to these
22 requests that are not in your custody, control, or
23 possession?

24 MR. ATKINS: Your Honor, I would say to the
25 extent they are not in our custody, control, or possession,

1 we would not have any obligation to provide them.

2 PRESIDING JUDGE: Okay. I'll grant the
3 objection or sustain the objection on that ground, since
4 the company hasn't asked for any.

5 I have another question I'm trying to decide
6 whether to ask you, Mr. Atkins. I'm going to save it.

7 MR. ATKINS: I look forward to it, your Honor.

8 PRESIDING JUDGE: We'll talk about 11.07d in a
9 bit. But we'll talk about that in the context of that
10 specific request.

11 I'll move on to privilege, and it's the same
12 line of questions. The objection again to 10.09 and 11.07
13 was to the extent they asked for documents covered under
14 the attorney-client joint defense or attorney work product
15 doctrine or privilege.

16 Mr. Hall, are you seeking documents covered
17 under those privileges?

18 MR. HALL: No, your Honor.

19 I mean, it would be great to see a privilege
20 log, but in corresponding and discussions with Mr. Atkins,
21 he's indicated that there are no documents implicated by at
22 least 10.09 that implicate privilege.

23 I suppose there's nothing to give us.

24 PRESIDING JUDGE: Okay. Mr. Hall -- Mr. Atkins,
25 are there any documents that are responsive that are

1 covered under privilege?

2 MR. ATKINS: Not that we have identified to
3 date, no, your Honor.

4 PRESIDING JUDGE: And I think I'll just put in
5 my plug to the last oral argument we had on a motion to
6 compel, I think it's a little late to produce a privilege
7 log at oral argument. If there were actual documents that
8 were subject to privilege, I would have expected you to
9 relay them either in your objections or at least in your
10 answers. So I think --

11 MR. ATKINS: I think, your Honor, at the time we
12 made our objections, that was unclear. Standing here
13 today, we are not aware of any, and there is no -- nothing
14 to list on a supplemental privilege log.

15 PRESIDING JUDGE: Okay. All right. So I will
16 overrule that objection, then, or consider it withdrawn.

17 All right. Let's talk about the big issue,
18 confidentiality. Start with DCRT. By your reading of
19 section 20 of the CAISO's tariff, is there anything in
20 there that prevents me from granting your motion to compel?

21 MR. HALL: No, your Honor.

22 And I'm going to go to the back of Sean's
23 pleading. They reference section 20.3, which in turn
24 references 20.2, which is the list of potentially
25 commercially sensitive data points, which is all subject to

1 20.1, which expressly contemplates the exact process we're
2 going through right now, where CAISO has been -- CAISO has
3 a request for confidential information that is subject to a
4 motions practice and a judge making a determination to have
5 it released, subject to a protective order, which I'm very
6 happy to discuss separately, your Honor.

7 PRESIDING JUDGE: Now, ETCC claims that 20.3
8 bars you from asking for this confidential information.

9 MR. HALL: I don't agree with that, your Honor.
10 That would seem to be in the context of a competitive
11 process.

12 But 20.3 again is in the context of a general
13 confidentiality release provision in the form of 20.1,
14 which again expressly contemplates a process where somebody
15 asks CAISO for information and they undertake the process
16 we're experiencing right now to go to a judge and argue if
17 it should be released.

18 While we're talking about confidentiality, your
19 Honor, just a reminder, if you don't mind. Our protective
20 order -- the protective order that you adopted, in effect,
21 is basically the same protective order that was used during
22 the settlement process.

23 And we actually had a motions practice
24 ironically with ETCC about the need to include the PRIV HC
25 designation process and the competitive duty protections

1 into our order.

2 When we went through the motions practice in I
3 think late '23, early '24, ETCC actually argued that the
4 higher level of confidentiality was not needed for this
5 case. And we, of course, disagreed and we took it to the
6 Chief Judge.

7 And there's language in the order where the
8 Chief Judge expressly -- and of course you can do whatever
9 you want, your Honor, okay, where the Chief Judge expressly
10 contemplated the exchange of commercially sensitive --
11 commercially sensitive information between the parties,
12 including potential competitors in this case.

13 So it's been asked and answered for all
14 purposes, your Honor.

15 PRESIDING JUDGE: Thank you, Mr. Hall.

16 So I guess I'm going to stick with CAISO. I
17 want to talk to Mr. Engleman in a minute, but let me ask
18 all of my questions of CAISO first.

19 So I'll ask you the same thing. Is there
20 anything in section 20 that prevents me from granting these
21 motions to compel?

22 MR. ATKINS: Your Honor, I think you would need
23 to read section 20 in the context of Commission precedent
24 that applies for the balancing test of information sought
25 in discovery or in a contested proceeding against the

1 potential harm to competitors.

2 So I think what section 20 obligates the CAISO
3 to do is it obligates us to take all actions permitted
4 under law to protect the confidentiality of third-party
5 information, particularly in a case like this, where there
6 is widespread competition from DCRT's competitors really
7 focused on, I would say, two areas.

8 One would be their bids. I think also any
9 information with regard to contract negotiations, and we
10 will pursue, to the extent your judge's order might address
11 that, pursue that notwithstanding the fact that we do not
12 have that information in our possession.

13 I think that in those contexts, the ISO is
14 obligated to take all actions and highlight the numerous
15 reasons why your Honor should not permit DCRT access to
16 competitor bid information and competitor contract
17 negotiation information.

18 PRESIDING JUDGE: Okay. But the balancing all
19 goes to the overbreadth and relevance arguments that we've
20 already talked about; right?

21 MR. ATKINS: I would submit that's not the case,
22 your Honor. I think that --

23 PRESIDING JUDGE: Okay. Then where in 20 does
24 it talk about balancing?

25 MR. ATKINS: I'd say that arises more in the

1 context of Commission precedent.

2 PRESIDING JUDGE: Okay. I mean, precedent
3 relating to section 20?

4 MR. ATKINS: No, precedent related to the
5 general principle of --

6 PRESIDING JUDGE: Relevance?

7 MR. ATKINS: Well, and I think it is not a pure
8 relevance argument, your Honor. It is a weighing of the
9 potential relevance to the harm to be done to competitors
10 of DCRT by providing this information.

11 PRESIDING JUDGE: Right.

12 MR. ATKINS: So if these are broad requests,
13 which something in the nature of a fishing expedition,
14 because they don't know what they are looking for, they are
15 just hoping to find something, I think, your Honor, you --
16 and I -- have we actually spoken about relevance as of yet?
17 I did not know we had.

18 PRESIDING JUDGE: I gave you a chance. I asked
19 all of the questions I had about relevance.

20 MR. ATKINS: I was not aware that was the
21 relevance discussion. I thought that was the scope of the
22 limited discovery.

23 PRESIDING JUDGE: Yeah, I said I was taking
24 those at the same time.

25 MR. ATKINS: I apologize, your Honor.

1 I mean, I will also point out, it is not clear
2 what the relevance would be that if the way one bid was
3 translated to an APSA for another entity, what the
4 relevance is for this case.

5 You know, in this case, we have the DCRT bid, we
6 have the APSA. You know, they're claiming that, in
7 essence, that they can extract something. They know not
8 what.

9 So -- but I think given the attenuated nature of
10 any hypothetical relevance compared to the significant harm
11 to competitors of providing DCRT, their counsel, who
12 represent competitive transmission developers in ISO
13 planning processes, in other words, their experts, who
14 represent parties involved in competitive transmission
15 planning, you know, that harm is substantial, and against
16 the highly attenuated nature of the request, we think that.

17 So section 20 relates to this insofar as it
18 relates to the applicable legal framework for the
19 disclosure of this information under Commission precedent.

20 PRESIDING JUDGE: Okay. But, again, nothing in
21 section 20 speaks to that?

22 MR. ATKINS: Section 20 speaks to the ISO's
23 obligation to advance the objections we have received and
24 pursue all legal steps available to us to maintain the
25 confidentiality of that information.

1 PRESIDING JUDGE: Okay. And, I mean, to
2 Mr. Hall's point, 20.1 and 20.4 actually contemplate
3 situations where I might require you to disclose the
4 information.

5 MR. ATKINS: I would agree with that.

6 Section 20 contemplates that there may be
7 proceedings like this, and it contemplates presentations of
8 reasons why third-party confidential information should not
9 be disclosed.

10 PRESIDING JUDGE: Okay. I don't want to go into
11 privileged session, but let me ask you about Exhibit
12 CSO-0372 PRIV and how that made its way into my record
13 without any of these objections being made.

14 MR. ATKINS: In that circumstance, your Honor,
15 we did provide notice. We thought it was directly relevant
16 to an argument that Mr. Reed was making, and we had an
17 obligation to present that specific data point.

18 I believe I can say this without getting into
19 privilege. Mr. Reed's table, which is the entire crux of
20 the discovery requests, right, they are all tied -- and his
21 associated testimony stand for the proposition that
22 immediately after the DCRT APSA was signed, the ISO changed
23 how it was transitioning in terms of how bids are
24 translated into APSAs.

25 The one privileged bid we provided was designed

1 to directly address that as -- because that was isolated in
2 Mr. Reed's testimony as a key pivot point.

3 The very broad scope of things that DCRT is now
4 seeking, and, you know, go much more widely. Temporally,
5 scope, it really -- other than the fact that it's a bunch
6 of bids that DCRT would like to take a look at, you know,
7 there is not an organized principle.

8 PRESIDING JUDGE: So the harms that you're
9 talking about only occur if DCRT asks for the information,
10 but if CAISO voluntarily puts it into the record, there are
11 no harms?

12 MR. ATKINS: No, your Honor. I'd say the harms
13 occur when notice is provided to parties whose third-party
14 confidential information is sought, whether it be the CAISO
15 submitting it itself or DCRT seeking it in discovery, where
16 there are objections to the provision of that information.

17 PRESIDING JUDGE: Okay. But --

18 MR. ATKINS: So with regard to --

19 PRESIDING JUDGE: -- the developers get to
20 decide whether they have harms?

21 MR. ATKINS: I believe, your Honor, the
22 developers do get to -- do get to flag whether they believe
23 there is competitive harm.

24 PRESIDING JUDGE: I understand that they do
25 under 20.4. But, I mean, I'm not going to allow my

1 discovery process in this hearing to be controlled by
2 nonparties in this case.

3 MR. ATKINS: I mean, your Honor, it puts us in
4 an uncomfortable position, right. Does that mean that any
5 case where anybody might hypothetically seek confidential
6 bid information, the roadmap to a successful bid, the
7 parties have to intervene in every single case?

8 You know, I would suggest, your Honor, if we
9 look at what Judge Brenner has done addressing this issue
10 in the past in Docket ER03-583, you know, he laid out a
11 test that I strongly recommend you consider.

12 He denied a motion to compel when weighed
13 against the fact that the information is at the highest
14 magnitude of commercial sensitivity for bidders that are
15 not parties to the proceeding but are competitors of the
16 movant.

17 And so using the weighting that Judge Brenner
18 did in that case, in that Entergy Services case in
19 ER03-583, and, your Honor, I will note this is highlighted
20 in the April 3 supplement, that we think is the appropriate
21 test to apply here. It is an appropriate test to apply for
22 nonparticipants in this proceeding.

23 PRESIDING JUDGE: Let me get to the cite.

24 MR. ATKINS: Sure.

25 PRESIDING JUDGE: And it won't surprise any of

1 you that I didn't look at all the citations in all of your
2 pleadings.

