BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 24, 2005

10:05 A.M.

Reported by:
Christopher Loverro
Contract No. 150-04-001

COMMISSIONERS PRESENT

Joseph Desmond, Chairperson

Arthur Rosenfeld

John L. Geesman

Jackalyne Pfannenstiel

STAFF and CONSULTANTS PRESENT

B.B. Blevins, Executive Director

William Chamberlain, Chief Counsel

Song Her, Secretariat

Donna Stone

Jim Folkman

Martha Brook

Caryn Holmes

Kevin Kennedy

Michael Jaske

Julia Frayer
London Economics International, LLC

PUBLIC ADVISER

Margret Kim

Nicholas Bartsch

ALSO PRESENT

Frank J. Cooley, Senior Attorney
Stuart R. Hemphill, Director
Kevin Seeney
Southern California Edison Company
  Charles Plott
  California Institute of Technology

ALSO PRESENT

Chris Warner, Attorney
Roy Kuga
James D. Shandalov
Pacific Gas and Electric Company

Lisa Urick, Attorney
Mike McKlinihan
San Diego Gas and Electric

Brian T. Cragg, Attorney
Goodin, MacBride, Squeri, Ritchie & Day, LLP
Steven Kelley
Independent Energy Producers Association

Les Guliasi
Pacific Gas and Electric Company

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P R O C E E D I N G S

10:05 a.m.

VICE CHAIRPERSON PFANNENSTIEL: Good morning. The business meeting will come to order. We'll start with the Pledge.

(Whereupon the Pledge of Allegiance was recited in unison.)

VICE CHAIRPERSON PFANNENSTIEL: Before we start on the agenda, let me make a note on a change to the published agenda. Item number 7 will be taken up after we've gone through the remainder of the agenda.

In fact, what we'll do is we'll go through the published agenda, skipping item 7, but all the way through to the end. We'll then adjourn the meeting this morning and reconvene at 1:30 today specifically to pick up item 7. So, for everybody's calendars.

The consent calendar. Do I have a motion for approval?

COMMISSIONER ROSENFELD: I move the consent calendar.

COMMISSIONER GEESMAN: I second.

VICE CHAIRPERSON PFANNENSTIEL: Moved and seconded. Any discussion?

In favor?

(Ayes.)

VICE CHAIRPERSON PFANNENSTIEL: Three-nothing.

Item number 2, Possible approval of petition to reduce the amount of habitat compensation acreage necessary to mitigate the potential impacts of the vernal pool ecosystem based on the final selection of the natural gas pipeline route at the Roseville Energy Park.

Yes, Donna.

MS. STONE: Yes, I'm Donna Stone; I'm the Compliance Project Manager for this project. And this is basically a project in Placer County here, 160 megawatts. And the proposed reduction is to mitigate the impacts from the pipeline route that was chosen when the decision came out. Staff, there were four possible pipeline routes, and staff chose the mitigation for the one that would have the most impact.

Since the route was chosen with less impact, they want to reduce the amount of acreage required. Staff has analyzed this and concludes there'll be no significant adverse impacts to the biological resources because the proposal

effectively mitigates for any potential impacts of this selected route.

This results in our changing the biologic condition of certification Bio-13 to reduce the compensation by 1.7 acres from the original of 20.6 acres.

There was only one objection and that was from the public, and that was when the notice of receipt went out. But after mailing the petition and the analysis to that person we've not heard anything back from him, or from anyone else. And the staff analysis was mailed out July 28th.

The petition meets all the filing criteria of section 1769 concerning our post-certification project modifications. And the project will remain in compliance with all applicable laws, ordinances, regulations and standards subject to the provisions of Public Resources Code section 25525.

Staff recommends that the Commission approve the project modification.

VICE CHAIRPERSON PFANNENSTIEL: Thank you. Discussion?

COMMISSIONER GEESMAN: Madam Chair, this matter was taken up by the Siting Committee and

found satisfactory. So I would move the staff recommendation.

COMMISSIONER ROSENFELD: Second.

VICE CHAIRPERSON PFANNENSTIEL: Moved and seconded. Further discussion?

In favor?

(Ayes.)

VICE CHAIRPERSON PFANNENSTIEL: Thank you.

Item 3, Mountainview Power Project. Possible approval of a petition to delay the completion of the facility color treatment from 30 days before the facility's first turbine fire to no more than 90 days after commercial operation. Ms. Stone.

MS. STONE: Yes, I'm also the Compliance Project Manager on that project. And it is located in San Bernardino County. Basically the summary is as you read it.

A lot of the color treatment has already occurred on this project, but finalization is requested to 90 days after the start of commercial operations, which, at this point in time, is expected to -- commercial operation for this project is expected to be mid-February 2006.

The time delay doesn't negate any completion of the surface treatment. And staff concludes the requested delay would not result in a significant impact to the viewshed. The project would continue to comply with the LORS, and it results in our amending one condition. And that would be our visual condition number 1.

We have had no comments from anyone on this. And the staff analysis was mailed out July 8th. This meets all the filing criteria of section 1769. And the project does remain in compliance with all the applicable laws, ordinances, regulations and standards subject to Public Resources Code section 25525.

And staff recommends approval of this.

VICE CHAIRPERSON PFANNENSTIEL: Thank you.

COMMISSIONER GEESMAN: Madam Chair, this was also taken up by the Siting Committee and found to be satisfactory, so I would move the staff recommendation.

COMMISSIONER ROSENFELD: Second.

VICE CHAIRPERSON PFANNENSTIEL: In favor?

(Ayes.)

VICE CHAIRPERSON PFANNENSTIEL: Thank you.

MS. STONE: Thank you.

VICE CHAIRPERSON PFANNENSTIEL: Item 4, Mercedes-Benz USA, LLC. Possible approval of contract 600-05-001, a memorandum of understanding with Mercedes-Benz USA, LLC, to demonstrate one or more MBUSA hydrogen fuel cell vehicles. Yes, Mr. Folkman.

MR. FOLKMAN: Hello, Commissioners, good morning. I'm Jim Folkman; I'm the Contract Manager for this project.

It is proposed that the Energy Commission, the Air Resources Board and the Department of General Services, in partnership with Mercedes-Benz USA, enter into a multi-agency participant agreement to demonstrate three light-duty hydrogen fuel cell vehicles here in Sacramento.

It's proposed that the Energy Commission will lease at no charge one Mercedes-Benz vehicle for the demonstration purposes up to 36 months.

Today we are asking the Commission for possible approval of this participant agreement between Mercedes-Benz USA and the three agencies.

Mercedes-Benz USA and the Air Resources Board and the Department of General Services have already agreed to the terms of this agreement.

In addition, we are asking that the Commission consider the possible approval of the addendum to the participant agreement. This addendum is between Mercedes-Benz USA and the Energy Commission. It does not detract from the language of the participant agreement. It primarily specifies passenger vehicle access.

Mercedes-Benz USA has verbally approved the addendum language and will deliver the official document within the next week or two.

Again, we are asking the Commission to consider for approval both the participant agreement, as it is currently constituted, and the addendum, as it is currently constituted, to be signed upon approval of Mercedes-Benz USA.

Thank you.

VICE CHAIRPERSON PFANNENSTIEL: Thank you. Are there questions or discussion?

Well, since this came up in the Transportation Committee and we approved it, then I'll move the item. Is there a second?

COMMISSIONER ROSENFELD: Second.

VICE CHAIRPERSON PFANNENSTIEL: Moved and seconded.

All in favor?

(Ayes.)

VICE CHAIRPERSON PFANNENSTIEL: Thank you, Jim.

Item 5, Department of Energy, Lawrence Berkeley National Laboratory. Possible approval of contract 500-05-007 for $1,396,000 to Lawrence Berkeley National Laboratory to develop recommendations to improve hot water equipment and system efficiency in California homes. Ms. Brook.

MS. BROOK: Good morning, Commissioners. I'm Martha Brook with the PIER buildings program.

Specific efforts will be made in this proposed contract to inform the Title 24 standards in the areas of multifamily water heating, hot water pipe losses, single family water heating construction practices, and hot water distribution system modeling.

The project will also develop a hot water distribution system retrofit potential report, which will characterize California housing in terms of current hot water performance issues and cost effective retrofit opportunities.

The proposed contract will be funded with PIER natural gas funds. It has been developed in coordination with energy efficiency divisions title 24 standards staff.

The proposal has been approved by the R&D Committee and I'm here to answer any questions that you might have.

VICE CHAIRPERSON PFANNENSTIEL: Questions?

COMMISSIONER ROSENFELD: I move the item. I am very pleased with this. We have been talking for a long time about conserving energy and water. We're finally getting around to treating water equitably and I think it's just great. I move it.

COMMISSIONER GEESMAN: I'll second it, but I'll point out that it's a hot water program, and equity will demand that we address cold water in the future, as well; which we intend to do.

COMMISSIONER ROSENFELD: Which we jolly well intend to do.

VICE CHAIRPERSON PFANNENSTIEL: May we have a vote.

All in favor?

(Ayes.)

VICE CHAIRPERSON PFANNENSTIEL: Thank you very much.

MS. BROOK: Thank you.

VICE CHAIRPERSON PFANNENSTIEL: Item 6 is being put over primarily because we want to make sure that the final Energy Action Plan II that we considered here at the Energy Commission for approval is completely consistent with and is implementing of the Integrated Energy Action Plan, and specifically the Governor's response to that.

Since we have just received the Governor's response to the 03/04 Energy Action Plan -- I'm sorry, the 03/04 IEPR, we'll put off the action on the EAP until we have an opportunity to make sure that we've incorporated into that all of the latest information. And frankly, all of the latest state policy to make sure that's consistent.

I see Mr. Guliasi of PG&E had asked to speak to this item. So, I assume we'll put that off, also?

MR. GULIASI: Yes, thank you.

VICE CHAIRPERSON PFANNENSTIEL: And as I said, item 7 we will take up separately at 1:30 today.

Item 8 is the minutes of the August 10, 2005 business meeting. Do we have a motion?

COMMISSIONER ROSENFELD: I move the minutes.

COMMISSIONER GEESMAN: Second.

VICE CHAIRPERSON PFANNENSTIEL: Moved and seconded.

In favor?

(Ayes.)

VICE CHAIRPERSON PFANNENSTIEL: Commission Committee and Oversight. Commissioner Geesman, I understood that the Electricity Committee had determined that the staff would participate in the PUC confidentiality proceeding. Was that something that needed to be or should be or wanted to be discussed now?

COMMISSIONER GEESMAN: It's something that we had hoped to have on the agenda for the Commission's approval. If there is concern with our intervention, this is probably the time to voice that concern.

But consistent with the protocol that we've followed in the past we will bring something back for the full Commission's approval of the intervention.

VICE CHAIRPERSON PFANNENSTIEL: And it would be the staff participating as a party in that proceeding?

COMMISSIONER GEESMAN: That's correct.

VICE CHAIRPERSON PFANNENSTIEL: Fine. And then the only other item I would mention is that we did receive the Governor's IEPR response, as I said a minute ago, last night. And so we're just beginning to go through it. And I'm sure that there will be further discussion here at the dais and in many of our separate proceedings in terms of incorporating the policies stated by the Governor.

Chief Counsel report. Mr. Chamberlain.

MR. CHAMBERLAIN: Yes, Madam Chair. I need to have a brief closed session with the Commission at about noon today for the purpose of discussing potential settlement of litigation.

VICE CHAIRPERSON PFANNENSTIEL: That's fine. Do we know if the Chair will be back by then?

MR. CHAMBERLAIN: He's told me that he will be back for that.

VICE CHAIRPERSON PFANNENSTIEL: That's fine.

COMMISSIONER ROSENFELD: Mr. Chamberlain, could you be a little more precise as to where we're going to meet?

MR. CHAMBERLAIN: I would assume it's in his office.

COMMISSIONER ROSENFELD: Okay.

VICE CHAIRPERSON PFANNENSTIEL: Also, Mr. Chamberlain, I was under the impression that Jonathan Blees was going to provide us an opinion on some clean coal questions that had been discussed. Is that going to come in writing? I thought he might be here today to do that.

MR. CHAMBERLAIN: I can certainly ask him to come down if you'd like to hear the briefing that he gave to the IEPR Committee last week. That basically is the substance. He has that in writing that he can provide you. Of if you'd like to hear that again, I will ask him.

VICE CHAIRPERSON PFANNENSTIEL: All right, no, that's fine. I had thought that there might be some further followup today. But this was information that probably isn't something that you'd also heard, so we'll put that off.

MR. CHAMBERLAIN: Okay, thank you.

VICE CHAIRPERSON PFANNENSTIEL:

Executive Director's report. Mr. Blevins.

MR. BLEVINS: I have nothing to report, thank you.

VICE CHAIRPERSON PFANNENSTIEL: Thank you. Leg report. I don't see anybody from the Leg.

Public Adviser report.

MR. BARTSCH: Madam Chair, Members, Nick Bartsch representing Margret Kim. We don't have anything to report at this time.

VICE CHAIRPERSON PFANNENSTIEL: Thank you, Mr. Bartsch.

Public Comment.

COMMISSIONER ROSENFELD: Before public comment, Madam Chairman, just for the record I should announce that next week I'm going to be on a mission to China to talk to Chinese electricity policy senior officials, along with Susan Kennedy from the PUC and Steve Kline and Steve McCarty from PG&E.

And we're going to talk to them about how we do public benefits charges; how we manage energy efficiency; and how we do building standards and appliance standards.

And just for the record I thought I'd

say that's what I'm going to be doing.

VICE CHAIRPERSON PFANNENSTIEL: Thank you, Commissioner Rosenfeld, good luck.

No public comment. Then we will stand adjourned until executive session at noon. And then public session reconvening at 1:30 today.

(Whereupon, at 10:15 a.m., the business meeting was adjourned, to reconvene at 12:00 noon in executive session; and to reconvene the public session at 1:30 p.m., this same day.)

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AFTERNOON SESSION

1:35 p.m.

CHAIRPERSON DESMOND: Good afternoon. I'd like to reconvene this meeting and welcome folks back. Continuation of today's business meeting is for the purpose of providing a hearing on the appeals of Southern California Edison, Pacific Gas and Electric, San Diego Gas and Electric to the decision of the Commission's Executive Director that certain categories of supply data aggregated from filings those utilities have made in the Commission's Integrated Energy Policy Report proceeding should be made public because they do not constitute trade secrets subject to the protection under the California Public Records Act.

The utilities and staff have both submitted written testimony, as have the Independent Energy Producers. This hearing will permit the parties to cross-examine the witnesses who are sponsoring that testimony.

After the hearing I propose that the parties will be permitted to file concurrent post-hearing briefs on or before August 31st when the Commission will move to a decision on the matter

at our next business meeting on September 7th.

Because this hearing is being conducted as a quasi-judicial proceeding, I have asked Mr. Chamberlain, the Commission's Chief Counsel, to sit here at the dais with me as I chair this meeting.

I should indicate that I will need to leave this hearing for a meeting at the Governor's Office in a short while, and will then return. During that absence the meeting will be chaired by Commissioner Pfannenstiel, our Vice Chair.

I want to assure the parties that I have read all the transcript, that's what I brought here, of that portion of the hearing that I will miss.

With that, I propose the following order of presentation: The appealing parties may present any opening statements they wish to present, and will then present their witnesses for any summary direct examination and cross-examination. They may go in whatever order they wish.

When that is complete the staff may make an opening statement and present its witnesses in the same manner.

I believe we have all had the opportunity to read the written testimony, so I encourage the parties to make any direct examination brief so that we can devote as much hearing time as possible to providing an opportunity for cross-examination.

After the staff's witnesses have been cross-examined we will hear the testimony of the IEP witnesses in the same manner.

Because it is important that the Commission be in the position to make a decision on this matter at its next meeting we will go as long as the parties need us to go in order to complete the evidentiary record today.

Are there any opening statements that my fellow Commissioners wish to make?

Okay, will counsel for the utilities proceed. Yes.

MR. COOLEY: My name is Frank Cooley on behalf of Southern California Edison Company. And we're here representing the interests of our customers. This is not a shareholder issue. This is not something where Edison's shareholders are going to make a dime. This is something we are doing purely on behalf of our customers.

The CEC Staff proposes a one-sided and only-partial disclosure of information. This forced disclosure will disadvantage Edison in its negotiations with suppliers on behalf of its customers. The forced disclosure of information would be unfair, discriminatory and would violate state law and the protections afforded under the Public Utilities Code. The only parties who will be harmed are our customers; and the only parties who will be benefitted from the disclosure are suppliers.

What is tragic is that there is no real need for this dispute. Edison only objects to the disclosure of its bundled customer information. Edison has no objection to the disclosure of planning area data. Planning area data includes aggregated forecasts of our bundled customer load, municipal load and direct access load. In other words, we are willing to allow disclosure of forecasts of the need in our entire planning area.

The CEC Staff has given no reason whatsoever in its testimony or anywhere else why planning area data is somehow inadequate for the state's planning needs.

Most unfairly, the CEC Staff proposal

would not apply to any other load-serving entity. It only applies to one set of LSEs, the IOUs, the investor-owned utilities.

Edison, as you have gleaned from the record you have read, has presented overwhelming evidence of the harm that forced disclosure of its market-sensitive information would cause. SCE has presented the expert testimony of the people who actually procure power on behalf of our customers and plan our system. They testify, or they will testify, that forced disclosure of our bundled customer information will cause our customers to incur higher prices.

We asked a well known, highly acclaimed pioneer in experimental economics from the California Institute of Technology to take an independent look at the harm that would be caused by the forced disclosure of our market-sensitive information. Dr. Plott concluded, based on his independent studies, that forced disclosure results in higher prices under the conditions that are most applicable to the electricity market in California.

Staff, in its testimony, concedes that there are public sources of information. In an

attempt to undercut our trade secret argument, the CEC Staff has gone to extraordinary lengths to prove that other public sources of information are available. The import of their arguments is that therefore the information is somehow not protected under state law. This is not a correct interpretation of state law.

Moreover, none of the public information that the CEC Staff states is a close substitute for IOU information, is, in fact, the IOU's estimate of its bundled customer load. In other words, the CEC Staff, after scouring the public sources of information, has verified what we've said all along. Our bundled customer information has never been revealed publicly.

The CEC Staff argument is a two-edged sword. If there are published sources of similar information the CEC Staff can and should rely on those sources. Edison has no objection whatsoever to the CEC Staff relying on this public information. However, if the CEC Staff cannot find precisely the same information elsewhere, it should refrain from disclosing it in the IEPR process.

The analysis, sound economic theory, and

economic commonsense presented in the record dictates that the information be held confidential.

In conclusion, we believe this dispute is unnecessary. The CEC Staff recommendation will cause harm to our customers. And there are alternatives that would avoid that harm to our customers and still meet the Commission's public interest objectives.

Thank you.

CHAIRPERSON DESMOND: Mr. Warner.

MR. WARNER: Mr. Chairman and Commissioners, my name is Chris Warner; I'm Chief Counsel for our regulatory in corporate, for Pacific Gas and Electric Company. Thank you for having us here today.

As a threshold matter I did want to make a procedural inquiry, and that is, as the Commissioners know, the three investor-owned utilities, the three appellants, filed a joint motion regarding a procedural approach to this matter. And we wanted to know just as to whether the Commission intends to act on that joint motion. If so, when? If the Commission has any response to that joint motion, what that response

would be? How we should expect the Commission to resolve that joint motion?

CHAIRPERSON DESMOND: Mr. Warner, it's our expectation that the Commission will decide that motion at the time it also decides on this at the September 7th business meeting.

MR. WARNER: Thank you, Mr. Chairman.

PG&E echoes a lot of what counsel for Edison has said, but I think what we really want to emphasize here is perhaps a roadmap to what we believe you will hear throughout today, this afternoon, in terms of the testimony, and what we believe the testimony will show in terms of this matter.

First of all, we believe that the testimony will demonstrate that, in fact, the information that is sought to be disclosed under the notice of intent by the Executive Director is, indeed, commercially valuable proprietary information that is not available anywhere else. And therefore that information meets the definition of a trade secret that must be protected under California law.

We also believe the testimony on both sides will demonstrate very directly that the

information in having value in electricity markets in California, by definition, is market sensitive. That is that we believe the testimony will show that in fact the information is of value to participants in the marketplace. And participants in the marketplace will -- it will affect their behavior, it will change their behavior. And therefore, by definition, that information is market sensitive. And also, under California law, must be protected from disclosure.

We believe the testimony will show, as Mr. Cooley mentioned, that this Commission has plenty of other sources for information, particularly at the aggregated level, in order to fulfill its statutory responsibilities for energy policy planning and for advising the CPUC in its procurement proceedings.

I think if one thing that you will see in this testimony, both written and oral, you will see an abundant amount of information about alternative sources for the various data and forecasts. We believe that testimony fully demonstrates that to the extent that that data is available elsewhere, that data is, in fact, sufficient for the Commission's needs. That data

is different and is not the same data as the utilities have asked to be protected.

And therefore the utility data is a trade secret. But the distinction is that if the information for planning purposes is available elsewhere the Commission can fulfill very well its responsibilities, in combination by the way, with the abundant amount of data that is not sought to be protected under this appeal.

It's important to remember that we believe that the data that is sought to be protected here is fully available to you, as decisionmakers, (a); (b) a tremendous amount of the data that has been submitted by the IOUs is available to you, as decisionmakers, as well as to the public without any request by the utilities for protection.

Finally, we think that the roadmap here today that you should follow and watch for is a comparison between the policies that this Commission is considering and the polices and the procedures that are already adopted by the California Public Utilities Commission.

This is not an issue of first impression in this state. We have been going through almost

two years, three years of debate at the California Public Utilities Commission over where to strike the balance in terms of protecting data that is market-sensitive from disclosure, and making sure the decisionmaking process is transparent and that all parties have a reasonable access to data.

To that end, as you know, the California Public Utilities Commission recently issued a notice of proposed rulemaking. That rulemaking, if you follow it and look at it in detail, that rulemaking is on all fours with the issues you are considering here today in this appeal.

The big differences is that the CPUC is following a comprehensive approach to try to provide overall policy direction on protecting confidential information on where to draw the line.

Here today we're dealing with another appeal, another dispute on more or less an ad hoc basis. And we believe the testimony today will demonstrate that it would be very bad for this Commission, as a matter of state energy policy, to be out of step with the California Public Utilities Commission and to follow a different path, a more ad hoc path.

With that, that's our opening statement. We'll let our testimony speak for itself.

Thank you.

CHAIRPERSON DESMOND: At this time we'll hear from staff.

MS. URICK: Good afternoon, Commissioners, --

CHAIRPERSON DESMOND: Thank you, Lisa. Go ahead.

MS. URICK: Good afternoon, Commissioners, General Counsel, my name is Lisa Urick. I'm representing San Diego Gas and Electric in this proceeding. Mike McKlinihan from SDG&E is also present. He's our subject matter expert and he's available obviously to address yours' and others' questions this afternoon.

I just wanted to briefly emphasize a few overarching points regarding SDG&E's limited appeal for your consideration as you deliberate on this matter.

First, I want to emphasize that there is not a lot of data in dispute here. SDG&E appeals only three categories of data. Originally there were 12 scenarios that were proposed.

The data that SDG&E is concerned about

all relates to protecting forecasted demand data for SDG&E's customers, on whose behalf we are advocating these issues before you.

SDG&E has carefully tailored its appeal in this regard to the data that it believes truly is the most sensitive and essential to be protected from public disclosure. The forecast capacity data is particularly sensitive in this regard, because that's the target SDG&E aims for in its procurement activities. Therefore, to the extent suppliers understand SDG&E's more granular needs, SDG&E is disadvantaged in its negotiations. We think that's an unacceptable risk for ratepayers.

It's also important to understand that SDG&E has not provided this data previously. There have been some suggestions that there is at least comparable data out there, or that this specific data has been provided, and that is not the case.

That consultants may try to replicate the data shows that the data does indeed have value. That people want it, presumably so they can use it to advance their business interests, also shows the data has value.

Also to the extent there are arguments that similar, if not identical data, is available, SDG&E believes there's a big leap between similar and the same data. Historic data is not the same as forecast data. The forecast is, of course, more sensitive.

For the IOUs to essentially verify all of these analysts' efforts by releasing our own precise data or serving it up in very user-friendly formats strikes us as precisely the type of commercially valuable information that should not be provided when the ratepayers are potentially harmed in the subsequent negotiations that may occur with all of that data available.

Second, SDG&E's concern that the body of the CEC's testimony does not fully capture the nature of at least SDG&E's concern. CEC essentially claims that the IOUs' fear that releasing the data could unleash a market meltdown similar to the energy crisis. And they claim that cannot happen because things are different now.

Without even addressing whether that's true or not, SDG&E wants to emphasize that its concerns arise long before any market meltdown stage. SDG&E recognizes that diligent sellers

will use any and all available information to their negotiating advantage. This advantage can lead to higher prices for SDG&E's customers.

Finally, I strongly urge the Commission to refrain from making a final decision in this matter until the CPUC's confidentiality OIR has concluded. There's a serious risk of an inconsistent and perhaps unworkable patchwork of regulations that could result absent such a step.

The CPUC, in its last resource planning decision, clearly found that it intends to work with the CEC in the confidentiality OIR proceeding. The CPUC indicated that the respective agency's rules should be as closely aligned as possible.

Efforts and expenditure of precious resources, we believe, could be much better spent in a single forum where these issues are already teed up and will soon be poised for decision. Failure to do this could result in a confidential data release here that may be contrary to the final CPUC regulations.

And, of course, once released the potential damage is already out there.

SDG&E does not believe that awaiting the

outcome of the PUC's proceeding will in any way compromise or delay resource planning efforts in the state. Indeed, resource planning has been taking place very effectively, both here and at the PUC.

The PUC observed in its last resource planning decision that even though there were levels of confidentiality that were strictly observed there, there was still a robust evidentiary hearing record and a full public vetting of important issues. In the spirit of consistent efficient regulatory outcomes we believe that better coordination is essential here.

Thank you, Commissioners, for the opportunity to present our views today. And while we obviously have some disagreements with the CEC Staff on some of these issues, we also very much appreciate their diligent efforts in this proceeding.

Thank you.

CHAIRPERSON DESMOND: Thank you.

MS. HOLMES: Good morning, Commissioners. Staff is pleased to be here this afternoon to finally have the opportunity to

present our position on the Executive Director's proposal to release aggregated data.

You've just heard the IOU attorneys explain why they believe that the aggregation table release will cause electricity prices to increase. And I want to assure you that if staff believed there was any reasonable likelihood that the aggregation tables would have that result we would be the first to argue against their release.

We agree with the IOUs that there was market manipulation during the 2000/2001 energy crisis. And that the result was catastrophic for the IOUs and for California ratepayers. And we also agree that this Commission should be vigilant in insuring that it doesn't take any action that could lead to a repeat of those kinds of situations.

However, we do believe that when you examine the evidence here today you will reach the same conclusion that the staff has, that the aggregations protect against the release of data that could negatively affect electricity prices, and may, in fact, exert downward pressure on prices. In other words, there is no ratepayer harm that will result from their release at

anytime and there may well be ratepayer benefits.

So why are the staff and the IOUs so far apart? I think that there's a very simple answer. The IOU testimony fundamentally addresses different data than what is in the aggregation tables; and it also addresses a different procurement environment than exists today for meeting long-term needs.

We're going to begin by looking at what is in the aggregation tables. The confidential submittals consisted of monthly information. They identify the monthly demand forecasts along with various adjustments due to distributed generation, energy efficiency, demand response, planning reserve margins and the like.

There was resulting firm resource requirement; and then the submittals identified a series of individual resources that were available to the IOUs to meet those resource requirements.

The aggregations at issue took all of that data and collapsed all of the individual resources into three categories of IOU resources, and four categories of contractual resources.

In addition, monthly data was aggregated so that only quarterly and yearly values would be

released. Finally, the first three years of planning data would be withheld under the aggregations.

The resulting aggregations provide broad, long-range planning data, and mask all the specific data, monthly resource and demand information that was included in the submittals.

The staff testimony is going to focus on the question of whether this release could allow another market participant to gain some kind of a competitive advantage. We'll start with the question of what the data is.

First, you're aware that these tables are not what the IOUs will procure to. These tables are an input into a combined CEC/CPUC planning and procurement process that ultimately establishes broad guidelines for the quantities and types of resources that the IOUs obtain.

The exact amount that the IOUs will need to obtain in order to meet this obligations in the 2009 to 2016 timeframe isn't even known at this time. There are several reasons for this. First, we don't know what range of need the CEC will submit to the CPU, nor do we know how the CPUC will direct the IOUs to procure generation

resources compared to, for example, energy efficiency, demand response or distributed generation.

We don't know how renewable generation resources, which are procured largely through the RPS process, will be treated vis-a-vis traditional generational resources. And finally, we don't know how much of the need for traditional generation will be met with utility-owned generation, or through contracts with third-party generators.

It is only when and if the PUC provides the public guidance about these issues that the third-party generators will have some inkling of the exact amount of need that the PUC identifies as needed to be met. As a result, you can see that the aggregation tables don't let a market participant know any specific increment of need that the IOUs will need to meet.

Second, all of the evidence offered by the IOUs in support of their position, the 2000/2001 energy crisis, the experiments performed by Dr. Plott and economic theory revolve around very specific, short-term procurement needs.

The aggregation tables don't identify

anything remotely resembling those types of needs. Rather, they provide information about long-term trends in the demand/supply balance for each IOU.

As a result, stating that the aggregation tables release a residual net short figure to which the IOUs must procure is simply misleading.

Next we'll look at the procurement environment in which the aggregation tables will be released. All of the evidence offered by the IOUs revolves around the short-term options I was discussing earlier. But, in reality, the IOUs have a myriad of options for meeting demand in the 2009 timeframe and beyond.

The CPUC procurement process provides IOUs with considerable flexibility. They don't need to meet the long-term demand needs that the aggregation tables provide information about in any specific transaction.

The IOUs can conduct, and in fact are conducting, a series of RFOs. And if the bids in any RFO are too high due to the fact that the need is a long-term one, they can reject them all and issue a new one.

They can implement additional energy

efficiency or demand reduction programs. They can make decisions about how much of their own generation to sell, and how much to use to meet their own needs. They can seek to construct or purchase their own generating facilities.

In short, the procurement environment in which the aggregated tables will be released is not the environment of 2000 and 2001, nor is it the environment identified in Plott's experiments or described in the economic theories underlying the IOUs' conclusions.

It is an environment in which the IOUs have considerable flexibility in bargaining power in meeting their long-term needs.

We'll also note that there is a broad range of energy demand and supply information already publicly available. Much of this data is very recent actual production data, and therefore provides a much more accurate picture of the IOUs' current situation than the aggregation tables. It's this data that can and presumably is being used to create bidding strategies in the short term.

Although we agree that this information, not the information we are proposing to release,

could potentially have negative consequences. FERC has already made the decision to require disclosure of this information in the interests of promoting competition and transparency in the energy markets.

Finally, we'll provide evidence indicating that information about long-term supply/demand trends can actually provide downward pressure on prices by reducing uncertainty and leveling the playing field for less sophisticated and smaller market participants.

You do not need to reach this conclusion in order to rule in support of the Executive Director's proposal, but we believe that you'll find the evidence persuasive and conclude that the aggregation tables will not create harm, and may provide important economic benefits to the ratepayers.

So, as I conclude my opening statement I want to encourage you to pay careful attention to those two distinctions as you hear the evidence presented today. As you determine whether the aggregated tables contain data that will provide a competitive advantage to other market participants, consider whether the data that's

being discussed by the IOUs is the long-term supply data, the demand data, that's being identified in the aggregated tables.

As you determine whether the aggregated tables contain data that will provide a competitive advantage to other market participants, consider whether the procurement activities described in the various IOU assertions about increased prices are the same types of activities that the IOUs will actually undertake to meet long-term demand needs.

We believe that when you do consider this information, and read the subsequent briefings, you'll agree that the data in the aggregation tables is not a trade secret, and can, and in fact, should be released by the Commission.

Thank you.

MR. CRAGG: Good afternoon, Mr. Chairman, Commissioners. My name is Brian Cragg; I'm representing the Independent Energy Producers Association.

I -- support for the staff position and the Executive Director's proposal, and not for the reasons that have been alleged by the utilities. We're not seeking this information so that we can

manipulate the market and drive prices sky-high, as sort of a recurrence of the energy crisis of 2000 and 2001. That's been tossed around and it certainly has a lot of emotional value, but that's not the reason we're seeking the information today, or that we think it should be disclosed.

Ms. Holmes did a very good job of delineating the difference between short-term information and long-term information. IEP agrees that short-term information should be redacted. Frankly, we don't need it. We would limit that to data that's projected out two years, rather than three years, as the Executive Director has recommended. But the principle is the same, short-term load data is susceptible to the sort of concerns that the utilities have identified.

But the long-term information has a different purpose and a different function and a different value. The long-term information provides specific information about where and when new resources are going to be needed, where new generation resources should be located. And that's the business that independent generators are in.

The classic business proposal is find a

need and fill it, and that's part of what we're trying to do. We're trying to figure out what the need is, where it will arise and to try to take steps to begin to be in a position to fill it when that need arises. That's a long-term process, and that's the information that would be disclosed by the Executive Director's proposal; not the short-term information that might be susceptible to other types of manipulation.

We're presenting as a witness today Steven Kelley from the IEP. And I will be conducting very brief cross-examination of some of the other witnesses, and that will be the extent of our participation.

Thank you very much.

CHAIRPERSON DESMOND: At this time we'll move to the first witness. Do we have an order in which --

MR. COOLEY: I understand that they'd like to have our witnesses presented as a panel. That's fine, or we can present them individually.

MS. HOLMES: We had suggested originally that the witnesses be seated at the table together. We can run through them sequentially.

CHAIRPERSON DESMOND: Great.

MS. HOLMES: But that would provide the Commissioners the ability to ask questions of any witnesses at the end.

CHAIRPERSON DESMOND: Okay. Why don't we go with that option, then.

MR. COOLEY: Okay, we'll call our panel of witnesses.

CHAIRPERSON DESMOND: Yes.

MR. COOLEY: It will be Kevin Seeney; Kevin Seeney is in our energy supply and bargaining organization. Dr. Charles Plott, who conducted the independent study. And Stuart Hemphill, who is in our resource planning area, and can answer questions about that.

Mr. Hemphill is adopting and sponsoring the testimony that was originally sponsored by Gary Stearn. Dr. Stearn is back in Washington, D.C. today, testifying on behalf of the California customers, California parties in the FERC refund proceedings and couldn't be here today. So Stuart Hemphill is going to adopt that testimony.

This is Mr. Seeney. Dr. Plott. And Mr. Hemphill.

And I have just a few additional direct questions for Dr. Plott. I will minimize it in

deference to your direction.

DIRECT EXAMINATION

BY MR. COOLEY:

Q Dr. Plott, in your rebuttal testimony submitted on August 12th you address issues regarding your initial study, is that correct?

DR. PLOTT: Yes.

MR. COOLEY: What aspects of your initial study did you address in your rebuttal testimony?

DR. PLOTT: Well, we cleared several points that have surfaced, that surfaced -- surfaced since. One is that disclosure alone that causes this problem that we're concerned. That if what's defined to be net short is, in fact, an indicator of whether the markets are plentiful or scarce, that announcement, alone, and not the announcement of the demand curve or in technical terms how much people would pay, that announcement, alone, is enough to create price increases.

Now, this type of phenomena is something you see daily in your lives. If someone -- a great example is what's called a short squeeze in the stockmarket. If investors discover that

certain people are short in the market, that means they must buy, all of a sudden the prices in the stockmarket will increase rapidly in anticipation of this phenomenon. The sellers know that prices are going to go up. They are not going to sell, as a result. They wait and hold for higher prices. And so the higher prices actually occur.

So this is not a collusion; it's not a conspiracy; it's not tacit collusion. It's part of everyday life that you and me and everyone else in this room has experienced. It's a fact. It's not disputable.

That's the fundamental problem. Is that the announcement of the net short creates an announcement about the market conditions that all participants know, all sellers know, all other sellers know, and the buyers know. And that announcement of the scarcity is sufficient to cause prices to increase.

Now, this announcement of the net short, if it's times of great supply, would actually drive prices down. If you announce that resources are plentiful people are in a hurry to sell because they know the competition is there and the price will be low.

However, if the announcement is that it's scare, the opposite occurs. And I've been told that we are approaching a situation in southern California in which this scarcity, this problem of scarcity is increasing with increasing frequency and increasing severity.

That means that as this time approaches we're going to continue to see more and more rapid price increases as opposed to price falls. And that's going to have a very very very dramatic impact on electricity prices.

If it's not announced then I can understand how sellers might prefer it to be announced. If it's not announced they go into a bidding and they actually bid lower than they would have liked to have bid, because they know that if they'd held back they could have gotten more money.

So, this announcement actually -- the lack of announcement would actually help the consumers and hurt the suppliers. And the announcement to sell will hurt the consumers.

Now, the other thing that I discovered that I addressed is that the theories that are being advanced by the staff, and Ms. Frayer,

particularly, are really very special cases. These are very very very specific theories that even in a theoretical term hold only in very special circumstances.

In particular, in the case of the widow's curse as applied to this type of supply, does not hold if the suppliers sell more than one unit, just as a technical matter. And that particular theory has never ever been tested in the field or experimentally.

So, the theories about how this information is going to benefit have on empirical support whatsoever.

So we're dealing with a problem in which the theories advanced by the staff are highly speculative, at best. Furthermore, the staff has presupposed that the only reason that someone might be concerned about this announcement is conspiracy.

Now, conspiracy and tacit collusion can be a problem. Certainly that, and there's lot of evidence of that. But that's not the only problem that's involved here. There's a much deeper problem and a more profound problem and more subtle problem that almost seems incontestable.

So, I would say that in addressing the staff I concluded that they're using the incorrect theory. The bidding theory, for example, is the common value auction application is wrong. The refinements of that theory are also wrong.

And so I guess that that's the substance of what I have to say on that particular matter.

MR. COOLEY: Can you please tell the Chairman and the Commissioners why you believe that Ms. Frayer's criticisms, that she put in the testimony that was submitted on the same day as your testimony, are unfounded based on your analysis.

DR. PLOTT: Well, I think that's quite interesting, as a matter of fact. Ms. Frayer looked at the original study and noticed that I did not use an auction process, which is true, I didn't. The reason I did not use an auction process was because I was consulting with many experts in the field about the type of industrial organization that might be most interesting to study in this context.

As you know, there are many many many different types of ways that this power is traded. These types of bilateral negotiations from an

economist's point of view -- forgive me, I turned out to be an economist, I can't really deny that -- but from an economist's point of view these bilateral negotiations provide great insights into the way market architectures work, by the way, and that is my expertise in terms of the detail of market architectures and how market architectures interact with the price discovery process.

So I studied the negotiation process and I was criticized because I didn't conduct an auction. And I think that anyone who has studied the details of market processes would have known that everything that you're going to learn from an auction would have also been learned from the kind of study I performed. But, you need data, so I performed an auction, by the way, on my own. Just because I thought that these statements were so outrageous.

So I conducted an auction. Very similar, by the way, to an RFO process. I have consulted with Southern California Edison; I know something about the way they conduct auctions. I've also designed many many auctions in various contexts around the world and their application.

So, we implemented the auction. We were criticized because we did not, we only revealed -- we revealed demand curve. The criticism was that there was too much, so okay, let's take the information away, which we did. Only revealed the net short.

Then we conducted an auction. We were criticized because we didn't have it controlled in the original paper, by the way, which is quite false. There were many controls in that paper.

So we conducted a control. So you can see in front of yourself just exactly what happens when the suppliers have this type of information. And it's perfectly obvious. When you tell the suppliers that supplies are short, all their bids go up. If they don't know it they stay down. The result is that the consumers of power in southern California are going to pay more money. It seems to be obvious. In fact, it's so obvious I'm surprised that there's any debate about it.

It has nothing to do with collusion; it has nothing to do with exotic theories of tacit collusion, nothing. It's as simple as that.

What else was there? Well, there's many comments here, most of which I just simply

disagree with. They talk about many different qualities, different kinds of commodities that are being produced. I dispute almost everything that's said along those lines.

They are worried about levels of competition in our studies. As it turns out the levels of competitions in our studies were about alike. We see in many of the procurements, which do not have oceans of suppliers, incidentally, very few suppliers actually bid in those procurement auctions.

They worried about structural complexity and sealed bids, which we do. They worried about the impact of new entrants. That's really an amazing one because the same type of announcement, the same announcement that coordinates the suppliers also coordinates the new entrants. You're telling them that supply is scarce, charge a lot of money, and they will.

So, those are the things that motivated the second study and that I addressed.

MR. COOLEY: Mr. Seeney, in light of staff's opening comments this morning with regard to the RFOs, do you have any information to offer to the panel here?

MR. SEENEY: Yes, I do, Mr. Cooley. Just a couple of comments. First, it's public information that Edison is now conducting two RFOs. We're conducting a five-year RFO looking for offers for the 2006 through 2010 period. And that RFO is expected to conclude next month.

So if this information is made public, this is the type of information, if it's made public in the September 7th timeframe this is the type of information that could be used by suppliers to effect their bids in the last couple years of the RFO.

These bids that we receive in our RFOs are not based on cost, they're based on market information, assessment of market conditions. And this type of information is made public, would be used by the suppliers to modify their bids. We're quite confident of that, having conducted several RFOs and actually having participated in RFOs, ourselves.

Second, we're also conducting a ten-year RFO that will probably conclude in the October timeframe. And that RFO is looking specifically for new generation to come online prior to August 1, 2008. And those contracts could extend out

through 2018. So, again, this data would be useful to a potential new entrant indicating what the need is that Edison is seeking to procure for now. In that RFO Edison is seeking to procure for the entire system of SB-15, southern California portion of the ISO grid, of which we're a large part. We're approximately two-thirds of the entire system.

But this information would be useful information, in my opinion, and would affect bidders' bids in that RFO. Again, those bids are not based on cost, they're based on suppliers' sense of where the market is for their product.

Second, I'd like to address the comment that was made by the staff attorney about calling off the auction if there is evidence of market manipulation.

In my experience it's very difficult to tell the degree to which bids have been modified as a result of market intelligence that is provided. Bids could easily be increased 10 percent, 20 percent or 30 percent. The cost consequences to our customers would be huge. And we would have no way of knowing what that is attributable to.

There are a variety of factors that go into putting these bids together. And if you give bidders more market intelligence, that is going to be used in their development of their bids. That is just based on my experience and, again, on both sides, having submitted bids and having received bids.

MR. COOLEY: That concludes the additional direct. The witnesses are available for cross-examination.

CHAIRPERSON DESMOND: Thank you. Staff.

MS. HOLMES: Thank you. Do you have a preference for which witness we begin with?

MR. COOLEY: No.

CROSS-EXAMINATION

BY MS. HOLMES:

Q I'll begin with Mr. Seeney, then. Good morning, or good afternoon, I should say. I don't think we've met. I'm Caryn Holmes and I work in the Chief Counsel's Office here at the Energy Commission.

I'd like to start off with a question related to the additional testimony that you just gave. If I understood you correctly you said it's hard to tell whether bid prices have been

increased as a result of market information that may have been made available to market participants. Did I understand your testimony correctly?

MR. SEENEY: Yes.

MS. HOLMES: Isn't that the same way of saying that you can't tell whether or not the prices are reasonable or not that you are receiving in your bids?

MR. SEENEY: The way we judge reasonable is by the auction process -- I shouldn't use that word auction process, by the RFO process. It's a competitive process that we conduct. We solicit bids from all qualifying sellers and we conduct valuations of the bids following the procurement plan guidelines. That's the procurement plan approved by the CPUC. And we select the best bids in merit order. And by selecting the best bids that establishes the reasonableness of those bids.

Now, if all the bids are increased, or if the bids are increased on average by 20 percent, we will select bids on average that have a 20 percent higher cost to our customers.

MS. HOLMES: Is there any requirement that you select any bids in an RFO?

MR. SEENEY: Actually there is no requirement that we select any bids, however if we conducted RFOs and didn't select any bids, that would be not received well by the market. It would be an indication of bad faith.

But secondarily, the needs would still need to be met in a future RFO or through some other means. But given the resource need, the primary means for filling the need has been the procurement we've conducted.

MS. HOLMES: I'd like to turn to paragraph 14 of your direct testimony. You state, and I'll just paraphrase and you can let me know if you're not happy with my paraphrasing, if a market participant becomes aware of the magnitude of Edison's short position for any period, that entity or all market participants collectively could charge or bid higher price than otherwise.

I think it's the same general concept you were just trying to get across. Is that an accurate characterization of your testimony?

MR. SEENEY: Yes.

MS. HOLMES: I'd like to have you focus now on the aggregated summary tables. Will the resource need that's identified in the aggregated

summary tables as future generic resource needs be subject to modification as it goes through the joint CEC/CPUC planning and procurement process?

MR. SEENEY: Well, I'm not that familiar with the joint process, but the fact of the matter is the information you have is current information; we're conducting procurement now. Those are our best estimates and we're using those best estimates to conduct procurement today.

Obviously the best estimates are going to change over time.

MS. HOLMES: In fact, those best estimates were prepared some time ago, weren't they?

MR. SEENEY: But they're fairly recent, and fairly current.

MS. HOLMES: But they were prepared some time last year?

MR. SEENEY: I don't believe so.

MS. HOLMES: Earlier this year?

MR. SEENEY: I believe it was earlier this year.

MS. HOLMES: And you don't have any knowledge as to what happens at the Energy Commission or the CPUC as the procurement process

proceeds?

MR. SEENEY: Perhaps that question should be addressed to Mr. Hemphill.

MS. HOLMES: No, I would like to ask, since you've testified that the magnitude -- allowing release of the magnitude of the short position would allow market participants to collectively bid a higher price, I think it's important to find out whether or not you know whether or not that target changes as time goes on.

And what I'm hearing you say so far is that you don't know how it changes as a result of the planning and procurement process.

MR. SEENEY: Well, my understanding of the planning and procurement process, what's most relevant to us in how we conduct procurement is the procurement plan, which I alluded to before.

It's put before the Public Utilities Commission. The latest filing was prepared on March 25th, which established limits, volume limits for us. And that's the -- those are the limits we use in conducting our procurement. The targets we have are based on those limits.

The information you have before you was

prepared in about the same timeframe as that March 25th filing that was made to the Commission.

MS. HOLMES: Is the supply --

MR. SEENEY: So it doesn't matter -- I'm sorry -- it doesn't really matter what happens to that data as time goes on, it's now current information, it's information that we're using to conduct procurement today.

MS. HOLMES: Are you saying that the CPUC decision on procurement that's scheduled for 2006 is not going to have any effect on your procurement targets?

MR. SEENEY: Yes, the procurement targets change over time to time. In fact, they've changed twice this year. They will change a second time with the March 25th filing.

They do change. Load forecasts are updated. There will probably be a change in 2006 and 2007. And when the changes are processed and implemented as part of our procurement plan, then they will indicate our new procurement targets. But the information you have today indicates what our current procurement targets are.

MS. HOLMES: That you've just indicated will change over time, correct?

MR. SEENEY: Yes.

MS. HOLMES: Okay. Will the supply situation for Edison change over time, as well?

MR. SEENEY: Well, the supply information changes as a result of contracts expiring, as a result of -- that's the main reason the supply situation changes. We have obviously DWR contracts in our portfolio, other contracts that expire, and QF contracts that expire.

So, how the supply picture changes is known by the nature of the contracts we've signed.

MS. HOLMES: Are all the terms of your contracts public?

MR. SEENEY: No.

MS. HOLMES: Let me see if I can summarize what I've heard you say. Let's say that in 2006 you have projected, or there is established for you an actual procurement target for the year 2010. And because it's gone through these iterations that you've already described, since you filed your original information with us, in 2006 that target might be different than what was submitted to the Energy Commission, is that correct?

MR. SEENEY: It will be somewhat

different in 2006 and somewhat different in 2007, I believe I testified to that.

MS. HOLMES: Thank you. So it would be different in 2006 than it is now, and in 2007 it would be different from what it is in 2006 and now. And isn't that correct for each year of the forecast period?

MR. SEENEY: Yes, as I indicated, our assessments are changing over time and our procurement plan limits change over time.

MS. HOLMES: Thank you. I don't know if you're the right witness to ask this question. If you're not, you can direct it to another witness.

Under the current procurement rules is Edison required to obtain sufficient capacity energy resources for the forecast years out in the future by next year?

MR. SEENEY: The present rule in the resource adequacy proceeding is that Edison is required -- and indeed all load-serving entities are required to procure 90 percent of 115 percent of their average year peak load a year in advance, i.e. by September 30th the year before.

And then 100 percent of 115 percent in the month ahead. And we don't actually procure

waiting till the last minute like that.

MS. HOLMES: But that's your choice as to when to procure over the ensuing years?

MR. SEENEY: Well, there's some discretion in how we conduct procurement, yes.

MS. HOLMES: Thank you. So would it be fair to say, then, for the years of the forecast for which the aggregated summary tables apply, 2009 to 2016, currently there is no requirement that Edison have procured a certain amount of commodity to meet its energy and capacity needs?

MR. SEENEY: That's right. There's no requirement for us to procure right now for those years.

MS. HOLMES: And you have flexibility in choosing how you procure. For example, you could enter into some long-term contracts; you could enter into some short-term contracts; you could choose to acquire your own generation. Are those all means that you could use to meet those requirements when they come into effect?

MR. SEENEY: Well, there are significant constraints on what we can do. There are multiple requirements that we're trying to meet here and risks we're trying to manage that are huge. And

we just can't -- it would not be prudent for us to, for example, wait until the last minute to procure.

You mentioned building new generation. There are reasons why, regulatory reasons why that may not happen for some time that I could go into if you'd like.

MS. HOLMES: I don't think that's necessary; I've been a siting attorney, so I may be familiar with some of them.

Can you tell me what information Edison is required to release after an RFO is complete?

MR. SEENEY: I don't believe we're required to make any public announcement after an RFO is concluded.

MS. HOLMES: Thank you, now if I could turn to Dr. Plott, please. Good afternoon.

Dr. Plott, I want to turn to a statement that you made on your additional direct earlier this afternoon. And if I understood you correctly you said that you can learn everything about auctions and the same kinds of experiments that you conducted on bilateral parawise (phonetic) negotiations. Did I understand you correctly?

DR. PLOTT: No, you didn't.

MS. HOLMES: Could you clarify that, please?

DR. PLOTT: Sure, of course. The parawise bilateral negotiations, these are typically two-sided so that means that the principles operating on one side can be then transformed to see if they operate on the other side. It's a little more information.

But from a technical point of view they're very -- the two-sided auction or the negotiation process is very revealing of the underlying principles involved.

In this case we can see why those prices increased in negotiations. So, I didn't have -- did not have a big leap of a theory to see that it's probably going to happen in auctions, as well. As a matter of fact, you noticed that in the testimony or criticisms we were told to conduct an auction because the people didn't realize that you would learn the same thing in an auction that you learned out of negotiations from an economic point of view. So we conducted them.

MS. HOLMES: But, in fact, didn't you learn something different? In y our direct testimony didn't you say that the effect of the

release of residual net short is only in one direction, price increases? And in your rebuttal testimony you said that the price effect associated with release of residual net short could be an increase or a decrease. Would you like me to point you to those sections of your testimony?

DR. PLOTT: -- point me to that section. I have no idea what --

MS. HOLMES: Turn to your declaration that was filed with your direct testimony.

DR. PLOTT: Oh, I'm sorry, so, where is it that you're --

MS. HOLMES: Your declaration that was filed with your direct testimony.

DR. PLOTT: Right. Oh, okay, fine, that's great. Yes, I understand.

MS. HOLMES: Do you see that statement?

DR. PLOTT: Are you looking at figure 8 in --

MS. HOLMES: I'm not looking --

DR. PLOTT: You're not looking at the pictures?

MS. HOLMES: I'm not looking at a figure; I'm looking at page 2 of the declaration.

DR. PLOTT: Oh, page 2 of the declaration.

MS. HOLMES: And I can read to you from line 7. It says: While the amount of any price impact will vary according to the circumstances, the general..." --

DR. PLOTT: Oh, yes.

MS. HOLMES: -- "competitive consequences only in one direction, price increases." And, in fact, in your rebuttal testimony on page 36 you said that the price effects could be an increase or could be a decrease.

DR. PLOTT: Yes, that's because in the original testimony we were talking, we were discussing whether the nature of the release and the nature of the information that was released to the market. In the rebuttal testimony it could be an increase or decrease, and that's a fact.

And it could be in the negotiated auctions because if the release says this stuff is -- this is very plentiful, it's very plentiful, that process are going to go down. So, if you think that in the future we're going to have situations in which power is very very very

plentiful, that's one thing.

MS. HOLMES: So is the --

DR. PLOTT: If you think that power's going to be scarce, then it's going to be up and only up.

MS. HOLMES: So is the difference in the type of information that you released, did that cause the apparently contradictory statements?

DR. PLOTT: No, no, there was no apparent contradiction. It's a very clear statement. It's not the type of information that is released, it is what was released, what was said.

If you say things are scarce, the price is going to go up. If you say things are not scarce, they're not.

MS. HOLMES: So your original study did not examine the same types of circumstances that the second study did?

DR. PLOTT: There were a variety of circumstances, a variety of circumstances examined in the original study, yes.

MS. HOLMES: And so some of them are different. Thank you.

DR. PLOTT: There are some differences

in both. And we actually looked at a variety of circumstances just to make sure that we understood what was going on here.

MS. HOLMES: That's fine We were just trying to understand why there were apparently different conclusions in the two studies.

In your first experiment on parawise negotiations did you evaluate the effect of new entry and exit?

DR. PLOTT: The new entry and exits is a quite interesting discussion, as a matter of fact. New entry --

MS. HOLMES: I just would like a question of whether or not it was included or not.

DR. PLOTT: Well, I don't know exactly what you mean by new entry and exit.

(Parties speaking simultaneously.)

MS. HOLMES: Let me turn to your --

DR. PLOTT: -- these people were there for the first time. Is that a new entry?

MS. HOLMES: Let me --

DR. PLOTT: Yes, it is.

MS. HOLMES: Excuse me, let me --

DR. PLOTT: Did we have --

MS. HOLMES: -- turn to your --

DR. PLOTT: Did we have --

(Parties speaking simultaneously.)

MS. HOLMES: Please let me turn to your testimony so --

DR. PLOTT: -- an increase in --

MS. HOLMES: -- I can ask you --

DR. PLOTT: -- no.

MS. HOLMES: -- a question.

DR. PLOTT: Surely, of course.

MS. HOLMES: On page 2 of your study, which was included in both the appeal, I believe, as well as the direct testimony, it says: Our experiment evaluates the market implications of greater information dissemination based on a static environment without endogenous entry or exit of suppliers."

I'm just asking you to confirm that that is still your testimony.

DR. PLOTT: For purposes of a market --

MS. HOLMES: I'm just asking you --

DR. PLOTT: -- the answer -- the answer is that there was no new entry during a period of negotiation.

MS. HOLMES: Thank you, that was the question I was asking.

In your second experiment using auctions, did you evaluate the effect of new entry or exit?

DR. PLOTT: During the negotiation period, no.

MS. HOLMES: Okay, thank you.

DR. PLOTT: No. Incidentally, we know exactly what would have happened --

MS. HOLMES: Based on your expertise in the effect in evaluating the effect of information on the information disclosure on the California market, can you tell me how many megawatts have come online in California since 2001?

DR. PLOTT: I think for the technical facts I'll refer to Mr. Hemphill.

MS. HOLMES: Well, --

DR. PLOTT: For the design of these experiments I relied on experts knowing the facts of --

MS. HOLMES: So, your expertise and the effect of information disclosure on the California market isn't based on any specific facts associated with the California market?

DR. PLOTT: It's based -- it's based upon facts as I was advised to use, yes. My

expertise is in what happens if you impose certain types of rules. That I can say.

What happens depending upon the facts, what the facts happen to be, I'm happy to entertain a variety of facts. If you'd like another experiment run we can do it.

MS. HOLMES: I'm just trying to understand whether or not you knew what the facts in the California market were at the time that you conducted your experiment.

What I'm hearing you say --

DR. PLOTT: When we were --

MS. HOLMES: What I'm hearing you say is that I need to defer questions about --

DR. PLOTT: I would defer --

MS. HOLMES: -- factual --

DR. PLOTT: -- that type of thing to --

MS. HOLMES: Mr. Hemphill.

DR. PLOTT: -- Hemphill --

MS. HOLMES: Thank you. In both of your experiments was demand inelastic? And as a noneconomist I want to make sure I get the definition correct. When I say inelastic I mean the need to procure a fixed quantity of product at almost any price.

First of all, is that a correct definition for purposes of this discussion?

DR. PLOTT: For purposes of this discussion that's not exactly right, but to carry an intuition about it, that's fine.

And to answer your question, no.

MS. HOLMES: Demand was not inelastic?

DR. PLOTT: Not all the time. We varied it over a whole variety of circumstances. In all the experiments.

MS. HOLMES: What happened when you varied demand elasticity in your experiments?

DR. PLOTT: Usually when you approach a very -- usually the demand inelasticity interacts with a total available supply. When those two get close and you have an announcement the way we're discussing here, up goes the price.

Now, it need not be an new equilibrium price, just as you get close it'll start going up.

MS. HOLMES: So what happens when demand is elastic?

DR. PLOTT: When demand's perfectly elastic?

MS. HOLMES: Um-hum.

DR. PLOTT: Very little. It'll bump.

Especially if it's known that it's very elastic and there's great supply. If it's elastic and you're close to an inelastic supply, if you're close to the capacity industry it'll still go up, even though the demand's elastic.

And the reason is because everyone knows that you're close to the end of capacity and they withhold.

MS. HOLMES: I have a couple more questions about the California market. If you would prefer to refer them to --

DR. PLOTT: Yes, would prefer --

MS. HOLMES: Before I even ask them. All right.

Did your first experiment evaluate the effect of release of information about the willingness to pay for a unit of commodity? I think you called them units.

DR. PLOTT: Yes, it did.

MS. HOLMES: It did.

DR. PLOTT: Um-hum.

MS. HOLMES: Is it fair to say that the willingness to pay indicates the price and quantity for each unit demanded by the buyer?

DR. PLOTT: I would say that's precisely

what it did answer.

MS. HOLMES: Could you show me where on the summary aggregated tables they would reveal the price that the IOU would be willing to pay for either energy or capacity?

DR. PLOTT: Well, again, the contents of the aggregate tables I would refer to someone else. Whether that is known or not is -- and whether it made a difference or not, came in dispute. So in the second experiments we did not reveal that.

And, as a matter of fact, it makes no difference. It --

MS. HOLMES: I'm trying to understand if your conclusions about what the effect of release of the data is going to be is based on any understanding of what the data that is proposed to be released.

DR. PLOTT: Yes, of course it is.

MS. HOLMES: Then could you --

DR. PLOTT: -- we tested, we tested both cases.

MS. HOLMES: Then can you please point to me on the table that identifies the data that we propose to release, where the price information

is?

DR. PLOTT: Oh, the second study actually addressed that question directly. The first question didn't. So, now we --

MS. HOLMES: I was asking you about the first experiment.

DR. PLOTT: Oh, no, on the first experiment we -- it was announced. Our feeling was that the sellers probably could take a fairly good guess about what it was, but we announced it.

MS. HOLMES: In your second experiment you evaluated the effect of the release to sellers of, I don't know if you referred to it as the gap between needs and availability?

DR. PLOTT: Um-hum.

MS. HOLMES: Is that approximately correct?

DR. PLOTT: Actually we didn't announce a gap, we announced a net short.

MS. HOLMES: What's the difference between the gap and the net short?

DR. PLOTT: The gap would be a difference between a net short and when capacity of the industry begins to be reached.

MS. HOLMES: I'm sorry, could you say

that again?

DR. PLOTT: When the capacity of the industry --

MS. HOLMES: Maybe you could --

DR. PLOTT: -- begins to be --

MS. HOLMES: -- define them separately for me. Define residual net short and then define gap.

DR. PLOTT: Usually the California utility -- the California electricity industry's defined with two problems. One is that the demand is inelastic, certainly at the peak hours. Certain times of years, very inelastic.

The second is that the total capacity of the industry is being approximated. So the costs of producing electricity are going to go up very rapidly if you expand much more.

MS. HOLMES: I'd still like to get back to the definitions of gap and --

DR. PLOTT: -- is where that turn up goes, where the supply starts turning up. It's the difference between residual net short and where the supply starts getting costly.

MS. HOLMES: Where the supply starts?

DR. PLOTT: Becoming costly. Marginal

cost goes up.

MS. HOLMES: Again, maybe I should start with this question. Are you familiar with the aggregated summary tables and the data that's proposed to be released?

DR. PLOTT: Only by described to me from experts.

MS. HOLMES: Okay. Did you evaluate, and I won't ask you to refer to them specifically, did you evaluate the effect of the release of the supply mix over time in your experiments?

DR. PLOTT: Evaluate the release of?

MS. HOLMES: The supply mix over time, as it changes over the forecast period.

DR. PLOTT: No, we had no difference in supply mix that was relevant to our study.

MS. HOLMES: Did you evaluate the release of the demand over time?

DR. PLOTT: No.

MS. HOLMES: Forecast period.

DR. PLOTT: Only to the extent that it was announced through net short. We compared the case where it was released as a net short and which it was not released.

MS. HOLMES: And that was a single net

short, not a net short that changes over time as you earlier heard Mr. Seeney --

DR. PLOTT: That was --

MS. HOLMES: -- testify to?

DR. PLOTT: -- these are, you could look at these as years.

MS. HOLMES: Did you evaluate the release of any informational distinctions that are comparable to the distinctions between energy and capacity?

DR. PLOTT: No, I think not.

MS. HOLMES: Thank you. If I understood correctly you used five sellers in your second experiment?

DR. PLOTT: Yes.

MS. HOLMES: Do you know how many owners of generating capacity there are in California that are capable of selling energy and capacity?

DR. PLOTT: I would refer to someone else. I know roughly how many show up at an auction if that's what --

MS. HOLMES: No, that's not the question I'm asking. Thank you.

In your testimony you stated that it's a well known property of game theory that

aggressiveness of bidding increases with the numbers of competitors, is that correct?

DR. PLOTT: That's correct.

MS. HOLMES: Holding all other elements equal, wouldn't increasing the number of sellers reduce the price paid by the buyer?

DR. PLOTT: There would.

MS. HOLMES: Is in effect a new entrant then another competitor?

DR. PLOTT: If they can attract into it would be great, nobody disagrees with that.

MS. HOLMES: And did you test sessions with more bidders --

DR. PLOTT: I have --

MS. HOLMES: -- than five?

DR. PLOTT: -- many many many occasions. This is something --

MS. HOLMES: In this --

DR. PLOTT: -- that's well known --

MS. HOLMES: In this testimony?

DR. PLOTT: I tested different experiments, different sessions that had different buyers and sellers in them. In this particular study, no, I did not.

MS. HOLMES: Thank you. You stated

earlier that the price increases associated with the release of R&S when R&S is large occur without collusion, is that a fair statement?

DR. PLOTT: (No audible response.)

MS. HOLMES: Is that another way of saying that it's scarcity that causes the effect of price increases?

DR. PLOTT: Well, it's several things that cause it. One is the scarcity, itself, no. The possibility that there's scarcity, together with the announcement of those facts, does.

So it's the announcement that coordinates the problem, not just the scarcity, alone.

MS. HOLMES: And is it your recommendation that planning agencies such as the Energy Commission respond to that threat of higher prices by withholding information about scarcity?

DR. PLOTT: I don't believe I've made any recommendation.

MS. HOLMES: Do you have a recommendation?

DR. PLOTT: No, I have no particular recommendation. That depends upon many legal problems -- I'll defer to you.

MS. HOLMES: Thank you. Given your earlier statements about lack of specific knowledge about the California markets, is it fair to say that you rely on others, that only others can determine whether your results are applicable to the California markets?

DR. PLOTT: Well, I think the principles are quite general.

MS. HOLMES: So --

DR. PLOTT: The principles are general. Take the model in the same way that you're seeing the model used by staff, the principles -- and they're using them very liberally, the principles are quite general.

MS. HOLMES: But do the --

DR. PLOTT: Just like any model, you change the parameters and you see what the model tells you.

MS. HOLMES: But you're not capable of determining whether the results are applicable to the California market given your lack of familiarity with the specific details of the California market that you referred to earlier?

DR. PLOTT: I know that it's applicable to the California market to the extent that these

facts, some of which are in dispute, are true.

MS. HOLMES: But you don't know whether or not all of the facts that you assumed in your study are present in the California market?

DR. PLOTT: The only thing I can say is the facts that we used in the study reflected expert opinion. And if those opinions are quite wrong, --

MS. HOLMES: Did those facts reflect what Edison told you to use in developing the study?

DR. PLOTT: Well, actually I talked to other types of experts who had also studied this. I also have done some studies, so I knew a little bit about what the facts were.

As far as I know there's not much dispute about the fact that demand tends to be inelastic, and that the capacity is beginning --

MS. HOLMES: But you don't --

DR. PLOTT: -- maybe those are false.

MS. HOLMES: But you did testify that you don't understand, you don't have a lot of information about what the requirements are under the RFO process. You also said that you didn't have a lot of information about the number of new

entrants in California.

So you're not familiar whether if those facts are relevant to the applicability of your study to California, those are facts that you've testified that you're not familiar with, is that correct?

DR. PLOTT: Well, I would say I relied on other people for advice in this --

MS. HOLMES: You didn't independently research --

DR. PLOTT: No, I did not independently go out and get the data, no.

MS. HOLMES: Thank you. Mr. Hemphill, would you prefer to do Dr. Stearn's testimony first, or would you prefer to do your testimony first?

MR. HEMPHILL: I would prefer Dr. Stearn do --

MS. HOLMES: Okay.

MR. HEMPHILL: -- his own testimony.

(Laughter.)

MR. HEMPHILL: But I didn't have a choice in the matter.

MS. HOLMES: Well, you can pick. If you want. I have his questions written down first, so

why don't we just proceed through those.

So, if you could get that testimony in front of you. I will do the same. Do you have that in front of you?

MR. HEMPHILL: Yes, I do.

MS. HOLMES: Can you look to the discussion that's on pages 2 and 3 that identifies different scenarios, do you see that?

MR. HEMPHILL: Yes.

MS. HOLMES: Can you tell me whether or not there'd be a different answer in scenario 2 if buyer A's need was not immediate and she could meet it over a multi-year time period with a range of resources?

MR. HEMPHILL: I think the general conclusion from both of these scenarios is that you cannot draw general conclusions unless you fully understand the market. And that's why experimental economics is a good tool to evaluate these kinds of issues.

MS. HOLMES: So, if I could paraphrase the fact that scenario 2 may result in some price increases wouldn't be applicable to those fact patterns -- excuse me -- if you change the facts so that buyer A doesn't need to obtain the

commodity immediately, the conclusion could change?

MR. HEMPHILL: I think I'll stay with the original conclusion which is you cannot determine the magnitude or even the direction of impacting a buyer's confidential information unless you know the conditions of the market.

MS. HOLMES: Fair enough. Let's turn to page 5. You have stated that the Energy Commission Staff erred in characterizing the California market by ignoring the inelastic demand curve. Are you familiar with that testimony?

MR. HEMPHILL: Yes.

MS. HOLMES: I will ask you some of the same questions that I asked Mr. Seeney. Will the resource need that you identified when you submitted to us, and that would be presented in the aggregated summary tables as future generic resource needs, be subject to modifications as it goes through the joint CEC/CPUC planning and procurement process?

MR. HEMPHILL: My best understanding is that I don't know how the process is going to go forward. I have not seen a document which precisely states how the Energy Commission's

process will fit with the PUC's procurement proceeding.

MS. HOLMES: If you were to set aside, for a moment, the Energy Commission's portion of the process, is it your understanding that in the procurement proceeding the Public Utilities Commission could potentially change the targets that it directs SCE to meet from those that are submitted by SCE?

MR. HEMPHILL: I think that's a possibility. But again, the process hasn't been defined.

MS. HOLMES: Thank you. Would the following types of situations affect the amount or the location or even the timing of potential future resource acquisitions by Edison? I'll just give you two examples. The construction of additional transmission capacity into the L.A. Basin.

MR. HEMPHILL: I'm sorry, could you repeat the question?

MS. HOLMES: I'm asking you whether these kinds of changes in circumstances would affect the amount, the location or the timing of what Edison needs to obtain in the future.

And the first one was additional transmission capacity into the Los Angeles Basin.