3 MR. ATKINS: There is one other case I might
4 draw your attention to, and, your Honor, I apologize, the
5 expedited time frame didn't allow ample time to take a look
6 at any of this.

7 PRESIDING JUDGE: Hold on, let me just call up
8 your supplement first.

9 Where in the supplement do you cite to Judge
10 Brenner's decision?

11 MR. ATKINS: Your Honor, if you give me just a
12 moment, apologies. I know I had it in front of me, but
13 I -- so, your Honor, this is on page 10, begins about
14 halfway down the page, "furthermore."

15 PRESIDING JUDGE: All right. I'll look at it.

16 Is there another case you wanted to draw my
17 attention to?

18 MR. ATKINS: Yes, your Honor. There's a few
19 cases, but the other one I would particularly highlight is
20 ISO New England case. So this is really discussed on page
21 9 of our April 3 filing, the case -- the citation is 148
22 FERC 61,137. I think the cite is to -- spot cite is to
23 paragraph 20, but I would encourage you to read on to
24 paragraph 21.

25 That is a case -- and I'll note this is probably

1 an appropriate place to note, I believe Mr. Hall made a
2 reference to not being in a competitive situation, which is
3 not an accurate situation.

4 DCRT is seeking information from direct
5 competitors to DCRT and their parent company Lotus. So
6 this is indeed exactly a competitive situation.

7 The ISO New England case actually dealt with
8 capacity market bids. And, you know, in that case, the
9 Commission determined that they would not provide specific
10 bid informations because it could harm market participants
11 that provided such information and adversely affect the
12 competitiveness of future capacity actions.

13 And, in fact, even for older information, the
14 Commission expressly found that the information in question
15 was not stale because it could reveal bidding strategies
16 and the like. So we would say, your Honor, that is
17 directly on point to the issues in this case.

18 PRESIDING JUDGE: Okay. Let me -- I can go two
19 ways here. Let me start with -- with respect to the
20 supplement and all you did to solicit the views of affected
21 developers, does CAISO feel it discharged all of its
22 responsibilities under 20.4 if I -- if I ultimately
23 conclude that you -- to grant the motion to compel?

24 MR. ATKINS: Your Honor, I think if you were
25 inclined to so move, the ISO would request that your Honor

1 stay that decision with regard to third-party competitive
2 information, specifically bids, contract negotiation
3 information, which we do not have, that you would stay that
4 and permit us to seek interlocutory appeal to the
5 Commission.

6 Several of the participants -- or several of the
7 nonparticipant project sponsors whose information their
8 competitor DCRT is seeking have strongly requested that the
9 ISO do so, and we believe we must do so to fulfill our
10 obligations under section 20.

11 PRESIDING JUDGE: You can request interlocutory
12 appeal, but our interlocutory appeal rules are pretty clear
13 that I'm not to stay the hearing proceedings while it is on
14 interlocutory appeal.

15 So I'm going to move ahead if we get there.

16 I mean, my only question was did you provide
17 enough -- did you provide notice?

18 MR. ATKINS: We did provide notice, your Honor.

19 PRESIDING JUDGE: Okay.

20 MR. ATKINS: We provided notice shortly before
21 the motion to compel, the March 26 motion to compel, was
22 provided. Prior to that, we were engaged in discussions.

23 We provided copies of the motion to compel. We
24 provided copies of the March 31 motion to compel. We made
25 interested participants -- I keep using that word

1 "participants."

2 We provided interested project sponsor
3 nonparticipants in this proceeding with responses to
4 questions, and we solicited their feedback, which is at a
5 high level was reflected in our April 2 answer, but
6 reflected in more detail in our April 3 supplement, which
7 attached, you know, specific correspondence, made a number
8 of representations that we were authorized to make, and
9 also included information provided to us by other impacted
10 project sponsors.

11 PRESIDING JUDGE: Okay. So I guess in answer to
12 my question, CAISO did discharge its obligations up to this
13 oral argument, including pressing during the oral argument,
14 the considerations --

15 MR. ATKINS: We believe we did, your Honor. We
16 believe we have obligations that go beyond this oral
17 argument, but yes.

18 PRESIDING JUDGE: Okay.

19 MR. ATKINS: And, your Honor, at the appropriate
20 time, I would like to just speak a few more words about the
21 harm.

22 PRESIDING JUDGE: Okay. But I have a few more
23 questions before we get there.

24 MR. ATKINS: Of course, your Honor. Apologies.

25 PRESIDING JUDGE: I'm looking at the clock.

1 It's almost noon. Does anyone feel like we should take a
2 break, a short break? I see the court reporter.

3 Why don't we take a 10 minute break and come
4 back and we'll pick up right where we left off. Thanks,
5 everybody.

6 Off the record.

7 (Recess.)

8 PRESIDING JUDGE: Back on the record.

9 So we took a quick break, and I was in the
10 middle of asking my questions of the California ISO. I've
11 got a few more questions, and Cal-ISO wanted to talk about
12 competitive harm a little bit more. Let me get through my
13 questions of you, and I'll have you speak to competitive
14 harm, and then I'll switch over to Mr. Engleman.

15 So the next question I had was with respect to
16 20.2, which, as I understand it, defines sort of the
17 universe of confidential matters. If you could confirm my
18 understanding of 20.2.

19 And then also point to me which of these many
20 documents listed here relate to the data requests, because
21 it wasn't clear to me whether any of it addressed the data
22 requests.

23 MR. ATKINS: Yes, your Honor.

24 So I would say I would draw your attention in
25 particular to 20.2f.iv.

1 PRESIDING JUDGE: Before we get there, just so
2 I'm clear, so in 20.2a, which talks about individual bids,
3 that's really electricity market bids, right, not
4 transmission bids?

5 I didn't see a definition of bids in section 20,
6 but I had Ryan look, and the only definition of bids we
7 could find related to the energy and capacity markets.

8 MR. ATKINS: Your Honor, I think subject to
9 check, that is likely correct.

10 PRESIDING JUDGE: Okay. So what we're talking
11 about is 20.2f -- I'm sorry, iv?

12 MR. ATKINS: Iv, yes.

13 And I would say when we are talking about bid
14 information, we are talking about other material that is
15 protected by intellectual property rights held by, dot,
16 dot, dot, project sponsor or other third party.

17 I would also point out, so the CAISO tariff is
18 approved by the Commission, and then in implementing the
19 CAISO tariff, as a number of ISOs and RTFs do, we have
20 business practice manuals that provide more information on
21 how these concepts exist.

22 And the business practice manual for
23 transmission planning specifically provides for project
24 sponsors to identify information as confidential. That is,
25 I believe, section 5.3.3.2. It's in the first paragraph.

1 To the extent a project sponsor considers any of the
2 information submitted with its application to be
3 confidential or proprietary, such information must be
4 clearly identified and must include an explanation as to
5 why the information should be handled by the CAISO as
6 confidential.

7 PRESIDING JUDGE: Okay. I saw a reference to
8 your business practice manual in either your answer or the
9 supplement. Does that have a specific cite?

10 MR. ATKINS: It does. This is -- what I am
11 referencing is included in I believe it is attachment 2 to
12 our April 2 answer. So I believe in that attachment, we
13 provided you the entirety of section 20 of the CAISO
14 tariff, and we provided you with the relevant excerpt of
15 the BPM for the transmission planning process.

16 PRESIDING JUDGE: Okay. And that's how we would
17 cite to it is business practice manual for transmission
18 planning process?

19 MR. ATKINS: Yes, your Honor.

20 PRESIDING JUDGE: Because you have multiple
21 business planning -- business practice manuals?

22 MR. ATKINS: We do, your Honor.

23 PRESIDING JUDGE: Okay. Is there anything in
24 here that prevents me from granting the motion to compel?

25 MR. ATKINS: No. It simply allows project

1 sponsors to identify information as confidential, which
2 then triggers the provisions of section 20 of the tariff.
3 Your Honor, we would contend that under the appropriate
4 balancing test, this information should not be disclosed,
5 but I would not suggest that either the BPM or section 20
6 of the ISO tariff in some way limits your legal authority.

7 PRESIDING JUDGE: Okay. And back to section
8 20 -- I'm sorry, I just want to get back to the language.

9 So 20.2f.iv says information that involves
10 proprietary analytical tools, that's not what we're talking
11 about, computer codes, that's not what we're talking about.
12 So it's -- or any other material that is protected by
13 intellectual property rights held by CAISO?

14 MR. ATKINS: I would say held by the project
15 sponsor.

16 PRESIDING JUDGE: Or project sponsor.

17 MR. ATKINS: Yes, your Honor.

18 PRESIDING JUDGE: So I'm struggling with the
19 phrase "intellectual property rights." So I can understand
20 intellectual property rights in analytical tools and
21 computer code, talking about copyright and trademark.

22 What's the intellectual property right in a bid?

23 MR. ATKINS: I would say a bid contains a wide
24 range of proprietary information for which -- you know, it
25 contains specific bidding strategies, it contains risk

1 premiums.

2 Actually, if you'll give me just a moment, your
3 Honor, I can provide -- so, you know, it contains
4 information on vendors, it contains information on cost of
5 debt, it contains information on bidding strategies and
6 why -- these are all detailed at greater length,
7 particularly in our April 3 supplement.

8 All of these are confidential and proprietary.
9 DCRT's bids are confidential and proprietary. They have
10 chosen to release them in this proceeding, which they can
11 do.

12 But I know DCRT and its affiliates bid, you
13 know -- I really caution you, your Honor, to suggest that
14 bid information is not confidential under the provisions of
15 the ISO tariff. That would have tremendous harm in the
16 CAISO bidding process.

17 PRESIDING JUDGE: Yeah, I don't want to rock the
18 boat. I just think it -- when I think of intellectual
19 property rights -- I understand proprietary information. I
20 just -- I guess you're telling me to read that phrase
21 "intellectual property rights" more broadly than a lawyer
22 ordinarily would.

23 MR. ATKINS: I certainly would read that in the
24 context of the reference to confidential and proprietary in
25 the BPM section 5.3.3.2.

1 PRESIDING JUDGE: Okay. All right. I have your
2 point.

3 Okay. Last question I have, which will lead
4 into your competitive harm question, is I've heard in your
5 supplement and ETCC's pleading that there are concerns with
6 the protective order in this case.

7 Is CAISO suggesting that the protective order in
8 this proceeding is inadequate?

9 MR. ATKINS: We are, your Honor. We are
10 submitting that the PRIV HC designation for a wide range of
11 bids is not sufficient, simply because a review of those
12 bids will -- by anybody who DCRT currently has designated
13 as noncompetitive personnel is problematic for a number of
14 reasons.

15 First off, those individuals may not always be
16 noncompetitive personnel. In addition, counsel and
17 consultants are actively working with competitors who are
18 submitting bids and planning processes. And even assuming
19 that no DCRT representative shares the specifics of bids,
20 enough data points, which includes even your limited list
21 of seven, right, what they are asking for is all the
22 successful bids or a large subset of the successful bids
23 over an approximately 12-year period.

24 From that, they can derive aspects and elements
25 of what makes a successful bid from their competitors. So,

1 right, they will then be able to, without necessarily
2 disclosing specifics, provide advice going forward on the
3 types of things that lead to successful bids in the CAISO
4 competitive transmission solicitation process.