MR. HEMPHILL: I think you're talking about issues at a planning area, rather than a bundled customer area.

MS. HOLMES: I'm asking you whether or not that's going to change. I mean you can -- I'm asking whether or not that's going to change either on a planning area, or you can answer both on a planning area or for bundled customer, whether that's going to change your need for potential future resource acquisitions.

MR. HEMPHILL: No, it won't change our need for future potential resource acquisitions. Those things will impact the planning area, and that information is best provided by the Energy Commission in terms of aggregate supply and demand. The timing is clearly from the Energy Commission and the Cal-ISO. And the location is best provided by the Cal-ISO.

MS. HOLMES: If summary tables were released and showed a capacity for Edison bundled customers, and I'm going to make up a number -- of 1000 megawatts or an energy need of 1000 megawatts hours for 2009, and an RFO was issued next year to

help you meet this need, would you be obligated to accept the offers if you found that the prices were unreasonably high?

MR. HEMPHILL: Well, I would certainly, you know, defer to Kevin Seeney on that topic. However, one possible outcome is that we would refrain from even trying to contract for years four and five that would reduce our flexibility and increase prices. I don't think that's a good policy for the State of California to be trying to implement.

MS. HOLMES: I'll ask you a general question similar to the one I asked Mr. Seeney. Once a specific need or a range of need is adopted for the years of the forecast period 2009 - 2016, would that target be updated by Edison to reflect new supplies, expiring contracts, changes in demand and the like?

MR. HEMPHILL: I believe Mr. Seeney indicated that it would.

MS. HOLMES: I'd like to turn to the testimony on page 17, line 23. And you talk about the demand curve to meet regulatory capacity requirement as vertical. Do you see that?

MR. HEMPHILL: Yes.

MS. HOLMES: Is the demand curve that exists now for capacity in 2010 vertical?

MR. HEMPHILL: I think demand is the demand for electricity, and it doesn't change much in terms of its elasticity. We've clearly seen that. For example, we had earlier this year some peak demand, and we called on interruptible customers. We had three peak demands in three days. And we subsequently saw a rapid reduction in the number of people who wanted to remain in the program.

So, what we find is we try to put together demand response programs, but once they are actually implemented, the consumers are realizing that it's not worth what they're getting for them. And they sometimes get out of them.

I don't think that's going to change whether it be 2006 or 2010.

MS. HOLMES: Do you know whether it's the policy of the state to increase demand elasticity?

MR. HEMPHILL: I think it's a good policy to pursue. And I think it is the policy of the state.

MS. HOLMES: Does Edison have the

opportunity to meet its 2010 capacity needs in different forms?

MR. HEMPHILL: Yes.

MS. HOLMES: I'd like to turn to the discussion about the 2000 and 2001 energy crisis. I believe it's on page 17.

That refers to the fact that there was a vertical demand curve in 2000 and 2001, and that there is the same vertical demand curve that exists today. Do you see that testimony?

MR. HEMPHILL: Yes.

MS. HOLMES: Is it your testimony that the disclosure of long-term capacity and energy requirements caused the energy crisis in 2000 and 2001?

MR. HEMPHILL: It was, that was one part of it, yes.

MS. HOLMES: Do you know whether or not long-term supply/demand balance information was disclosed in 2000-2001?

MR. HEMPHILL: I'm sorry, was your original question long-term supply and demand?

MS. HOLMES: Yes.

MR. HEMPHILL: Because, no, that was not -- I'm sorry, I apologize, that was not my --

MS. HOLMES: Were you referring --

MR. HEMPHILL: -- I misspoke.

MS. HOLMES: -- to short term?

MR. HEMPHILL: No, I was just talking about disclosure of information more generally.

MS. HOLMES: So which disclosure of information contributed to the energy crisis --

MR. HEMPHILL: Well, you have to look at what we were required to do during that time. And during that time we were required to sell everything into the spot market and procure everything out of the spot market.

So in that case the relevant timeframe would be very short term.

MS. HOLMES: Right.

MR. HEMPHILL: However, now we're in a situation where we can do short, medium, and long. And so it's equally important for us to not disclose information for all of those reasons, because we're now looking at several different markets rather than just one.

MS. HOLMES: How was the power priced that Edison purchased in the day-ahead and hour-ahead market in 2000, 2001?

MR. HEMPHILL: It was primarily

purchased through the PX.

MS. HOLMES: And so there was an established price that was transparent?

MR. HEMPHILL: Yes.

MS. HOLMES: Is that true today?

MR. HEMPHILL: Well, it certainly -- I guess I'm most concerned about not only the price being --

MS. HOLMES: I'm just asking whether or not Edison's power that it purchases for its retail customers is priced the same way today.

MR. HEMPHILL: It's definitely not priced today, but Dr. Plott's economic analysis shows that price isn't all that important. That quantity, alone, can impact the prices that we pay for power.

MS. HOLMES: And did Edison have the authority in 2000 and 2001 to enter into new long-term contracts?

MR. HEMPHILL: No.

MS. HOLMES: Do they have that authority now?

MR. HEMPHILL: Yes, and that's why it's equally important to hold that information as confidential.

MS. HOLMES: Have new power plants come into commercial operation in California since 2000?

MR. HEMPHILL: Yes.

MS. HOLMES: Do you believe that there's more vigilance and control in monitoring over market power concerns now than compared to 2000 and 2001?

MR. HEMPHILL: I hope so. But I can't be certain. I mean, we were clearly monitoring it, ourselves, and I think -- I hope that there are more entities who are taking a more active role, especially the FERC. But what we saw was very slow response to the market manipulation in 2000, 2001.

MS. HOLMES: And do you think that that would be true today?

MR. HEMPHILL: I don't know.

MS. HOLMES: I wanted, there's a couple of places in your testimony where you talk about the fact that there's much less information about suppliers and IOUs. Do you recollect that testimony? I can refer you to the specific pages of that.

MR. HEMPHILL: I'd appreciate that.

MS. HOLMES: Page 6 and page 14.

MR. HEMPHILL: Okay. Okay, that's in discussion about asymmetry, yes.

MS. HOLMES: Right. Are you testifying that the IOUs don't have much information about their suppliers?

MR. HEMPHILL: We certainly do not know their cost structure, no. We don't have access to their books. And that is clearly -- so there's clearly an asymmetry. And as Mr. Seeney mentioned earlier today, they are not bidding their costs. They're bidding based on market intelligence.

MS. HOLMES: You've testified that you don't have much information about their cost structures, but didn't you also testify on page 6 in the discussion of conditions prerequisite for tacit collusion that the suppliers have similar cost structures?

MR. HEMPHILL: Well, having some knowledge about what the plants used to operate at, we can at least make some speculation about their cost structure. But we don't have the exact information --

MS. HOLMES: So you do have cost information?

MR. HEMPHILL: No, we do not have cost information. The same is true as the estimation that the CEC Staff has talked about. You can certainly estimate what's going on on the buy side, but that's very different than having the information.

MS. HOLMES: So you would say that you can conclude that they have similar cost structures without knowing what their costs are?

MR. HEMPHILL: I don't know what their costs are.

MS. HOLMES: I said can you conclude that they have similar cost structures without knowing what their costs are?

MR. HEMPHILL: I can assume that, but I don't know that I can necessarily conclude it.

MS. HOLMES: Do you know where the generators from which you purchase are located?

MR. HEMPHILL: Sometimes.

MS. HOLMES: And do you know what kind of technology they employ?

MR. HEMPHILL: Not always. There are certain contracts, especially certain DWR contracts, where the actual location of the delivery is variable.

MS. HOLMES: What about the contracts that you enter into as a result of the RFO process?

MR. HEMPHILL: I would defer to Mr Seeney on anything that's related to RFOs.

MS. HOLMES: Okay, that's fair enough. I may go back and ask a couple of questions.

Are you familiar with the EQR reports? Staff refers to in their testimony, I think --

MR. HEMPHILL: I don't know what --

MS. HOLMES: Okay, that's fine.

MR. HEMPHILL: -- an EQR report is.

MS. HOLMES: Thank you, that's fine.

MR. HEMPHILL: If you showed it to me I might recognize it, but I'm not very good with acronyms.

MS. HOLMES: The electronic quarterly reporting.

MR. HEMPHILL: I'm not familiar with --

MS. HOLMES: Okay, I didn't think you were. I'd like to have you look at the suppliers in footnote 5 on the bottom of page 5. Do you have that in front of you?

MR. HEMPHILL: Yes.

MS. HOLMES: How much of the generation

that those entities control is produced by facilities that were formerly owned either by the IOUs or by Edison specifically?

MR. HEMPHILL: I don't have the numbers in front of me, I'm sorry, I can't answer.

MS. HOLMES: Do you know how much of its capacity Edison sold to these particular companies?

MR. HEMPHILL: We sold 10,000 megawatts, ballpark.

MS. HOLMES: And to these companies specifically?

MR. HEMPHILL: Well, Calpine, I don't believe we sold to, but --

MS. HOLMES: So the other four? Or the other five, excuse me.

MR. HEMPHILL: I believe that's right.

MS. HOLMES: And when you operated those facilities did you have detailed cost information about them?

MR. HEMPHILL: Yes, we did.

MS. HOLMES: Okay. Thank you.

MR. HEMPHILL: But we don't anymore.

MS. HOLMES: Thank you. I'd like to turn now to your testimony -- I shouldn't call it

your testimony, the testimony that you prefiled as rebuttal testimony.

Which, I believe, begins on page 52. Do you have that in front of you?

MR. HEMPHILL: Yes.

MS. HOLMES: Mr. Hemphill, did you read attachment C prepared by Dr. Jaske where he discussed the differences between California utilities and other utilities in the western interconnect?

MR. HEMPHILL: Yes, I did.

MS. HOLMES: Would it be fair to say that he addresses the issues that you raise as differences between the California IOUs and the other western utilities?

MR. HEMPHILL: Yeah, I believe that's an appropriate characterization.

MS. HOLMES: With respect to the reliance, the percentage of reliance on the market, there appear to be some significant differences between your testimony and his. Do you recollect that?

MR. HEMPHILL: Yes, I do. I noted that was --

MS. HOLMES: Is that due to the

difference -- is that due to the fact that you included the DWR contracts and he excluded them, do you know?

MR. HEMPHILL: It's not that at all. Well, let me tell you, I can tell you exactly what it was because I took a look at it. I looked at utility generation, which is what all of the utilities in the western states that Dr. Jaske had indicated have the option of pursuing.

And I noted that Dr. Jaske somehow excluded the DWR contracts, which is really, I think, erroneous, because those are the very contracts that will expire and will have to be replaced with utility procurement.

And I think that puts his analysis seriously in error.

MS. HOLMES: And is Edison going to be required to replace those resources with new contracts, or do they have other options for meeting those needs?

MR. HEMPHILL: Well, realistically the only options are contracting.

MS. HOLMES: Edison cannot build its own generation --

MR. HEMPHILL: Not to meet the full

needs of the DWR contracts which supply the bulk of our power requirements.

MS. HOLMES: Could be used to meet partial needs?

MR. HEMPHILL: Yes, it could, but nowhere near as much as we'll be reliant on the market.

MS. HOLMES: On page 62 of your testimony, beginning on line 15, you have a quote from Dr. Jaske in which you changed the -- you substituted the word RNS for gap, do you see that? His original testimony --

MR. HEMPHILL: Yes.

MS. HOLMES: -- says, understand the size of the gap, and the size of the RNS is what -- is the language that you used.

Would it be fair to say that RNS can have many different meanings? For example, Edison did not oppose release of bundled customer annual energy data.

MR. HEMPHILL: That's correct.

MS. HOLMES: So revealing some gaps is acceptable to Edison, whereas others are not?

MR. HEMPHILL: Well, the most concerning one, of course, is capacity. And the more you

define residual net short in the near term, like quarterly, that we have significant problems with that, as it provides specific market intelligence to the generating community.

MS. HOLMES: But Edison does support releasing some data that shows a gap or an RNS on the energy --

MR. HEMPHILL: I don't think it actually shows up as an RNS in the aggregated table. It'll show some energy. And I believe we found it acceptable on an annual basis to produce it as it was described.

MS. HOLMES: So perhaps gap was the more appropriate word to use?

MR. HEMPHILL: I don't know whether it's gap or RNS.

MS. HOLMES: Thank you.

MR. HEMPHILL: I thought I was characterizing it appropriately, but if it's not, that's, you know, I'm happy to change it back.

MS. HOLMES: Thank you. Also on page 62 you talk about debating policy choices without revealing RNS, do you see that?

MR. HEMPHILL: Yes, we've been doing that for at least two years.

MS. HOLMES: Is it your testimony that the Energy Commission should be adopting state policy, for example, about resource mixes, about appropriate amounts of energy efficiency, demand response, distributed generation without ever considering the quantities of those resources that would be implicated in the policies?

MR. HEMPHILL: I think a good example would be the Energy Action Plan which actually states a preference for many different types of resources without ever indicating whether the amount that was necessary. I think that's an entirely appropriate thing for the California Energy Commission to be opining on, on behalf of the State of California.

MS. HOLMES: And the Energy Commission, your opinion, should not be considering quantities when it makes specific recommendations to the CPUC in the procurement proceeding?

MR. HEMPHILL: I never said that. I think the CPUC has requested from the Energy Commission that specific information be provided to them.

The big question is, is it released to generators or is it protected.

MS. HOLMES: But you've said here that the Energy Commission can make those determinations without ever looking at the actual numbers.

MR. HEMPHILL: No, that doesn't say that. And I would never say that. We've given full amounts of information to the California Energy Commission. What I said was in none of these proceedings has RNS been disclosed. This is about disclosure of what is market-sensitive, confidential information.

MS. HOLMES: So you would like the discussion that happens in public not to disclose the information, but you don't oppose the Energy Commission having access to the underlying numerical data?

MR. HEMPHILL: I think there's real value in the Energy Commission having that information. I think it's a good role for state government to look at all of the different loads and resources in the state and encourage policy debate on what we ought to do as a state.

MS. HOLMES: But the policy debate that happens publicly would have to happen without the quantities being identified?

MR. HEMPHILL: Yes.

MS. HOLMES: Thank you. Those are all my questions.

VICE CHAIRPERSON PFANNENSTIEL: Thank you, Ms. Holmes. Are there questions here for any of these witnesses? Yes.

MS. HOLMES: Shall we take a break, perhaps, before we have the next panel of -- or are you going to do redirect?

VICE CHAIRPERSON PFANNENSTIEL: Well, is there redirect?

MR. CRAGG: Excuse me, --

MR. COOLEY: I might have a little bit of --

MS. HOLMES: I'm sorry, --

VICE CHAIRPERSON PFANNENSTIEL: I'm sorry, yes, Mr. Cragg, for some direct cross-examination.

MR. CRAGG: Yes.

MS. HOLMES: I've had at least one request for a break. Perhaps when we're finished with cross, or if there's a brief redirect.

VICE CHAIRPERSON PFANNENSTIEL: That's fine.

MS. HOLMES: -- at that time. Didn't

mean to cut you off, sorry.

CROSS-EXAMINATION

BY MR. CRAGG:

Q Good afternoon, members of the panel. I'm Brian Cragg representing the Independent Energy Producers Association. I just have a few questions for at least some of you.

Mr. Plott, in your additional direct testimony this morning, or earlier today this afternoon, you indicated that the, if I recall correctly, the market response to the release of net short information will depend, to some extent, on whether there's a surplus or shortage of supply, is that a correct paraphrase?

DR. PLOTT: It depends on how tight the market's going to be, yes.

MR. CRAGG: Now, assume for a moment that a utility issues an RFO now in 2005 for delivery in 2016. Would an announcement of a shortage have that same effect that far out in the future?

DR. PLOTT: That would depend upon technical aspects about both the planning of the utility company that the problems of building power plants, what they expected their net short

to be. So, you know, without knowing many many more details on this, I couldn't answer.

MR. CRAGG: Well, let's assume that the announcement --

DR. PLOTT: Suppose they were buying for 16 years or 19 years out now.

MR. CRAGG: They're issuing an RFO to procure power that will be deliverable in 2016, and they're also releasing information about their projected net short for 2016.

DR. PLOTT: Are they selling capacity? What are they selling?

MR. CRAGG: They're purchasing.

DR. PLOTT: Purchasing capacity?

MR. CRAGG: Yes. Under those circumstances would that same effect hold true?

DR. PLOTT: My understanding of the circumstances, yes, of course. As long as they felt, as long as the suppliers felt that they were going to have trouble finding suppliers, it certainly is.

If they think that they're not going to have trouble finding suppliers, if they think there's going to be many suppliers going to the RFO, it's not going to have any effect.

But I think that if the suppliers, in general, feel the market's going to be tight, sure. It's a very general principle we're talking about here, if you expect the prices to go up, you raise your prices.

MR. CRAGG: Would it make any difference if it's possible to construct new capacity in less than, well, let's say roughly four years?

DR. PLOTT: Probably would make a difference in who would be willing to bid or supply the power, of course.

MR. CRAGG: It's been many years since I was involved in academia and even longer since I was taught anything about experimental design, but when I was taught that many years ago now, I understood that, or at least I was instructed that you begin experimental design by first forming a hypothesis and then constructing an experiment that will test that hypothesis.

Is that still true today?

DR. PLOTT: No. That shows how long ago you studied --

(Laughter.)

MR. CRAGG: It was, it was a long time ago.

DR. PLOTT: That's kind of high school stuff. No, you don't do that. Sometimes you do, sometimes that's a good thing to do. In medical professions they can do that. But in complex things, no. No, in understanding complex models, there's many different ways you can go about understanding data.

MR. CRAGG: Well, how do you construct an experiment? How do you design it to show what you -- or test what you want it to test?

DR. PLOTT: Well, the thing you're actually asking about are models, and how these models work. And asking about how phenomena works.

For example, in this debate here, people have claimed that the price will not go up unless there's some conspiracy. That's false. You don't need a conspiracy to do that. You don't need tacit collusion. That's very easy to test.

The claim was made that had we done an auction process as opposed to bilateral negotiations this phenomenon would have disappeared. So we took a look. And the answer is no. And not only would that not go away, we understand why it will not go away.

So, sure, it allows you to see phenomena that are extremely complex. And you're always tinkering and asking will this variable make a difference or why. And those kinds of questions dictate the design of the experiment.

Is that helpful? Usually you have some kind of structural modeling.

MR. CRAGG: So you begin with the model and then make tinkerings to it to better fit --

DR. PLOTT: Frequently it depends upon how much at sea you are in these worlds. You will actually create the simple situation. Of course, we're creating these experiments with people who are extremely financial motivated. You control who's making the bidding. You control who conducts the experiment. You try many many replications to make sure you're not -- then you start tinkering with the institutions and the procedures that are used in the bidding process. And that gives us great insight into how these markets discover price and how they work.

And so, sure, you start with the model. Typically you start with a model, discover your model is really awful. And so you go back to the drawing boards and you change the model, trying to

understand the principles a little better.

And out of this confusion frequently comes a very powerful model, useful models.

MR. CRAGG: Is it correct to say then that the results that are reported, or the model that's reported in the paper that is attached to your declaration doesn't reveal some of the unsuccessful attempts you made to model or to --

DR. PLOTT: No, actually, --

MR. CRAGG: -- the model?

DR. PLOTT: -- we reported everything.

MR. CRAGG: Everything's in there?

DR. PLOTT: Everything is in those things. Everything.

MR. CRAGG: From the very basic --

DR. PLOTT: From the very basic, from the very beginning. Now, what's not reported there is when we approached this it wasn't as though we bounced up to this problem saying, oh, let's do this.

There's about 10,000 experiments that are very closely related to this. There's 30 years worth of experimentation. So we're not going into this kind of like very blind. These are things that are deeply understood and have

been studied by many many many people.

So, again, so your presumption -- I might say that you should answer one more question, and your question should be addressed one more way.

Had there been an experimental design problem, you would have found a conclusion that was wrong. I want to call your attention to no such assertion was made.

MR. CRAGG: By whom?

DR. PLOTT: By anyone. In terms of the statistical way that we treated the data, there's not one of those conclusions about the experiments and about the way what we derived from the experiments that has been challenged. Which one?

There's a whole series of statistical tests in there. Which one?

MR. CRAGG: I'm not asking that question.

DR. PLOTT: Oh, okay. Sorry. I thought you were.

MR. CRAGG: No, that was your question.

DR. PLOTT: Oh, okay.

MR. CRAGG: Mr. Seeney, you had some testimony under cross-examination from Ms. Holmes

about the conduct of RFOs. And I think you said that the bids were selected on the basis of -- well, maybe I'll ask the question.

Aren't you under instruction from the PUC to use the least-cost/best-fit approach to selecting bids in RFOs?

MR. SEENEY: The guides from the CPUC is contained in our procurement plan. And I'll just say generally we conduct evaluation. Each bid we receive goes through evaluation process and gets evaluation result. Net cost to customers.

And then we rank order bids in merit order, and select in merit order, selecting the least-cost bids first.

MR. CRAGG: Have you ever rejected a bid because the price was too high?

MR. SEENEY: Well, again, if it's at the very bottom and there are attractive bids above it, we won't select the higher cost bid. And on that basis it would not -- not being selected, it would be rejected.

MR. CRAGG: You also made a statement, as I recall, that it would be some time before there would be additional new generation, and you offered to explain that. Ms. Holmes declined to

accept your offer. Can I ask you to elaborate on why you believe that it would take awhile before there would be new generation?

MR. SEENEY: I was referring to utility build. And one reason why a utility would be reluctant to build under the present circumstances is the asymmetry in the cost recovery. I'm not sure what CPUC decision this is in; I think it was in the --

MR. COOLEY: Don't guess.

MR. SEENEY: Okay. I won't guess. But the asymmetry is that if there's a cost overrun the utility shareholders bear 50 percent. If there's a cost underrun, it goes 100 percent to customers.

MR. CRAGG: That's for a utility sponsoring utility build generation?

MR. SEENEY: Yes.

MR. CRAGG: Turnkey projects are another way for utilities to acquire new generation, is that correct?

MR. SEENEY: Yes.

MR. CRAGG: And that's proved fairly popular among the California utilities in recent years, is that correct?

MR. SEENEY: I'm not sure. I don't really know what you mean, fairly popular.

MR. CRAGG: Well, Mountainview is a turnkey project, if I recall correctly, is that right?

MR. SEENEY: I'm not sure what you mean by turnkey. I believe Mountainview is a utility affiliate, and it's being constructed by a contractor. But it's being paid for by a utility affiliate. And then Southern California Edison is the buyer of the contract with the affiliate. So I'm not sure it fits the turnkey definition.

MR. CRAGG: You're correct, I'm sorry; that's a 30-year contract between Edison and the Edison affiliate, if I recall, is that right?

MR. SEENEY: I believe so.

MR. CRAGG: The Palomar project, does that fit your definition of a turnkey project?

MR. SEENEY: I'm not that familiar with it.

MR. CRAGG: Okay, what about Contra Costa 8?

MR. SEENEY: I don't know.

MR. COOLEY: Just for the record, those are being built by other utilities, so Mr. Seeney

wouldn't have any knowledge about that.

MR. CRAGG: I'm sorry to jump around, but, Mr. Plott, I'm back to you now.

DR. PLOTT: Sure.

MR. CRAGG: You indicated that you were -- on the essential facts of the California market you had relied on expert opinion of others to develop those facts, is that correct?

DR. PLOTT: Sure.

MR. CRAGG: Can you tell us who you talked to in connection with that, and what information --

DR. PLOTT: Well, I talked to Mr. Hemphill extensively. I had colleagues who worked in the energy business, Tim Cason, who also -- he's at Purdue. I knew something about the facts of the industry since I've had a long-term, over the past, a long-term research interest in project with the Electric Power Research Institute, dealing with attempts to merge transmission and power auctions at the same time.

So, I've also consulted and looked at the RFO process at Southern California Edison. I read the newspaper.

(Laughter.)

MR. CRAGG: Did you rely on the newspaper for facts about the California market structure?

DR. PLOTT: No, no --

MR. CRAGG: So, the names I heard you mention were Mr. Cason and Mr. Hemphill. Are there any others?

DR. PLOTT: Well, it would be people primarily at Southern California Edison, and members of the staff. I could probably find a list of names that I discussed these types of things with over a period of time. Most would be from Southern California Edison, and specifically with respect to this case, would be most of my --

MR. CRAGG: Mr. Hemphill, I have just a couple questions; unfortunately it's about Mr. Stearn's testimony. If you could turn to, in his rebuttal testimony, on page 5, the last paragraph there discusses -- well, he states there that the number of large sellers of capacity substantially limited, and goes on to say that we think California there are no more than six sellers with large portfolios.

And then he distinguishes what he refers to as remaining small sellers having insufficient

amounts of capacity to meet the needs of LSEs.

I don't know if I should say he or you in this case, but do you have any indication of what the distinction is in this testimony between large sellers and small sellers?

MR. HEMPHILL: I certainly can opine. I believe we would be looking at sellers who have greater than 1000 megawatts in their portfolio. And these ones are all local; and all of them then -- well, not all of them, but many of them actually have generation which can be used in very local markets, which does cause some issues related to market power that we don't address here.

MR. CRAGG: Generation related to local markets is more tightly or more closely tied to individual plants rather than portfolios, is that correct?

MR. HEMPHILL: Yeah, I think that's right.

MR. CRAGG: And there are other suppliers who could provide substantial amounts of capacity from individual plants, isn't that correct?

MR. HEMPHILL: Not that I'm aware of in

these locational areas that we just discussed.

MR. CRAGG: Well, it says within California. Are there other suppliers within California other than the six that are mentioned in --

MR. HEMPHILL: Oh, yes, there are many. And, you know, I think, as I mentioned before, all of the information that IEP has requested is already made available. We have the timing of resources, which clearly the CEC and Cal-ISO --

MR. CRAGG: Well, I'm talking now about suppliers.

MR. COOLEY: Excuse me, counsel, if he could just complete the answer, I believe he is being responsive to your question.

MR. HEMPHILL: I'm just pointing out that IEP said that there were a few things that they absolutely needed from Edison's and the other utilities' bundled customers. And none of that information is related to our bundled customers. But everything is at a planning area.

And there were three basic types. The first was the timing, which Cal-ISO and Energy Commission have been working on and providing information. Also, the quantity, in similar

reports. And the type of resources has been, I've said it for the last two years, that our needs are for peaking and intermediate resources. And so I've been quite vocal about that. And the Commission has, the CPUC has agreed with my conclusions there.

So what concerns me, or what I don't understand, is what isn't IEP getting that isn't already out there and being provided by someone who's far more qualified to provide that information.

MR. CRAGG: Well, you're asking me a question. That wasn't my question. My question only had to refer to additional suppliers within California, which is tied to this testimony.

My question was aren't there other suppliers, other than the six that are mentioned in footnote 5, that could provide substantial amounts of capacity within California?

MR. HEMPHILL: I can presume that there are.

MR. CRAGG: Don't you know?

MR. HEMPHILL: Well, I don't follow all of California, which is why the Energy Commission and Cal-ISO would be better suited to answer those

types of questions.

MR. CRAGG: Have you heard of the LaPaloma Plant?

MR. HEMPHILL: Yes, I have.

MR. CRAGG: Any idea how large that is?

MR. HEMPHILL: No, I'm not -- I don't know.

MR. CRAGG: How about High Desert?

MR. HEMPHILL: No.

MR. CRAGG: You haven't heard of it?

MR. HEMPHILL: I've heard -- I'm sorry, I've heard of it. I can't tell you how big it is. My focus is on meeting my retail bundled customer needs, not on meeting the needs of the state, or the needs of the different regions within the state.

MR. CRAGG: Well, I don't mean to put you on the spot, but Mr. Stearn had indicated that the amount of capacity available from remaining small sellers was insufficient to meet the needs of large LSEs. And I was wondering what the basis for that statement was. I started to list some of the plants that are available.

Do you know if there's anything about his testimony that I'm missing here?

MR. HEMPHILL: Oh, I believe he is referring to, when he talks about large load-serving entities, I believe that would be the investor-owned utilities. That would be my guess.

MR. CRAGG: Well, let's take the example of Southern California Edison Company. You just put out an RFO for 1500 megawatts of new capacity, is that correct?

MR. HEMPHILL: Yes, but I would defer any questions to RFOs to Mr. Seeney; he's far more knowledgeable about that.

MR. CRAGG: Well, just based on that assumption wouldn't you be interested in 1000 megawatts of capacity from an individual plant?

MR. HEMPHILL: Well, I think if you look at our long-term RFO, it's to meet the needs of the south of Path 15, it's not to meet our retail customer needs, which is the subject of this hearing this afternoon.

MR. CRAGG: Well, I guess I'm still not sure if you're saying that Edison would not be interested in 1000 megawatts of capacity from a plant that's not among the big six that Mr. Stearn has listed --

MR. HEMPHILL: I would refer to Mr.

Seeney to talk about our preferences as he is most closely aligned with the, or in charge of the RFO process.

MR. CRAGG: Well, let me just ask one final, I hope, question. Can you explain why Mr. Stearn thought the capacity available from remaining sellers, other than these six that he mentioned, was insufficient to meet the needs of large LSEs?

MR. HEMPHILL: I believe what he is indicating is that the ones that are smaller are not sufficient to fully meet the needs of the investor-owned utilities.

MR. CRAGG: Do the investor-owned utilities typically rely on a single supplier to meet their needs, their entire needs?

MR. HEMPHILL: No. But I don't think that that's what's indicated here.

MR. CRAGG: Well, what did you just say? I thought you said that they were insufficient to meet the entire needs of the IOUs.

MR. HEMPHILL: Well, what this language says is the amount of capacity available from the remaining small sellers, so that's an aggregate, a bunch of very small sellers, and that, in itself,

would not be sufficient to meet the needs of the large investor-owned utilities.

MR. CRAGG: Well, let me shift a little bit. This sentence begins with the phrase, within California. Isn't it also true that California IOUs purchase from plants located outside of California?

MR. HEMPHILL: Yes.

MR. CRAGG: In fact they buy quite a bit from the Pacific Northwest, is that correct?

MR. HEMPHILL: Yes.

MR. CRAGG: And the southwest, as well?

MR. HEMPHILL: Yes.

MR. CRAGG: And even from Canada?

MR. HEMPHILL: Yes.

MR. CRAGG: So the market of suppliers is not limited to within California, is that correct?

MR. HEMPHILL: Well, no, what this says is within California there are no more than six sellers with large portfolios. So this is specifically focusing on California generation owners.

MR. CRAGG: Yes, although the preceding sentence says, the number of large sellers of

capacity is substantially limited. The fact is there are large sellers of capacity outside of California that sell to California, isn't that correct?

MR. HEMPHILL: Yes.

MR. CRAGG: Thank you. Those are all my questions, thank you very much.

VICE CHAIRPERSON PFANNENSTIEL: Thank you, Mr. Cragg. If there's nothing further for these witnesses then I will -- was there --

MR. COOLEY: Could I consult with the witnesses before I decide there's no redirect?

VICE CHAIRPERSON PFANNENSTIEL: Yes.

(Pause.)

VICE CHAIRPERSON PFANNENSTIEL: Perhaps this then would be an appropriate time for us to take a break. And we can see, coming back, whether there's any redirect.

We'll have a ten-minute break.

(Brief recess.)

VICE CHAIRPERSON PFANNENSTIEL: Mr. Cooley, did you decide you wanted redirect?

MR. COOLEY: Yes, Commissioner.

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REDIRECT EXAMINATION

BY MR. COOLEY:

Q Mr. Seeney, there was some discussion of a footnote on page 5, footnote 5 where it refers to several plants. And without revealing any information about the RFO or Edison's needs for its bundled customers, can you comment specifically on that footnote with regard to the entities that are identified there, specifically with respect to their ability to supply to southern California?

MS. HOLMES: Excuse me, can I please ask a clarifying question. Are we talking about footnote 5 on page 5 of Dr. Stearn's testimony?

MR. COOLEY: That's correct.

MS. HOLMES: Thank you.

MR. SEENEY: Yes, there are a number of constraints that go into the type of resources that we can select in our RFOs, including what type of contracts count for the Commission's resource adequacy requirements.

By that I mean the contracts have to be, well, it appears to be that the contracts will have to be from specific units, as opposed to being from portfolios.

There are also local area reliability requirements that are being developed by the California ISO that are substantial for the Los Angeles area. There are creditworthiness issues. And there are substantial transmission constraints to get power into the southern California area.

The long and short of that is that our procurement in the RFOs tends to be from generators that are located in the southern California area, that are creditworthy. And the number in that set is limited. It includes the generators that are in footnote 5; those are the major players; some of whom have significant credit issues that we have to try to work with.

With the exception of Mirant, they're not -- they don't have any substantial generation in the southern California area.

MR. COOLEY: That concludes my redirect.

VICE CHAIRPERSON PFANNENSTIEL: Thank you.

MR. COOLEY: And the witnesses are available for cross-examination by the Commissioners at this time.

VICE CHAIRPERSON PFANNENSTIEL: Thank you. Ms. Holmes, did you have anything further?

MS. HOLMES: I just have one question.

RECROSS-EXAMINATION

BY MS. HOLMES:

Q Would Southern California Edison be able to buy from a new entrant in southern California that was creditworthy?

MR. SEENEY: Yes. We see in the five-year RFO is we don't see new entrants any substantial degree. I don't want to reveal any confidential information. Because it's -- what we see is that the new entrants require like ten-year contract minimum.

MS. HOLMES: Okay, thank you.

VICE CHAIRPERSON PFANNENSTIEL: Anything further for these witnesses?

Nothing, then thank you, Mr. Cooley.

Mr. Warner of PG&E.

MR. WARNER: Yes, Madam Chair. We would also, by pre-arrangement, agree to have our witnesses on a panel with San Diego Gas and Electric's witness, as well, for efficiency.

VICE CHAIRPERSON PFANNENSTIEL: That's fine, thank you.

MR. WARNER: Commissioners, at this time I'd like to introduce PG&E's two witnesses. The

first witness is Roy Kuga, Vice President of Gas and Electric Supply. He's sponsoring two bits of testimony. One is the initial testimony, dated July 13, 2005. The second testimony is rebuttal testimony, dated August 12, 2005.

Our second witness is James D. Shandalov, who is sponsoring one set of testimony.

DIRECT EXAMINATION

BY MR. WARNER:

Q I'd like to ask first, Mr. Kuga, do you have any corrections to your testimony?

MR. KUGA: Yes, I just have one related to my rebuttal testimony. I apologize. I inadvertently referred to Ms. Frayer as Ms. Thayer. I apologize for that.

MR. WARNER: Do you have any other corrections to your testimony?

MR. KUGA: No.

MR. WARNER: Mr. Shandalov, do you have any corrections to your testimony?

MR. SHANDALOV: No, I do not.

MR. WARNER: Mr. Kuga, do you have a -- can you provide a short summary, and any additions to your testimony?

MR. KUGA: Sure. I'd like to address a

couple of issues raised by Ms. Holmes in her summary of the staff testimony. The first is that -- well, first of all, I'd like to express the appreciation for the recognition by the Commission and staff for the need to protect commercially sensitive information. I think that is a very important starting point.

The point that Ms. Holmes made in her summary was that aggregated data and the timeframes in which the data is proposed to be released should not jeopardize our shorter term commercial activities. And I'm paraphrasing there, so I apologize if it's not quite correct.

In my opinion this is not adequate. The data is not aggregated enough. PG&E is a very active participant in the market, both as a buyer and as a seller. In fact, there are times where we actually sell more than we actually buy. And that's pursuant to least-cost dispatch principles, pursuant to the PUC.

In our activities we are buying, you know, day-ahead, hour-ahead. We also buy quarterly strips, we sell quarterly strips, we buy year-ahead, we buy multi-year products. And the aggregation proposal from staff, in our opinion,

provides enough information to the marketplace that we believe gives them an indication of our needs or our surplus position with the quarterly disaggregation.

So we have been opposed to any quarterly disaggregation. Those are products that we are trading. We do trade those up to several years forward. We are also very active in multi-year solicitations. We buy multi-year products. And the market is becoming more disaggregated with resource adequacy requirements.

So we buy not only energy and capacity, we buy reserves. We're going to be purchasing resource adequacy products. We buy ancillary services. We sell ancillary services. So we're very active in the market. And so any indication that gives the marketplace any insight as to what PG&E's supply position is, or what our short position is, we believe is going to result in additional costs to our customers.

And my experience and that of my staff in the procurement activities lead me to believe, our direct experience is that as the market knows what products you're looking for and have a sense that you're short of a product and that you want

more of it, we see prices increase.

So, contrary to staff's testimony that there is going to be a decrease in price with the revelation of this kind of information, our direct experience is contrary to that.

So you can refer to economic theory, but the practical experience is that prices go up as the market understands what your needs are.

PG&E also believes that the level of disaggregation with the multi-year timeframe is not adequate because you can back-calculate, extrapolate or interpolate, whatever the case may be, what the quarterly needs are. So it's very imperative that the quarterly information, even though it's characterized as aggregation, not be disclosed, even for a period, because you can backtrack and calculate what our open position, or our long position is.

So, it may be different for other utilities. I understand, for example, San Diego does not have a need for an extended period of time. Our situation is markedly different. So, we have great sensitivity to both disaggregated quarterly information for energy, as well as capacity. And that extends for multi-year

periods.

So the quarterly disaggregation proposal from staff is not satisfactory, and we think would be harmful to our customers.

The second summary point was from staff was that just data about the utility's position will create downward price pressures and reduce risk for developers. Our experience directly with both the capital markets and generators is that none of them have asked us for our net open position, whether it's through our RFOs, through our bidders conference where we have open solicitations. They have not said, I need your net open position for me to reduce my risk. I have not heard bankers say that.

In fact, they have all said pretty much the same thing. Well, we need our stable wholesale market rules. We need a long-term contract. And we need assurances that the regulatory framework will provide a stable stream of revenues, meaning that the utilities can count on cost recovery and therefore the utilities can actually pay the revenue streams that they contract for.

So, this is what the marketplace is

saying, whether it's the capital markets or the generators. They're not saying I need your net open position.

Furthermore, this Commission has before it approved thousands of megawatts of applications for certification for generators, or pending before it thousands of megawatts of applications. What's holding those plants from moving forward? Is it our net open position? It doesn't appear so. They all say the same thing, and I'm not going to repeat myself. They are not saying they need the net open position for the utilities.

Now with respect to reducing risk for these developers, you know, I think there's a credible source, Standard and Poor's, they assess the risk of utilities, of financial companies, of businesses and of the merchant generating sector.

They recently issued a report. They identified what the risk factors are associated with the generation merchant market. They identified about six things. Not on the list was the utilities' net open position.

So I find it curious that staff believes that this is a key piece of information to promote new resource development in the State of

California or elsewhere. And I find it hard to believe that that is the sole piece of information holding generation development in California. The evidence does not support that. Whether it's the capital markets, the generators themselves, or an entity who was involved in assessing the risks of these merchant generators, Standard and Poor's.

We have provided extensive information in our RFO that we issue for our solicitations. We hold bidders conferences for some of them. And we have indicated what our needs are. As Edison, with Mr. Hemphill, indicated, we also have indicated very clearly we have a need for peaking resources and shaping resources. We've indicated the timeframe in which we want those resources. And we've also indicated the volumes that we're seeking to procure.

And, again, nobody has said, I need your net open position, especially on a quarterly basis, for me to offer a bid to you.

There is a faulty premise in the Energy Commission Staff's testimony that there is a merchant market that does not require long-term contracts for new resource development. That used to be the market model a few years ago. That is

no longer the case across the United States. And you can hear Pete Cartwright from Calpine, you can hear the large generators say, I need long-term contracts. It's not that they need the net open position of the utilities.

The last area I'd like to address is in Mr. Jaske's testimony; he talks about what other utilities have provided in terms of information being made available. And I think the earlier cross-examination of Mr. Hemphill touched upon some of the differences.

On the one hand, many of these utilities own or control generation. And it's critical to look at what type of generation they own. As you know, the utilities' load varies over a 24-hour period and from month to month. The key is who controls the price-setting resource, or who controls the marginal resource. And I'm not sure that Mr. Jaske even gets to addressing that issue.

In PG&E's case we don't control the marginal resource. The entity that controls the marginal resource can price up. Other utilities may control the marginal resource, and what they're looking for is baseload resources. Baseload supply typically does not set the price.

The other distinction is that all the other utilities, including the municipalities, in California have or control long-term transmission rights not only for their native supplies, and in many instances it exceeds their native load supply.

PG&E does not have long-term control of transmission. Transmission is made available through the ISO process. At best, firm transmission rights are made available on a one-year-ahead basis. And the volume of transmission that is made available by the ISO through that process does not come close to what we previously had under our control when we were vertically integrated. For whatever reason, I don't know why. I've asked them and have not gotten an answer.

So, we don't control the marginal resource. We don't have the lock on transmission. And we don't have transmission-locked resources, resources that cannot get out of the region and where there is a surplus situation. So the circumstances under which entities are willing to release information are very distinct from PG&E's situation.

In summary, I think it's important that this Commission look at the facts, what data is necessary to provide, to be made available. All the data that is confidential we have provided to staff on a confidential basis. We provide that information to the procurement review group on a confidential basis. So it's not like PG&E is the only entity holding this information. It is out there to nonmarket participants.

In closing, I ask you to consider the sensitivity of the information that the staff is recommending from an aggregated basis. If it's quarterly, it's for PG&E's situation, that is still commercially sensitive given the activities that we have in the marketplace.

If it's bundled, it's very sensitive on a planning area basis. Even on that basis, quarterly information is considered sensitive from PG&E's standpoint.

Thanks.

MR. WARNER: Mr. Shandalov, do you have a short summary?

MR. SHANDALOV: I do.

MR. WARNER: Thank you.

MR. SHANDALOV: My name is James

Shandalov. I'm currently employed with Pacific Gas and Electric in the power contracts department. My responsibilities include carrying out short-term request for offers for power supply. And the negotiation and execution of longer term structured power transactions.

I have 18 years of experience in the power industry, including both regulated and merchant.

Prior to my employment with PG&E I worked for Mirant Corporation in the areas of trading, marketing and generation development. In my role as director of marketing, I was responsible for the origination of supply contracts to California wholesale customers. In this role I saw firsthand the value of information.

My practical commercial experience allows me to comment on how it's simply rational behavior for a supplier to gather as much information as possible and extract the highest prices possible for its product.

I'd like to offer a recent experience that we had in a mid-term solicitation. This was an intermediate term RFO covering the years 2005

through 2008. What we saw in this RFO was one of the ways in which suppliers attempt to gather intelligence on PG&E's net open position and what PG&E is willing to pay. And that example is tiered pricing.

I saw this type of behavior when I was a supplier, and I continue to see this type of behavior now, as a buyer. I've seen it in our short-term solicitations, mid-term solicitations, and long-term solicitation. Rather than offering a volume discount, a supplier will offer pieces of power with increasing prices for increasing volumes.

So to the extent that an IOU enters into a series of transactions but has a residual position to fill, then any subsequent RFOs for that sort of product will necessarily lead to higher prices until new resources come to market.

Because a large part of PG&E's net open position or power supply comes from nonutility-owned generation, the sensitivity of the IOUs' specific information and quarterly data is unquestionable. The forecast quarterly information is particularly sensitive in that suppliers could take the 2009 forecast data and

extrapolate the seasonal net open position for PG&E between today and the year 2009, leading to a disadvantage for PG&E in the short-term markets whether PG&E is a buyer or a seller, which we are at times, as Mr. Kuga mentioned.

There's clearly value to the supplier community in having access to detailed quarterly IOU-specific information, but as it relates to generation investment decisions, the annual planning area information should be more than sufficient to influence a decision whether to invest or not, invest in new generation.

Thank you.

MR. WARNER: The witnesses are available for cross-examination -- or do we want to do a summary with San Diego?

MS. URICK: We don't have a summary of our testimony, but I can go ahead and make -- did you want to do PG&E first, and then --

VICE CHAIRPERSON PFANNENSTIEL: It probably would be more efficient to --

MS. URICK: Do them all three --

VICE CHAIRPERSON PFANNENSTIEL: -- do them all at once. But, will there be a summary of --

MS. URICK: No, I was simply going to indicate that Mike McKlinihan is the Manager of Electric Procurement for San Diego Gas and Electric. He has filed two pieces of testimony here for this proceeding on July 8th in the form of a declaration, on August 12th, his rebuttal testimony. And barring any corrections that he may have of that testimony, he's available for cross-examination.

VICE CHAIRPERSON PFANNENSTIEL: Thank you. Ms. Holmes.

MS. HOLMES: Thank you. I guess I will change gears here and start with San Diego Gas and Electric Company.

CROSS-EXAMINATION

BY MS. HOLMES:

Q Good afternoon, Mr. McKlinihan.

MR. McKLINIHAN: Good afternoon.

MS. HOLMES: I think I can see you over there. On page 1 of your direct testimony you raise a general argument that bundled customers could be harmed by the release of the data that's the subject of the SDG&E appeals, is that a fair summary?

MR. McKLINIHAN: That's correct.

MS. HOLMES: I'm going to ask you some questions that are similar to the ones that you've heard me ask of other witnesses.

Will the resource needs that you identified in your submittals and that would be identified in the aggregated summary tables be subject to modification as they go through the planning and procurement process, both here and at the Public Utilities Commission?

MR. McKLINIHAN: Our resource needs change through time, yes.

MS. HOLMES: Has your resource situation changed since you prepared your filing for this proceeding?

MR. McKLINIHAN: For which timeframe?

MS. HOLMES: Since between the time that you prepared your submittal and today.

MR. McKLINIHAN: My resource needs for future years have not changed. My resource needs for near-term periods may have changed, depending on what I procured in the intervening time.

MS. HOLMES: Is it fair to say that in 2006 when the procurement decision hopefully will be issued, the procurement target or the range that's identified, for example, 2010, would not be

identical to the need that's identified in the summary aggregated tables for 2010? Is that a fair statement?

MR. McKLINIHAN: I'm not sure that's correct.

MS. HOLMES: You did testify earlier that your resource needs change over time. Would you expect that they would change between now and 2010?

MR. McKLINIHAN: I think there may be some modifications to it, but I can't be sure. It really depends on procurement between now and the time the 2006 plan is submitted or approved.

MS. HOLMES: And are you planning to engage in procurement activities between now and 2010 for your 2010 needs?

MR. McKLINIHAN: Between now -- yes, we will.

MS. HOLMES: So, -- and, for example, as that process continues would you see your procurement needs for 2010 change say in 2006 and in 2007 and in 2008? In other words, is this an iterative process meeting those 2010 needs?

MR. McKLINIHAN: They will change, but they may change in a very predictable way. They

may change in a way that we outline the 2006 plan, and if we execute the 2006 plan as it's submitted, the changes will be known in 2006.

MS. HOLMES: Did you submit -- I'm sorry, I'm having trouble understanding that. You said they may change in a very predictable way consistent with the changes you identified in your 2006 plan. Can you identify where in the summary of aggregated tables that changes are identified?

MR. McKLINIHAN: They would be reflected in where you get to purchases of different kinds of resources. The 2006 plan will be a multi-year plan that will address resource needs and how we intend to fill those resource needs over those years.

If we stick to the 2006 plan and nothing changes, I don't think those aggregate tables would change. It would have the resource needs and the supplies identified in the 2006 plan.

MS. HOLMES: So you think that you have identified the specific supplies that you're going to use to meet your procurement needs, say in 2010 or 2012 and 2016. You've already identified those?

MR. McKLINIHAN: I think in the near

term San Diego has said before that it's fully resourced through 2009. So those needs are very well known. As we move into 2010 and beyond it's more subject to change.

MS. HOLMES: Thank you. I just want to make sure that your understanding is the same as the Edison's witness. He testified that there is no information that Edison was required to release after an RFO is complete. Is that your understanding, as well?

MR. McKLINIHAN: I don't know the answer to that question.

MS. HOLMES: Do you know whether Edison can meet its resource needs outside of the RFO process?

MS. URICK: Excuse me, counsel, are you referring to Edison or SDG&E?

MS. HOLMES: Excuse me, SDG&E.

MS. URICK: Okay.

MS. HOLMES: I'm sorry.

MR. McKLINIHAN: Yes, we could.

MS. HOLMES: I don't get my kids' names right, either, so --

(Laughter.)

MS. HOLMES: -- it's not personal.

I'd like to turn to your rebuttal testimony for a moment. On page 1 of your testimony, and now I've closed the wrong book, I apologize.

On page 1 of your rebuttal testimony you discuss the fact that the need to begin the resource acquisition process for 2009 is already upon you. And you conclude by stating that in essence the 2009 market for major capacity additions is trading right now, so that releasing 2009 data is very much as large a danger or even larger, as release of more recent data. Do you see that?

MR. McKLINIHAN: Yes, I do.

MS. HOLMES: Did you provide a summary of the capacity of the individual DWR contracts that are assigned to SDG&E in your March 1st and April 1st filings to the Energy Commission?

MR. McKLINIHAN: I believe those were part of the filing. I did not make that filing.

MS. HOLMES: Would it be your understanding that that information, the capacity and expiration dates of the individual DWR contracts, would effectively disclose information about your need for capacity in 2009?

MR. McKLINIHAN: It would be a part of our need.

MS. HOLMES: Thank you.

MR. McKLINIHAN: It would be partial information.

MS. HOLMES: That's fine, thank you. Lower down on page 2 you state that information contained in a utility RFO has been scrutinized by many parties through the CPUC and CEC long-term resource planning and integrated policy report process. Do you see that?

MR. McKLINIHAN: Yes, I do.

MS. HOLMES: Are you familiar with the Energy Commission's decision or order denying San Diego's appeal of the Executive Director's denial of confidentiality for demand forecast data?

MR. McKLINIHAN: I am only generally familiar with it.

MS. HOLMES: Are you generally aware that the Commission has stated that it prefers to have a transparent planning process and to have information that's used in policymaking debated in a public forum?

MR. McKLINIHAN: I'm aware of that.

MS. HOLMES: Given that statement and

San Diego's application for capacity data contained in this resource filing, can you explain --

MS. URICK: Excuse me, counsel, I want to be clear about what SDG&E application you're referring to.

MS. HOLMES: I was referring to the fact that earlier this year the Energy Commission denied a portion of San Diego's application for confidentiality for demand forecast data. And included in that were several statements about policy preferences for public processes with which I believe your witness said he's generally familiar.

MS. URICK: Yes, I just -- I thought your question perhaps went to that earlier application, and I just, you know, want to understand that it's possible you're asking questions about material that is not part of his testimony, or wasn't part of this particular filing that we've been working on.

MS. HOLMES: No, just my question is fairly simple. Given that you are generally familiar with that policy, I'm wondering how you have concluded that the portions of the data that

you submitted in this proceeding for which you're seeking confidentiality will be scrutinized and reviewed.

MR. McKLINIHAN: In my testimony I referred to RFOs. Before the RFO goes out it will likely go through a series of review by the entities mentioned here, the procurement review groups, perhaps with at least CPUC Staff, and perhaps with an independent evaluator, as well. So there will be a series of review of the RFO. The RFO will contain the need within it.

MS. HOLMES: But you weren't referring to a CEC public review process, then?

MR. McKLINIHAN: No, I was referring to the review process of the RFO by many parties prior to it being made public.

MS. HOLMES: Thank you. Also on page 2 of your rebuttal testimony, you state that the release of an IOU solicitation with its precise communication of need should serve to promote vigorous competition. Do you see that?

MR. McKLINIHAN: Yes, I do.

MS. HOLMES: Can you generally describe what information you release with an RFO?

MR. McKLINIHAN: We would release our

need. We would solicit offers for that need which we seek to fill.

MS. HOLMES: But that wouldn't necessarily be your entire need for a given year, would it?

MR. McKLINIHAN: It wouldn't necessarily be, but you need to keep in mind the size of the San Diego load, and the size of, you know, large baseload capacity additions, as well. So, it's -- San Diego perhaps doesn't have the layers of RFOs that other utilities might.

MS. HOLMES: But it would be fair to say that San Diego will procure to meet its resource needs through multiple RFOs over time?

MR. McKLINIHAN: No. I don't know how many RFOs San Diego will have between now and 2010. As we discussed before, there's other avenues available to us besides RFOs. And we've recently concluded a pretty sizeable RFO in 2003, 2004. So I can't tell you right now how many RFOs we'll have between now and 2010.

MS. HOLMES: Can you tell me what some of those other options are for meeting your resource needs?

MR. McKLINIHAN: Bilateral contracting.

MS. HOLMES: What about utility-owned generation? We heard some discussion earlier today about various arrangements by which utilities can --

MR. McKLINIHAN: I assume that's a possibility.

MS. HOLMES: Generally speaking, and it may vary from RFO to RFO, but I'd like to get a general idea of how long a responder has to file a bid in the RFO process.

MR. McKLINIHAN: I think it would depend largely on what product is being solicited. If it's a simple quarterly firm energy deal, it might be a very short turnaround. If it's a -- if it would require construction of a new generation facility, it would be a longer turnaround.

MS. HOLMES: Can you give me a rough idea of how long that might be for the latter example?

MR. McKLINIHAN: I would point you to our 2003 -- RFO, and I don't recall the exact timelines, but I think that would provide some guidance.

MS. HOLMES: Can you explain generally how many suppliers typically bid in response to an

RFO?

MR. McKLINIHAN: Again, you know, typical for us is one RFO. So I'm not sure that's a typical response.

MS. HOLMES: Fair enough. In your one RFO, were there any bidders that were new market entries?

MR. McKLINIHAN: I'm not sure what you mean by new -- a new player in the market, or a new project? They were all new projects.

MS. HOLMES: We could divide up between, we could divide up between both of those answers. Were there new players?

MR. McKLINIHAN: I guess I shouldn't have made a distinction because I don't know, either.

MS. HOLMES: Okay. All right. Fair enough.

MR. McKLINIHAN: So certainly the projects were new. The players that were ultimately selected were not new to the market.

MS. HOLMES: Okay, but were there new projects?

MR. McKLINIHAN: Yes.

MS. HOLMES: I guess I have to ask this

question about your one RFO, and I apologize for my lack of familiarity with it. How long after the RFO -- how long after you issued the RFO do you need to have electricity delivery to begin?

MR. McKLINIHAN: Well, I think what we would do is try and estimate the timing for siting, permitting, approvals, construction, and work backward from the time we identify the need and the type of resource we think we're going to need to fill that and develop an estimate of how far in advance we need to put the RFO out.

MS. HOLMES: And did you do that for the RFO that you issued?

MR. McKLINIHAN: Yes, I'm sure we did.

MS. HOLMES: And can you tell me when electricity delivery needed to be delivered, needed to begin under that RFO for --

MR. McKLINIHAN: I think we had a range of dates in there. The two projects that were selected -- there were three projects selected, actually. One was a peaker which had a much faster online date. And then there were two combined cycle plants which were later and staggered.

MS. HOLMES: Are you familiar with the

signed Commissioner ruling that was issued by President Peevey on March 5, 2005 that discusses coordination between this proceeding and the procurement proceeding?

MR. McKLINIHAN: Not in any detail.

MS. HOLMES: Thank you. Those are all my questions of the witness. I don't know if you want to have other people do San Diego, or if I should be moving on to PG&E at this time?

VICE CHAIRPERSON PFANNENSTIEL: I don't have a preference --

MS. HOLMES: Why don't I just --

VICE CHAIRPERSON PFANNENSTIEL: Sorry. I don't have a preference, Ms. Holmes. Why don't you -- I think if they're in a panel why don't you continue with the panel.

MS. HOLMES: That's fine. Then my next set of questions will be for Mr. Kuga.

CROSS-EXAMINATION

BY MS. HOLMES:

Q Good afternoon.

MR. KUGA: Good afternoon.

MS. HOLMES: In your additional direct testimony that you gave earlier this afternoon you said that you're concerned about releasing net

open positions because it could give suppliers an unfair advantage. Is that a correct summary of your testimony, or of that point in your testimony?

MR. KUGA: That's a fair statement.

MS. HOLMES: Would suppliers include generators?

MR. KUGA: Yes.

MS. HOLMES: And did you also testify that generators aren't asking for the net open position?

MR. KUGA: I testified that in our solicitations for long-term solicitations they have not asked for that information.

MS. HOLMES: You also talked about suppliers being able to back-calculate PG&E's position from forecast data. Do you recollect that?

MR. KUGA: Yes.

MS. HOLMES: Could you provide me with a short description of exactly how that back-calculation process takes place?

MR. KUGA: For example, if the proposal is that four years out from now quarterly information for bundled utility load and supply is

provided, --

MS. HOLMES: Um-hum.

MR. KUGA: -- and PG&E is active in the market for supply three years out, or even two years out, they can look at adjustments to our load and calculate what our open position is relative to what is already released in the public domain from that quarterly information.

MS. HOLMES: How do they look at the adjustments to your load?

MR. KUGA: Well, I think this Commission notes that load grows on average in an x percent per year. And peak grows x percent; and energy grows y percent. They can back-calculate what the load would be for the prior year.

MS. HOLMES: Would they also need to know how your supply situation changes during the next three years?

MR. KUGA: They may, but there's information that related to our portfolio that is fairly static, as well. I mean we have a number of resources that don't change over time.

MS. HOLMES: But you do also have a number of resources that do change over time?

MR. KUGA: For a portion, for a small

portion of our load.

MS. HOLMES: Is the supply situation for PG&E going to continue to change as you move forward, as you conduct these RFOs?

MR. KUGA: Are you asking as we make new commitments?

MS. HOLMES: And as existing commitments expire.

MR. KUGA: Does the supply picture change? Yeah, there are changes.

MS. HOLMES: Would you expect that the supply situation that actually exists say in 2010 will be different than that which would be depicted on the summary annual tables -- summary aggregated tables?

MR. KUGA: Are you asking relative to the summary annual tables that are in this proceeding?

MS. HOLMES: I'm saying take as a hypothetical, the information that would be provided on the summary aggregated tables for PG&E for -- we're picking 2010 for some reason. Would you expect that the actual resource needs of PG&E would be different from what's in that table say in 2007 than is in the tables?

In other words, I can try to use -- maybe if I put some simple numbers, which is all I can deal with, on the table. For example, if the number in the aggregated tables for a PG&E resource need is ten, just take a very simple example, and that's based on information that PG&E provided to us earlier this year, would you expect that in 2007 or 2008 that your estimate of what your resource need for 2010 would have been modified from the number 10?

MR. KUGA: It may change, yes. But the information we provided today is the current information that we use in our procurement activities.

MS. HOLMES: And do you update that information as you go through the procurement process?

MR. KUGA: Well, to the extent we conclude RFOs, it would be updated. But, right now that's the premise for our decisionmaking.

MS. HOLMES: And don't you also have a certain amount of short-term contractual arrangements that will expire that you may or may not renew over time?

MR. KUGA: Well, by its nature, if it's

short term like day-ahead or, you know, on a quarterly basis, they would be renewed. But, you know, they would continue to show as part of our need.

MS. HOLMES: Are you saying that all the resources that you obtain now through say short-term contracts, quarterly contracts, seasonal contracts, would never be replaced with anything other than short-term contracts?

MR. KUGA: No, I'm not saying that. But we try to maintain a portfolio that includes short-term contracts.

MS. HOLMES: Does PG&E have different options for meeting its demand needs?

MR. KUGA: I don't know what you mean by that.

MS. HOLMES: Well, for example, over time you can enter into short-term contracts or long-term contracts, is that fair to say?

MR. KUGA: Yes.

MS. HOLMES: Can you either construct or contract for generation resources through an affiliate, for example?

MR. KUGA: Well, going through a regulatory process we could pursue those options.

MS. HOLMES: All right, --

MR. KUGA: But what doesn't change is the fact that we have an obligation to serve; we have a load that we're forecasting that we need to meet; we know what our current supply situation is; and we have procurement rules established through the Public Utilities Commission in terms of you need to go through a solicitation if it's going to be a commitment of duration longer than certain timeframe. Or if you're going to not pursue that then you need to go through an approval process before the Public Utilities Commission.

So, there are established procedures that we need to follow.

MS. HOLMES: I'd like to turn to page 2 of your direct testimony. In the second full paragraph you say, as we all -- the previous paragraph refers to providing information to market participants.

And the next paragraph says: As we all know, a number of energy suppliers and marketers use a version of this type of market power in California's electricity market during 2000/2001 energy crisis, imposing billions of dollars of

excess costs on PG&E and its customers and other utility customers."

Do you see that?

MR. KUGA: Yes.

MS. HOLMES: Is it your testimony that the energy crisis in 2000 and 2001 was caused by the disclosure of information?

MR. KUGA: I don't know what you mean by disclosure of information. I can say that what was known during the energy crisis was the fact that the California IOUs had to bid its resources and procure its load through the Power Exchange.

MS. HOLMES: Okay, let's --

MR. KUGA: And that the market knew at what level the Power Exchange was clearing at in terms of volume and price. And it also knew from the ISO what the expected load was.

So, the marketplace knew that the ISO load in many instances exceeded what the Power Exchange was clearing from a resource standpoint; and it knew that there were deficiencies relative to the utilities' obligation to serve its load.

MS. HOLMES: And in 2000 and 2001 what percentage of your electricity did you purchase in the day-ahead and the hour-ahead markets?

MR. KUGA: It varied. I can tell you there were days where because of market manipulation we only cleared I'd say less than 70 percent, perhaps lower than that, maybe as low as 50 percent.

MS. HOLMES: For both the day-ahead and the hour-ahead market?

MR. KUGA: Well, through the PX market, yes. And then there were times where it was, you know, probably close to 100 percent.

MS. HOLMES: And how does that compare to the percentage that you purchase through the short-term markets today, day-ahead and hour-ahead?

MR. KUGA: Day and hour, well, the numbers are a little difficult to calculate off the top of my head. The reason is we have least-cost dispatch requirements from the Public Utilities Commission.

So, we're required to buy and displace or sell excess, notwithstanding the fact that we don't have a load. So, you know, I can't say off the top of my head what the percentage is.

MS. HOLMES: That's fine; that's fine. Would it be fair to say that in 2000 and 2001 PG&E

purchased much more of its energy needs through the day-ahead and the hour-ahead markets than it does today?

MR. KUGA: Yeah, I think that's fair.

MS. HOLMES: In 2000 and 2001 did PG&E have the authority to enter into new long-term contracts?

MR. KUGA: Somewhere along the lines we got the authority. I can't remember what year.

MS. HOLMES: New ones or are you talking about you entered into new long-term contracts?

MR. KUGA: Well, if you mean long term meaning greater than one day, yeah, at some point I believe in October of 2000.

MS. HOLMES: You're talking about the end of 2001?

MR. KUGA: You know, I take that back. I'm not sure we had the authority --

MS. HOLMES: Okay, do you have that authority now?

MR. KUGA: Yes.

MS. HOLMES: How was the power priced that you purchased for your retail customers in 2000 and 2001?

MR. KUGA: You mean what was the price?

MS. HOLMES: Yes. Was it the price established by the PX market?

MR. KUGA: It was established by the PX market, by the ISO real-time market; or to the extent we were purchasing bilateral, it was the bilateral market.

MS. HOLMES: And how are your costs priced now? How are your purchased priced now?

MR. KUGA: We purchase through bilateral markets; we purchase through exchanges; we purchase through auctions or requests for offers.

MS. HOLMES: So would it be fair to say that there's more variety in the pricing mechanisms?

MR. KUGA: Well, we have -- we didn't have long-term authority for a number of years through the Power Exchange, so yeah, we have different tools available certainly. But, the protocols that we need to follow in terms of going through a competitive solicitation, those are fairly well prescribed by the Public Utilities Commission for us.

MS. HOLMES: Is PG&E required by those rules to meet all of its resource needs say for 2010 in any single RFO?

MR. KUGA: I'm not aware of that.

MS. HOLMES: I'd like to turn to your testimony on page 5, and I believe it reflects some testimony that you gave earlier today about the particular sensitivity that you see in quarterly or seasonal data.

I think on page 5 you talk about release of this data adversely affecting PG&E's ability to procure; on page 13 of your testimony you talk about quarterly data providing commercially valuable information to competitors. Are you generally familiar with those?

MR. KUGA: This is on page 5 of my testimony? I don't have 13 of my direct.

MS. HOLMES: I'm talking about your rebuttal.

MR. KUGA: Oh, my rebuttal, I'm sorry.

MS. HOLMES: I'm sorry. There were two sections where you discussed that in addition to the additional direct you gave us earlier this afternoon. One is on page 5 and one is on page 13.

MR. KUGA: Oh, yes.

MS. HOLMES: Okay.

MR. KUGA: I'm sorry, what was your

question?

MS. HOLMES: I hadn't gotten to it yet.

MR. KUGA: Oh, okay.

MS. HOLMES: Doesn't PG&E provide monthly hydroelectric generation data to the EIA on form EIA-906?

MR. WARNER: Does your question relate to historical data or to forecast data?

MS. HOLMES: Historical data.

MR. KUGA: Actually, I don't know.

MS. HOLMES: You don't know. Are you familiar with the electronic quarterly reporting reports that we were discussing earlier, the EQR reports?

MR. KUGA: The EQR --

MS. HOLMES: Apparently not.

MR. KUGA: No.

MS. HOLMES: That's fine. Are you familiar with hourly production data that's released through the continuous emission monitoring systems to EPA by PG&E?

MR. KUGA: No.

MR. WARNER: Again, historical?

MS. HOLMES: Yes.

MR. WARNER: Not forecast.

MS. HOLMES: Right, we're talking about historical data. Are you aware of whether or not PG&E provided a significant amount of monthly and quarterly data in response to a May 9th ALJ ruling? This data has been summarized in attachment H to the staff's testimony. It includes 2005 and 2006, so it does include forecast data, monthly supply/demand balance for bundled customers? Are you familiar with that?

MR. KUGA: I was familiar at one time. I can't say I know that data.

MS. HOLMES: You are familiar with the fact that PG&E did release that forecast data in response to the ALJ ruling?

MR. KUGA: Well, I'm not sure if the representation of the data release is correct, but I'm aware that PG&E did release data pursuant to the ALJ order.

MS. HOLMES: And are you familiar with whether or not it's forecast data?

MR. KUGA: I believe there were elements of forecast, yes.

MS. HOLMES: And are you familiar with whether or not it is monthly data?

MR. KUGA: I was familiar at one time.

I apologize, I don't recall.

MS. HOLMES: Is it your testimony that suppliers cannot use the historical production data that we've been discussing to project forward to PG&E's future needs?

MR. KUGA: Do you have a reference to my testimony on that effect?

MS. HOLMES: No, I don't have a reference. I'm asking you a question. And if you can't answer it, that's fine. I asked you some questions about historical data, hydro data filed with EIA, emissions data, production data filed with the EPA and you said you're not familiar with them, which is fine.

But my question is are you aware of whether or not suppliers can use, or do you believe that suppliers can use monthly data that's provided on a historical basis to forecast forwards to ascertain seasonal variations in PG&E's needs?

MR. KUGA: Yes, I believe that.

MS. WOODS: Again, just to clarify, to perform their own forecasts, correct?

MS. HOLMES: Correct. Thank you.

MR. KUGA: Yes, I believe that's

possible.

MS. HOLMES: Given your response to your last question is it your testimony that the monthly actual production data that we've been discussing that can be used to forecast forward, is it your testimony that that data would be less valuable for forecasting PG&E's future needs than forecast data that PG&E has created three years out?

MR. KUGA: I'm not making a judgment. All I know -- what my testimony is the more information the market participants have, the more potential that they could raise the cost to PG&E's customers.

Furthermore, you know, as I mentioned earlier, PG&E is an active participant as a seller in the marketplace, so, you know, we find that asymmetric rules that require one market participant to disclose information about its supply, as well as its position in terms of long position, let's say in this case, whereas other market participants are not required to provide that information. We're not sure why that's in the customers' best interests.

In fact, you know, I'm not sure why

you're not pursuing information for other generators in terms of what commitments they have, what's the -- rate of the resources, what kind of maintenance they have planned, what's their cost structure. That's valuable information that, you know, we would like as a buyer.

MS. HOLMES: And does PG&E have that information for the plants that PG&E divested?

MR. KUGA: No.

MS. HOLMES: You don't have any information about the plants that you operated?

MR. KUGA: We have information of the plants when we operated it, but we don't have information about the plants as they stand now. I'm not sure what the going-forward economics are. I'm not sure what the Moss Landing economics are for the new plants that Duke put in. You know, we don't have that information.

Yeah, as a buyer, sure, I'd like to have that information. You know, to level the playing field require all market participants to disclose all their information. Why does one entity, the IOUs, have to disclose its information as a buyer and as a seller, when other entities don't have to?