5 Once they have seen this and internalized this,
6 they -- you know, the genie is out of the bottle, right.
7 They will have the road map to successful bids.

8 And that, we believe, is a harm that cannot be
9 remedied solely by the designation of this material as
10 PRIV HC.

11 PRESIDING JUDGE: Mr. Atkins, you do realize
12 that the protective order in this case is based on the
13 model protective order that the Commission uses in
14 virtually every administrative litigation?

15 MR. ATKINS: I do, your Honor. And I also know
16 that when Judge Brenner looked at comparable issues when
17 the Commission in the ISO New England case looked at
18 comparable issues, they ultimately concluded that the harm
19 of revealing bidding information to a competitor,
20 particularly a competitor in Judge Brenner's case, meant
21 that it should not be disclosed even subject to whatever
22 protective order existed at that time.

23 PRESIDING JUDGE: Okay. And you do realize
24 that -- so this is in paragraphs 4 and 20 of the protective
25 order, that, you know, to the extent that a recipient of

1 privileged materials and highly confidential privileged
2 materials -- I'll state it the way that the order states
3 it.

4 Those materials, those privileged materials and
5 highly confidential privileged materials, shall only be
6 used in connection with this -- these specific consolidated
7 proceedings; right? And that a violation of that or any
8 other restriction in my protective order shall constitute a
9 violation of the order of the Commission?

10 MR. ATKINS: Your Honor, I am aware of that.

11 But it would be impossible to trace back, right.
12 It would simply be an understanding of what goes into --
13 it's the secret sauce. And if used in other contexts,
14 counsel, consultants, not necessarily even DCRT and Lotus,
15 if the secret sauce is made available, it would be more or
16 less impossible to prove that they are taking advantage of
17 access to the recipe for the secret sauce.

18 PRESIDING JUDGE: I'm having trouble enforcing
19 an order on the assumption that it will be violated or not
20 enforcing an order on the assumption that it will be
21 violated.

22 And I'm also having trouble taking a document
23 that the Commission has issued in virtually every
24 administrative litigation and saying, you know,
25 notwithstanding all of this, that because it may be

1 violated someday, we have to carve out a whole category of
2 information that can never be produced in a litigation,
3 even when the disclosing entity voluntarily provided that
4 information in the record itself.

5 MR. ATKINS: A single snapshot, your Honor,
6 without the -- with full notice, your Honor, I would simply
7 note that what you are suggesting may be impossible is
8 precisely what the Commission did in ISO New England. It
9 is precisely what Judge Brenner did in the Entergy
10 proceeding.

11 So I am sure they weighed -- considered the very
12 issues that you are raising, and they ultimately concluded,
13 weighing the potential harm against the benefits of
14 providing it even subject to a protective order that, the
15 harm of releasing this bidding information to competitors
16 was great enough that they did not order the disclosure.

17 And in the case of Judge Brenner, denied a
18 motion to compel.

19 PRESIDING JUDGE: All right. Well, I'll take a
20 look at those two orders.

21 Anything else you have to add?

22 MR. ATKINS: No, your Honor. I just -- I do
23 think you should take note of the fact that, you know, the
24 information provided by Viridon in the attachment to our
25 April 3 supplement, that the information provided by

1 multiple, multiple other project sponsors, some of whom
2 authorized us to share their names, some of whom did not,
3 consistently raised this theme. They consistently -- and,
4 your Honor, when DCRT is seeking information of their
5 competitors, I respectfully submit that should be afforded
6 some significant weight and, you know, that you need to
7 consider the possibility that the very folks DCRT and Lotus
8 are competing against are telling you of the type of harm
9 that will occur if you were to grant the motion to compel
10 specifically with regard to their bid and confidential
11 contract negotiation information.

12 PRESIDING JUDGE: Okay. I mean, I've read your
13 supplement, and I've read the Viridon letter that was
14 attached to it. Even though I denied LS Power Grid's
15 motion to answer, I did read it.

16 So I will take it into account. I guess let me
17 ask, Citizens are another competitor. They are a party in
18 this proceeding. Did they authorize you to put their name
19 on any of the points in the supplement? I know they didn't
20 themselves file an answer, which they were authorized to
21 do.

22 MR. ATKINS: Your Honor, I am not aware of any
23 communications with Citizens, but I will point out, I don't
24 believe any of the Citizens APSAs were the subject of these
25 requests -- or bids, I should say, I'm sorry. I don't

1 believe any Citizens bids were the subject of this request.

2 PRESIDING JUDGE: Even 11.7? Did they predate
3 or postdate 11.7?

4 MR. ATKINS: I mean, the 11.07 is broader, your
5 Honor. But I don't believe 11.07 goes to bids.

6 11.07, your Honor, I believe is requesting
7 information on final costs, cost caps, cost cap exclusions,
8 final cost reports provided by transmission developers over
9 an 11-year period, and the APSA drafts and related
10 communications.

11 PRESIDING JUDGE: Okay. So that's post-award
12 communications in your --

13 MR. ATKINS: I believe so. And, your Honor,
14 again, subject to check, I am not aware of -- yeah. You
15 know, I don't believe Citizens has any information that
16 would be responsive to this.

17 PRESIDING JUDGE: Okay. Are there any other --
18 Mr. Engleman's group, whole group, is there, and they did
19 respond to this along the same lines as you.

20 MR. ATKINS: You know, as I indicated, there are
21 folks who authorized us to share their names. There were
22 several other impacted project sponsors who urged us to --
23 but didn't provide us specific information that we could
24 share.

25 PRESIDING JUDGE: Okay.

1 MR. ATKINS: But, you know, I think I can say
2 most of the nonincumbent developers who are impacted by
3 their requests one way or another asked us to oppose the
4 provision of their bid information and their contract
5 negotiation information.

6 PRESIDING JUDGE: Most. So were there some that
7 said --

8 MR. ATKINS: Yeah, your Honor, because some
9 folks did not -- I am trying to honor their requests.

10 PRESIDING JUDGE: Did any of them say don't
11 oppose it?

12 MR. ATKINS: Not to my knowledge, no, your
13 Honor. Everybody who responded strongly objected to the
14 provision of their information.

15 PRESIDING JUDGE: And the rest didn't respond at
16 all?

17 MR. ATKINS: I believe that's correct, your
18 Honor.

19 PRESIDING JUDGE: Okay. Just want to get that
20 clear on the record.

21 Let me just switch over to Mr. Engleman.

22 Are you still with us, Mr. Engleman?

23 MR. ENGLEMAN: I am, your Honor.

24 PRESIDING JUDGE: All right. So one argument
25 that you raised that I didn't see in CAISO's supplement or

1 answer was that -- I don't know if there was an explicit
2 suggestion or maybe I just took it as implicit that -- are
3 you arguing the 20.3 prevents DCRT from asking the data
4 requests that it's asking?

5 MR. ENGLEMAN: I am, your Honor. The language
6 of 20.3 is very specific.

7 PRESIDING JUDGE: Okay. Why don't you step me
8 through the argument, then.

9 MR. ENGLEMAN: 20.3 says no market participant
10 shall have the right to receive from CAISO the documents of
11 other market participants to the extent that they're
12 treated as confidential.

13 PRESIDING JUDGE: Mr. Engleman, you left out a
14 word there. "Hereunder." No market participant shall have
15 the right hereunder to receive from CAISO -- to review any
16 documents, et cetera.

17 Doesn't the hereunder mean that it's only with
18 respect to section 20? Is there something in section 20
19 that waives the company's right to ask for discovery under
20 the Commission's regulations?

21 MR. ENGLEMAN: I think in section 24 point --
22 give me a second to find the reference.

23 PRESIDING JUDGE: Sure.

24 MR. ENGLEMAN: 24.5.4, it makes section 20
25 applicable to all of the information that is required under

1 24.5.2.4. Or excuse me, 25.2.3, the project information,
2 which CAISO has always treated as confidential information
3 and, in fact, wouldn't even release the -- whether or not
4 there was a cost cap until there was a change in Commission
5 policy on that.

6 So CAISO has always treated it as confidential
7 under section 20, and section 24.5.2.4 says subject to the
8 confidentiality provisions of tariff section 20.

9 PRESIDING JUDGE: I'm sorry, Mr. Engleman --

10 MR. ENGLEMAN: In our position, it makes it
11 relevant.

12 PRESIDING JUDGE: Mr. Engleman, I don't have 24
13 or 25 in front of me.

14 MR. ENGLEMAN: The language of 24 was in our
15 pleading on page -- the language of 24.5.2.3, which is all
16 the information the competitors have to submit, was on
17 pages 5, 6 and 7. And then the language -- the relevant
18 language of 24.5.2.4 is on page 7.

19 PRESIDING JUDGE: Okay. All right. I get you.

20 Is there anything in sections 24 or 25 or back
21 to 20 that waives the company's right to ask for discovery
22 under the Commission's regulations?

23 MR. ENGLEMAN: Well, I think the Commission's
24 regulations and the tariff have to be read together. The
25 tariff is binding on DCRT just as it's binding on the rest

1 of the market participants. And DCRT can't simply waive
2 the tariff provision by seeking discovery.

3 And our position is 20.4 relates to when third
4 parties are seeking discovery, whether that be litigation
5 before the Commission or in a suit if a contractor files a
6 suit against one of the market participants, seeking
7 information and subpoenas CAISO.

8 So I think you have to read each section in
9 context. 20.3 is very specific, no market participant
10 shall have the right hereunder. And 20.4b, while is less
11 specific, and it doesn't provide a waiver for a market
12 participant to seek information through discovery that it
13 can't seek under 20.3.

14 PRESIDING JUDGE: Okay. Again, I'm more
15 familiar with the section 20 provisions you cited to, so
16 step me through where in 24, and if you have language where
17 in your pleading, it says that the market participant can't
18 ask for discovery.

19 MR. ENGLEMAN: It does not say anywhere that the
20 market participant can't ask for discovery.

21 It says in 20.3, they shall not have the right.

22 PRESIDING JUDGE: Hereunder.

23 MR. ENGLEMAN: Yes.

24 PRESIDING JUDGE: So meaning section 20 or if
25 you want to broaden it to California ISO's tariff, it

1 doesn't have the right under those. But I think the
2 company has an independent right under the Commission's
3 regulations to ask for discovery; right?

4 MR. ENGLEMAN: It -- I think maybe we're talking
5 past each other.

6 It certainly has the right under the
7 Commission's regulations to ask for discovery. The
8 Commission's regulations, though, don't provide for an
9 automatic waiver of a tariff provision.

10 PRESIDING JUDGE: I understand.

11 MR. ENGLEMAN: Whether that's through discovery
12 or through any other mechanism.

13 And if it could, that would allow companies like
14 DCRT to do exactly what they're doing, which is get
15 something through discovery that they can't get under the
16 tariff simply because there's an ongoing proceeding.

17 And while your Honor has the ability to restrict
18 that based on the relevance and things like that, as you
19 have made clear, the discovery rules are much broader than
20 what the tariff would appear to allow based on the language
21 of the tariff.

22 And the importance is is to protect all of the
23 market participants, who give all of the information we
24 listed on 2-1/2 pages, to the very core of their company,
25 to other market participants.

1 And as you noted, your Honor, DCRT is not the
2 only market participant in this case. Releasing the
3 information goes to everybody in the case, whether that's
4 PG&E, SDG&E, Citizens, all the other market participants in
5 the case, significantly impacting CAISO's competitive
6 transmission.

7 And then when you weigh that against the
8 relevance, which I haven't addressed but CAISO did, the
9 relevance, which is DCRT has said the only relevance in
10 this case are the words of its contract, now it's wanting
11 everybody else's contract, everybody else's bids, to -- in
12 order to come up with an argument as to how they interpret
13 their contract, when their very case is read nothing but
14 the contract.

15 I believe Mr. Reed didn't even want us to read
16 the bid.

17 PRESIDING JUDGE: Okay. But CAISO and I believe
18 even on your cross-examination, Mr. Engleman, did impress
19 upon the record the importance of the bid information.

20 MR. ENGLEMAN: Of DCRT's bid information, your
21 Honor.

22 PRESIDING JUDGE: Well -- but --

23 MR. ENGLEMAN: Not the bid information of
24 anybody else related to any other APSA, particularly ones
25 after the fact.

1 PRESIDING JUDGE: How can the company assess the
2 validity of your arguments about the importance of the bid
3 without comparing how CAISO addressed the other bids?

4 MR. ENGLEMAN: They can -- Mr. Reed presented
5 that he already had the ability to assess that. He
6 presented a chart, which may have come under question in
7 cross-examination. But there's been no assertion that they
8 have -- until this rebuttal testimony, which also didn't
9 look at the bids. CAISO has specifically said that Ms. Le
10 Vine did not look at any of the bids in preparing her
11 cross-examination -- or preparing her rebuttal testimony.

12 So they have -- they have the full ability to
13 question her on cross-examination as to what she looked at.
14 And she's said under oath she hasn't looked at any of that
15 stuff.

16 PRESIDING JUDGE: Well, I mean, I appreciate
17 that you're giving them a plan for cross-examination, but
18 the company should decide for itself how to respond to the
19 arguments that are raised on the other side; right?

20 MR. ENGLEMAN: They should, your Honor. But I
21 think we have to go back to what they're asking for.

22 And, again, on page 20 -- or excuse me, page 5,
23 6 and 7 of our pleading, we laid out all of the information
24 they're seeking from other market participants under the
25 hope that they can find some nugget that will allow them to

1 expound upon this notion that even Mr. Crew said he didn't
2 hear of until 2023.

3 And so it's a balancing of what they're looking
4 for.

5 And I would add one other thing related to 20.3.
6 I know your Honor has ruled on LS Power Grid's request to
7 participate. But 20.3 actually says that they have the
8 right to defend, may in its sole discretion and own costs
9 challenge or defend against a disclosure, which, you know,
10 doesn't -- you can't fulfill that tariff provision through
11 a proceeding where they don't have that opportunity, when
12 they weren't even involved.

13 PRESIDING JUDGE: Well, they could have been
14 involved. I mean, you're not suggesting that the Cal-ISO
15 tariff overturns our intervention rules, are you?

16 MR. ENGLEMAN: I'm not saying it overturns the
17 intervention rules. But it certainly applies to their
18 ability to at least participate in a hearing in which their
19 confidential documents are going to be disclosed.

20 PRESIDING JUDGE: I guess -- I hear your point.
21 But they have the ability to submit even a late motion to
22 intervene and I'll address it when I see it. But I'm not
23 going to accept a letter that was sent by a non -- I mean,
24 I would open myself up to exceptions if I considered that.

25 MR. ENGLEMAN: I think -- I apologize. I wasn't

1 asking you to reconsider.

2 The point is that the tariff provides market
3 participants a lot more protection than what DCRT is trying
4 to accomplish in this case for their confidential
5 information.

6 And then Mr. Hall touched on the privileged HC.
7 Completely out of context. At the time none of these
8 issues were relevant. This was, as he noted, presettlement
9 or during settlement. And the issue was overdesignation of
10 privileged HC by the company.

11 PRESIDING JUDGE: Do you mean that's not a
12 problem anymore?

13 MR. ENGLEMAN: I'm sorry?

14 PRESIDING JUDGE: Do you mean that's not a
15 problem anymore? Because I have a big problem with
16 overdesignation right now.

17 MR. ENGLEMAN: That was the relevance of the
18 issue when it was raised. It had nothing to do with the
19 disclosure of third-party bids that aren't participants in
20 this case.

21 PRESIDING JUDGE: Okay. Yeah, I'm going to go
22 back and read Brenner's order, and I'll read the ISO New
23 England and the order that the Commission wrote.

24 But as to Brenner, he's another judge. He's
25 smart, probably smarter than me. I just on this record, I

1 just don't see that.

2 And I appreciate the concerns about people
3 violating the protective order, but I just can't make my
4 rulings on the assumption that people will violate my
5 orders.

6 MR. ENGLEMAN: Your Honor, may I touch on that
7 for just one second?

8 PRESIDING JUDGE: Sure.

9 MR. ENGLEMAN: I think the issue is you can't
10 unsee the information. It's easy to say somebody violated
11 the order if they filed it in something else. But if they
12 have all the financial information, all the contract
13 information of a competitor, you can't unsee that.

14 You might not go file it in another proceeding,
15 but can you affirmatively say you're not going to use it in
16 the next bid? I don't think anybody sitting in that room,
17 or me, can say that, you know, they can segregate their
18 brain that way.

19 And part of the reason you only have two cases
20 being cited by Mr. Atkins is it's so rare that somebody is
21 seeking such confidential information within one of these
22 proceedings.

23 PRESIDING JUDGE: Okay. Well, fair points. I'm
24 just telling you that I'm struggling here.

25 I struggle over a lot of issues that I expect

1 parties to seek interlocutory appeal on, and this is one.
2 So I'll -- I will -- without prejudging the matter, I'm
3 going to take it under advisement.

4 But I hope you all are hearing how I'm leaning
5 on these issues.

6 Is there anything -- well, I guess I should ask
7 the company, do you want to respond to anything that was
8 talked about with regard to the confidentiality and
9 competitive harms?

10 MR. HALL: Yeah, I think we read the tariff to
11 apply to the ability to look at other bidding material
12 while you're going through the competitive process.

13 But just to address Mr. Engleman's point about
14 the discussion in 2024 --

15 PRESIDING JUDGE: I'm sorry, Mr. Hall, would you
16 turn your mike on?

17 MR. HALL: Sure, sure.

18 With respect to Mr. Engleman's point about what
19 was subject to the motion practice in 2024, I mean, SDG&E,
20 PG&E, Citizens and SCE are all sponsors and are in this
21 docket. And the Judge -- the Chief Judge expressly
22 contemplated the exchange of information between
23 competitors.

24 I'll just leave it at that, your Honor.

25 PRESIDING JUDGE: Just like all the other

1 objections, last call? Anything else I need to consider?

2 MR. ATKINS: Your Honor, I mean, if you are --
3 and I can read the tea leaves as well as anyone. I would
4 like an opportunity to address the interlocutory appeal
5 issue at the appropriate time and place, and we can figure
6 out what that is.

7 But I also would encourage you, given the
8 competitive harm that multiple, multiple parties whose
9 information DCRT is seeking -- I would like to suggest
10 appropriate limitations on how the information is accessed.

11 Your Honor, the CAISO would be prepared to make
12 the bid documents available for in-person review by DCRT
13 counsel, and DCRT counsel alone, at our offices, we can
14 work out the specifics of it.

15 PRESIDING JUDGE: So that's a good point.

16 Look, there's no magic trick here. I'm trying
17 to telegraph to you all how I'm going to rule, and then I'm
18 going to take everything under advisement for however long
19 it takes for me to get my rulings straight.

20 In that time, you are free to talk with Mr. Hall
21 about trying to alleviate me of the burden of actually
22 making rulings. So is that clear enough?

23 MR. ATKINS: It is, your Honor.

24 PRESIDING JUDGE: Let's do this. I do want to
25 get through specific questions that I have about each of

1 the data requests. So let's keep going.

2 The first one is 10.09. And I don't have my
3 questions broken out by participants, so this is sort of
4 free-for-all. Let me just -- well, I'll ask the company
5 first. Actually, let me ask CAISO first.

6 You're still objecting to 10.09. But does the
7 supplemental response to 11.07d mean that you don't have
8 responsive documents to these either, to a, 10.09a?

9 MR. ATKINS: Your Honor, we have not completed a
10 full survey, but we will have some documents that are
11 responsive to 10.09a.

12 PRESIDING JUDGE: You will have?

13 MR. ATKINS: We will, your Honor.

14 PRESIDING JUDGE: Okay. And is that just
15 because of the scope of your document destruction policy?

16 MR. ATKINS: And the degree to which this is
17 older material, yes.

18 PRESIDING JUDGE: So the age of the documents?

19 MR. ATKINS: Yes, in some cases. But, you know,
20 we are aware that there are at least some that we have, and
21 we would complete our review and provide what we have,
22 assuming your Honor were to rule against our objection, and
23 at the appropriate time, subject to any interlocutory
24 appeal.

25 PRESIDING JUDGE: Okay. So -- well, I

1 appreciate that you did undertake that investigation, so
2 let me ask you, I think you said earlier, you are not
3 pressing your vagueness objection as to 10.9a?

4 MR. ATKINS: Yeah, our understanding based on
5 subsequent conversations and the motion is -- it is the
6 bids and the revised bids, so that is how we read a.

7 The vagueness of b I think we now understand --

8 PRESIDING JUDGE: Let's go to b after we're
9 finished with a.

10 MR. ATKINS: Of course. Apologies, your Honor.

11 PRESIDING JUDGE: The documents you identified
12 that are responsive to a, how many documents are there?

13 MR. ATKINS: I don't have a full accounting,
14 your Honor. I suspect that we have at least four or five,
15 but I don't have a full list.

16 PRESIDING JUDGE: Okay. But not unduly
17 burdensome amount?

18 MR. ATKINS: Well, your Honor, I mean, in their
19 initial request, they requested bids for 19 APSAs. So even
20 with revised bids, I think we are probably talking about
21 something, you know, under 50.

22 PRESIDING JUDGE: Okay.

23 MR. ATKINS: Just doing the math.

24 PRESIDING JUDGE: Okay. And I understand that
25 you're packaging all your objections together and they all

1 sort of compound on each other. But at least as to undue
2 burden, no more than 50 doesn't sound like a lot of
3 documents.

4 MR. ATKINS: Your Honor, I will tell you, we
5 literally have one individual who is able to search this
6 information. It might take some time. But we have begun
7 that process, and depending upon the nature of your Honor's
8 ruling, you know, we will endeavor to complete it
9 expeditiously.

10 PRESIDING JUDGE: Okay. All right.

11 I think that's all I have on 10.09a. Let's go
12 to 10.09b. So same question about 11.07d. Does your
13 destruction policy cover documents under 11 -- under
14 10.09b.

15 MR. ATKINS: I believe these are largely public
16 documents, as I understand the request. These are -- this
17 is, you know, competitive solicitation announcements and,
18 you know, functional specifications as they clarified
19 particularly in their March 26 motion.

20 I believe at least for more recent competitive
21 solicitations, all of that should be available. I suspect,
22 subject to check, that it is all still available.

23 PRESIDING JUDGE: Okay. So not big, not
24 burdensome, and it all rests on my ruling on scope.

25 MR. ATKINS: Ruling on scope and I guess a is

1 more the focus of competitive third-party information and b
2 is limited to documents that the ISO issued, self-issued.