You're creating an unlevel playing field for us, as a seller. And I think you're creating a huge cost risk for customers for us, as a buyer. We don't make a dime in this business. And our procurement costs are pass-through costs. Everybody else is in the business for profit.

MS. HOLMES: You're saying PG&E doesn't make any profit?

MR. KUGA: On procurement activities. It's a pass-through function. We risk disallowances, but we don't make any money on it.

MS. HOLMES: I have some questions for Mr. Shandalov. Did I pronounce your name correctly? Good afternoon.

MR. SHANDALOV: Hello.

MS. HOLMES: Can you tell me when you prepared this testimony?

MR. SHANDALOV: In February and March of 2004.

MS. HOLMES: Was it prepared for this proceeding or for another proceeding?

MR. SHANDALOV: For another proceeding.

MS. HOLMES: Would it be fair to say that the testimony that you included in this declaration addresses a significant amount of data

that's not at issue in this specific appeal?

MR. SHANDALOV: That's fair.

MS. HOLMES: I'd like to run through just a few of those items, and you could just say yes or no, if you'd like.

You referred to, in your testimony, price -- disclosure on price data. It's not your testimony here that the Energy Commission is proposing to release price data, is it?

MR. SHANDALOV: No, it isn't.

MS. HOLMES: Or past fuel buying or hedging information?

MR. SHANDALOV: No.

MS. HOLMES: Hourly avoided energy costs?

MR. SHANDALOV: No.

MS. HOLMES: I have no further questions.

VICE CHAIRPERSON PFANNENSTIEL: Thank you, Ms. Holmes. I see that Mr. Cragg has some questions. Do you want to do redirect now or wait till he's finished?

MR. WARNER: I would be happy to wait for redirect till he completes his questions. And my redirect will be brief.

VICE CHAIRPERSON PFANNENSTIEL: Thank you.

MR. CRAGG: As will mine. Good afternoon, I'm Brian Cragg representing Independent Energy Producers Association. And I just have a few questions for some of you.

CROSS-EXAMINATION

BY MR. CRAGG:

Q Mr. McKlinihan, you had some questions about the RFP that SDG&E had conducted. Is it true that that RFP was issued around May of 2003?

MR. McKLINIHAN: I believe it was.

MR. CRAGG: And is it also correct that the results were, at least the preliminary results were announced around September of 2003?

MR. McKLINIHAN: I honestly don't recall the entire procedural schedule.

MR. CRAGG: Does that sound roughly correct, it was about 120 days perhaps --

MR. McKLINIHAN: I really don't recall.

MR. CRAGG: Do you recall if the PUC decision that ultimately approved the RFP was issued around April of 2004?

MR. McKLINIHAN: That could be true.

MS. URICK: Excuse me, counsel. I

think, are you referring to decision 0406011? The CPUC decision approving SDG&E's grid reliability RFP resources? If that's the decision, it's June, not April.

MR. CRAGG: It was June rather than April? That may be true, yes, thank you.

Now, do you know whether or not the Palomar project, which was one of the winners of that RFP, was originally and probably still currently scheduled to come online in mid 2006?

MR. McKLINIHAN: That's correct.

MR. CRAGG: When you're evaluating -- when SDG&E is evaluating, or when it evaluated the bids in the RFP, did it do it on the basis of the SDG&E service area or the planning area?

MR. McKLINIHAN: I'm not sure of the distinction between service area and planning area. Are you talking about bundled customers versus total service territory customers?

MR. CRAGG: Well, there have been some discussions earlier about the distinction between the service area versus the planning area, and --

MR. McKLINIHAN: Well, and that RFP was a grid reliability RFP, so some of the needs being met were the needs of the grid, itself. So it

would address reliability on the total San Diego transmission system.

CROSS-EXAMINATION

BY MR. CRAGG:

Q Mr. Kuga, you had some testimony earlier about the role of PG&E as a seller of resources at times during the year, is that correct?

MR. KUGA: That's correct.

MR. CRAGG: And to whom does PG&E sell resources?

MR. KUGA: To any number of market participants who are interested in buying, including other utilities, municipalities, marketers, trading arms of generators.

MR. CRAGG: In your role as a seller is it correct that PG&E is in competition with other suppliers of energy and capacity?

MR. KUGA: One could say that's the case. We are active in the market, and the market is competitive, there would be other buyers, as well as sellers. So in that regard, we are competing.

MR. CRAGG: In its role as a seller, does PG&E attempt to maximize the revenues it receives for its sales?

MR. KUGA: Well, basically follow least-cost dispatch principles. So if it's economic to make a sale, we will make a sale. We shop the product around and try to get the best price for our customers.

I would say, you know, it's not a revenue maximization strategy, per se. It's a, if it's economic to do so, get the best price you can get.

MR. CRAGG: When you say it's economic you mean that the amount you receive for the sale is greater than the cost of producing the power?

MR. KUGA: That's correct, and 100 percent of those revenues go back to our customers.

MR. CRAGG: And if you're seeking the highest --

MR. KUGA: Excuse me, and some of it's shared with DWR.

MR. CRAGG: If you're attempting to get the highest price for the resources, then I guess I would call that maximizing the revenues, but that may be quibbling. But you do try to get the highest price?

MR. KUGA: Well, we don't go into

bidding games in terms of, you know, trying to price up the increments as Mr. Shandalov described happens to us. We look at the basic economics which are to make the sale. We call several potential buyers and strike the deal. We don't, you know, price up every increment.

I'm not sure what you mean by maximizing revenues. We try to get the best price for our customers.

MR. CRAGG: I think that's about what I mean, thank you.

MR. KUGA: Yeah.

MR. CRAGG: Does the price that PG&E can receive for its sales depend on market conditions at the time?

MR. KUGA: I think the price for every product depends on market conditions.

MR. CRAGG: And as a seller of resources does PG&E have knowledge of the load and resource forecast of PG&E?

MR. KUGA: Well, for the day of the sale, yes. In other words, basically we're making an economic dispatch to serve load. That's our primary responsibility. If, in that process of the economic dispatch, it's economic to dispatch a

plant that we don't need to serve our own load, but it's economic to sell it to the marketplace, that occurs.

But our primary purpose is not selling; our primary function is buying to serve our load. And to the extent we have additional resources where it's economic to dispatch and sell into the marketplace, pursuant to Commission -- the protocols approved by the Commission, that's what we do.

MR. CRAGG: And I --

MR. KUGA: You know, our role's not primarily a seller, it's a buyer.

MR. CRAGG: Right. I believe you testified earlier that you also make somewhat longer term sales. I think, if I recall correctly, that you sometimes sell quarterly products?

MR. KUGA: That's correct.

MR. CRAGG: And in connection with that would you have access -- PG&E sellers have access to the quarterly forecast of load and resources for PG&E?

MR. KUGA: I'm not sure the people actually selling have that information. Somebody

in PG&E has that information.

MR. CRAGG: Have you established any firewall or other procedures to prevent that information -- to prevent the people who are responsible for the sales to having access to that information?

MR. KUGA: Now, again, we're selling pursuant to least-cost dispatch principles. And the principles say that if your cost of generation is less than the market price, you should be selling that. If we don't sell that, we face a disallowance.

MR. CRAGG: Those are all my questions. Thank you very much.

VICE CHAIRPERSON PFANNENSTIEL: Redirect, Mr. Warner.

MR. WARNER: If I could take one minute with my witnesses.

(Pause.)

VICE CHAIRPERSON PFANNENSTIEL: One second.

(Off the record.)

VICE CHAIRPERSON PFANNENSTIEL: Ms. Urick, will you have redirect, also?

MS. URICK: No, we don't have any

redirect, thank you.

VICE CHAIRPERSON PFANNENSTIEL: Thank you. Mr. Warner.

MR. WARNER: Thank you.

REDIRECT EXAMINATION

BY MR. WARNER:

Q Mr. Kuga, I think Ms. Holmes asked you whether data and information developed by generators, themselves, by back-calculation and access to historical data was more or less valuable than if the generators obtained the utilities' own forecasts.

Could you clarify what your opinion is on that question?

MR. KUGA: Well, I think if a supplier or competitor had specific information on PG&E from PG&E that is certainly more valuable than extrapolated data or assumed data. I think that just carries more weight because it represents PG&E's actual position or it's actual expectation that it's basing its business decisions on.

MR. WARNER: Mr. Shandalov, is your testimony generally applicable in terms of its statements regarding value of information to suppliers to the categories of data that are

subject to the appeal by PG&E today?

MR. SHANDALOV: Yes, it is.

MR. WARNER: Thank you. No further questions, Madam Chair.

VICE CHAIRPERSON PFANNENSTIEL: Are there questions from Commissioners for the panel? Then I guess this panel is excused, and we will, I believe, then take the staff witnesses. Is that the agreement on the schedule?

MS. HOLMES: Are we having the witnesses sworn? I don't believe we've done that.

VICE CHAIRPERSON PFANNENSTIEL: We have not yet, so far. Should we have? Mr. Chamberlain.

MR. CHAMBERLAIN: Well, we can do that, but I believe that given that this is not perception testimony, but rather expert testimony, I rather doubt that people are going to lie about their opinions. I'm not sure that the courts would view this as important, but if you would like to have your witnesses sworn, we can certainly do that.

MS. HOLMES: I just wanted to make sure that it wouldn't be a problem if we didn't.

(Pause.)

MS. HOLMES: The staff's witnesses are Dr. Kevin Kennedy, Dr. Michael Jaske, and Ms. Julia Frayer.

DIRECT EXAMINATION

BY MS. HOLMES:

Q Do any of you have any corrections to your prefiled testimony?

DR. KENNEDY: No.

DR. JASKE: No.

MS. FRAYER: No.

MS. HOLMES: Then I guess we can just move directly to the summary. I believe that Dr. Kennedy is going to begin with the summary of the overview testimony.

MR. CHAMBERLAIN: Perhaps before we do that, perhaps I should ask, is there any objection on the part of the utility attorneys that these witnesses have not been sworn?

MR. WARNER: That's certainly the way we approached our examination.

MR. CHAMBERLAIN: Can we have a common stipulation that all witnesses are testifying under oath?

MS. HOLMES: Yes.

MR. COOLEY: Yes.

MS. URICK: Yes.

MR. WARNER: Yes.

MR. CRAGG: Yes.

DR. KENNEDY: Thank you. Good afternoon. I'm Kevin Kennedy and I'm the Staff Program Manager for the 2005 Integrated Energy Policy Report proceeding here at the Energy Commission. I will be giving a brief overview of the staff testimony, which will be followed by some short summaries by Dr. Jaske and Ms. Frayer of their specific testimony.

As I begin, I want first to set a bit of a context for the aggregation proposal, itself; and to revisit the basic question before the Commission in considering the appeals today.

As you are all aware, the Commission directed the utilities to provide certain information and forecasts as part of the 2005 Energy Report proceeding. The dispute today revolves around staff's proposal to publish aggregated summary tables of the resource plan data provided by the utilities.

Energy Commission Staff has committed to insuring that the 2005 Energy Report policy proceeding is conducted in an open and public

manner. As a matter of policy the Energy Commission has long advocated for the greatest possible openness in the planning process.

Consistent with that, staff understands that the Energy Report Committee, and likely the full Commission, is planning to only consider information that is in the public record, and that all parties have had the opportunity to review and comment on in developing the findings and recommendations for the 2005 Energy Report, and the accompanying transmittal report to the California Public Utilities Commission.

To help meet this objective staff proposed releasing public summaries and aggregations of confidential resource plan data for outside parties and Energy Commissioners to review.

These summaries and aggregations would allow all parties to understand the supply demand picture for the state and the individual utilities, while protecting any underlying data that is confidential.

The basic dispute under consideration here today is whether those aggregated summaries of confidential data are, themselves, trade

secrets deserving of confidential treatment. As discussed in our testimony staff has concluded that the summary tables do not reveal trade secrets and that the arguments put forward by the utilities fail to demonstrate that the information that would be revealed is a trade secret.

Staff's proposals included both annual and quarterly summaries of the detailed monthly data. Staff proposed two main forms of aggregation. The first would summarize the data provided by the utilities specific to the needs of their bundled customers. That is those customers for which utilities provide both electricity and electricity distribution services, as opposed to customers who use their distribution service, but who buy their electricity from another company.

The second would summarize the data identifying the needs of all customers within the IOUs' service territory, including publicly owned utility resources that use the IOU transmission system. This approach has been referred to as the planning area aggregation in testimony and in discussion today.

For both of these approaches the aggregated summary tables would be published for

each of the resource scenarios that have been filed by the utilities.

An important feature of the staff's aggregation proposal is that it would only include the annual and quarterly summaries for the years 2009 through 2016. Data submitted for the years 2006 through 2008 would not be summarized in the tables staff proposed to publish.

The three utilities responded individually to the overall proposal. None of the utilities opposed publication of bundled customer annual energy data or planning area data, annual data, either for energy or capacity. And as a result, staff published those summary tables back in June.

One or more of the utilities did object to IOU bundled customer annual capacity data, IOU bundled customer quarterly, either capacity or energy data, and quarterly planning area energy or capacity data. And as a result staff has not published those aggregation tables.

The Energy Commission regulations allow the Executive Director to release records designated as confidential if the information has been masked or aggregated to the point necessary

to protect the confidentiality.

In proposing to publish these aggregated data summaries, staff determined that the summaries did protect the confidentiality of the underlying data.

The utilities generally maintained that the bundled customer annual capacity summary tables and any of the quarterly summary tables are trade secrets because they would result in higher prices for the ratepayers if released.

The utilities' claims of economic harm if these summaries are released failed to account for a number of factors. That the information that would be released does not represent a specific procurement target that they must immediately meet; the degree to which they have many options available to them to meet their future resource needs; the fact that there is much more detailed and potentially more damaging data publicly available; the fact that other utilities that operate in many of the same markets release as much or more data in their integrated resource plans than would be included in the summary tables without any apparent harm. And last, the possibility that long-term beneficial effects may

result.

As a major part of their testimony the utilities are have argued that the release of the aggregated summaries could result in a return to the market manipulation by electricity generators and wholesalers that occurred in 2000 and 2001.

In making this argument the utilities consistently imply that the need reflected in the summary tables is an absolute value that they must go and immediately procure from the market. For example, Kuga speaks of suppliers gaining an unfair advantage in pricing the last increment needed.

This argument fails to account for the fact that the summary tables would be the starting point of a planning process here at the Energy Commission, and at the PUC, not the final number that reveals their last increment needed in 2009 or 2016.

It's important to remember that staff's proposal would not include summary information for 2006 through 2008. Staff does recognize that there can be limited ability of new electricity generation or demand response products to enter the markets in response to the utilities' needs in

the short term. And that could give existing generators more ability to negotiate favorable terms in the short term.

However, release of information for the later years provides market signals that may encourage investment in generating resources and demand reduction programs, thereby increasing competition.

The utility arguments also ignore the major changes that have occurred in the California electricity market during the last five years, which is discussed in some detail in Ms. Frayer's direct testimony and in her attachment A to our rebuttal testimony.

The argument also ignores the realities of the current procurement system in place in California, discussed in detail in attachment B to our rebuttal testimony.

In 2000 and early 2001 utilities were mandated to purchase a large majority of their power from a centralized day-ahead, hourly energy market. Under those circumstances supply shortages in that market, for whatever reason, could lead to greatly inflated costs to the utilities.

In contrast, in 2005 the utilities serve their loads primarily through utility-owned power plants and multi-year, bilateral purchase contracts, including the long-term contracts negotiated by the state during the 2001 crisis.

In maintaining that the disclosure of incremental information about capacity and energy needs at anytime in the forecast period necessarily results in harm, the utilities also ignore the benefits that could result from creating a more open market place in the longer term.

Any potential harm that could come from market manipulation in the short term evaporates when adequate time is available for additional resources, whether new generation resources, transmission upgrades or additions, or demand side management programs can be brought online in response to the need.

Because the proposed summaries start with the data for 2009, publication would allow more than three years during which additional resources are likely to become available in response to identified needs and to increase competition among suppliers.

We have not suggested in our testimony that the release of these summaries would somehow magically, by themselves, spur new construction of power plants. But rather that it could provide useful signals for new entrants; and that it could aid in their being able to respond to RFOs in the future. And thereby, would aid the entry of new participants into the market.

In fact, to the extent that the current market lacks sufficient suppliers to insure competition, failure to make this type of long-term planning information freely available has the potential to lead to a market, over time, where incumbent suppliers have increasing bargaining power and results in higher prices. New entry would discipline market incumbent suppliers and dampen the effects of scarcity on market prices.

While the analogy is not perfect, the idea is much the same as if General Motors had a need for widgets. If the supply was tight, GM might, quite rightly, not want to publicize its immediate needs less the widget manufacturers run up the price. This appears to be the basic model of much of the utility testimony.

However, if GM knew that it was making

changes in their car designs such that their need for widgets three years from now would be greater than manufacturers currently have the capacity for, clearly it would be in GM's interest to let the suppliers know about the magnitude of their future needs so that manufacturers could expand production in the meantime.

Similar to what I said about construction of new power plants, they probably wouldn't start constructing the new production capacity just from a simple announcement. But it would help them in their planning for what they were doing in future production.

Another point that the utility testimony fails to adequately appreciate is the degree to which data similar to the aggregated summaries is already available, both for these utilities and for many other public and private utilities throughout the western U.S., as is discussed in Dr. Jaske's direct testimony.

In our rebuttal testimony staff has gone into further detail about the types of information that are currently available in order to address the ability of others to gauge the value that utilities place on various goods and services,

which McKlinihan has testified is an important part of gaining competitive advantage.

Staff's rebuttal clearly shows that there already exists a large body of detailed information on the current and recent supply, demand and price picture for the utilities. Some of the main sources of relevant information are summarized in attachments E through H of staff's rebuttal testimony.

While the information that would be released in the aggregation proposal is very useful from a planning perspective, given this body of existing information, the aggregation proposal information would add little to refining the existing picture of the short-term needs of the utilities.

Should suppliers be looking for a means of determining the value that utilities are placing on various goods and services, it seems that this existing information provides a much richer source of useful information than the summary information for 2009 through 2016 that staff would publish under the aggregation proposal.

Given the picture that this existing

public information base provides the utilities' near-term position in the market and the value that they currently place on their resources, it's difficult to see how the summary tables could be considered a trade secret.

It is also worth noting the degree to which other private and public utilities throughout the western U.S. make the type of aggregated summary tables proposed by staff publicly available. And some actually make substantially more detailed information available.

The utility witnesses claim in their testimony that release of the aggregated data will necessarily lead to a repeat of the 2000/2001 crisis. But this fails to recognize the fact that other western utilities operating in much the same market that the IOUs do today release as much or more information than would be revealed under the aggregation proposal. This is discussed in more detail in attachment C of staff's rebuttal testimony.

Of the publicly owned utilities that provided data to the Energy Commission for the 2005 Energy Report proceeding, only Imperial Irrigation District requested confidentiality for

the detailed monthly supply plans. And they actually agreed to the release of the aggregated summaries as proposed by the Executive Director.

While investor-owned utilities do operate under different procurement rules, the publicly owned utilities do buy energy and capacity services from some of the same markets. If release of this resource data would have the uniformly negative impacts suggested by the utilities here, those publicly owned utilities would presumably have also insisted on confidentiality of this planning data.

And as has been discussed extensively today the energy and capacity data summarized in the aggregated summary tables is only a snapshot of the utilities' resource balance as it existed in early 2005. The utilities have a degree of flexibility in addressing the long-term resource balance reflected there; and are not required to buy now or to sell now, if they have an excess, capacity and energy to exactly match their forecast demand for 2009 or 2016.

By the time 2009 approaches and the utilities are required to have adequate resources for that year, their position will have changed

significantly.

With that, I have concluded the overall summary of staff's testimony.

MS. HOLMES: Thank you. Before we move to very brief summaries of the individual subsidiary pieces and attachments by Dr. Jaske and Ms. Frayer, I'd like to hand out three pieces of paper.

One of them is simply a summary of the IOU positions. The second is a table that's been made publicly available by PG&E; it's planning area table. It's just the purpose is so that the Commissioners can have in front of them exactly what the tables look like and what the data is. I have copies for everybody.

And then the third is a visual representation that Dr. Jaske will be using to explain his testimony in a visual format. And I'll be happy to pass all of these around.

MR. WARNER: I'd just like to clarify, is this being offered as evidence in this proceeding? Is it being offered for cross-examination purposes? What's the purpose of the --

MS. HOLMES: No, it wasn't being --

well, of course, what's included as evidence is the summary table forms without numbers in them. We thought it would be useful for the Commissioners to see what they looked like with numbers in them. These are publicly available numbers. It's just so that they can have an example in front of them.

MR. WARNER: And that's fine, subject to us looking at them --

MS. HOLMES: That's fine.

MR. WARNER: -- in terms of any objections or any responses.

DR. KENNEDY: To clarify briefly, the PG&E tables were actually two of the tables that were included in the aggregation summary report that staff published in June based on, I believe it was the planning area annual numbers for which there was no objection from any of the utilities. So we just picked PG&E as an example to use.

MR. WARNER: That's fine.

(Pause.)

MS. HOLMES: Do you have any objection?

MR. WARNER: No, we do not.

(Pause.)

MS. HOLMES: Dr. Jaske and Ms. Frayer,

would you --

MR. WARNER: Could I have a clarification? I think it would be useful, Caryn, to have the third table, which appears to be again just a calculation of maybe existing data, it might be good for the record purposes just to make sure this is labeled and identified as staff-generated.

MS. HOLMES: That's fine. And Dr. Jaske will be explaining how he created that, based on his testimony.

DR. JASKE: Good afternoon. My name is Michael Jaske; I work in the Strategic Issues Integration Group, the Executive Office of the California Energy Commission. For 15 years I was the Chief Forecaster here at the Commission. And in more recent years I've been involved as the Energy Commission's witness in all of the Energy Commission's testimony in procurement-related matters, starting with post-transition ratemaking back to 1999.

My direct testimony of July 8th actually includes one of the three tables that was just passed around, the one that summarizes what IOUs agree to and disagree about the Executive

Director's aggregation proposal. It's page 19 of that direct testimony.

First off, it's the position of the staff that public disclosure of the proposed aggregation summary tables is an important element of a public transparent planning process, as this Commission articulated in writing in the order adopted April 13th, distributed on May 11th, concerning the demand forecast data dispute. There's a direct statement in there that discusses the importance of such public releases to the planning process.

Further, we believe that the March 15, 2005 ACR of President Peevey that established the relationship between the 2005 IEPR proceeding and the forthcoming 2006 procurement proceeding requires that we do analysis for the three IOUs on a bundled customer basis.

And so that is an important motivator of our desire to be able to release data on a bundled customer basis, as opposed to a planning area basis.

We believe that the IOUs, despite their presentations in direct testimony today, and their written testimony earlier, have still not been

able to explain why they are different than all of the other investor-owned utilities in the western United States with respect to the kind of planning data that is made available.

They have not demonstrated that they have unique characteristics; that there's some special qualities that justify them behaving differently than do these other IOUs.

There is a great deal of similar, although I will admit not exactly the same, information that is made available by the IOUs in other forums, the ISO transmission planning process, data submitted to FERC as part of 714 requirements that can be used to guesstimate, to back-calculate, to extrapolate, all those kind of words, to an approximation of what the utilities, themselves, would calculate.

And in light of that information, what we are talking about is what is the incremental effect of specific release that the Executive Director's NOI proposes.

In my rebuttal testimony attachment C I go into more detail about why the IOUs are not -- California IOUs are not different from the other IOUs or large munis in California, at least

according to the four measures that I examined.

I examined the degree to which existing and planned resources covered load; the degree to which voluntarily-entered-into-contracts were a percentage of existing and planned resources; the degree to which hydroelectric generation was a percentage of existing and planned resources. And the best I could glean about the degree of loss-of-load jeopardy that those IOUs are under, either from retail choice or from loss of firm sales contracts to munis, which is common in other parts of the west.

Today Mr. Kuga suggested a particular measure that I didn't examine in detail. He talked about the degree to which there was a swing resource that the incumbent IOU controlled; and, you know, that was a key difference that was different between the California IOUs, or at least PG&E, and these other western IOUs.

That measure is not something I looked at directly, but that line of thinking is not supported by the fact that five of the western IOUs report capacity data on a monthly basis. They report net short of capacity on a monthly basis. They are showing where they are short and

long month-by-month; and they are revealing far more than what would be appropriate were Mr. Kuga's hypothesis to be correct.

Finally, in attachment H I go into considerable length to amplify upon what was in my direct testimony concerning the degree to which PUC rulemaking 0404025 has directed the IOUs to release similar kinds of data.

This proceeding is attempting to come up with a new way of pricing QF contracts. The intervenors in that proceeding are rightly looking to resource planning information from the IOUs as a basis for understanding what future IOU costs are and presumably will be filing testimony later in that proceeding, making proposals about how they should be paid on some sort of future avoided cost basis. That's their interest in acquiring resource planning data.

There's been a discovery dispute going on for probably nine months in that proceeding. Been very difficult back and forth trying to get the utilities to reveal this data. A judge has stepped in, and through a series of rulings essentially decided certain things are public, certain things are completely off limits, and

certain other things are in the middle, can be accessed via protective order.

What I identify in attachment H are the things that are public and that are pertinent to the particular aggregation proposals before us. And those are quarterly load forecasts; the output of utility-retained generation, whether fossil, nuclear or hydro; and certain other miscellaneous factors, mostly historic, that again can be used by analysts to project forward.

While the material produced by the utilities through that ruling is certainly not a definitive overlap with appeals, or the matters being appealed here, are in dispute, they are a very close analogy. Because the judge essentially decided the data that was hourly or daily ought to be protected. The data that is annual and quarterly ought to be made public.

And that's essentially what the proposal of the Executive Director does. And with that, I would turn things over to --

MS. HOLMES: Do you want to first explain the table that we presented to the --

DR. JASKE: Yes, that'll be done next. I told you what two of the three -- thank you.

This chart, with a series of stacked bars, is for 2009. It uses the capacity data from SMUD. SMUD agreed to allow its data to be published. In fact, SMUD didn't ask for any confidentiality, so the full-blown, by-resource, by-month resource plan data submitted by SMUD is publicly available.

We published an aggregation of that in the report footnoted in my direct testimony; the one that Mr. Kennedy referred to earlier that was published in June. And that is the source of the left-most set of three columns. So it shows demand with a little bit of demand adjustment. It's very hard to see because SMUD is not really pursuing efficiency or demand response.

A third of that set of bars is called resource categories. Totals up the various kinds of resources that SMUD has available. And the one in the middle, the red one, shows resource need. And that same pattern is repeated three more times, going from left to right.

So the original supply/demand balance inputted into the IEPR process by SMUD. And then there's some hypothetical illustrations of how that data might change over time. The set of bars

with the overall label called technical adjusted balance shows a little bit higher peak demand forecast, everything on the supply side the same. And so a little bit larger resource need.

That would reflect the kind of review of load forecasts that has already gone on in the IEPR process. And shows how the original inputs are not necessarily what the Energy Commission might adopt as part of the IEPR process, and pass on for this IOU to the PUC.

The next set of three bars shows a further set of adjustments that have to do with policies on how to satisfy that need. So, in this instance the demand bar shows greater degrees of energy efficiency demand response and distributed generation than SMUD might have originally submitted. The supply side, itself, is not changed. And so resource need has shrunk considerably.

And then finally, the right-most set of bars moves off of that policy modified group; and it shows just as one step, as we have discussed earlier in the utility witness cross-examination, how that can continue to evolve over time as the utilities either refine their forecasts or

actually make resource commitments. I think Mr. Kuga and Mr. McKlinihan more or less agreed that this is the way things evolve. So this picture just sort of helps show how all this discussion about the original filings of the IOUs evolve, both through the regulatory process and over time, as they undertake resource commitments through RFOs and other methods.

But there is no direct correlation between the data they're asking, they're mostly concerned about, is the need and that which is actually governing the resource selection.

MS. FRAYER: Good afternoon, Commissioners, ladies and gentlemen. My name is Julia Frayer and I'm a Managing Director of London Economics International, LLC, an economic consulting firm specializing in the economics of infrastructure industry and specifically the electricity sector.

I have worked extensively in California in the electricity sector and in other restructured electricity markets worldwide. And have led numerous engagements involving key issues at the heart of today's dispute.

As an applied economist, my job is to

take the fundamental theories of economics and apply them in practice to solve real world business problems.

At the request of the staff of the Commission I was asked to conduct a review of the analysis prepared by the investor-owned utilities and their experts in their appeal of the Executive Director's notice of intent.

As Dr. Kennedy has described, the aggregated summary tables would summarize the IOU's expected supply and demand in the long term. The aggregated summary tables are not going to provide any information about the short-term or spot-market supply/demand conditions.

The IOUs, in procuring for the long term, are currently engaged and will be engaged in the future in various RFOs which we've talked about today. RFOs are best described as auction processes when an IOU is soliciting offers to buy energy and capacity from a number of suppliers, which I describe further in attachment B to the staff's rebuttal.

In fact, the IOUs have many different opportunities to purchase electricity products over time and across different procurement

options. This may sound like a broken record by this point in the evening, but I did want to stress that as it flows through with some of the other points I would like to make.

This optionality directly translates into a very elastic demand curve for any given IOU and any given RFO or procurement process for long-term energy and capacity. The IOUs have continuously raised concerns of collusion and also coordination by announcement in reference to an inelastic demand curve. And that may be correct for spot market analysis, but we are not advocating release of the IOU supply/demand expectations for the short term.

This is one of the fundamental points, in my opinion, leading to the misunderstanding about the aggregated summary tables. The information proposed to be released will not necessarily take place in the context of a market with limited number of sellers and a fixed inelastic quantity of demand.

In summary of my original testimony, because of the nature of the aggregated summary tables, the current market environment, and expected future market environment, the structure

of the California electricity procurement process, economic theory leads me to conclude that the dissemination of information in the aggregated summary tables would not be harmful. Rather it could be beneficial to the long-term procurement process.

The aggregated summary tables will provide much needed signals for new investment with sufficient time to allow developers to prepare for future RFOs. Moreover, the information embodied in the aggregated summary tables would level the playing field between potential suppliers and incumbents, and increase the competitive nature of the RFOs, which in turn would likely lead to lower rather than higher costs of electricity for ratepayers, holding all else constant.

From the rebuttals of the IOUs there appears to be a lot of misunderstanding of the electricity markets and the application of the economic theory that I just described. So, I would like to take this opportunity to step through the context, the logic of this well regarded economic theory and how it would apply to the RFOs and procurement of electricity by the

IOUs in practice.

Before I start, however, I should note that the results of this theory have been observed in the real world. This is not untested scientific hypothesis. In fact, the original developer of this theory observed the interaction of players in the auction of oil drainage tracts, in an auction of those oil drainage tracts, and created his hypothesis, his theoretical hypothesis of that observation.

The premise behind the benefits of information release in the context of this theory have also been invoked in the electricity markets abroad. My attachment B has a small case study where I describe one such example with reference to the Australian National Electricity market.

So, let's start with the basics. The energy and capacity that the IOUs procure in the RFOs can be used by the IOUs. They will use it to meet the needs of the ratepayers, or they can actually resell at any point in the future prior to actual consumption. Because the IOUs effectively are arbitraging every day, over time, their portfolio of commitments and hedges. And that's been talked about today by the IOUs when

they describe how they buy and sell at any given point in time.

Resale is also possible for the suppliers. They can resell their obligations to other third parties. This resale condition is one element that suggests that the theory of common value auctions is applicable in this instance. Similarly to the experience of the oil drainage tract's example.

In addition, there are a lot of common uncertainties and risks regarding the key drivers underlying the costs, such as gas prices, and the future market value of electricity, which each individual bidder in an RFO, each supplier may have a private estimate or conjecture about.

In California many of the generators are gas fired, and market prices in the spot market are commonly set by gas-fired resources. Thus, the future price of gas is one key driver that unites California's electricity suppliers.

In addition, as we heard earlier today, I believe Mr. Seeney testified about this, the bidders, in offering up commitments in RFOs, generally also look at the perception in the market, where is the market. So they are very

cognizant of the future market price of electricity, and that impacts how they develop evaluation of their commitments in these RFOs.

Thus, the valuation that the bidders, that the suppliers make is based on their direct costs, possibly their fuel prices and other costs, and also their opportunity costs. When I say opportunity costs what I'm talking about is the idea that they can possibly not generate, but actually buy in the spot market in the future and resell to meet their obligation to the IOUs.

The suppliers' direct costs, fuel prices, are also highly affiliated because of the regional market for gas. Each supplier, each bidder in an RFO will have some private conjecture, some private guess about future gas prices and future electricity prices. And the key point here is that some suppliers, possibly some of the larger incumbents, are much better informed than others.

Since electricity demand and gas demand are highly interdependent in California, a higher than expected demand for electricity, as presented in the aggregated summary tables, to potential suppliers, if they were released, may suggest the

demand for gas will also be higher, and thus the cost of gas higher.

The revelation of this information resolves some of the uncertainty that suppliers face. Similarly, the future market price of electricity, which as values have testified, is a key component of the development of the bids or offers by suppliers, can be seen as this opportunity cost.

This opportunity cost, the future price of electricity, is also highly uncertain and it's common across bidders. Each bidder will develop their own projections about future prices of electricity, which will include the cost, possibly, of buying energy and capacity in the spot market and then reselling it to the IOUs.

The key element, though, is that some suppliers have enormous resources to data mine and forecast through the use of the vast public knowledge base, and develop these models of future cost of gas, future prices of electricity, in analogy to the oil company in the oil drainage tract model, which will be able to drill and get a very good estimate of the oil in the ground, and therefore refine, substantially more than its

competitors, the value that it's willing to put in order to buy the oil tracts.

Other suppliers in these RFOs are not as well informed. But they do know that their competitors are better informed. These other less-informed suppliers will naturally believe they are, well, out-gunned at the auction. And may even decide not to participate or perhaps marginally participate because they are uncomfortable with their limited knowledge.

They will fear competing aggressively because they know they are less informed. If they are too aggressive they may over-shoot on price and not win any supply agreements. Or they may sell their supply too cheaply and thus forego opportunities in the future. This is the winner's curse.

New entrants are particularly likely to be less informed and less likely to participate without information that levels the playing field between themselves and incumbents.