3 PRESIDING JUDGE: So not even competitive harm,
4 just --

5 MR. ATKINS: Based on our current understanding
6 of the scope of 10.09b.

7 PRESIDING JUDGE: Okay. Mr. Hall, do you have
8 anything to say in response? Do you read 10.09b --

9 MR. HALL: I would just note on page 10 of our
10 motion, we say for example the competitive solicitation and
11 proposals. So if there are -- for example, if you were to
12 go through CSO-0006, there are questions from CAISO to
13 DCRT. So our expectation would be that if that combined
14 final package did not include CAISO's clarifying questions,
15 that they would be provided in the same way we provided
16 different correspondences between Abengoa and CAISO.

17 And obviously, Sean, if you find something and
18 you need to talk, we can discuss it.

19 MR. ATKINS: Your Honor, respectfully, I don't
20 think you can read that for a request that is asking for
21 materials provided by the CAISO. I don't think that's a
22 fair reading of the language of 10.09b.

23 PRESIDING JUDGE: Well, I think a fair reading
24 would be that you would provide those questions but redact
25 the portions of the questions that refer to material that

1 was provided to Cal-ISO. Unfortunately, that's the way I
2 read the request.

3 So I'm with you there, Mr. Atkins, but -- yeah.
4 All right. I think I have an understanding of this issue,
5 so I think you all have an understanding of what you can
6 talk about while I'm considering my ruling on this. But
7 let me move on to 10.09c.

8 MR. ATKINS: And, your Honor, in the
9 supplemental responses we provided last night, which we
10 understand DCRT counsel has not had an opportunity to fully
11 assess, we believe we've fully responded to 10.09c.

12 PRESIDING JUDGE: That was going to be my
13 question to the company.

14 Mr. Hall, recognizing that you've only had a few
15 hours, do you --

16 MR. HALL: We have not had time to review what
17 was provided last night in detail, your Honor, so if we
18 have time now or during a break, I don't know what time it
19 is, we can take a look at it.

20 We'll bring it up on the screen now.

21 PRESIDING JUDGE: No.

22 MR. ATKINS: Those are definitely protective HC
23 attachments.

24 MR. HALL: Okay.

25 PRESIDING JUDGE: So we're not going to bring

1 anything up on the screen. I would -- gosh, I think 10.09c
2 is a narrative response that's privileged and an
3 attachment, if I have that correct, which is a spreadsheet.

4 MR. ATKINS: Yes. And I believe the spreadsheet
5 is designated as PRIV HC.

6 PRESIDING JUDGE: How much time do you need,
7 Mr. Hall? Because --

8 MR. HALL: Mr. Reed is reviewing it right now.

9 PRESIDING JUDGE: I need to decide whether I'm
10 going to actually rule on this or not, or whether the
11 company is satisfied with the supplemental response.

12 Would you like a few minutes off the record?

13 MR. HALL: Please, your Honor.

14 PRESIDING JUDGE: How much time do you need?

15 MR. HALL: 10 minutes.

16 PRESIDING JUDGE: Let's go off the record for 10
17 minutes. Back at 1:00. Thanks, everybody.

18 (Recess.)

19 PRESIDING JUDGE: Let's go on the record.

20 So I think where we left off was 10.09c. And I
21 understand CAISO had supplemented that response.

22 Mr. Hall, does that satisfy the company?

23 MR. HALL: Yes, the Excel spreadsheet sent at
24 10:00 or 10:30 last night satisfies 10.09c.

25 PRESIDING JUDGE: So we can move on. 11.07a.

1 There's a supplemental response.

2 MR. HALL: Same answer, your Honor. We think
3 that the Excel spreadsheet sent last night would also
4 satisfy 07a as well.

5 PRESIDING JUDGE: Okay. So I can treat those
6 two, 10.09c and 11.07a, as withdrawn?

7 MR. HALL: Yes, your Honor.

8 PRESIDING JUDGE: Okay. See how much easier
9 this would have been if you would have done this in the
10 meet-and-confer period?

11 MR. ATKINS: Yes, your Honor. There were just
12 quite a few other things happening. We did our very best.

13 PRESIDING JUDGE: I understand. I understand.

14 I think the next one, there was no objection --
15 there was no motion as to 11.07b, so the next one
16 is 11.07c.

17 MR. ATKINS: And, your Honor, we have not
18 provided the actual final cost reports for a relatively
19 small number of projects that have been completed. We
20 would respectfully submit that the summary information in
21 the table provided for 11.07a and for 10.09c provides what
22 they need.

23 PRESIDING JUDGE: But didn't I see two reports?

24 MR. ATKINS: There is one I am aware of, not
25 counting DCRT's document itself, which is a subject of

1 ongoing discussions.

2 PRESIDING JUDGE: Okay. Mr. Hall, do you accept
3 that as a response?

4 MR. HALL: I'm checking now.

5 PRESIDING JUDGE: Okay.

6 MR. HALL: Your Honor, I'm going to go talk to
7 Mr. Reed.

8 PRESIDING JUDGE: Okay.

9 MR. HALL: Your Honor, the tables provided last
10 night will satisfy 11.07c as well.

11 PRESIDING JUDGE: Okay. Thank you. So I'll
12 consider that motion withdrawn as well.

13 And 11.07d, I guess same question. CAISO
14 supplemented its response last night?

15 MR. ATKINS: Yes. And we had responded
16 previously, but I think there was a lack of clarity. And
17 we clarified that, in fact, due to our document retention
18 policies and specifically our practices with regard to
19 negotiations of APSAs, we do not have responsive documents.

20 MR. HALL: Actually, isn't it that you destroyed
21 them?

22 MR. ATKINS: Yes. We removed them from our
23 records, that's correct.

24 MR. HALL: So, your Honor, just a point of
25 clarification. I think what d was asking for was all

1 communications, including those as part of the bidding
2 process.

3 But if what they're saying is they destroyed the
4 documents, it's a moot issue.

5 PRESIDING JUDGE: Okay. I mean, the only
6 question I have, Mr. Atkins, I hope I get the right answer,
7 which is, when were these documents destroyed, and were any
8 of them destroyed after this hearing was initiated in 2023?

9 MR. ATKINS: All of these would have been
10 destroyed upon -- or removed from our records upon
11 execution of the negotiated APSA. So that would have
12 probably included an ongoing practice through the date -- I
13 do not believe any of this occurred after we received these
14 discovery requests, no.

15 PRESIDING JUDGE: So there wasn't a litigation
16 hold put in place when --

17 MR. ATKINS: Respectfully, your Honor, it was
18 our view that these were not within -- for nonDCRT APSAs,
19 it was not our view that that was within the scope of
20 discovery for this.

21 PRESIDING JUDGE: Do you have any records of the
22 specific documents that were destroyed and when?

23 MR. ATKINS: Other than I know there were drafts
24 that went back and forth. I do not know, your Honor.

25 PRESIDING JUDGE: Mr. Hall, I don't see anything

1 in bad faith about their response to this. So are you
2 pressing your motion to compel with respect to d?

3 MR. HALL: It sounds like there's nothing to
4 compel, so we withdraw it, noting for the record that there
5 are APSAs executed after the case was filed.

6 PRESIDING JUDGE: Okay. I mean, I'll take that
7 into consideration. But -- when I write the ID. But I
8 don't have a motion pending, so that one is off the list.

9 And then the last one is 11.08b. CAISO
10 responded. There was some dispute as to whether they
11 responded to everything. They did provide a supplemental
12 response.

13 MR. ATKINS: That's correct, your Honor.

14 PRESIDING JUDGE: Mr. Hall, does that satisfy
15 the response? Satisfy the motion?

16 MR. HALL: So I think it may be a form of the
17 same response to the destruction issue, destruction of
18 documents issue.

19 What we were asking for here was communications
20 or documents that bridge a gap between the APSA, the bid
21 and the final cost reports.

22 PRESIDING JUDGE: Mr. Hall, let me just cut in
23 and make sure we're careful.

24 The supplemental response they provided to b is
25 marked privileged.

1 MR. HALL: Okay.

2 PRESIDING JUDGE: So I guess let's tread lightly
3 on how we describe the response.

4 MR. HALL: Another one that came in last night.
5 Just so I am as accurate as possible, can we bring it up,
6 please, Ed?

7 PRESIDING JUDGE: On your screen, not on the
8 hearing.

9 MR. HALL: Yes, on Ed's screen, correct.

10 PRESIDING JUDGE: I tell you what. Why don't we
11 take another 10-minute break. Mr. Hall, you can review the
12 response and then maybe talk with Mr. Atkins about, you
13 know, what can be said publicly about it.

14 MR. HALL: Okay.

15 PRESIDING JUDGE: I'm going to say another 10
16 minutes, so let's go off the record until 1:20.

17 Off the record.

18 (Recess.)

19 PRESIDING JUDGE: Let's go back on the record.
20 We were talking about data request 11.08b, and
21 the question was whether -- to the company was whether
22 CAISO's supplemental response was a sufficient response to
23 the data request.

24 MR. HALL: So just for the record, your Honor,
25 our understanding is CAISO's document destruction policy is

1 such that once an APSA is executed, prior documents are
2 destroyed.

3 This question -- these cost reports come in well
4 after an APSA is executed. So we wanted to verify whether
5 or not documents exchanged between APSA execution and the
6 cost reports coming in would also be destroyed.

7 I think what Mr. Atkins is going to confirm for
8 us is that they either are destroyed or they do not exist.
9 So I think he's going to say on the record that there are
10 no responsive documents in existence for --

11 PRESIDING JUDGE: That's what the answer
12 actually says right now. The nonprivileged portion of the
13 answer is no other documents responsive to this request
14 exist.

15 MR. ATKINS: And, your Honor, that is correct.
16 I won't get into what's within the scope of the privileged
17 portion of the response, but you can infer from the
18 reference to no other documents responsive to this request
19 exist, this is not a by-product of any CAISO document
20 retention policy. This is simply no documents other than
21 the mystery document within the scope of the privileged
22 response exist.

23 PRESIDING JUDGE: So --

24 MR. HALL: So we can withdraw the motion with
25 respect to 11.08b, your Honor.

1 PRESIDING JUDGE: b as in boy.

2 MR. HALL: b as in boy.

3 PRESIDING JUDGE: Okay. I think the only thing
4 I have left to talk about before we break is when the
5 responses would be due if I do compel responses. Looking
6 at my calendar and considering that the requests were sent
7 out originally on March 10 and March 17, and consistent
8 with my admonition that CAISO take whatever steps it could
9 to prepare for the possibility that I may compel
10 production, which it sounds like they did during the
11 argument, I'm proposing -- I'm leaning toward ruling that
12 the responses would be due June 13, which is a week from
13 today or five business days -- April 13. I apologize.

14 (Laughter.)

15 PRESIDING JUDGE: April 13. Whoa. That's what
16 I get for prepping on Easter Sunday.

17 So even if I give DCRT everything it wants,
18 which it sounds like we've already cut back a fair amount
19 on the motion to compel, I don't expect it to be a lot of
20 documents.

21 Mr. Atkins, let me ask you, is there a concern
22 with the deadline I'm thinking about requiring?

23 MR. ATKINS: Subject only to -- well, two
24 concerns, let me state. One is just the fact there is
25 still more digging to be done, so I do not have an exact

1 sense of that. We have already done some as we've
2 previously discussed. So certainly provide -- I hope
3 everything by that date. But all of this is subject to,
4 your Honor, I really would urge you given the competitive
5 harm, the bids and that information in particular, I think,
6 so we're looking at 10.09a, to consider granting an
7 interlocutory appeal, if you are inclined to grant that
8 motion.

9 I will note that I believe 715A allows the
10 presiding officer to stay while an interlocutory appeal is
11 pending, and the ISO reiterates its request on both counts
12 just with regard to 10.09a.

13 PRESIDING JUDGE: I hear you. I hear you.

14 Mr. Hall?

15 MR. HALL: We would obviously oppose that, your
16 Honor.

17 PRESIDING JUDGE: Oppose what?

18 MR. HALL: His request for -- actually, several
19 things. One, we don't agree that the risk/benefit analysis
20 pans out relative to the risk to the market precluding the
21 production of the documents we requested.

22 In terms of the production itself, your Honor.
23 It is limited documents. It sounds like CAISO has engaged
24 in efforts to find them. It would actually be great if we
25 could get them before the 13th, because depending on what

1 we do Wednesday relative to witnesses, we would need at
2 least a day or two to review them so we could cross Davis
3 and I think Witness Le Vine.

4 In terms of interlocutory appeal, we don't think
5 there are extraordinary circumstances here. It's a
6 standard discovery dispute subject to Rule 402.

7 PRESIDING JUDGE: We'll get to arguments about
8 whether I grant interlocutory appeal and what we do pending
9 an appeal after I issue my ruling.

10 But right now I want to take under consideration
11 the argument that we just had. I'll look specifically at
12 the two orders that CAISO wrote. I'm not sure they will
13 change my mind, but I -- I wrote this out so let me just
14 read it.

15 So prior to rendering my ruling, I'll remind you
16 that you still have -- you can still resolve this without
17 me actually rendering a ruling. Without prejudging my
18 decision, I can tell you that neither side is going to like
19 how I rule on this issue, so again, this is Easter Sunday,
20 so like Solomon's baby, neither side is going to win 100
21 percent.

22 And let me mention one thing to you all. As I
23 said at the beginning, I'm going to take up my motion and
24 answer on the witness list on Wednesday. I don't view this
25 discovery dispute and the order of witnesses as linked in

1 any way.

2 Meaning it's entirely possible if I grant DCRT's
3 motion to compel, I'm not going to be inclined to disrupt
4 CAISO and the other participants' order of witnesses, which
5 I think is their right, given that they have the burden of
6 proof.

7 So I'll be open to persuasion otherwise, but
8 that will happen on Wednesday.

9 So if you want to talk about resolving the
10 two -- as I understand it, two outstanding data requests in
11 a way that address that issue, great. But I'll be prepared
12 to announce my ruling today, and I'll do my usual deal
13 where I'll invite whoever doesn't like the ruling, and
14 maybe both sides won't like it, I'll give you an
15 opportunity to ask for an interlocutory appeal, which I
16 will adjudicate based on the extraordinary circumstances
17 standard under 715. So consider that as well.

18 I think these can be resolved, but I'll leave it
19 to you.

20 Why don't we do this. It's 1:25 now. Let's
21 come back at -- Chad, do you have a hard stop at 4:00
22 today?

23 MR. ERB: Yes.

24 PRESIDING JUDGE: So let's come back at 3:00.

25 And you can talk about those issues.

1 After I issue my ruling and take up any motions
2 for interlocutory appeal, I do want to talk about two
3 administrative matters. One is this witness list issue,
4 and the other is my ongoing issue with privilege. So don't
5 run off after the argument. We'll be talking about that.
6 And then I may have a couple of other more minor
7 administrative matters.

8 With that, anything before we recess until 3:00?
9 Hearing none. We're in recess.

10 Off the record. See you at 3:00.

11 (Whereupon, at 1:26 p.m., the hearing was
12 recessed, to be reconvened at 3:00 p.m. this same day.)

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1 AFTERNOON SESSION (3:02 p.m.)

2 PRESIDING JUDGE: We're back on the record.

3 So we took a break for me to consider the
4 arguments made earlier today on the two motions. Before we
5 broke, I did ask the participants if they would maybe talk
6 about the issues a little bit more and see if there's a
7 need for me to issue a ruling.

8 Mr. Hall?

9 MR. HALL: Your Honor, yes, we did. And DCRT
10 offered a list of APSAs for which we would seek the
11 contested information. And I'll let Mr. Atkins speak for
12 himself, but we still weren't able to -- a shortened list.
13 We still weren't able to come to a conclusion.

14 PRESIDING JUDGE: Mr. Atkins?

15 MR. ATKINS: Your Honor, we just have concluded.
16 Consistent with our obligations under section 20 of the
17 tariff, we concluded we are not able to agree to any sort
18 of a deal on that.

19 PRESIDING JUDGE: Is that because if you struck
20 a deal, then you wouldn't pursue an interlocutory appeal?

21 MR. ATKINS: Yes, it's because for I would
22 expect most of the APSAs on Mr. Hall's list, project
23 sponsors have specifically objected to the disclosure of
24 their confidential information.

25 PRESIDING JUDGE: Okay. Did you talk to -- did

1 the two of you also talk about any restrictions that you
2 might want to impose if I compelled you to answer the
3 outstanding requests?

4 MR. ATKINS: We did not, your Honor. We
5 still -- although we oppose the motion, we still think that
6 if you're inclined to grant the motion and not stay it
7 pending interlocutory appeal, we believe the appropriate
8 arrangements would be in-person review of those materials
9 by DCRT counsel.

10 But we did not discuss that any further.

11 PRESIDING JUDGE: I'm sorry, I'm just thinking.

12 I don't know -- well, we'll get to my ruling.

13 I'll rule. I'm not going to -- see, this is the issue.

14 I'm telling you before you make the motion, I'm
15 probably not going to grant it. And I'm also not going to
16 grant any request to alter the normal course of discovery
17 pending that interlocutory appeal. So that's my
18 predisposition. I'll hear your motion. I'm willing to be
19 convinced otherwise, but I think that's how I'd rule.

20 Does any of that suggest that there's any
21 fruitful conversation to be had with Mr. Hall?

22 MR. ATKINS: I don't believe it does, your
23 Honor.

24 PRESIDING JUDGE: Okay.

25 MR. ATKINS: I appreciate the heads-up, but I

1 think we are obligated to seek to preserve the
2 confidentiality of third-party information in our
3 possession, given their very clear directive about the
4 potential harm that would come to them and to the ISO
5 planning process.

6 I appreciate the insight. It's perhaps not
7 shocking after our discussion before the break, so I don't
8 think it changes.

9 And we do believe it is within your Honor's
10 scope of authority to grant the motion subject to the
11 limits that we have proposed, and we would request that you
12 consider that.

13 PRESIDING JUDGE: Yeah, we'll get to your
14 motion. But let me announce my rulings, and I will -- I'm
15 going to endeavor to get an order memorializing these bench
16 rulings out tomorrow. You can imagine that with the
17 additional pleadings over the weekend and some of the
18 insights that came out of this oral argument that I need to
19 address, that it's possible it may slip into Wednesday.

20 But I'll do my best. But I'll render my ruling
21 from the bench, give the aggrieved parties/participants an
22 opportunity to make a motion for interlocutory appeal.

23 Now, subject to -- at least that tolls the
24 clock, right, it makes it easier for -- if I deny those
25 motions, for the appellants to go straight to the motions

1 commissioner.

2 So let's start with as to Cal ISO's objections,
3 I overrule them with certain caveats. So I'll just
4 explain.

5 I do not find DCRT's requests to be overbroad or
6 in excess of the scope of limited discovery on the new
7 rebuttal testimony. DCRT tied their requests to specific
8 statements in the rebuttal testimony, as recognized in both
9 motions.

10 I do recognize that they had every opportunity
11 to seek this discovery earlier, but I don't see anything
12 and the participants didn't cite anything in their
13 discussions reaching an agreement for this limited period
14 of discovery that tells me one way or the other what the
15 limits of those are, other than they had to be related to
16 the new rebuttal testimony, which I find based on that that
17 they clearly are related to the new rebuttal testimony.

18 Whether they seek relevant data or not, they are
19 reasonably calculated to lead to admissible information, so
20 that's my ruling with respect to scope and relevance.

21 I believe that with respect to CAISO's vagueness
22 objection, that they withdrew that objection as to
23 vagueness at least with respect to the two discovery
24 requests that are still in dispute.

25 And in light of our discussion today, I don't

1 find the requests, again the requests that remain in
2 dispute, to be unduly burdensome.

3 10.09 is limited to, I believe, seven projects,
4 the nine listed in the March 26 motion to compel less two
5 which don't have cost caps. So that's my ruling on that.

6 CAISO need not produce documents that are not
7 within its custody, control or possession, but they will
8 need to provide all responsive documents that are within
9 its custody, control or possession.

10 With respect to attorney-client privileged,
11 joint defense privileged, attorney work product doctrine, I
12 believe CAISO confirmed that there are no responsive
13 documents that fall within those privileges so I'll deem
14 that objection withdrawn.

15 Now, as to the confidentiality, I find nothing
16 in section 20 of the Cal ISO tariff that bars me from
17 compelling responses to these data requests. Section 20
18 contemplates the possibility that the Commission or an
19 Administrative Law Judge would require disclosure of
20 materials governed by section 20.

21 Notwithstanding doubts, and I'll just say it,
22 collateral attacks on the protective order in this
23 proceeding, I find the protective order provides adequate
24 protection of even highly confidential privileged material.

25 I'll remind participants in this case who have

1 access to highly confidential privileged materials that any
2 misuse of such materials, including use for purposes other
3 than this hearing, is a violation of a Commission order.

4 I did take a look at the order cited by the
5 CAISO, and with respect to the Brenner case that was cited,
6 yes, Judge Brenner did balance the interests of obtaining
7 the bid information against the competitive harms that were
8 alleged.

9 But I read Judge Brenner's decision to say that,
10 and I'll quote it, "Tractebel failed to show that there was
11 a specific need for the third-party nonaffiliated bid
12 data."

13 I've already ruled that DCRT has found -- has
14 demonstrated a specific need for the information they are
15 seeking, namely to respond to statements in the rebuttal
16 testimony.

17 With respect to the ISO New England decision
18 that was cited by CAISO, I'll note that that case did not
19 involve a Commission protective order but rather a
20 nondisclosure agreement.

21 A protective order, obviously, penalizes
22 violations as if they were violations of the Commission
23 order, whereas a nondisclosure agreement makes only breach
24 of contract remedies available to the parties who signed
25 those nondisclosure agreements. So I think that's a very

1 big distinction between the ISO New England case and this
2 case.

3 I'll also note that the according to the
4 Commission, and I believe this is paragraph 20 of the ISO
5 New England order, the Commission described the parties
6 requesting the confidential information's interest as
7 participating in this proceeding, but the Commission found
8 no specific basis for that.

9 Whereas I think a good contrast to the ISO New
10 England case, is the West Deptford case, which is cited in
11 the ISO New England case, this will be in my written order
12 but the citation is 134 FERC paragraph 61,189.

13 There in paragraph 24, the Commission actually
14 denied, what is it, a bidder's request to limit access to
15 confidential information using the same balancing test. In
16 fact, I think the Commission in the ISO New England case
17 cited the West Deptford case as the basis for their
18 balancing test.