The aggregated summary tables represent the IOUs' forecasts of future supply and demand under baseline and alternative scenarios for California. The information includes peak demand,

total energy, supply mix expectations of the IOUs on an aggregated annual and quarterly basis. The future price of electricity in California and the future cost of gas prices are a function of supply and demand conditions. Thus, the information being proposed to be released will directly impact the valuation that suppliers or bidders in these RFOs are making when they consider to participate in any particular RFO.

The information would thus level the playing field between the well-informed and the less-informed bidders. And if it substitutes for the private information of the well-informed suppliers it will likely motivate the less-informed suppliers to be more aggressive in their bidding. By setting everyone on equal footing we are likely going to see more competitive prices from the RFOs and benefits to ratepayers.

Dr. Plott has criticized my application of this theory because he has incorrectly focused on a single number of the aggregated summary tables, the RNS, as he discussed earlier today.

But the aggregated summary tables, Commissioners, which are in front of you are much more than that. They provide a description of the

long-run expectations of key supply and demand drivers.

In my experience with long-term price forecasting for the electricity sector such information is one of the crucial factors for determining the future market prices of electricity and the costs of producing electricity. Thus, this is information that would work through in the theory to level the playing field.

Dr. Robert Wilson was the first one to propose this theory of information release when he developed the oil drainage tract model in 1967. Which was further considered in work by Dr. Milgrum and Dr. Webber. I have discussed application of this theory to the current issues with Dr. Wilson and he fully endorses my application of the theory in this instance.

The IOUs dismiss my arguments about the value of signaling and the need for new investment, as well. For electricity, the introduction of new suppliers through proper market signals will, in fact, offset the potential collusive behavior of incumbents that the IOUs claim exists today, or possibly could exist in the

future.

Indeed, the experimental analysis conducted by Dr. Plott also indirectly suggests the potential competitive benefit from the release of the aggregated summary tables due to new entry, though he would like us to believe otherwise.

Though Dr. Plott's second experiment was conducted in a spot market setting, and thus lacked the defining characteristics of the IOUs' long-term procurement activities, the results of his second experiment nevertheless implicitly suggest additional competition would lower offer prices. Let me explain:

Dr. Plott notes in his rebuttal that a reduced RNS with a static number of bidders is effectively equivalent to the outcome if there were more bidders. New entrants are more bidders. They are new bidders. And thus would increase competition and lower the average offer price.

It only takes one additional competitor to begin to unravel the coordination and potential collusive behaviors that the IOUs are hypothesizing may exist.

Dr. Plott also noted earlier this afternoon that if demand is elastic and there is

no scarcity, offer prices do not rise substantially. He then noted that if demand is elastic and there is scarcity, suppliers may increase their offers. But he failed to note that the buyer, by definition of elastic demand, would not need to accept those offers. And effectively market clearing prices, the prices that ratepayers would pay would not be affected.

On a further note, two of my most critical critiques of the parawise negotiations experiments conducted by Dr. Plott and Dr. Cason remain open with a second auction experiment, as well. Neither set of experiments allow for new entry, which we know for a fact is a key force in California. I believe the rebuttal testimony has a graph to show how much new entry we've had in California since 1997. And I believe it totals over 9000 megawatts.

Neither experiment also fully or explicitly reflected the demand side options of the IOUs. They can forego purchases in any particular RFO. They can use other forums; for example, they can trade over the counter, they can trade short term, bilateral. They can even build their own plants over the longer term, which would

in all instances, reduce the RNS. Thus it would result in the situation where prices would come down rather than go up.

Moreover, neither of the experiments adequately represent the information that would be revealed to the public in the aggregated summary tables. This was my first point.

The character of the aggregated summary tables, a sample of which the Commissioners have in front of them, is the key to understanding the impact of the market.

I would like to spend my last few minutes discussing some of the points that Dr. Kennedy raised in his introduction. In my original testimony I alluded to the availability of a number of similar data or information on supply and demand. This is the data that segregates the well informed from the less informed.

As noted by Dr. Kennedy, it is very difficult to understand why the IOUs would characterize the aggregated summary tables as confidential when the public has access to this rich actual data which is much more insightful about the willingness to pay and trading

strategies of the market participants in the short term.

In response to the testimony filed by the utilities in July, attachment E contains a summary of the FERC's electronic quarterly data, which has detailed information, down to the hour increment, on energy, capacity and ancillary services transactions of all FERC-licensed market participants. The contract and transactions data includes detailed information on the product sold, price paid, quantity, tenure, location of delivery, I could go on and on. But it's all covered in the attachment.

The volume of data in electronic quarterly reports dwarfs the forward-looking planning and bundled customer information proposed to be released in aggregated form.

In rebuttal to the issues raised by PG&E about the quarterly aggregations, attachment G to the staff rebuttal presents the type of data already publicly available on monthly hydroelectric production from EIA form 906. This form also contains monthly production, fuel consumption data for thermal plant. It is mandatory for power plant operators to file this

form, though small plants, for example under 80 megawatts, do not need to do it on a monthly basis, because the EIA then applies a sampling technique to get an estimate.

Despite this 80 megawatt threshold for mandatory filing, some companies have continued to make this information available on a voluntary basis. PG&E is, in fact, one such company. It has continued to file information about hydroelectric production from its plants on a monthly basis on a plant-level basis, though some plants are below the 80 megawatt mandatory threshold.

Given the public availability of actual monthly data the release of the aggregated summary tables on a quarterly basis, and given the fact that they are just projections, cannot be said to provide information about seasonality that is not already generally known.

Indeed, one could argue that the actual historical data is potentially more sensitive than the annual and quarterly aggregated summary table projections because the actual historical data is disaggregated at a plant level and is available on a much more frequent basis monthly instead of

quarterly. Moreover, the historical data is actual; it's not a estimate. And it's closer to real time, so it's likely to be more accurate in its representation of the IOUs' real-time or short-term needs.

Indeed, there's even public information on projected future electricity prices, which is, of course, not what Dr. Plott assumed in his experiment. Attachment F to the rebuttal contains a short description of the various price indices that is available for market participants across the western interconnect to gauge the future market price electricity.

The IOUs argue about the potential for market manipulation with the release of aggregated summary tables; however, they haven't really offered any evidence to support their claims. And after reading the rebuttals of the IOUs it is quite clear that Dr. Plott does not want to associate the results of his experiments with collusion or market power. And I'd like to make clear that none of our conclusions or theories rely on collusion, as may have been implied this afternoon.

However, other witnesses for the IOUs

continue to allude to market manipulation but they offer no concrete evidence of market manipulation in their procurement process. Rather, the IOUs' entire position hinges on an emotional, but not factual, analogy to the crisis of 2000/2001. Attachment A to the rebuttal provides the reasonings for why this is not a factual analogy.

The IOUs' testimony in rebuttal suggests a market composed of a handful of suppliers. Though there are some large generation owners in terms of overall capacity, and in fact some of the IOUs are part of that large generation ownership group, there are many more than just five suppliers in this market. And it's naive to ignore the impact of these smaller suppliers.

The IOUs refer to the presence of six IPPs in their testimony; I believe it's Calpine, Duke, Dynegy, Mirant, Reliant and AES/Williams. It is worthy to note that FERC has, within the last year, approved the market-based rate authorities of four of these independent power producers, confirming that the generation market in California, and specifically within the Cal-ISO, is competitive based on FERC's structural test for market power. And that these suppliers

are not expected to be able to exert market power, short term or long term.

In spite of these facts Dr. Stearn from Southern California Edison, in his prefiled testimony, claimed that the conditions for collusion are present.

I would like to reiterate that for the long-term market, with which we are concerned with today, the conditions for tacit collusion are not evident. Suppliers cannot perfectly observe in real time each others' price, making punishment for departing from the collusive target really unfeasible.

Suppliers in California do not have similar cost structures. Though many use gas, they all have different heat rates and different variable O&M, possibly different fixed costs because their debt levels are different, which all figures into their total production costs.

And the concentration of supply is not so high as to be worrying. Otherwise, why would FERC have approved the market-based rates.

And to correct Dr. Stearn, because the timeframe of the aggregated data covers the long-term market, not the spot market, the demand for

energy and capacity in any given procurement process is elastic, making it less profitable and thus difficult to game by suppliers.

In my professional opinion the release of the aggregated summary tables is unlikely to be a cause of any market power crisis. And clearly, the release of this type of information was not the cause of the 2000/2001 crisis, since this type of information was not even available then.

In fact, I think there are a lot of benefits for releasing this type of information, as I've noted throughout my opening statement.

Thank you. This concludes my presentation.

VICE CHAIRPERSON PFANNENSTIEL: Ms. Holmes, are the witnesses available for cross-examination?

MS. HOLMES: They are.

VICE CHAIRPERSON PFANNENSTIEL: Is there any cross-examination? Mr. Cooley.

CROSS-EXAMINATION

BY MR. COOLEY:

Q I'll direct my questions to Ms. Frayer. I would like to get your understanding of SCE's position, Edison's position, in this proceeding

regarding the release of its confidential and proprietary information.

Is Edison, in your opinion, opposing the release of planning area data?

MS. FRAYER: In terms of asking me about which information Edison is opposing and not opposing, that question's probably better directed to Mr. Jaske or Mr. Kennedy, --

MR. COOLEY: I'm asking for your understanding at this point.

MS. FRAYER: If I can review the testimony we filed, and let's see -- Edison -- and what data was it?

MR. COOLEY: Any planning area data.

MS. FRAYER: As I understand it, Edison opposes annual -- sorry?

MR. COOLEY: The question is, is Edison opposing the release of any planning area data.

MS. FRAYER: I think no.

MR. COOLEY: Thank you. Is Edison opposing the CEC's reliance on public information?

MS. FRAYER: I believe they have not opposed that; that would not be logical.

MR. COOLEY: Now is the CEC proposing to release the same sort of bundled customer

information for all buyers in the state?

MS. FRAYER: Again, though I have reviewed the Executive Director's NOI, I think that's a question that you should ask the CEC Staff.

MR. COOLEY: I'm asking for your understanding at this point.

MS. FRAYER: Well, I'd like you to redirect it to the staff. I think they're better --

MR. COOLEY: Would it make a difference if the CEC was proposing for your theoretical bases for your conclusions, would it make a difference whether the CEC was just proposing part of the market releasing this bundled customer information, and not the whole market?

MS. FRAYER: What do you mean by part of the market?

MR. COOLEY: Well, only some of the participants in the market, some of the buyers.

MS. FRAYER: So you're saying that when you're talking about the market you're specifically, in this instance, talking just about one buyer versus another buyer?

MR. COOLEY: Well, I'm talking about the

market for electrical energy and capacity in the State of California. Do you understand the CEC's recommendation that some buyers in the market would not be required to release their bundled customer information?

MS. FRAYER: If I understand it correctly, and I shouldn't be -- you know, right now I am interpreting for the CEC, and they could probably speak better for themselves, but my interpretation and my conclusions are that the buyers, the IOUs are the largest buyers in California. And that the --

MR. COOLEY: So this --

MS. FRAYER: -- that the information they're seeking is going to be coming into their IEPR process, which will eventually go into the procurement process for the IOUs at the CPUC. So that's the need.

MR. COOLEY: You understand that the IOUs are the only buyers in the market for electricity in California?

MS. FRAYER: They are not the only buyers.

MR. COOLEY: And do you know whether the CEC Staff's proposal here would apply to all

buyers in terms of releasing their bundled customer information, or only to the IOUs?

MS. FRAYER: Well, again, as far as I understand it there's a very specific objective to the request, and that is it feed into the IEPR process, which feeds into the CPUC procurement process for the IOUs.

So I think it's kind of beside the point. We're trying to get --

MR. COOLEY: No, no, no, it's very much the point. What is very much the point is the fact that the CEC Staff's proposal only applies to some load-serving entities; it doesn't apply to all load-serving entities.

MS. FRAYER: I also know that some load-serving entities have already basically said we can go ahead and release others, like the POUs. Most of them have not --

MR. COOLEY: Well, again, I'm asking for your understanding of whether the recommendation that the CEC Staff is making would apply to all load-serving entities in the State of California in terms of producing their bundled customer information.

MS. FRAYER: Let me put it this way. My

recommendation holds even given the fact that the CEC may choose or not choose to require others to -- other buyers to withhold. The IOUs are the largest, one of the largest buyers of electricity. It's the IOUs' procurement plan that's key in my conclusions regarding the benefits of releasing this information to make the RFO processes for the IOUs more competitive and to signal the need for new entry would still hold.

MR. COOLEY: Is the CEC Staff proposing to release any information from suppliers regarding their costs?

MS. FRAYER: I believe this proposal does not talk about suppliers or generators.

MR. COOLEY: And is the CEC Staff proposing to release any information from suppliers regarding the availability of their generating capacity?

MS. FRAYER: What do you mean by availability? It has lots of meanings in this industry.

MR. COOLEY: What they have for sale.

MS. FRAYER: What they have in the ground? How much megawatts they have? What's committed, --

MR. COOLEY: What they have --

MS. FRAYER: -- what's not committed?

MR. COOLEY: Excuse me. What they have uncommitted and available for sale to buyers in the State of California.

MS. FRAYER: Well, in fact, that information's available. FERC, in their market-based rate authorizations, ask each seller -- and almost every single seller in the California ISO control area is authorized by FERC -- but basically they ask each seller to come up with a very specific definition of what capacity they have committed and uncommitted in much detail.

So that information is actually all available already.

MR. COOLEY: Okay. Do you understand whether Edison is opposed to the release of market-sensitive information, that bundled customer load information, to nonmarket participants under a protective order?

MS. FRAYER: I understand that Edison has appealed specific categories of aggregation. I don't necessarily agree with you that they're market sensitive or a trade secret. Does that answer your question?

MR. COOLEY: Do you know whether Edison has voiced any opposition to providing this same information to nonmarket participants, but under the terms of a protective order?

MS. FRAYER: I believe I've heard that you're happy to provide this information under protective order.

MR. COOLEY: Does Edison object to the release of this market-sensitive information, that's my term, to its procurement review group?

MS. FRAYER: I believe your witnesses have testified that there isn't any objection to that, so --

MR. COOLEY: That would be under terms of an appropriate protective order?

MS. FRAYER: If I understand how PRDs work, yes.

MR. COOLEY: In your opinion do the utilities' retail customers represent a market in and of itself?

MS. FRAYER: Well, it's a question how do you define markets. In anti-trust, when you study market power there's a lot of particular ways you define a market. When you talk about economics there's another way to define markets.

MR. COOLEY: I think the definition I'm thinking of here is just more simple than that. Are they potential buyers of electricity in the California electricity market?

MS. FRAYER: The IOUs buy on behalf of their retail load.

MR. COOLEY: Are they whole market?

MS. FRAYER: The retail customers? No, there are other people buying electricity in California, and selling electricity in California.

MR. COOLEY: But it's your testimony, as I understand it, that releasing the utilities' bundled customer data provides the appropriate market signals to developers, is that correct?

MS. FRAYER: It is. And let me explain why.

MR. COOLEY: No, I just --

MS. FRAYER: Well, can I actually go on and --

MR. COOLEY: Sure, go ahead.

MS. FRAYER: -- explain a little bit? The appropriate market signals goes back to this need for the signaling for new entry.

Based on my review of public information of RFOs, the RFOs typically -- and this is in one

of the attachments to my rebuttal testimony; I believe it's in attachment B -- the RFOs that I've been able to gather from public information provide a very limited time of response between RFO announcement and the time when the initial bid is due.

That is not sufficient time for a new entrant, a new plant, to develop to the point where they have a credible bid to offer, a credible offer to give in response to the RFO.

So there is a need because the IOUs are, in some instances in some RFOs, procuring for their bundled customer to be able to signal the difference between bundled customer and planning area.

MR. COOLEY: And I guess the distinction between planning area and retail customers is quite important. Why is it that planning area data doesn't provide an appropriate signal to the amount of need that is there in the California market. And you focus immediately on the IOUs and their retail customers. But as I've tried to point out, they're not the whole market. The whole market, at least Edison's planning area, consists of not only its own retail customers, but

also nonbundled customers of the utility.

MS. FRAYER: Sorry, what was the question?

MR. COOLEY: The question is you focus on supporting a policy that is partial. It only applies, CEC's recommendation only applies to IOUs and their retail customers. It does not apply, you know, and Edison is quite willing to give up and provide or have the CEC rely on planning area data, because that does provide the aggregate demand for the whole area in which Edison has its, you know, demand.

MS. FRAYER: Well, --

MS. HOLMES: Could we get a specific question, please, rather than an argument. I haven't heard a question --

MR. COOLEY: I'm trying to give the witness some understanding and background of what the recommendation is. And the specific question is why doesn't planning area data provide the appropriate market signals to potential entrants, and Edison has no objection to providing planning area data to -- or for the CEC to provide that for the whole market, not just its retail customers, which is a subset, albeit a large subset, but only

a subset of the planning area.

MS. FRAYER: Well, I think you just answered your own question. You made a very -- you've tried to argue there's a big distinction between planning area and bundled area. And I've made my argument that there's a need for signals, market-accurate signals, to be made ahead of the IOUs' RFOs which go, in many cases, to bundled customer need.

So the idea is, because planning area and bundled customer data is so different, there's a need to differentiate between the two in order to have proper market signals for the RFOs in the future.

MR. COOLEY: Do you -- what is your understanding of planning area data, what does it include?

MS. FRAYER: The planning area data, as far as I understand, includes -- probably somebody else can confirm this if I'm wrong -- but I believe it includes the entire planning area of the utility, or the service territory of the utility, even though there may be some direct access customers within that service territory that the utility no longer sells generation to.

MR. COOLEY: Does it also include municipal load customers in that planning area?

MS. FRAYER: I believe so, but if I'm wrong maybe some of the --

UNIDENTIFIED SPEAKER: You're correct.

MR. COOLEY: Okay, on page 16 of your second rebuttal testimony at the bottom of the page --

MS. HOLMES: Can we refer to it by attachment --

MR. COOLEY: Page 16.

MS. FRAYER: Attachment or --

MS. HOLMES: I'm sorry, we identify these amongst ourselves by attachment, so are you referring to --

MR. COOLEY: I think it's attachment A.

MS. HOLMES: Thank you.

MS. FRAYER: Attachment A is the -- mine aren't organized, but bear with me.

MR. COOLEY: It's under market power mitigation.

MS. FRAYER: Yes.

MR. COOLEY: At the bottom of the page.

MS. FRAYER: 16, you said, right?

MR. COOLEY: Page 16, bottom of the

page. And in that paragraph at the bottom of the page you talk about market power mitigation.

MS. FRAYER: Yes.

MR. COOLEY: And you mentioned the market analysis department of the ISO?

MS. FRAYER: Yes.

MR. COOLEY: Did you consult with the market analysis department of the ISO regarding the CEC Staff's proposal for the one-sided and partial release of retail customer data?

MS. FRAYER: Well, again, I don't like your characterization of it, but in terms of producing the work products I've produced right now, I did not consult. These are independent work products that I produced or were produced under my direction.

MR. COOLEY: Then you next mentioned the market surveillance committee.

MS. FRAYER: Yes.

MR. COOLEY: -- report to the ISO Board of Directors?

MS. FRAYER: Yes.

MR. COOLEY: Did you consult with them regarding the proposal that the CEC Staff is making regarding the release of the IOUs' retail

customer data?

MS. FRAYER: Again, the conclusions I've made have been made independently.

MR. COOLEY: So neither organization told you that the one-sided and partial release of information was something that they endorsed and supported, is that correct?

MS. FRAYER: No, I haven't called the Cal-ISO and asked them if they endorsed the proposals of the CEC.

Have you done that to see if they endorse your proposal?

MR. COOLEY: I'm asking about your proposal, your recommendation here, because you've identified these entities or these bodies, and they potentially might have something to say about your proposal.

MS. FRAYER: Well, the --

MR. COOLEY: Turning to page --

MS. FRAYER: Can I -- all right, that's fine.

MR. COOLEY: Turning to page 18, actually continuing on to the next page, you state that the IOUs' fears of market manipulation are unfounded. You see that?

MS. FRAYER: Can you tell me exactly --

MR. COOLEY: Well, it's in the title for the section, 4.2.

MS. FRAYER: It says, IOUs' concerns --

MR. COOLEY: Are unfounded.

MS. FRAYER: -- are unfounded, yes. Fears, concerns, okay. I was just not finding the exact quote you were referring to.

MR. COOLEY: You further state that no single actor in the California market has the power to manipulate prices on a unilateral basis, is that correct?

MS. FRAYER: Yes, that is correct.

MR. COOLEY: And in 2000 and 2001 do you believe that any single actor had the power to manipulate prices?

MS. FRAYER: Under the conditions that were present there, including the adverse hydrological conditions, and the fact that there was a forced requirement to effectively buy and sell through the PX for the largest buyers, yes.

MR. COOLEY: And on page 20 you state that the release of the aggregated data tables is expected to improve transparency for all market participants. Do you see that testimony?

MS. FRAYER: Yes.

MR. COOLEY: It's on section 4.3?

MS. FRAYER: Um-hum. It says, improved competitive forces at work.

MR. COOLEY: Can you please explain why this principle should not also apply to the release of information by energy service providers?

MS. HOLMES: Are you asking her whether or not this principle does apply to the release of information by energy service providers?

MR. COOLEY: We'll start with that question and then ask the one that I did ask.

MS. HOLMES: Okay.

MR. COOLEY: Does this apply to energy service providers, as well, in principle?

MS. FRAYER: In principle, I don't believe that -- and, again, Kevin can clarify if I'm wrong, but I don't believe the energy service providers are being asked to release the same information that the IOUs are.

MR. COOLEY: But my question is, is why does not this principle also apply for release of information --

MS. FRAYER: The principle --

MR. COOLEY: -- by the ESPs.

MS. FRAYER: Well, the principle does not need to apply in order to make my statement true. In other words, the release of the aggregated data tables will improve the transparency for all market participants in the RFO and procurement processes for the IOUs.

MR. COOLEY: Well, again, I'll ask the question. Why wouldn't your principle, as stated on page 20, also apply to the release of information by ESPs?

MS. FRAYER: It could theoretically, but it doesn't need -- the principle does not need to be there in order for this conclusion to also be valid.

MR. COOLEY: Does the principle also apply to suppliers regarding their cost of availability data?

MS. FRAYER: Well, again, I think a lot of the cost and availability data is already out there.

MR. COOLEY: So if the CEC wanted to ask, you believe that the principle should apply to suppliers, as well as buyers, is that correct, to make everyone on a level playing field with

regard to the information they have available?

MS. FRAYER: Well, actually, the economic theory that I used, the Wilson model and the Milgrum model, and -- actually the Milgrum and Webber model, they do not require, when they talk about auction settings and the release of information, they don't require, in the concept that they're talking, because they're talking about the sell side rather than buy side, they don't require the release of information by the other party to make their conclusions hold.

MR. COOLEY: But would this principle of the release of information to provide a more equitable and transparent market also apply to suppliers, as well?

MS. FRAYER: If we translate the drainage tract model in the reverse, and also the Milgrum and Webber model in the reverse, again, they don't really talk about -- they always talk about information being released that affects the pattern of bidding among the parties that are bidding. It possibly could, but I'm not sure, you know. I follow the logic of the argument that I've laid out with aggregated summary tables. I could think about it and get back to you about

those supply costs.

MR. COOLEY: On page 2 and page 20 of your testimony, at least attachment A, -- attachment A. You state that the three-year window, beginning in 2009, for not disclosing IOU confidential information is adequate protection. Is that the essence of your testimony?

MS. FRAYER: Yes, I think that is very good protection.

MR. COOLEY: Do you know whether any IOUs are currently engaged in solicitations for capacity?

MS. FRAYER: I believe I've heard today that some of them are.

MR. COOLEY: You just learned that today?

MS. FRAYER: Well, I actually know there's a couple of RFOs that are open. But I also know that they are not necessary for them to fulfill those RFOs. They can close them without fulfilling all of them, so --

MR. COOLEY: And the upshot of not fulfilling the RFOs would be that the utility would not obtain capacity from that RFO, is that correct?

MS. FRAYER: Well, if they're looking for capacity, maybe energy, maybe some other product. But, yes.

MR. COOLEY: For what terms are the IOUs seeking bids?

MS. FRAYER: Well, if we go back to, I believe it's attachment -- is it attachment B?

MS. HOLMES: B.

MS. FRAYER: I go through and describe in attachment B in detail that publicly available information on each of the three IOUs on their previous RFOs and current outstanding RFOs.

MR. COOLEY: Did you prepare that attachment?

MS. FRAYER: Yes, I did.

MR. COOLEY: And it discusses the IOUs' RFOs, is that correct?

MS. FRAYER: Yes.

MR. COOLEY: Does the CEC Staff's proposal to release information overlap with these current RFOs?

MS. FRAYER: Are you asking me if some of the RFOs are seeking energy to be delivered over the timeframe 2009 to 2016?

MR. COOLEY: That's correct.

MS. FRAYER: And my answer is yes, but as we know, it doesn't mean they have to take the offers they get in this particular RFO.

MR. COOLEY: And the upshot of not taking the offers would be California would not have that -- or the IOUs wouldn't be able to have that capacity --

MS. FRAYER: Well, no, they would issue another RFO at some future point in time. Maybe they can restructure their RFO process if they're not getting the activity they want in terms of the bidders. There's a lot of alternatives there. They can build their own generation if they think that the bids they're getting is, you know, way out of line with competitive market conditions.

MR. COOLEY: In proposing the three-year window, what specific harm to customers are you trying to mitigate or prevent during that three-year period?

MS. FRAYER: Well, I actually agree with a lot of the testimony that talks about the fact that demand is inelastic in the short term or real-time spot markets. So I think the idea is there's a lot of sensitivity to releasing information that may be short term or real time.

And we want to avoid that.

MR. COOLEY: So a key issue from your perspective is the elasticity of demand for electricity --

MS. FRAYER: One of the issues. Because it goes to the issue of whether or not there's possibilities from manipulation and whether or not the IOUs have an ability to maneuver and to choose alternative options to forego price increases that they may perceive exist out there.

MR. COOLEY: And in your testimony at page 3, attachment A, -- excuse me, page 4, you state that there are dozens of existing suppliers, do you recall that testimony?

MS. FRAYER: The number sounds very familiar. If I said dozens, I looked at a list recently. So there are many owners of generation in the State of California, many more than five.

MR. COOLEY: I think your testimony is dozens. How many creditworthy suppliers are participating in the California market?

MS. FRAYER: I actually probably don't know. I'd have to go back and do a credit score on each of the suppliers or generation owners I have on my list.

MR. COOLEY: Do you know how many creditworthy suppliers submitted bids in Edison's RFO?

MS. FRAYER: Well, no, because Edison doesn't disclose that information unfortunately.

MR. COOLEY: And how many creditworthy suppliers have capacity exceeding 200 megawatts to offer for sale in California?

MS. FRAYER: Again, I know there's many suppliers, generation owners. I don't know what their creditworthiness is.

MR. COOLEY: What is the basis for your statement that there are dozens of existing suppliers in the California market?

MS. FRAYER: Well, there's a lot of information about generating capacity. Again, so much information that actually is available from a number of resources. California Energy Commission has information about plant ownership, plant capacity and the existing market. FERC has information on that. EIA, there's a whole list of possible sources of information. And they're fairly consistent.

MR. COOLEY: can you identify all of the new creditworthy entrants to the California market

with capacity in excess of 200 megawatts available for sale?

MS. FRAYER: Well, again, I don't know the current creditworthiness. And it actually also depends on what you define as creditworthy. Are you looking for a BBB+, A-, AA credit rating of the --

MR. COOLEY: Do you understand what requirements the Public Utilities Commission has placed on the utilities with regard to the creditworthiness of potential contracting parties?

MS. FRAYER: No, I'm not familiar with those.

MR. COOLEY: In your credentials I notice that you had given advice to the Alberta Department of Energy on market power safeguards, is that correct?

MS. FRAYER: Yes.

MR. COOLEY: Have you ever heard of Project Stanley?

MS. FRAYER: The name sounds familiar, but I don't recall.

MR. COOLEY: Do you know whether Project Stanley was a collusive price-setting game used by PowerX and Enron to manipulate prices and profits

in the Alberta electrical market?

MS. FRAYER: At what time? When? When?

MR. COOLEY: When Enron was still in existence.

MS. FRAYER: That would have been probably prior -- awhile ago, yeah, okay. I'll take your word that it was.

MR. COOLEY: And did that collusive behavior buy Enron and PowerX, in your opinion, increased prices --

MS. HOLMES: I'm sorry, I have to object at this point. She said she's not familiar with it. He's testifying through the witness. I'm sorry.

MR. COOLEY: That's fine.

Okay, on page 10 of your testimony, attachment A, -- excuse me, on the original rebuttal testimony.

MS. FRAYER: The original testimony?

MR. COOLEY: The original testimony.

MS. FRAYER: Okay.

MR. COOLEY: Although it was rebuttal, -- the utilities at that point. Page 10.

MS. FRAYER: Um-hum.

MR. COOLEY: And you contend, and I'll

quote, "Indeed there are also many proxies for the forecast energy and capacity data that the IOUs are arguing to keep confidential, such as those provided as part of the annual CAISO RIF planning process as discussed in more detail in Dr. Jaske's testimony, as well as the North American Electric Reliability Council, NERC, regional assessment.

Is it your position that information similar to what the utilities contend is confidential is already publicly available?

MS. FRAYER: It's similar but not identical, as your own witnesses have stated.

MR. COOLEY: Were the public sources of information regarding the California market that you mentioned on pages 10 and 11 of that testimony, --

MS. FRAYER: Um-hum.

MR. COOLEY: -- were they also available in 2000 and 2001?

MS. FRAYER: You mean -- can you --

MR. COOLEY: Well, all of the ones you mentioned --

MS. FRAYER: So, --

MR. COOLEY: -- one by one.

MS. FRAYER: -- Platts, Dow Jones, ICE,

are all those the ones you're asking about? The bilateral price indices or NERC? I'm not -- I mentioned NERC --

MR. COOLEY: I'm asking about all of the sources of information that you identified beginning at line 8 and continuing on over to line 3 of page 11.

MS. FRAYER: Okay. I believe line 8 through line 3 on the next page talk about price index data, bilateral price index data that is or isn't available. The bilateral price index data that I quote here, Platts, Dow Jones, ICE, has definitely improved substantially since 2001.

I believe ICE was not available then. It actually was a fallout of the Enron crisis. Dow Jones, as well. I don't believe, but I'm not familiar with it, so don't quote me on it, Platts was available, was publishing information. It's actually a daily news publication. But I don't believe they had the extent information they currently have on forward market prices, or bilateral prices. They have improved their information, their survey techniques substantially since FERC got on their case.

MR. COOLEY: Are these public sources of

information available to the CEC Staff?

MS. FRAYER: These sources about future market prices are available to everyone, though some of them require subscription. You have to pay a fee.

MR. COOLEY: Are you aware of any published source of bundled customer forecast data?

MS. FRAYER: Not for the California utilities, but for other utilities, yes.

MR. COOLEY: And on page 11 you use the term trade secret. Are you attempting to give a legal definition?

MS. FRAYER: No, oh, no. I'm not a legal expert. I will leave that to you.

MR. COOLEY: Thank you. In attachment E of your more current rebuttal testimony, --

(Pause.)

MR. COOLEY: And that's entitled, the guide for the FERC electric quarterly reports. You claim that data similar to the aggregated summaries is already publicly available, is that correct?

MS. FRAYER: Well, my claim, the information I provide in here is a survey of

information from the EQRs. The data in the EQRs is actual transaction data. One can use it to develop similar proxies for the information -- for some of the information in the aggregated summary tables.

MR. COOLEY: Well, based on your perusal of the EQR data, does it produce a quantification of the utilities' residual net short?

MS. FRAYER: One can actually pretty much estimate it on a sum basis. It will probably be on a portfolio-wide basis. Let me explain what the EQR data has, if you'd like.

MR. COOLEY: I just want to know -- what I'm trying to find out is if the EQR provides a forecast of the residual net short?

MS. FRAYER: Well, let me explain how I would do it. The EQR data provides very detailed information, actual transactions, which gives you a good understanding of the net short position in reality over the last quarter. It's filed quarterly.

So, one can then establish a fairly robust model where you take the information in the EQR data, which is transaction-based. You then take information on hourly historical demand from

other FERC sources, and possibly hourly or daily fuel prices from other sources; combine all that historical information into an empirical model, economic model that will then let you forecast forward.

MR. COOLEY: And the EQR information is publicly available, anybody can go to this database and pick all this information and do the calculation of the residual net short as you just described, is that correct?

MS. FRAYER: The EQR data is publicly available, but what you would get out of the forecast is your estimate of residual net short. You would not get effectively kind of the same effect of a level playing field that one would get by the release of the buyer's data in an RFO auction process that theory would suggest.

MR. COOLEY: Does it provide retail customer demand data?

MS. FRAYER: It does not provide -- it's transaction-based for the company, so it provides information on every single transaction a company makes, or its affiliates makes. It doesn't talk about demand at all. You would be able to get hourly demand data from FERC form 714.

MR. COOLEY: And as far as you know, suppliers can access the same public information that you have presented in attachment E, isn't that correct?

MS. FRAYER: I believe everyone who goes to the FERC website could have access to the information, to the sample information. Of course, the information there is much more voluminous.

MR. COOLEY: And the CEC Staff can also access that database, is that correct?

MS. FRAYER: They can access historical actual transactions just like anyone else.

MR. COOLEY: And the CPUC could rely on this information, as well, is that correct?

MS. FRAYER: I believe, again, anybody who has a computer can gain access to this.

MR. COOLEY: Would that include CEC Commissioners?

MS. FRAYER: If they would like, I guess so.

MR. COOLEY: In attachments E, F and G, you present the results of your investigation of public and private sources of information that would be close substitutes for the information in

the aggregated summary tables that you recommend the CEC produce, is that correct?

MS. FRAYER: Well, E and F describe information, historical actual information that is available. The actual purpose of my testimony for those, for E and F, was to show that there's a lot more detailed actual information out there that, as Kevin had summarized so eloquently, could be much more interesting and much more extraordinary for a supplier to use in the short-term markets to make short-term strategies about trading.

MR. COOLEY: So in your investigation of the sources that you've identified in attachments E, F and G, did you find any source which published Edison's bundled customer information and attributed that source of information to Southern California Edison?

MS. FRAYER: No, I believe I did not.

MR. COOLEY: So it would be fair to conclude that based on your investigation that Edison has maintained the confidentiality of its bundled customer information, is that correct?

MS. FRAYER: Well, based on my research I don't know of any other source, other than the aggregated summary tables.

MR. COOLEY: In your qualifications that are included with your original testimony on page 32 you state that you've participated in the buy-and-sell side of generating asset divestitures in worldwide markets, including California's original asset divestitures, where I led a team of economists in developing the long-term economic valuation of various utility assets.

MS. FRAYER: Yes.

MR. COOLEY: Do you have that testimony in front of you?

MS. FRAYER: Yes.

MR. COOLEY: Who were you advising regarding the economics of divestiture of generating assets in California?

MS. FRAYER: It's confidential information. A lot of my projects involve nondisclosure agreements for many years.

MR. COOLEY: Well, without revealing the entity with whom you have the contract, do you believe that you gave a thorough assessment of the economics of divestiture?

MS. FRAYER: I believe that we provided the best advice we could.

MR. COOLEY: And did you realize at that

time that you were giving your economic advice that market conditions could develop that would be harmful to California consumers?

MS. FRAYER: Well, --

MS. HOLMES: I'm wondering whether, is he challenging her credentials as a economist? I'm not sure what the purpose of the question is.

MR. COOLEY: Well, the purpose of the question is to, I guess, illustrate that at the time she was giving that advice she didn't perceive certain conditions that eventually developed in the California market. And I would say that's relevant to the recommendation she is making now.

MS. HOLMES: I guess I'm going to ask that she answer the question of whether you gave recommendations --

MR. COOLEY: Well, the question --

MS. HOLMES: -- that -- how did you characterize that again? That failed to take into account the --

MR. COOLEY: My question --

MS. HOLMES: -- potential changes --

MR. COOLEY: My question was whether she realized at the time she was giving her economic

advice to the unnamed entity, that market conditions could develop that would be harmful to California consumers.

MS. HOLMES: There's no evidence in the record of what her recommendations were.

MR. COOLEY: Well, --

MR. CHAMBERLAIN: Counsel, I think that's correct. Because of her confidentiality agreement we really don't have anything in the record as to what her recommendations were. Or even who she --

MR. COOLEY: My question is simply whether she realized whether the economic advice she was giving could have had harmful impacts. That's not asking about the specific recommendations, it's asking whether she realized at the time that there could be harmful impact.

And I think that's directly relevant to the quality of the advice that she's asking you Commissioners to rely on right now.

MS. HOLMES: Let me --

MR. CHAMBERLAIN: Well, but you're assuming that there was harmful impact, I think, that her advice led to harmful impact.

MR. COOLEY: Well, I think $40 billion

is pretty harmful to the California consumer.

MR. CHAMBERLAIN: But we don't know what her advice was.

MR. COOLEY: Well, without asking what the advice is, I'm simply asking whether she realized at the time that there might be harmful impacts from the advice she was giving. That's a fairly straightforward question. If she didn't realize it, fine, we'll go on.

I think it proves my point, though.

MS. HOLMES: I'm sorry, I have problems with the last comment. If we don't have any evidence about what the advice was, how can it prove a point.

CHAIRPERSON DESMOND: I share that concern. Not only do we not have advice, we don't have the detailed methodologies that were employed, or that the client did at the time, the unknown client for confidentiality reasons, had requested. It may have been, for all I know, a risk-based probability assessment under various market conditions. I don't know whether or not she was asked to project into the future.

So it would be difficult, I would imagine, to determine how anyone at that point in

time could have realized simultaneously that the advice they were providing is advice that is harmful.

So, I'd simply ask counsel to continue with the questions.

MR. COOLEY: Okay. Again, in your qualifications you mention that you did some transmission evaluation work for the ISO in 2000/2001, is that correct?

MS. FRAYER: Yes, yes. Actually 2001, 2002 and we had some residual CPUC testimony, I think, that might have gone in 2003. I think, that's what my draft says.

MR. COOLEY: At the time you were rendering that advice to the ISO were you aware of any market manipulation practices that eventually came to light during the energy crisis, or after the energy crisis actually?

MS. FRAYER: Well, if you're familiar with my work with the California ISO you would know that one of the key features of the ISO -- and this was after the crisis; we started work in the fall of 2001 -- but one of the key features was to develop a transmission methodology that took into account the impact of market power on

consumers, ratepayers.

MR. COOLEY: I believe at one point in your testimony you mentioned that during the energy crisis Edison sold off its transmission capacity, is that correct?

MS. FRAYER: I believe the way that I phrased it, and you can correct me if it's not technically correct, but that in order to recapitalize, transmission assets were sold.

MR. COOLEY: And to whom were they sold?

MS. FRAYER: If I understand correctly, the state.

MR. COOLEY: And how much was realized from the transaction?

MS. FRAYER: I don't know the details of that.

MR. COOLEY: Was it in the billions of dollars?

MS. FRAYER: I'm not familiar with the details.

MR. COOLEY: Could I have a moment off the record?

(Off the record.)

CHAIRPERSON DESMOND: Counsel, just before continuing, just to get a sense of the

number of additional questions that you have in order to gauge when we should take the next appropriate break, do you have any sense?

MR. COOLEY: We can take a break now, if you'd like.

CHAIRPERSON DESMOND: Pardon me?

MR. COOLEY: We can take a break now --

CHAIRPERSON DESMOND: No, no, I --

MR. COOLEY: I have some additional questions. I think during a break I could probably shorten it up a little bit.

CHAIRPERSON DESMOND: Okay, why don't we take a 15-minute break then.

MR. COOLEY: All right.

(Thereupon, a recess was taken.)

CHAIRPERSON DESMOND: Please.

MR. COOLEY: Thank you.

CROSS-EXAMINATION - Resumed

BY MR. COOLEY:

Q Ms. Frayer, you state that you're familiar with the California electricity market, is that correct?

MS. FRAYER: Yes, sir.

MR. COOLEY: And are you aware of a proceeding at the PUC called the biennial resource

plan update?

MS. FRAYER: I believe I am vaguely familiar with it, but I would need to see the documents in front of me to re-familiarize myself with it.

MR. COOLEY: What's your vague recollection of what the, by the acronym, BRPU, was all about?

MS. FRAYER: You know what, you would have to fill me in.

MR. COOLEY: All right. And did you investigate or determine whether there was any consideration in that kind of a proceeding of long-term contracts?

MS. HOLMES: Are you asking whether there was a consideration of long-term contracts in the BRPU?

MR. COOLEY: Right.

MS. HOLMES: I think she's testified she would need to refresh her recollection as to the BRPU.

MS. FRAYER: Can you show me some documentation of it? Then --

MR. COOLEY: Well, it was a relatively famous proceeding in California, and I don't have

that data with me. But I'll just take it --

MS. FRAYER: Okay.

MR. COOLEY: In the FERC market-based rate authority that you discussed earlier in your testimony this evening, and I believe in your prepared testimony, is that based on historical information or forecasted data?

MS. FRAYER: The market-based rate authorizations, which addresses one specific section of the Federal Power Act, right now FERC is using what they call their interim generation market screens.

Those screens are based on current data. There's two screens; there's a pivotal supplier test that's based on 12 months of available data. So there's a screen that's based on pivotal supplier test, and then there's another screen based on seasonal market shares.

MR. COOLEY: And is that information historical or forecast?

MS. FRAYER: It's historical, but -- but, right now there was an NOPA issue that has been approved by FERC Commission that says if any conditions change for any market party that's been authorized they must immediately update the

Commission.

So, effectively it's real time on a continuous basis. Any information, contracts have changed, anything of substance, they've sold generation, their demand expectations for some reason have drastically changed for whatever reason. Those types of events will trigger a quick review.

MR. COOLEY: That concludes my cross-examination of this witness. I understand that counsel for PG&E has just a few questions for this witness, as well.

MR. WARNER: Thank you. And for the benefit of the Commissioners and staff, I think the way we are trying to efficiently move forward on this is PG&E will have maybe five or ten minutes questions followup with Ms. Frayer.

Then we're going to move immediately with us in the lead in terms of cross-examination questions for Dr. Jaske, with some followup by the other two counsel. I would anticipate from PG&E's perspective that we would try to get done with cross-examination of Dr. Jaske in 35 to 45 minutes.

And then I think we'll end up with Ms.

Urick taking the lead on cross-examination questions such as they are with Mr. Kennedy. And then we'll try to wrap up at that point.

So, at least give you an idea of what we're trying to do in terms of the schedule. We appreciate your patience and the staff's patience with the schedule.

MR. COOLEY: Just so they don't leave, we do have some questions for the IEP witness.

MR. WARNER: Isn't it four hours for the IEP witness? No, excuse me --

(Laughter.)

MR. WARNER: No, just kidding, just kidding.

MR. KELLY: I'm not going anywhere.

CROSS-EXAMINATION

BY MR. WARNER:

Q Ms. Frayer, a couple questions concerning your background and the London Economics. Does London Economics have any current clients who are suppliers participating in California electricity markets?

MS. FRAYER: We do not currently, to my knowledge, have any clients that I directly consult that are generation owners in California.

As you know, though, there are many many market participants that actually transact that may have no generation assets.

I don't know. I'd have to actually possibly go back to my own FEC EQR data to see if any of my clients have transacted in the market recently.

MR. WARNER: And I think it's important to follow up on that. Again, the question relates to suppliers in the California electricity market, and that would include not only generators, but marketers, traders and other electric supply providers.

And I think it is important to provide for the record any current clients that you have that are participating in California electricity markets. And included within that subset would be any current clients London Economics has that are participating in responding to the utility RFOs.

MS. FRAYER: My response is that I am not advising anybody that is participating in the RFOs to my knowledge. I'm not advising anybody, to my knowledge, on any California issues outside right now of the CEC.

MR. WARNER: Again, the question doesn't

apply only to you, it applies to London Economics, in which you're, I guess -- gather, a managing director.

MS. FRAYER: And to my knowledge, again, I don't believe any of my other principals or any other concurrent engagements are involved directly with any participants in the RFOs or any other California-related matters that are relevant to this.

MR. WARNER: Could you check and provide that for the record?

MS. FRAYER: I will. I could do that. It probably would be not today.

MR. WARNER: That's fine, we're perfectly happy having the record left open. Again, just the question relates to whether there's any bias or conflict of interest in terms of London Economics' representation of the Commission in this proceeding.

MS. FRAYER: One thing I do note is I am on the -- I am part of the Aspen team that is subcontracted to the California Energy Commission. So I am part of -- I do represent them. And so --

MR. WARNER: I understand. This question goes solely to London Economics'

representation of any electric suppliers in the California markets.

COMMISSIONER GEESMAN: Just to make clear, you said their representation of the Commission. They're representing the Commission Staff. The Commissioners don't have any --

MR. WARNER: I understand, --

COMMISSIONER GEESMAN: -- representation.

MR. WARNER: -- Commissioner. I would assume that the contract engagement is with the Commission on behalf of the Commission Staff. Thank you.

Ms. Frayer, in connection with developing your testimony in this proceeding, have you had any communications with Commissioners or Advisors to Commissioners?

MS. FRAYER: No, I have not.

MR. WARNER: Have any Commissioners or Advisors to Commissioners communicated with you?

MS. FRAYER: Not a single word.

MR. WARNER: I'd like to turn to page 29 of your initial testimony if I could. At lines 4 through 9, do you have that?

MS. FRAYER: Yes.

MR. WARNER: At lines 7 through 9 you conclude that new long-term supplies will not materialize and the higher prices that the IOUs fear will be realized, but precisely because the IOUs withheld beneficial information for new investment.

Which information in this appeal does that statement apply to?

MS. FRAYER: The information that is necessary, for example, information about the needs of the IOUs, the aggregated summary tables.

MR. WARNER: Again, I'm asking, as you know, there are specific categories of data that the utilities are contesting in this appeal. And for now let's just assume it's a distinction, as Mr. Cooley mentioned, between planning area data and bundled customer data.

MS. FRAYER: Well, I think, as we sort of discussed previously, each has its purpose. And each would have a very useful context for incentivizing new entry.

MR. WARNER: Again, that's not the question. The question is which particular categories of information are the basis for your statement that new long-term supplies will not

materialize.

MS. FRAYER: Maybe I should also correct the statement to say new long-term supplies would not or may not materialize. But leaving that aside, I think the aggregated summary tables that represent both the bundled customer and the planning area data are important for signaling.

For example, the planning area data, which is more encompassing, provides a general aspect of need. The bundled customer data, and I'm sure Dr. Jaske and Dr. Kennedy could speak more to this, provides a more focused aspect of need to the RFOs of the IOUs.

MR. WARNER: Again, I'd like to just check with you, are you correcting your testimony in this regard?

MS. FRAYER: No. I think my -- in the regard of which data?

MR. WARNER: You stated as a kind of prelude to your response to my last question that you may need to correct your testimony to say not that new long-term supplies will not materialize, but to correct that to say that new long-term supplies may not materialize. Are you correcting your testimony?

MS. FRAYER: The testimony could stand as itself. I just want to put it into context that the way you had read it sounds very strong. The way I had intended for it to sound was much more hypothetical, possibly.

MR. WARNER: Well, again, not to take this out of context, but are you comfortable using the words will not materialize as opposed to may not materialize?

MS. FRAYER: If you ask me which ones I would -- well, let's put it this way: If there is a vacuum where there's no information about the need for generation, and no information that allows for new developers to come online and propose substantial and credible offers to your RFOs, I think you can read the statement as strongly as that.

MR. WARNER: Again, that's not the case here, would you agree?

MS. FRAYER: Sorry?

MR. WARNER: That is not the case here, wouldn't you agree?

MS. FRAYER: That -- which --

MR. WARNER: That no information is available.

MS. FRAYER: But no IOU information is available. For example, if I understand correctly, certain information is under dispute which is not publicly available, like the IOU bundled customer data, to my knowledge is not available.

MR. WARNER: Okay, let me just clarify, because I think this is an important point, and I appreciate your patience. Are you testifying that if the IOU bundled customer data is not made available in this proceeding that, quote, "new long-term supplies will not materialize" end quote?

MS. FRAYER: Under certain conditions. I agree with you that it's a very strong statement.

MR. WARNER: Okay, again, under what conditions, under that question, would new long-term supplies not materialize?

MS. FRAYER: Maybe the other way to ask is under what conditions could they materialize?

MR. WARNER: No. I'm asking under what conditions -- this is your statement -- under what conditions would new long-term supplies not materialize if utility bundled customer data,

that's the subject of this appeal, is not disclosed to the suppliers.

MS. FRAYER: Well, if there's a lot of uncertainty; if the RFOs are short term in nature, not long term in nature. I think one of the other utilities' witnesses testified that the merchants appear to be looking for very long-term contracts. You know, most of your offers to date have looked five years out, six, seven years out, but haven't looked out 10, 20 years, which is the economic life of most of these facilities.

You can probably go through, and I'm talking off the top of my head, but do a brainstorm list --

MR. WARNER: Again, for the purpose of this question, assume that this is limited to RFOs in which utilities are seeking long-term contracts, five, ten, 15, 20 years. In fact, I heard from one of the questioners; we talked about one contract I think Edison is involved in that's a 30-year contract. Assume these are long-term RFOs.

Under what conditions would the unavailability of utility bundled customer data, as the subject of this appeal, cause those new

long-term supplies not to materialize?

MS. FRAYER: Well, under the assumptions you've laid out, I would say -- and with some other assumptions, for example, assume these are long-term RFOs, assume that you're giving bidders substantial enough time, that you're changing -- your current RFO structure doesn't really provide the time to prepare for many new entrants, but assume you've done that. Assume that you've possibly made other amendments to the RFO process. Maybe then -- and assume that certain information's revealed about your need.

So, for example, maybe is preannounced six months in advance with a need that you say is included in most of these RFOs. Well, the six-month period would allow new entrants to develop. So then this statement would not be appropriate in that context.

But you have to put some assumptions around that.

MR. WARNER: Okay, thank you. In terms of the RFOs did you review each utility's current pending RFOs as part of the preparation of your testimony?

MS. FRAYER: I have reviewed all public

information that's available on each of the utilities' website about their RFOs.

MR. WARNER: Is it your understanding, for example, that PG&E's long-term RFO provides different stages of bidders to respond to the RFO?

MS. FRAYER: If I understand correctly, and I'm not -- are you talking about the one that was just issued, or are you talking about the other ones.

MR. WARNER: It's the long-term RFO.

MS. FRAYER: Let me -- if you don't mind I'll go back to my testimony very quickly so I know that we're referring to the same thing.

So it is the 2004 long-term RFO facility ownership/power purchase alternative?

MR. WARNER: That's correct, I think it's dated July 9, 2004.

MS. FRAYER: Okay. Can you repeat the question again?

MR. WARNER: Again, did you review that RFO as part of your preparation of your testimony?

MS. FRAYER: I reviewed it and others in my office, under my guidance, reviewed it.

MR. WARNER: And do you agree that that RFO provides for different stages in which bidders

would respond?

MS. FRAYER: If I understand correctly, this RFO had a two-stage process. One stage was an initial stage, and then the short-list bidders from the initial stage, no new bidders were then put into a second stage.

MR. WARNER: And is it your understanding that the utility may engage in extensive bilateral negotiations with a winning bidder under that RFO?

MS. FRAYER: I'm not familiar and I don't think I ever saw documentation of what type of negotiations and what parameters are negotiated during the second stage.

MR. WARNER: Your testimony concludes that the data proposed to be released, the information proposed to be released in this proceeding, is of value to suppliers in making investment decisions, is that correct?

MS. FRAYER: Well, my conclusion is that there are benefits towards competitive markets for the release of this information.

MR. WARNER: Again, does this information have value to suppliers in making their investment decisions?

MS. FRAYER: This information -- let me think about this -- this information affects, does affect how, according to the economic theory, how the bidders would interact in an auction process. But the conclusions of the theory is that it would be to the benefit of the supplier, the IOUs who are procuring in that interaction and affecting that interaction.

MR. WARNER: So, again, this information, if provided to the suppliers, would be of value to them in making their investment decisions and drafting up their bids?

MS. FRAYER: If you define value that way, yes, I have to agree. If that's how you define value.

MR. WARNER: Is it also your testimony that alternative sources of information are available to suppliers outside of this proceeding, but that those sources of information are not precisely the same as the data that's subject to this appeal.

MS. FRAYER: Yes, they're not identical to the aggregated summary tables.

MR. WARNER: And is it also your testimony that there are sources and data outside

this proceeding that are commercial sources of data in which suppliers obtain the data for a fee, such as ICE and Dow Jones and --

MS. FRAYER: Well, ICE is publicly available. That's free to download.

MR. WARNER: Okay. Platts, Dow Jones, et cetera.

MS. FRAYER: Platts, there's a nominal, I think it's maybe $2000 you pay a year to receive the publications.

MR. WARNER: Would you agree that the data that Platts develops is proprietary to Platts?

MS. FRAYER: They publish the data. Well, they publish the price indices.

MR. WARNER: But for a fee, correct?

MS. FRAYER: For a fee, yes.

MR. WARNER: So, again, you don't have to be a lawyer to answer this; you're a consultant; you have your own proprietary models and forecasting techniques. But would you agree that when Platts develops those forecasts and those data sets and charges a fee for them, that Platts considers those forecasts and data sets proprietary and confidential?

MS. FRAYER: Well, actually, let me clarify because you brought my experience in. I believe Platts, and I'm talking for them, but I can talk from my own experience later on, I believe Platts believes the methodology they use is confidential.

But when they sell me the data I'm allowed to use it. So I wouldn't call it proprietary, because I can quote them and use it in my publications.

MR. WARNER: Again, I'm not talking about after you pay them the fee for the data. I'm asking could you obtain the data from Platts for free?

MS. FRAYER: You can ask for a sample, but --

MR. WARNER: Again, the answer yes or no, can you obtain the data from Platts for free?

MS. FRAYER: Not to my knowledge.

MR. WARNER: So you would agree that that data has commercial value to Platts?

MS. FRAYER: I don't understand your question. What do you mean by commercial value to -- yes, they are producing it and selling it. But after I buy it I can do whatever I want with it,

as long as I give them, you know, I say this is data from Platts.

MR. WARNER: So, if the IOUs in this proceeding develop proprietary data and information that commercially valuable to suppliers should we be required to provide that data to suppliers without them paying us for it?

MS. HOLMES: I'm sorry, is this a question about -- can you tie it back to some of the economic theories that she's been talking about, please. That she's testifying about.

MR. WARNER: She has included in her testimony some statements regarding whether we supported the showing that this information is a trade secret or not.

She has also stated in response to my questions that the data that is sought to be protected is not duplicated anywhere else.

She has stated that for her own firm, as well as for Platts, similar data, but not the same data, may be available for a fee.

I am asking her to answer factual questions, not legal questions, that would relate to her conclusions as to whether this data is, indeed, a trade secret or not.

MR. CHAMBERLAIN: Well, counsel, as I recall your question you asked should it be, so that makes it sound like you're asking her what the law ought to be in this area.

MR. WARNER: No, actually the should is very intentional because the Commission also has in front of it, what it believes to be, and I think is part of the Public Records Act, the balancing test in terms of protecting commercial data or proprietary data that may not be a trade secret versus the public benefits of disclosing that data.

And I'm asking her not the legal conclusion of whether this data is a trade secret, but does she believe the data should be disclosed notwithstanding the fact that it has commercial value to the utilities.

MR. CHAMBERLAIN: Okay, I think we can allow that question.

MS. FRAYER: Well, my response, and I hope this answers your question, is an analogy to the Platts example you've walked me through, I believe your methodology for creating the data should be confidential. But I don't believe the data that you create should be confidential.

MR. WARNER: So you'd support a regulation that requires Platts to provide its forecasts for free to any member of the public?

MS. FRAYER: I don't support -- I think there's a difference, a distinction between the data that Platts has and the aggregated summary tables that you have, or that are being prepared by the CEC based on input from your data.

Remember, your data is not being disclosed. It's aggregated summary tables that have been processed by the Commission Staff.

But maybe that's a -- that could be a debate, too.

MR. WARNER: That's okay, let me move on. Your testimony states that under economic theory essentially, and I may paraphrase here so correct me, that more information rather than less information in the marketplace is better in terms of suppliers and buyers participating in what amounts to an auction, is that correct?

MS. FRAYER: The economic theory has a couple of -- let me actually clarify a couple of points. There's a number of effects that occur as a result of release of information in an auction environment. And my conclusion is that the

information that would be released in the aggregated summary tables are a substitute for the private information developed by the well informed bidders.

Because they are a substitute from economic theory then we can logically conclude that they would remove away the winner's curse problem from the less informed bidders and therefore produce more competitive results in the auction process.

MR. WARNER: Would you also agree that if this Commission required electricity suppliers, as a condition of receiving any information in this proceeding, to provide the utilities with forecasts of their production costs, their costs of service, their heat rates, their profit margins, that that would improve the competitive situation in terms of the energy markets in California?

MS. FRAYER: Well, some of this data is again available. Heat --

MR. WARNER: And --

MS. FRAYER: Heat rates are available already.

MR. WARNER: No, I'm talking about

forecasts of costs of production and heat rates. Remember, you were referencing, if I understand correctly, historical data filed by the suppliers at FERC in support of market-based ratemaking.

I am talking about forecasts that are internal forecasts developed by the suppliers, themselves, regarding their forecast production costs, their forecast project margins, their forecast availability.

MS. FRAYER: Well, let me answer each one in hand. Heat rates do not change over time. They're a technical characteristic of the plant. Due to actual wear and tear of the facility they may change over time slowly, but they're a very static number. So historical information on actual heat rates is quite robust to use in a forecast environment.

In terms of cost, to the extent you know the prime mover that's gas or coal, there's actually abundant data already about future costs from NYMEX Henry Hubb prices give you a great understanding of future gas prices. And that goes out through 2010 right now.

MR. WARNER: That's not my question. My question is would the suppliers own internal

forecasts of production costs and cost of service and profit margins be of value to the buyers in electricity procurement proceedings?

MS. FRAYER: Only if -- I guess the idea is only if it's going to be, quote-unquote, leveling the playing field. But what I'm trying to say --

MR. WARNER: How would it not be leveling the playing field?

MS. FRAYER: Well, it's already out there.

MR. WARNER: Well, again, let's assume for the sake of argument, that the sellers own internal forecasts of production costs and profit margins are not out there.

MS. FRAYER: But that's a hypothetical that's not appropriate for the situation.

MR. WARNER: Again, it's a hypothetical that I'm permitted to ask as a reasonable aspect of cross-examination. Take my hypothetical and please answer the question.

MS. FRAYER: Well, and I guess the hypothetical and your assumption in the hypothetical is that there's multiple buyers, so you're trying to level the field between the

buyers?

MR. WARNER: No. Answer the question. The question is --

MS. FRAYER: Well, I --

MR. WARNER: -- and think of it this way: PG&E in an RFO has bidders into the RFO. Suppose, as part of the RFO and the CPUC procurement process, the CPUC and the Energy Commission required that as a condition of suppliers obtaining the data that's being released or sought to be released in this proceeding, the suppliers would have to provide PG&E in an RFO bid with their production cost forecast, their internal projections of profits and other data related to their bid.

MS. FRAYER: The only way that that would make sense is if for some reason the provision of that data -- remember, my whole argument is that the provision of the data about need is going to impact how the suppliers are competing against each other.

MR. WARNER: I'm not speaking of suppliers. I'm speaking of -- my question is solely related to --

MS. FRAYER: But who's the buyer? Who

is PG&E competing against?

MR. WARNER: My sole question is would that information be valuable to PG&E, as a buyer, for long-term electricity supplies in the California market?

MS. FRAYER: It doesn't hold with economic theory that it would provide any competitive benefits in the respect of the RFO. So, if you're referring to the economic theory that I have written, the example doesn't fit well. Because the provision of that information by each supplier to PG&E is not going to affect how these suppliers compete against each other. Because the hypothetical you created doesn't allow for that.

And so it has no effect whatsoever on the outcome of your procurement process if you hold everything else equal.

MR. WARNER: Let me ask you, though, the real -- the question here doesn't relate to competition among the suppliers solely; it also relates to would this information made available to PG&E, as a buyer, assist in lowering costs.

MS. FRAYER: Well, I don't understand how that would do it. Because my whole theory talks about it from the perspective of improving

competition, therefore lowering the price you pay.

MR. WARNER: Again, I'm not going to testify, I'm asking the questions here. But, my question relates to do you agree that, all else being equal, that more information from suppliers regarding their particular production costs forecasts and their profit margins would make the outcome of the procurement process more competitive from the buyers' perspective and from the market's perspective?

MS. FRAYER: From the hypothetical where you have one IOU buying from many suppliers in a single RFO, I can't -- and the information is revealed by each of the suppliers only to the utility, I don't see how that could actually lower costs.

MR. WARNER: Let me move on. Is it your understanding that in the long-term RFOs by several of the utilities that the utilities are seeking to enter into commitments, contracts for five, ten, 15, 20 years?

MS. FRAYER: I definitely understand that there are terms of four or five years. I don't think I saw one for 20, but maybe I'm wrong. Maybe it's --

MR. WARNER: In your testimony you stated that three years protection is sufficient in light of those contract terms, is that correct?

MS. FRAYER: I said three years protection is sufficient in light of the ability for new entry to respond. So, in effect, we don't have a static group of suppliers. After three years it's more likely that we could get new developers competing against the incumbent bidders. So that was the position of the three-year window.

MR. WARNER: But, again, just to be sure I clarify your testimony, your testimony is that you would assume that a utility would enter into a long-term 20-year contract at year one, and then additional suppliers would materialize in years four through whatever, and that therefore the utility could break that contract and avoid the higher cost that it's incurred?

MS. FRAYER: I don't recall talking about it that way. But if you point me to the right --

MR. WARNER: I'm just trying to understand your statement as to how the utilities forecast information beyond the three-year period,

because entering into a long-term contract would be protected against the utility paying higher costs due to the fact it's revealing its net short beyond year three.

MS. FRAYER: Well, I think the idea here to understand is that the utilities, as some of the witnesses have testified today, are under no stringent obligation to procure now for ten years out or 20 years out. They have many options available to them, which makes their demand curve very elastic.

At the same time, new entrants, though there is no ability for a new entrant to build a plant in the next 12 months, that's highly unlikely. It's much more likely for a new plant to be built over the next three to four years, and there's actual experience over the last five years or even more, that plants were built within, you know, an average of about four years timeframe.

Thus, the three-year window is trying to protect the short-term market where demand is inelastic and supply is possibly inelastic, as well.

MR. WARNER: Let me be sure I understand your statement. Is it your testimony that none of

the utilities are under any obligation under their long-term RFOs or under the renewables portfolio standard to procure for longer than three or four years?

MS. FRAYER: They are not -- my understanding is that in any given RFO there's no obligation for them to buy. I know that they're under a general obligation, over time, but I believe their explicit legal obligation, and perhaps Dr. Jaske and Dr. Kennedy can correct me again if I'm wrong, is much more shorter term.

I believe one of the witnesses testified earlier from the utilities is that it's one year out and one month out.

MR. WARNER: I think Dr. Jaske may be able to respond to this, but let's just suffice it to say if, subject to check, we were to demonstrate the utilities, under their renewables RFOs, are under an obligation to enter into longer term contracts than that, would that change your testimony?

MS. FRAYER: Well, for the renewable portion of the market, possibly. But that may be a very small portion of the market.

MR. WARNER: I'm just about done here.

The other question I want to ask you is about the auction model versus the bilateral model, which I think is central to your theoretical testimony.

One of the statements I believe you make regarding why California's electricity markets have attributes of a public good under an auction market --

MS. FRAYER: I don't ever refer to a public good.

MR. WARNER: Well, a public --

MS. FRAYER: That's a very specific economic term.

MR. WARNER: -- a public auction process, is that you say that gas prices are available for the utilities and are transparent. And so the gas prices that affect the overall electricity prices bid into the RFOs the utilities are transparent and available, is that correct?

MS. FRAYER: No. I don't think that's what I said this morning -- or, sorry, earlier today.

MR. WARNER: In your testimony.

MS. FRAYER: Which page?

MR. WARNER: Just a second.

(Pause.)

BY MR. WARNER:

Q Maybe I can read the quote and --

MS. FRAYER: Sure.

MR. WARNER: -- we can probably find it. But let's see if you agree with the quote. I believe I have the quote correctly.

MS. FRAYER: Can you tell me the page number so I can put it into context about where it is?

Maybe if you tell me which testimony --

MR. WARNER: Let me -- I think it's your --

MS. FRAYER: Original?

MR. WARNER: -- rebuttal testimony --

MS. FRAYER: Okay.

MR. WARNER: -- and I think it's a statement that is along the following lines: The gas price driver underlying electricity prices in California is one example of the affiliation concept that, in my opinion, qualifies long-term electricity markets as common value auctions.

MS. FRAYER: That's something that is not in any of my written testimonies. It's a little bit of a misstatement of what I said earlier today.

MR. WARNER: Would you like to clarify that -- maybe this is where you can clarify your testimony regarding the gas price driver.

MS. FRAYER: Earlier this afternoon I had described the fact that I strongly believe that there's common value properties to the RFOs in which the IOUs procure for the long term, and in which suppliers participate.

Common value properties effectively require, as part of the definition of common value, require that there's, if all information was known that there would be a common or a single value for the product being transacted.

The product being transacted is long-term commitments for energy and capacity. And there's effectively a strong common ground. There's two common grounds, or you can look at it from two different perspectives.

One common ground is the common uncertainty about future gas prices. Many generators in California utilize gas. Other generators don't. I know that PG&E has a lot of nongas-fired resources. But effectively, the price-setting resource in the spot market, not the long-term market, but the spot market is gas.

Which then becomes an opportunity cost estimate for many of the other generators.

So when they're trying to analyze the future market value of electricity, which also serves as a sort of common value element that joins a lot of the suppliers across California, that plays out that way.

MR. WARNER: Let me ask you in that regard, then, this statement only applies to short-term procurement?

MS. FRAYER: No. The statement applies to RFOs, which are long-term procurement. But let me explain, again the idea is what affects the value that suppliers are willing to give for the commitments to supply the utilities in the future.

From the perspective of suppliers they're saying, okay, if I bid into this RFO and I win, I am probably obligated to serve them. So the future value of gas is very important.

The future value of electricity is also very important, because if I win now I forego opportunities in future RFOs to participate, in future bilaterals to participate.

So, from their perspective they set the value on their commitments based on their estimate

of the future market price of electricity, the future market price of gas, which is a key contributor of the future market price of electricity.

And this is exactly to what I believe Mr. Seeney testified earlier today, where he said that the bidders are effectively making bids that represent wherever the believe the market is, the future market price.

MR. WARNER: Would you agree, though, that gas price is not the only variable applied to the long-term contracts, but that the individual bidders' heat rates is also another very important variable?

MS. FRAYER: There are many components to the valuation that generators will place in determining their commitments.

MR. WARNER: Would you agree that individual heat rates vary --

MS. FRAYER: Oh, yes, that's --

MR. WARNER: -- broadly among generators?

MS. FRAYER: -- what I said in my testimony earlier today.

MR. WARNER: I have no further

questions. And if --

CHAIRPERSON DESMOND: Thank you, Mr. Warner. You're going to move to Dr. Jaske.

MR. WARNER: Yes.

BY MR. WARNER:

Q Dr. Jaske, good evening. I also wanted to ask you just a couple questions about your background and the preparation of your testimony. And then I will try to follow the logic of going first through your initial testimony and then your rebuttal testimony and try not to skip around too much.

First, in terms of background and what you say in your testimony, you're not a lawyer, are you?

DR. JASKE: I am not.

MR. WARNER: You're not an economist, are you?

DR. JASKE: I am not.

MR. WARNER: So your testimony on issues such as trade secrets or California markets is not intended to be testimony regarding legal conclusions or economic theory, correct?

DR. JASKE: That's correct, not either of those two things.

MR. WARNER: Do you agree with Ms. Holmes' question, or at least what appeared to be the predicate of her questions to some of the utility witnesses earlier that the utilities' forecast for the out years for their needs are changeable?

DR. JASKE: Yes, that was the entire purpose of that colored chart that I put forward in my summary statement is to show that while there are initial understandings of what demand, supply, and therefore resource need are, those evolve over both the regulatory process as well as then the utility execution of contract commitments.

MR. WARNER: So to the extent that the forecast data submitted by the utilities is changeable, and in fact, I think as you and Ms. Holmes were stating, will change, then does that data for particularly the out years have any value for energy planning purposes?