19 And in paragraph 29, the Commission said "the
20 Commission finds that a protective agreement consistent
21 with this order will meet the legitimate needs of the
22 parties, who should be able to view the entire submittal
23 by" the applicant in that case, West Deptford, "to be able
24 to respond."

25 So it wasn't just a generic allegation of

1 participation in the case; they didn't know what they were
2 responding to without access to that confidential
3 information.

4 So, you know, comparing this case to both the
5 West Deptford case and the ISO New England case, I think in
6 this case the company makes a clear demonstration of its
7 need for the confidential information by tying -- again,
8 tying its request to the statements in the rebuttal
9 testimony.

10 I'll note one other thing about the West
11 Deptford case, which is that they -- the Commission
12 characterized the competitive harms as basically
13 speculation that the state commissions who were receiving
14 the information may not protect the confidential materials.

15 And, again, you know, I don't doubt the
16 competitive harms in this case, but I think that the
17 arguments that the protective order in this case are not
18 enough -- is not enough to safeguard the competitive harms
19 is similarly based on speculation that a participant in
20 this case, either a witness or a counsel in this case, will
21 violate the protective order. And I don't have any
22 evidence of that.

23 So that's my ruling as to the objections.

24 As to the specific data requests, I find that
25 with respect to 10.09a, CAISO must respond by providing

1 "bids or applications and any revised bids or applications"
2 for the seven developers that I found are subject to that
3 data request.

4 And then with respect to 10.09b, I believe CAISO
5 has a good understanding of what bidding materials are,
6 based on our discussions and with respect to the seven
7 developers that we're talking about, CAISO should respond
8 by providing the bidding materials it cited for those seven
9 developers.

10 With respect to the remaining data requests, I
11 believe I understood that those -- the motions to compel
12 those responses or further responses, and I'll list them
13 out, 10.09c, 11.07a, 11.07c, 11.07b, and 11.08e have been
14 withdrawn. So I won't -- I won't rule on those.

15 Mr. Hall wants to talk to I'll stop there. I
16 think that completes my ruling. Are there any questions
17 about my ruling?

18 MR. HALL: Yes, your Honor. For the seventh,
19 are you working from what we had identified as a list of
20 contracts to prioritize in the event --

21 PRESIDING JUDGE: Yes, I am.

22 MR. HALL: Okay.

23 PRESIDING JUDGE: And I'm restricting the
24 responses to those nine, minus the two that Mr. Reed has
25 already admitted don't have cost caps.

1 MR. HALL: I think there's one more -- your
2 Honor, this list wasn't meant to --

3 PRESIDING JUDGE: I understand what you intended
4 to list. Based on our discussion today and based on my
5 reading of the pleadings, I don't find you explained the
6 need for information beyond those seven projects, based on
7 your pleading.

8 MR. HALL: Okay.

9 PRESIDING JUDGE: Responses to the two disputed
10 data requests are due April 13, five business days from
11 today. That really does conclude my ruling.

12 Let me ask again, are there any questions about
13 that ruling? Hearing none.

14 MR. HALL: One question, your Honor.

15 PRESIDING JUDGE: Sure.

16 MR. HALL: And this may go to our discussion on
17 Wednesday about sequencing of witnesses. Is it appropriate
18 now to ask about a potential recall right for CAISO
19 witnesses in the event that we aren't provided enough time
20 to review material, or is that a Wednesday issue?

21 PRESIDING JUDGE: I already said that I won't
22 address this until Wednesday.

23 MR. HALL: Okay. Okay.

24 PRESIDING JUDGE: Let me see here. I'm going to
25 ask your indulgence. I have a separate script for

1 interlocutory appeal.

2 Let me ask, is there any participant that wishes
3 to seek an interlocutory appeal?

4 MR. ATKINS: Yes, your Honor. And, your Honor,
5 I would note you -- just a moment or two ago said you do
6 not doubt the competitive harm in this case, you know,
7 which I think aligns quite a bit with the standard under
8 715A, necessary to present detriment to the public interest
9 or irreparable harm to any person.

10 A number of impacted project sponsors have
11 expressly said that this will cause irreparable harm to
12 them.

13 So given that, given the competitive harm, and
14 given the fact that once the genie is out of the bottle, we
15 cannot put it back in, your Honor, we would request that
16 you hold off on enforcement of this ruling with regard to
17 10.09a and authorize us an interlocutory appeal up to the
18 Commission.

19 This does address pretty fundamental issues with
20 regard to protecting the confidentiality of bids that can
21 impact competitive transmission planning processes. In
22 addition to the irreparable harm, that is another reason
23 why it's appropriate to grant an interlocutory appeal.

24 PRESIDING JUDGE: Thank you.

25 Any response to that motion?

1 MR. HALL: Your Honor, we obviously disagree.
2 We think that the balances here go to our favor for the
3 production of the information.

4 CAISO put this information out there in its
5 rebuttal testimony, put information from Mr. Reed.

6 PRESIDING JUDGE: Hold on a second, Mr. Hall.
7 Could you please turn your mike on?

8 MR. HALL: Sure, sure. We disagree, your Honor.

9 We think that, you know, when weighing the
10 benefit under the circumstances, that the precedent, you
11 know, would dictate that the information be provided to us
12 so we could test CAISO's claims as well as other claims.
13 Once more, CAISO is the entity that put this in the
14 rebuttal testimony. If they had concerns about subjecting
15 it to discovery, they shouldn't have done that.

16 PRESIDING JUDGE: Should I address this one
17 motion first or should I ask if there are other motions?

18 MR. HALL: Your Honor, I do think we would seek
19 interlocutory appeal for one more contract on Mr. Reed's
20 list. I'm not sure I can mention the name publicly, but on
21 page 39, it's the third from the bottom. I'm sorry, third
22 from the top.

23 I'm looking at --

24 PRESIDING JUDGE: Give me a second to get there.

25 MR. HALL: Sure.

1 PRESIDING JUDGE: So, I'm sorry, Mr. Reed's
2 testimony was admitted privileged; is that right?

3 MR. HALL: Yes. The sponsor for the project is
4 publicly known, but for purposes of this discussion --

5 PRESIDING JUDGE: Hold on a second. So DCT-0125
6 REV PRIV.

7 MR. HALL: Correct, 39 of 77.

8 PRESIDING JUDGE: So the third --

9 MR. HALL: From the top.

10 PRESIDING JUDGE: -- from the top.

11 MR. HALL: Correct.

12 PRESIDING JUDGE: On page 38.

13 MR. HALL: Correct. 39.

14 PRESIDING JUDGE: Oh, I'm sorry. The top of
15 page 39?

16 MR. HALL: Correct, third from the bottom --
17 third from the top, sorry.

18 PRESIDING JUDGE: No, I'm going to deny that.
19 Go ahead and make your argument for why I should grant the
20 interlocutory appeal on that.

21 MR. HALL: Your Honor, because, one, it's a cap
22 TRR as opposed to a capital cost. But the reason why this
23 particular contract is of interest is that it was re -- it
24 was fundamentally restructured without going out to bid
25 again.

1 And we have the same questions about the process
2 used when submitting the bid -- the process used by the
3 particular developer when submitting the bid to see what
4 language they included in their bid that would have
5 exempted it from going out to rebidding and ultimately
6 exceeding the cost cap, that just happens to be stated in a
7 TRR.

8 PRESIDING JUDGE: So I -- well, I have a
9 response to that, but let me ask if there are any
10 objections to that interlocutory appeal.

11 MR. ATKINS: There are, your Honor. So basis on
12 which Mr. Hall is now seeking is not the basis set in the
13 data request. And, you know, respectfully, your Honor, we
14 just -- consistent with our overall objection to providing
15 confidential third-party information.

16 PRESIDING JUDGE: Okay. I've got to keep these
17 motions straight.

18 So I have a motion from Cal ISO for
19 interlocutory appeal, I have a motion from DCRT.

20 Are there any other requests or motions for
21 interlocutory appeal?

22 MR. ENGLEMAN: Yes, your Honor, Michael Engleman
23 on behalf of ETCC. And I apologize, given the timing, I'm
24 not in a great location so I apologize if there's
25 background noise.

1 We would also seek an interlocutory appeal of
2 your order requiring disclosure of confidential bidding
3 information.

4 We think it's an extraordinary circumstance and
5 it would warrant the Commission weighing in on the
6 applicability of both the tariff and the disclosure of
7 competing information, particularly unrelated to DCR
8 Transmission's either contract or the project as built.

9 PRESIDING JUDGE: Any response to that?

10 MR. HALL: Nothing beyond what we've already
11 raised in response to CAISO, your Honor.

12 PRESIDING JUDGE: Okay. Any other motions to
13 interlocutory appeal? Okay. I'm going to -- I told you I
14 would, but I'm going to deny all three motions. Let me
15 note first with respect to CAISO's motion, when I said that
16 I -- what was the word I used, I don't have my transcript
17 in front of me.

18 I heard you on the competitive harms. I did
19 hear you on the competitive harms, but I also think that
20 those harms are mitigated by the protective order and any
21 harms that might occur despite the protective order I view
22 as speculative.

23 So as to the CAISO's motion in particular, I
24 find this to be a typical discovery dispute, and so I do
25 not find -- I lost my script here. I do not find that the

1 standard in 715A has been met. I find no extraordinary
2 circumstances which may prompt Commission review of my
3 rulings necessary to prevent detriment to public interest
4 or irreparable harm to any person.

5 With respect to the company's motion, I agree
6 with CAISO. You didn't raise those arguments for the need
7 for that request in your motion or in the data request
8 itself, so I don't see any basis for seeking an
9 interlocutory appeal, but -- and certainly no extraordinary
10 circumstances which the interlocutory appeal regulation
11 requires.

12 And with respect to ETCC's motion, it's the same
13 ruling with respect to their motion for interlocutory
14 appeal.

15 All three of you are free to press your appeal
16 to the motions commissioner. And since I'm denying the
17 interlocutory appeal, I would, at least with respect to
18 Mr. Atkins and Cal ISO's motion, I would advise you to
19 press any restrictions on discovery pending the appeal with
20 the motions commissioner. Since I'm denying the motion for
21 interlocutory appeal, I'm not going to order restrictions
22 on the discovery. Per my order today, you are to provide
23 the full and complete responses by April 13.

24 And I think I mentioned this in the context of
25 the last motion to compel I granted, but if you all work

1 out some sort of production arrangement with each other
2 that gets information to the company faster than April 13
3 but under restrictions that you want, I don't need to hear
4 about it, and I'm going to assume that my order is complied
5 with notwithstanding whatever the motions commissioner
6 rules.

7 So, you know, you all are free to work out
8 whatever arrangements you want in order to comply with my
9 order compelling discovery.

10 And I'll remind folks, I know you won't quote me
11 back this, but under rule 17E -- 715E, this proceeding and
12 the deadline I set and all the remaining deadlines in the
13 procedural schedule will continue unsuspended unless and
14 until with the motions commissioner or the Commission
15 itself orders this case to be suspended. But I'm not going
16 to do anything to stay my orders pending an interlocutory
17 appeal that I denied.

18 Are we clear on that? Are there any questions
19 about it? Hearing none.

20 This just saves you the time and the effort of
21 sending me a written motion for interlocutory appeal and
22 another oral argument. So hopefully, you can -- you all
23 have -- you all know how to take interlocutory appeals.
24 I'll leave you to it.

25 All right. That concludes the oral argument

1 portion of today. I want to take up some administrative
2 matters, the first being the witness list issue.

3 As I've said a couple of times, I was busy
4 prepping for this oral argument and have not been able to
5 address the motion for adoption of a proposed joint witness
6 list, request for waiver of the answer period, request for
7 oral argument on April 6 and request for expedited
8 consideration, nor the joint participants answer to DCRT's
9 motion to adopt the proposed witness list, both of which
10 were filed Friday. I received courtesy copies Friday, but
11 they didn't reach the Commission's docket until this
12 afternoon.

13 So we'll address it as a preliminary matter
14 before we start calling witnesses on Wednesday. I know
15 that leaves a big question mark as to who is going to be
16 called first, but I'm hoping in light of the rulings today
17 that maybe you all can reach an agreement on the witness
18 list.

19 I will note that there's a little bit of irony
20 in the company's motion, calling their joint proposed
21 witness list a joint proposed witness list, when they were
22 the only party to support that witness list.

23 But hopefully, you all can reach an agreement
24 and we won't have to have me rule on that motion.

25 I think that's all I want to say about that.

1 Does anyone have any questions or comments?

2 MR. ADRIAN: Yes, your Honor, Josh Adrian for
3 the Six Cities.

4 It looks like the two witness lists do have --
5 start off with the first two witnesses being the same. I
6 think the first and affected witness by this is the third
7 witness. And for DCRT's motion, its proposed witness list
8 would have Brenda Mac Mathuna, the Six Cities witness,
9 going third. And based on prognostications of how much
10 time each witness is taking, that could mean he's up on the
11 stand on Friday.

12 And I understand that your Honor doesn't want to
13 address this until Wednesday, but it would be helpful for
14 the logistics of his flight and hotel information, if you
15 do happen to read the motion before tomorrow and if you
16 could throw something into your order on the motions that
17 you heard today, it would give us a little bit of -- I'm
18 just pleading for some clarity.

19 PRESIDING JUDGE: Let me take a quick look at it
20 now, and I will see what I can say on the record right now.

21 MR. ADRIAN: Thanks, your Honor.

22 MR. HALL: Actually, Josh, I think it's -- the
23 difference is you guys have Wagle, Davis, Lee. We have
24 Wagle, Lee -- so there is a difference. And I don't think
25 you would have Hoffman -- I think there are three witnesses

1 in both cases that would go up before Hoffman.

2 PRESIDING JUDGE: No, he's talking about Mr. Mac
3 Mathuna.

4 MR. ADRIAN: It's either Mr. Mac Mathuna would
5 go on potentially as early as Friday or three weeks later,
6 based on the CAISO witnesses and Joe Hoffman. So that's
7 why it would be helpful to know a little bit more about
8 what we might expect.

9 PRESIDING JUDGE: So Dr. Wagle is first, and
10 everyone agrees that Dr. Wagle will go first.

11 And then Ms. Lee will go second, and everyone
12 agrees that Ms. Lee will go second?

13 MR. ATKINS: That is not correct, your Honor.

14 PRESIDING JUDGE: Okay.

15 MR. ATKINS: So we -- Dr. Wagle is first and
16 there is agreement. We would put up Dr. Davis second.

17 PRESIDING JUDGE: Oh. This is why I shouldn't
18 be talking about these motions at all.

19 MR. ADRIAN: And how I screwed up the list,
20 sorry.

21 MR. ATKINS: No worries, not like folks didn't
22 have plenty else to read.

23 PRESIDING JUDGE: I'm not sure what guidance I
24 can give you. I don't want to prejudge this, but I think
25 I've already said that I believe the parties have the right

1 to order their witnesses in the way they choose, and the
2 fact that there was a discovery request at the end of the
3 discovery period that reached a motion to compel at the end
4 of the discovery period is not compelling to me in terms of
5 disrupting the participants' rights.

6 I will hear your arguments on Wednesday, but
7 that's my going-in proposition. That's about as much
8 assurance that I can give you, Mr. Adrian, about this.

9 MR. ADRIAN: Thank you, your Honor.

10 PRESIDING JUDGE: Yeah, I mean, I'm going to
11 hold my tongue and not say any more. It would take a lot
12 to convince me otherwise.

13 Let's talk about my favorite issue, privilege
14 designations. First, I do appreciate the company and Six
15 Cities in reviewing and lifting the privilege designations
16 in your exhibits. I assume they lifted them, and not added
17 more. I again was kind of busy this weekend so I didn't
18 actually review your submissions in-depth.

19 I do have a couple of questions, though, and the
20 first one, Mr. Phillips, is to you. My March 13 order was
21 prompted almost exclusively by the rebuttal testimony of
22 Mr. Dollens which redacted almost a third of his testimony.
23 I didn't see a submission from Trial Staff on April 3 as I
24 had directed, had wished.

25 Do you have an explanation, Mr. Phillips?

1 MR. PHILLIPS: I do, your Honor.

2 Trial Staff made an earnest effort to work with
3 the other parties, and we identified 200 exhibits and parts
4 and subparts that needed revision.

5 We ran into some technical difficulties
6 attempting to file those 200 parts on Friday and weren't
7 able to make the deadline.

8 We had prepared a motion to file out of time
9 today that we were going to circulate to the parties. We
10 haven't yet because I know you wanted to talk about
11 privilege. So we're happy to make an oral motion now if
12 you would prefer, but I think we can get those 200 parts
13 and subparts and revised testimonies into e-filing this
14 afternoon.

15 PRESIDING JUDGE: Okay. Well, that's good. Go
16 ahead and make the motion and I'll address it Wednesday
17 morning.

18 I did want to highlight a discrepancy that I did
19 notice in Mr. Gandhi's testimony.

20 In Exhibit DCT-0162 REV PRIV and PUB, there's a
21 table on page 10. And that table refers to payments under
22 settlement terms.

23 And with respect to -- I guess their reference
24 is to both payments under settlement terms in Mr. Dollens's
25 testimony and in Mr. Hofstra's testimony. One number is

1 redacted, and one number is unredacted. And I didn't
2 understand that. So I don't want to go into privileged
3 session now to talk about that. I don't even know if
4 that's the same number or referring to the same payments
5 under settlement terms. But we'll have a discussion about
6 that.

7 And, you know, I think maybe what I'd like to do
8 is -- I rattled off a list at the last oral argument of
9 items that I wanted to -- wanted you all to think about how
10 I could describe either the issue or the parties or the
11 amount in dispute.

12 So I just want to make sure that we're all on
13 the same page, you know, with respect to, I don't know,
14 WAPA costs that, for example, that, well, it's okay to
15 mention WAPA, it's okay to mention the amounts, or it's not
16 okay to mention the amount, or it's okay to mention the
17 reason why, you know, that amount should or should not
18 remain in the cost of service.

19 So maybe what we'll do as another preliminary
20 matter is just go through and see how you actually did
21 resolve each of those so that I have sort of a going-in
22 proposition.

23 This also helps in the event that someone
24 inadvertently marks something as privileged that you all
25 agreed shouldn't be privileged or vice versa, not unlike

1 the company name in that exhibit earlier today. So that's
2 sort of what we can expect again before we even call
3 witnesses. I just want to clear the decks on that issue.

4 Any questions about that?

5 MR. HALL: Just a comment, your Honor.

6 PRESIDING JUDGE: Mr. Hall.

7 MR. HALL: That particular cost, we actually,
8 like you, we were working this weekend. We actually found
9 an instance where that cost should -- the 500 should be
10 privileged. We won't tie it -- we actually had an instance
11 where it was not redacted in another document. So we were
12 going to either file a new one or wait until Wednesday.

13 PRESIDING JUDGE: That's not my preferred answer
14 to that question, but let's talk about it Wednesday.

15 MR. HALL: Okay.

16 MR. PHILLIPS: And, your Honor, I would also
17 note that DCRT identified a few passages in our testimony
18 that needed to have additional privilege applied while we
19 were going through this process.

20 PRESIDING JUDGE: Okay. Okay. Well, the first
21 thing on my list is Mr. Dollens's testimony, so we'll go
22 through that.

23 I guess the other thing and the overriding
24 comment about all of this is that I need to write an
25 initial decision at the end of this process. So I hope

1 that when you talk about your positions as to whether
2 something should be privileged or should not be privileged,
3 that you're leaving me with at least enough information
4 that I can write a document without having to redact
5 everything.

6 So I will leave it at that.

7 I think I have one more administrative matter.
8 I understand CAISO requested that witness Martha Davis be
9 added to the hearing site. And I understand that the
10 Commission's SharePoint team has granted her access.

11 Mr. Atkins, do you know if she's been able to
12 access the site or has reviewed the training videos?

13 MR. ATKINS: I believe the answer is yes on both
14 counts, your Honor.

15 PRESIDING JUDGE: Okay. All right.

16 And then my next favorite topic is any word on
17 Mr. Kennedy?

18 MR. HALL: Your Honor, yes, we've been working
19 through -- I think ultimately, he's not going to be able to
20 get access until he's here in the U.S. And I think I
21 mentioned that in one of our revised --

22 PRESIDING JUDGE: I saw it in your -- actually,
23 when we submitted the privilege-lifted versions of certain
24 testimony.

25 MR. HALL: Correct.

1 PRESIDING JUDGE: So when do you expect him?

2 MR. HALL: Expect him to be here?

3 PRESIDING JUDGE: Yes. Is he coming Wednesday?

4 MR. HALL: He will not be here on Wednesday.

5 PRESIDING JUDGE: Will not.

6 MR. HALL: He will not be here on Wednesday.

7 But I don't think we need him on Wednesday.

8 So Mr. Davis and Mr. Kennedy worked very closely
9 on the testimony, so there are no questions that -- with
10 respect to confidentiality, I can't imagine a question
11 relative to confidentiality on Larry's testimony that
12 Mr. Davis couldn't resolve.

13 PRESIDING JUDGE: No, that's not the issue. I
14 don't want to find out whenever he comes on the stand
15 sometime in early May that he can't access his own
16 exhibits.

17 I need to know at least a week in advance, so --

18 MR. HALL: And I think where we've -- let me
19 just check with John real quickly.

20 Your Honor, he will be here long before he's up
21 on the stand.

22 PRESIDING JUDGE: Okay.

23 MR. HALL: The issue we have is the Concentric
24 Canadian system won't allow him access, the Concentric
25 American system will. And he will be here four, five, six,

1 days to a week ahead of when he takes the stand.

2 PRESIDING JUDGE: Hopefully that will be enough
3 time for our IT department to debug any other issues that
4 might prevent him from accessing. He's your last witness,
5 and I'm not going to -- I'm not going to hold the hearing
6 for him. If he can't -- if he's not ready by showtime,
7 we're moving on.

8 MR. HALL: Sure.

9 PRESIDING JUDGE: That's all I have. Does
10 anybody have anything else they would like to bring up
11 today? Hearing none. Thank you very much. I'll see you
12 in a couple of days.

13 We're off the record.

14 (Whereupon, at 3:58 p.m., the oral argument was
15 concluded.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceeding before
the FEDERAL ENERGY REGULATORY COMMISSION in the Matter of:

Name of Proceeding:

IN THE MATTER OF:
DCR TRANSMISSION, L.L.C.

Docket Nos: ER23-2309-001
ER24-1394-001
EL26-34-000
(Consolidated)

Place: Washington, DC
Date: Monday, April 6, 2026

were held as herein appears, and that this is the original
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of the proceedings.

____CARMEN SMITH_____

Official Reporter

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