DR. JASKE: The data that we were discussing is the data that PG&E, as an example, put into this process in March and April of this year. That data has only one-half of it ever been revealed in public, and that data is essential for

this process, to really understand what PG&E's resource needs are in conjunction with the various other LSEs, so that the Commission can both discharge its agreement with the PUC, as memorialized in the PV ACR, as well as the more general energy policy and purposes of the IEPR.

MR. WARNER: But, again, I want to be very specific on the question. Let's assume for the sake of argument that PG&E's forecast for its needs for 2008, 2009, 2010 is very changeable; and therefore PG&E's forecast submitted in April this year is unreliable as any accurate or even reasonably accurate indicator of what its actual needs will be in 2008, 2009, 2010.

If that is the assumption then is that information of any value for this Commission in energy planning purposes for those years?

DR. JASKE: Aside from the fact that your hypothetical is irrelevant to the matter at hand, then it would not be of value. But how we would make that judgment is, of course, indeterminate. We would need to see it in the first place; we'd need to have some process to render a judgment about whether it's not reliable; and presumably over time there'd be some effort to

correct the fact that PG&E was putting in unreliable information.

MR. WARNER: So, again, you agree with Ms. Holmes that the information is highly changeable, but you disagree that it is unreliable because it's changeable?

DR. JASKE: The information -- the appropriate premise to serious people talking about real data is that there's at least substantial reliability to this data. The reason that the initial views would change is that the Commission, in its judgment, in its review process, come to some other determination of both technical and policy matters.

And those are forwarded to the Public Utilities Commission, who then agree to direct you to pursue something different than your initial position.

So it's not that there's necessarily an unreliability, there is a fine tuning to certain dimensions, of the initial submittal; a comparison with the information put forward by other parties. And then a policy overlay that might be different than PG&E's initial judgment.

So there are reasons that the initial

position put in by PG&E isn't necessarily the position that is going to be your guidance in future procurement. It's not that it's unreliable necessarily. If there is that, that's probably a narrow dimension in reality.

It's that there's differences of opinion about, you know, matters that are uncertain; how to deal with them; and the policy overlay of how to go about satisfying resource need in a way that the state believes is appropriate.

MR. WARNER: Let me turn to page 6 of your initial testimony, if I could, and we'll plough through it.

And the first question relates to the IOUs' data provided as part of the ISO grid planning process.

DR. JASKE: Yes.

MR. WARNER: Is it your understanding that that data is not utility bundled customer data?

DR. JASKE: I have in my possession two documents from PG&E, one filed in 2004; one filed in 2005. They essentially give out, while the initial numbers are there in terms of PG&E planning area for one-in-ten, there is a direct

explanation of the method and the adjustments that go from PG&E bundled customers, add in munis that I believe will allow a party to reverse engineer that and get something very close to PG&E bundled customer peak demand.

MR. WARNER: And, again, we're not discussing -- and I know we had a little bit of discussion in April on this same issue, what's reverse engineerable and what's not, I'm solely asking whether the ISO data that PG&E submits is on a planning area basis versus a utility bundled customer basis. And I think you answered that question.

DR. JASKE: It's both.

MR. WARNER: I'd like to turn to FERC form 714. Is it also your understanding that the FERC form 714 information is not on a bundled customer basis?

DR. JASKE: Yes, I agree.

MR. WARNER: Turning to page 9 of your testimony where you reference other California ESPs and local publicly owned utilities, do you see that under the heading A on page 9?

DR. JASKE: Yes.

MR. WARNER: Is it not correct that the

data provided on forecasts by the ESPs is not being made public, not proposed to be made public by the Commission Staff on the same basis as the IOUs' data?

DR. JASKE: The result of the appeals of demand forecast confidentiality are that the Commission Staff is free to publish the individual ESP peak and energy forecasts.

MR. WARNER: On a bundled customer basis or sole --

DR. JASKE: On an individual ESP basis. Those entities did not file in court, and so the Commission Staff is free to publish that data should it choose to do so.

MR. WARNER: But is not proposing at this time to publish that data?

DR. JASKE: That was not part of this aggregation proposal. This proposal deals with resource planning data.

MR. WARNER: Are the locally publicly owned utilities that are subject to the Commission's data gathering subject to any independent regulation or reviews of their procurement plans substantially similar to what the investor-owned utilities are subject to at the

Public Utilities Commission? To your knowledge?

DR. JASKE: There's legislation in the hopper that would have that consequence, but not today.

MR. WARNER: I'd like to turn, if I could, at this point in time to your rebuttal testimony. And I'll go to the -- let's see here, attachment H. And also in conjunction with this it might be useful to use a handout that I think you provided from the Commission's aggregation of supply and demand, which I think is entitled, table 3, annual aggregated dependable capacity.

Do you have both? I'm really --

DR. JASKE: The one that Ms. Holmes handed out earlier today?

MR. WARNER: Yes.

DR. JASKE: I have table 3, annual aggregated dependable capacity. Is that the one you're referencing?

MR. WARNER: Let's actually deal with table 3 directly, if I could.

DR. JASKE: Okay. Now I'm confused. Are you talking about the one --

MR. WARNER: This table --

DR. JASKE: Single sheet?

MR. WARNER: -- that you handed out, that Ms. Holmes handed out.

DR. JASKE: All right.

MR. WARNER: I believe it is your testimony that PG&E and the other IOUs have somewhere in the range of forecast dependence on bilateral contracts of only about 5 percent in the year 2009, is that correct?

DR. JASKE: Well, I would prefer to look at the actual table that addresses that matter, which is in appendix C, attachment C rather.

MR. WARNER: Let's turn to appendix C then. It's table 1 in appendix C, is it not?

DR. JASKE: Yes, on page 6. And I see PG&E 5 percent, Edison 2 percent, and San Diego 30 percent.

MR. WARNER: That's correct. And I want to compare that to table 3 that was handed out today. And I just wanted to be sure that we were cross-walking it correctly in light of your testimony.

Again, is it your testimony that in terms of 2009 projections for PG&E in particular, that bilateral contracts will only account for about 5.1 percent of its needs?

DR. JASKE: Well, you can see how I calculated that. The numbers are all there. It's done on an energy basis. Table 3 that you've asked me to look at on this single sheet is on a capacity basis, so they're not directly comparable percentagewise.

MR. WARNER: Would you agree on a capacity basis that PG&E's reliance on bilateral contracts would be significantly greater than 5 percent?

DR. JASKE: Well, I can see 1522, which is other bilateral contracts, divided by the total existing capacity of 17-3 and it gets somewhere around 8 percent.

MR. WARNER: Again, you've got the line total utility control physical resources for 2009 on table 3 at 8506, correct?

DR. JASKE: Well, we're going to attempt to do this on an even comparison, Mr. Warner, so I used total, existing and planned resources just like I did in attachment C. And that would bring us down to a line near the bottom that is 17398.

MR. WARNER: But again, I just want to clarify what you're saying. In table 1 of your rebuttal testimony, and when you use the term

bilateral contracts it's important to define that. And in this case wouldn't you agree that you begin with the lines under existing and planned contractual resources, in your table 3, --

DR. JASKE: No, I wouldn't --

MR. WARNER: -- that everything below that --

DR. JASKE: I would not agree to that. And if you'll look at the footnotes on table 1, page 6 of attachment C, it quite clearly says that bilateral contracts exclude long-term DWR. And the reason I did that is because this column that says bilateral contracts is representing those contracts that a utility entered into voluntarily. And that is the connection to their choice to disseminate information.

You, PG&E, did not enter into any of these DWR contracts. These particular ones were assigned to you. So the issue at hand is what is the elements of the resource plan that are connected to your information disclosure preferences relative to these other western utilities.

I did that on as even a basis as I could, which is to select the energy associated

with bilateral contracts that you chose to enter into, --

MR. WARNER: Again, I'm --

DR. JASKE: -- not the ones that were assigned to you by the PUC.

MR. WARNER: -- I'm not asking for an opinion on which is the way you should cut it or calculate it, Dr. Jaske. I'm just trying to understand how you calculated it. In table 1 in your rebuttal testimony, which says 5 percent, and how that compares or contrasts to table 3.

And let's just assume, and maybe you can just confirm this and this will complete this question, but you're basically saying that for purposes of calculating what the utilities dependence on bilateral contracts is, you'd exclude the DWR contracts for 2009 and that would be all that you would exclude in terms of the bilateral contracts, is that correct?

DR. JASKE: If I was to use the data on the single sheet called table 3, I would probably use the two lines that were, one called other bilateral contracts about two-thirds of the way down that is 1522, and the total existing and planned at 17398 and get somewhere around 8

percent. So 8 percent would be a little bit different than 5.1 percent.

MR. WARNER: Why wouldn't you use QF dependable capacity?

DR. JASKE: Because there's a historic process that, in effect, told you to enter into contracts with QFs.

MR. WARNER: But those are bilateral contracts. Those are not utility-controlled resources, correct?

DR. JASKE: The purpose of this attachment C is to correlate information disclosure practices with the elements of the resource plan that create risk, and therefore are the basis for utility potentially feeling that it needs to withhold data.

So these other categories of resources that you did not enter into voluntarily, I don't think, are germane to the question of what's at the margin, whether you enter into voluntarily, and how does that correlate to your information disclosure practices.

All these other utilities around the west have comparable exposure in terms of the voluntarily entered-into bilateral contracts, or

hydro, et cetera. And they have very different information disclosure practices. They disclose far more than you have been willing to.

MR. WARNER: Again, the question is just an apples-and-oranges question, and I don't want to belabor it at this late hour, but, Dr. Jaske, in your testimony, rebuttal testimony, at page 2 you basically say, right under the heading, reliance upon bilateral contracts, and you're making a point that you feel is a very important point here, and that is you're saying: examining the projections reported in table 1 it is clear that the percentage that bilateral contracts are of existing and planned resources for the California IOUs does not exceed the level of several other western IOUs.

Your table 1 does not disclose whether the comparison with other IOUs in terms of whether QF contracts are in or out, renewables contracts are in or out, other bilateral contracts are in or out. It does not disclose, on the surface of it in table 1, on whether your numbers for the California IOUs are on an apples-and-apples basis or apples-and-oranges in terms of what's defined as a bilateral contract for the other utilities.

Maybe that's the way to ask the question. Did you determine for these other utilities that their QFs and other renewables contracts and other mandatory purchases were or were not included in their numbers?

DR. JASKE: I guess the best way to answer your question, Mr. Warner, is to focus on that which is most comparable. The line called other bilateral contracts is -- got a close analog in what all of the other western utilities do.

It's obvious to anyone in the industry that the other western utilities don't have the level of QFs that California utilities do. And they don't have anything comparable to the DWR contracts.

So that's why, in making this comparison, I essentially use what you might best call other bilateral contracts, using the terminology of this table 3. And I guess I should apologize for not identifying the QFs and a whole bunch of other things were omitted.

MR. WARNER: No apology is needed. What we're just trying to do here is be sure that the record and the evidence is on an apples-to-apples

basis. We understand the basis for your comparison.

Okay, let me see if I can finish up with Dr. Jaske.

Do you believe that information from suppliers regarding their forecast production costs and their profit margins would be valuable information to buyers procuring in the CPUC long-term procurement proceedings?

DR. JASKE: I don't think that question is analogous to the issue in front of us.

MR. WARNER: Again, the question -- you can opine that it's not analogous, but the question really is a yes or no question.

DR. JASKE: Repeat the question.

MR. WARNER: Do you believe that forecast production costs and profit margins and other internal forecast information from suppliers would be valuable to buyers, the IOUs, in the CPUC long-term procurement proceedings?

DR. JASKE: I think the value of that information would be dependent on the degree to which PG&E was either allowed or chose to make use of it in its ranking of suppliers.

MR. WARNER: Let me ask you a final

couple questions on your perception of the Commission's purpose in terms of seeking to release this information to the public and to suppliers.

Is this information needed to be disclosed in terms of the Commission's participation in the CPUC review of utilities' procurement plans?

DR. JASKE: My understanding is that this Commission has publicly stated that it wants a public transparent process to be used to, in effect, review the information that has come in from the three IOUs so that it can therefore provide a product to the PUC.

MR. WARNER: Has the CPUC stated anywhere in any of its orders regarding the protection of similar information, that it requires, as part of its statutory role, that this information that's part of the notice of intent be disclosed to the public and to suppliers?

DR. JASKE: To the best of my knowledge the March 15th ACR is silent on both the question of confidentiality and the public process.

MR. WARNER: In the Energy Commission Staff's participation at the CPUC in its

procurement proceedings so far, has the Energy Commission Staff been under standards regarding which information may be disclosed and which information may not be disclosed?

MS. HOLMES: Are you talking about the 2006 procurement proceeding with this --

MR. WARNER: I'm talking about the 2006 procurement proceeding.

DR. JASKE: Well, there is no 2006 procurement proceeding, so --

MR. WARNER: Well, the --

DR. JASKE: -- are you talking about 2004 procurement proceeding?

MR. WARNER: Yeah, the ongoing, the current docket and --

(Laughter.)

MR. WARNER: -- we're getting ahead of ourselves a little bit.

DR. JASKE: The manner in which the Energy Commission Staff has participated in the PUC's procurement proceeding has been as a collaborating party. And as such, we are observing the PUC's rules for confidentiality.

MR. WARNER: Would you agree that in the CPUC's procurement proceedings the CEC Staff is

functioning like the Commission's own advisory staff for purposes of that proceeding?

DR. JASKE: I think at least something close to that.

MR. WARNER: And would you also agree that it is a given that the Energy Commission will honor any confidentiality claims that are ultimately upheld by the assigned ALJs in those proceedings?

MS. HOLMES: Again, a question of clarification. Do you mean -- you said Energy Commission, do you mean Energy Commission Staff that's participating as collaborative staff in the procurement proceedings?

MR. WARNER: Well, let's deal with both for a second.

MS. HOLMES: Okay.

MR. WARNER: Start with Energy Commission Staff.

DR. JASKE: Absolutely Energy Commission Staff will observe any PUC direction on confidentiality.

MR. WARNER: Is it also your understanding that the Energy Commission, itself, will honor any confidentiality claims that are

ultimately upheld by the assigned ALJs in that proceeding?

DR. JASKE: The absolute clear and unambiguous statement in the modified Public Resources Code, as a result of SB-1389, is that the originating agency controls the distribution of any confidential data that that agency originally determined was confidential.

The Energy Commission cannot release data provided to it by the PUC that was labeled confidential. Unless, of course, directed by some court.

MR. WARNER: That's all I have for Dr. Jaske. And I thank you, Dr. Jaske, for your patience.

MS. URICK: Just a few followup questions.

MR. CHAMBERLAIN: Mr. Warner, before we start that, I just want to clarify one point. You asked Dr. Jaske in this last set of questions regarding his understanding of whether the Energy Commission would be bound by the ALJ determination of what's confidential in their proceeding.

Did you mean that the Energy Commission, with respect to information that it has collected

in its own proceeding, would be bound by that? Or did you mean simply that if it comes by that information during the course of the CPUC proceeding, would be bound by that?

MR. WARNER: This is a very good question, Mr. Chamberlain, because I think it goes to the heart of the coordination role between the two agencies. And I'll be happy to provide the Commissioners with copies of the ALJ's ruling from July 9, 2004.

But for now I'll just read it directly verbatim. It basically says essentially this, meaning review of materials being undertaken by the CPUC Staff and the CEC Staff working collaboratively under the OIR, the procurement OIR, so that's the context.

"Essentially this means that the CEC Staff is functioning like the Commission's own Advisory Staff for purposes of the proceeding. As with past models of interagency collaboration, it is a given that the CEC will honor any confidentiality claims that are ultimately upheld by the assigned ALJs in this proceeding, and will insure that any confidential or privileged documents are exempt from public disclosure under

its regulations for confidential designation." Citing title 2501 et seq.

That the key point here is that this Commission is serving a dual role, as we understand it, in this proceeding. One part of its role is the development of the IEPR. But the other part of its role that is really, we believe, intended by this Commission to be, in some ways, a higher priority, is to serve as an advisor in the CPUC's procurement proceedings.

And in order to be what amounts to a technical expert, a good faith advisor on key information that the CPUC believes is necessary in terms of evaluating the IOUs' procurement plans, and the overall needs of the state in connection with those procurement plans.

Our point here, and I think if I understood Dr. Jaske's comment, I believe he was correct in his understanding. And that is, to the extent that the Energy Commission is advising the CPUC in its procurement proceeding, it is bound by the confidentiality protections provided in those proceedings.

An open question may be in front of you, well, is the Energy Commission, when it's not

serving the purpose of advising the Commission, subject only to its own balancing test of the Public Records Act under the Public Resources Code.

I think that's an open question. I think you'll see some argument on briefs on that in the next seven days.

But what is important is, I think, for this Commission, if it is proposing to release this data as part of its obligation and undertaking with the CPUC to provide information to the CPUC, then it is our position that the CPUC protective orders and confidentiality guidelines control.

And that's why I -- that's a little bit of a further explanation than you may have expected, but I think that's an important legal and regulatory issue in this proceeding.

CHAIRPERSON DESMOND: Okay, appreciate the clarification of your interpretation.

MR. WARNER: And I'll be happy to make copies of the --

MS. HOLMES: Chairman Desmond, if I might point out at this point, staff raised this issue in what we referred to as a statement of

counsel as the cover to our testimony. We don't think it's the sort of thing that's appropriate for technical experts to be testifying on as to whether or not the Energy Commission is legally bound by these rules.

So, we did provide that as a statement of counsel, and we think that it addresses the issue sufficiently.

CHAIRPERSON DESMOND: Okay, so --

MR. WARNER: And, again, just to clarify. I'm not considering what Dr. Jaske said to be a legal conclusion. I'm just asking what was his understanding of the obligation of the Energy Commission.

CHAIRPERSON DESMOND: So let me ask the question of Dr. Jaske. In light of the clarification provided by Mr. Warner, is your answer still the same as to your understanding of the obligations and expectations that he's laid out?

DR. JASKE: Unfortunately, I think I have to say that I don't necessarily believe they're relevant because I don't have it in front of me, and I haven't memorized it, but I think the March 15th ACR speaks of the 2005 IEPR as the

start of a new cycle to be followed -- to feed into 2006 procurement.

We don't know that the confidentiality practices of 2006 procurement will be the same as 2004 procurement. In fact, given the existence of the PUC confidentiality OIR and statements in previous PUC decisions about aspiring to make more data public, there's every reason to believe they will be different.

And, you know, whether they'll be marginally different, a little different, who knows. But it's not quite as open and shut as might have appeared from the colloquy that you and Mr. Chamberlain had.

CHAIRPERSON DESMOND: That's why I'm asking the question.

MR. WARNER: At 8:00 this evening it is very useful to actually be on the same page with the Energy Commission Staff. And that is -- I think we completely agree that the CPUC, itself, is undertaking a review of what should be the right confidentiality standards.

And I think I'm a little bit of a different opinion than Dr. Jaske in what may result from that. But it is absolutely correct

that the confidentiality policies are being re-examined by the CPUC.

The current policies in effect, however, remain as they've been promulgated by the ALJs in that proceeding. We believe until such time as the CPUC modifies its policies or changes them, an even after they do, we believe that this Commission is legally bound, if it's acting as advisor to the Commission -- to the CPUC, to follow those policies.

That's why we need to try to get together and try to have consistent policy between the two agencies.

COMMISSIONER GEESMAN: Mr. Warner, maybe you can get me on the same page. You outlined two roles that you saw us playing. And you prioritized one over the other.

On what basis did you derive that priority?

MR. WARNER: Well, it's a practical basis, Commissioner. And that is that in the dual Commissioners' ACR earlier this year, and in connection with everything we've seen as part of this proceeding, we believe that the IEPR role of this Commission is not merely to come up with some

energy plan that is of no consequence in the state, in terms of state energy policy.

The real goal, as we understand it, and you're the ones that need to decide this, but we understand the goal to be to serve the overall practical needs of the state and energy policy makers, and those who participate in the utility procurement proceedings for expert advice regarding the needs of the state for additional energy supplies, and for supply/demand balance purposes.

That's not in the vacuum of an IEPR. That's connected directly to the procurement proceedings at the CPUC where the rubber meets the road. And that's a very valuable role. So we see that role, that practical role, as being a higher priority, if you will, in terms of schedule for this Commission, in terms of actually feeding into the 2006 procurement proceeding than just coming up with another energy plan that sits on a shelf.

COMMISSIONER GEESMAN: Interesting.

MR. WARNER: I'm not asking you necessarily to agree, but certainly what we've seen in the terms of the joint efforts to coordinate by these two agencies, is that seems to

be one of your highest priorities.

COMMISSIONER GEESMAN: The statute would seem to afford the IEPR the prevalent responsibility, though. I'm not certain that it's inconsistent with what you've just described, but you've, in my judgment, put cart-in-front-of-horse in terms of priorities.

MR. WARNER: We always have cart-and-horse disagreements. But one of the most efficient ways to get around those disagreements or resolve them is to actually have the cart and the horse get together and be pulling in the same direction.

And in that respect we think you and the Public Utilities Commission can serve a very broad goal here by providing consistent confidentiality policies, and not be departing with one being the cart, one being the horse.

COMMISSIONER GEESMAN: I think that's probably accurate.

MR. WARNER: Thank you.

MR. HEMPHILL: I know I'm speaking out of turn, but I did want to mention one thing that ties specifically to what the CEC does provide as part of the IEPR.

We are currently doing a ten-year RFO where we rely solely on the CEC's identification of needed resources in the south-of-Path-15 area that has real commercial value to generators because it creates new opportunities. And it's something that we can't do on our own, simply because we don't have that information.

It does rely on the Cal-ISO. They certainly can give a lot of information regarding locational value for generation that we also don't have. And this is something that I think is a very high priority, at least to Southern California Edison.

COMMISSIONER GEESMAN: But the quality of any information that we provide you is suspect with many to the extent that it's not made public.

MR. HEMPHILL: Oh, I think you do make all of the information public. And we also rely on that public information. It's at a planning-area basis, and that's appropriate when looking at aggregate supply and demand in locational areas that are constrained by transmission.

I think that's one of the most valuable pieces of information that can be provided to generators, and for those of us who are trying to

assure that there's sufficient generation in California to meet customer demand.

CHAIRPERSON DESMOND: Mr. Hemphill, maybe I'm a little confused. I want to make sure the statement was that SCE is relying solely on the CEC's determination of need. And so the first part of the question is in the absence of any CEC determination of need here, I assume Edison would have gone forward and identified its own need and entered into its own RFO for its obligations for its bundled service customers.

MR. HEMPHILL: We identify our own need for our own bundled customers each and every time. But our ten-year RFO relies on the joint Cal-ISO/ CEC estimate at a planning area basis. When it looks at aggregated supply and demand, it looks at the load forecast there, all of the generation; it looks at transmission limitations and forced outages. And comes up with an estimation of needed resources in the SP-15 area.

That can be done completely without relying on any bundled customer data. And it is something that is totally public. That is of very high value, I think, to both generators and those of us who are trying to procure the power on

behalf of those customers.

CHAIRPERSON DESMOND: Thank you.

MS. URICK: Shall I proceed? Good evening, my name's Lisa Urick representing SDG&E. Just a few followup questions for Dr. Jaske and Ms. Frayer.

CROSS-EXAMINATION

BY MS. URICK:

Q Dr. Jaske, at page 8 of your direct testimony you have indicated that the majority of IOU purchasing is through RFOs. Did you specifically intend this statement to apply to SDG&E, as well?

DR. JASKE: I think that was intended to be a general statement.

MS. URICK: Did you rely on any specific information relative to SDG&E for that assertion?

DR. JASKE: No.

MS. URICK: At page 12 of your direct testimony you indicate that each IOU is likely to have sponsored three to six RFOs between 2005 and 2009.

DR. JASKE: Yes, I see that.

MS. URICK: On what specific information from SDG&E do you base that statistic?

DR. JASKE: I think it was relatively simplistic. In the order of one to two per year times three years makes three to six.

MS. URICK: But you had no specific set of precise information that indeed SDG&E will be undertaking three to six RFOs during that timeframe, do you?

DR. JASKE: No. That material, or that assessment, or the more detailed assessment of RFOs was undertaken by Ms. Frayer and her colleagues and reported in rebuttal testimony.

MS. URICK: You talk in your rebuttal testimony, I think it's table 2, about the other IOUs and information they publish. Do you know whether that information is provided in the course of organized regulatory proceedings such as an integrated energy resource planning process?

DR. JASKE: Almost all of those are part of IRP processes. There are significant practices that differ among the states. Some of them have calendar cycle; some of them require an IRP whenever there's a major resource, so there's a proposal, so there's a more erratic pattern to when they're timed.

And at least one, Arizona Public

Service, was provided directly, in conjunction with an RFO, itself. So there wasn't an IRP; it was an RFO that caused the release of their detailed resource need information.

MS. URICK: Ms. Frayer, I have just a couple of questions for you.

MS. FRAYER: Yes. Sorry about that.

MS. URICK: At page 20 of your direct testimony you say that IOUs have typically contracted for terms up to five years. Are you basing that statement on any specific information you have about SDG&E?

MS. FRAYER: That is not based -- again, it's a typical statement, a general statement. It is supposed to be reflective of the California practice, both now, but also possibly in the longer term.

MS. URICK: Further down in that paragraph you say that no updates will be forthcoming in the IEPR process until the next IEPR process is initiated.

Are you aware that the results of this proceeding will be considered at the CPUC in its next long-term resource planning proceeding?

MS. FRAYER: I am. But let me clarify

about what was intended with that statement. That statement reflects the fact that the utilities are not going to be providing to the CEC any updates of the original monthly data that they provided. And that's, to my knowledge, that you aren't planning to provide updates to the CEC of your underlying data. That was what was intended there.

MS. URICK: I see. And then in the section of your rebuttal testimony where you talk about the FERC EQR data. And the comparison with information that's filed at the CPUC. And I'm specifically looking at page 11.

MS. FRAYER: Yes.

MS. URICK: Now, did you review the exact information that was provided to the PUC under the protective order you reference there by the utilities?

MS. FRAYER: No. I had an empty table with no values. So I had categories of information but no particular information to any utility.

MS. URICK: Did you -- now in figure 4 you have an example, I guess, of some information that you pulled from the FERC EQR database.

MS. FRAYER: Yes, it's just a sample.

MS. URICK: And looking at this transaction type under capacity, the average rate, there's a $13,000 figure for PG&E as compared to $10 and $14 for SDG&E. What does this disparity, this difference in amounts here say to you?

MS. FRAYER: Most likely a typographical error --

(Laughter.)

MS. FRAYER: -- that I will correct.

MS. URICK: So that was supposed to be $13?

MS. FRAYER: I suspect so.

MS. URICK: Oh, okay.

MS. FRAYER: But let me confirm that. Thank you for pointing that out.

MS. URICK: Also, on figure 5 you talk about under onpeak average data. You note a $72 average figure for Edison and a $46 figure for SDG&E.

Now, two utilities located in SP-15, what's your interpretation of this disparity between these numbers?

MS. FRAYER: It's very possible. Generally these prices range, and remember we're

including all energy purchases in that particular quarter, quarter one 2005. And these are just statistics, descriptive statistics. If you'd like I could provide the wealth of information underlying every single transaction incorporated in here.

But, highly possible, and it's probably a question. I don't want to speculate about the strategies of the utilities, but there was something going on in that quarter with their transactions.

This is the data that the utilities file; I have done nothing to the data. This is raw data that the utilities, themselves, provide to FERC.

MS. URICK: Now, the EQR data that you were looking at, that's not forecast data, right?

MS. FRAYER: The EQR data is actual transaction data.

MS. URICK: So there's no ten-year forecast data, year by year?

MS. FRAYER: There's no forecast element at all to the EQR system.

MS. URICK: Okay. Thank you.

Mr. Kennedy, just a few questions for

you. Now, earlier in your summary you talked about that utilities had expressed concerns about market dysfunction. Did SDG&E talk anywhere in its testimony about concerns about returning to an energy crisis market meltdown situation?

DR. KENNEDY: I would have to take a quick review through the SDG&E testimony.

(Pause.)

DR. KENNEDY: On a quick review I'm not seeing any specific references to 2000 and 2001. It's possible there's some mention of the energy crisis, though I suspect that you've been through this more thoroughly than I have, so I would guess not.

MS. URICK: Now, earlier also in your summary you were talking about the aggregation tables and the benefits of the aggregation tables, and as a general matter, SDG&E, as we said in our appeal, thinks that you've done a good job on assembling aggregation tables in quite a few categories.

It's true, is it not, that SDG&E is not challenging the majority of the categorizations for the aggregation proposals that you would include in your final report, isn't that correct?

DR. KENNEDY: SDG&E is specifically opposing the annual bundled customer capacity data, and then the quarterly both bundled customer and planning capacity data.

MS. URICK: So three categories of information according to the boxes you have laid out here. And there are ten boxes.

DR. KENNEDY: Yes, in terms of the capacity data that might have been made available, though, the planning area aggregation annual level SDG&E agreed to, but the other three key capacity categories SDG&E objected to.

MS. URICK: And SDG&E did not object to any of the energy tables that you proposed to include, isn't that right?

DR. KENNEDY: That is correct.

MS. URICK: Now, you talked throughout your testimony about whether data is or is not a trade secret. I assume you're speaking in your opinion as an analyst and not as an attorney, and making legal conclusions about --

DR. KENNEDY: That is correct.

MS. URICK: -- what is or is not a --

DR. KENNEDY: I am not an attorney; I'm not making legal conclusions; I'm attempting to

testify. The utility testimony, to a very large extent, was attempting to establish a case as I understood it that the material was a trade secret because it would harm ratepayers.

And so I was trying to evaluate the degree to which the release of this information would seem likely to harm ratepayers.

MS. URICK: I apologize if I'm going over ground we've already ploughed. We certainly don't want to do that at this hour.

But I think the question -- I'm just not clear on this one. We've talked about the PUC's current OIR regarding confidentiality to implement SB-1488. You're familiar with that proceeding, aren't you?

DR. KENNEDY: In general terms, yes.

MS. URICK: And the CEC is not participating as a party in that case, is that right?

DR. KENNEDY: I am not sure offhand. I have actually been busy in part preparing for this hearing. I know that there have been discussions about whether the Energy Commission would be participating. And I would actually turn to the dais to see whether a decision's been made.

COMMISSIONER GEESMAN: This is with respect to the confidentiality proceeding at the PUC?

DR. KENNEDY: Correct.

COMMISSIONER GEESMAN: I announced in our Commission business meeting that our Electricity Committee, which Commissioner Desmond and I are the Members of, was planning on intervening as a party in that proceeding.

It's not yet come before the full Commission for the formal authorization of the intervention, but on a disclosure basis we did take it up today.

MS. URICK: I see, okay. Thank you.

Now, at page 4 of your direct testimony you talk about IOU claims of economic harm if the amount of data under debate is released.

SDG&E's claims of economic harm are based exclusively on the potential harm that it perceives for its customers through public release of this information, isn't that right?

DR. KENNEDY: That is my understanding, yes.

MS. URICK: Have you reviewed SDG&E's grid reliability RFP, the one that was issued in

2003?

DR. KENNEDY: No, I have not. I have some general knowledge of it, but I have not looked at it in any detail.

MS. URICK: Now, at page 7 of your direct testimony at the top you talk about utilities, the majority of current power purchasing is through organized RFOs. And you say that some market manipulation is possible in this context, especially in the shorter term.

What types of manipulation did you have in mind here when you made that statement?

DR. KENNEDY: I was just trying to make clear that I was not suggesting that simply going from the market conditions of 2000/2001 to an RFO-based procurement process absolutely eliminates all possibility of market manipulation.

So, in the context of RFO solicitations there may still be some possibility of market manipulation.

MS. URICK: Have you --

DR. KENNEDY: Especially in the short term, as I said.

MS. URICK: Okay. Have you contemplated how you would measure what would be an acceptable

tolerance for ratepayers to absorb of these potential activities?

DR. KENNEDY: Let me answer that and then put it into the context of the aggregation proposal before us.

No, I have not given any thought to how one might measure, you know, the exact amount of harm that would result from that. But I feel that it's very clear in terms of the overall staff testimony that release of the aggregation tables will not, in fact, result in harm because there is adequate time for market entry, for new players to come in in a way that will not result in higher rates.

MS. URICK: Thank you, Mr. Kennedy, those are all my questions. Thank you, CEC, that concludes my questions.

CROSS-EXAMINATION

BY MR. COOLEY:

Q Following up, Mr. Kennedy, the testimony you just gave, your August 12th rebuttal testimony, which is attachment D, you provide information regarding the timelines for project development in California, is that correct?

DR. KENNEDY: That is correct.

MR. COOLEY: And you conclude that the average development time for a nonpeaker project was four years and two months, is that also correct?

DR. KENNEDY: That was the average of the data that we had there, yes.

MR. COOLEY: And does your calculation of the time needed for project development include an allowance for the time needed by the applicant to negotiate its contract with the purchaser?

DR. KENNEDY: I don't know that that would be necessarily occurring on the same timeline; though, actually, I --

MR. COOLEY: Well, the question's simple. Does your analysis presented in attachment D include an allowance for the time needed by the applicant to negotiate a contract with the purchaser?

DR. KENNEDY: I would actually say that it does, not explicitly, but in the fact that much of the generation that is represented here was held up in its construction due to contractual issues. And therefore -- and I don't know that I could go through item by item and say which ones, but I believe that the average of four years is,

in part, due to delays on a number of these projects, that at least in some measure for some of the projects, was due to contract negotiations.

MR. COOLEY: Does your calculation include any allowance for the time needed for the IOU to obtain approval from the PUC?

DR. KENNEDY: I don't know that that is actually relevant to the timelines for construction of the projects.

MR. COOLEY: Does your calculation include any allowance for the time needed for the IOU to issue an RFO and to award a contract to the developer?

DR. KENNEDY: I am failing to see how these questions are actually relevant to the table at hand, which is the development and construction of power plant projects, not IOU activities.

MR. COOLEY: Does your calculation include any time needed to conduct transmission studies by the utility?

MS. HOLMES: Again, I think at this point I have to object. There's a mischaracterization of this as something that he developed. Perhaps it would be helpful for us to explain that this was pulled together from

information that's publicly available on the Commission's webpage.

And it simply identifies when the projects were originally filed; when they were data adequate; when they were approved; when the construction started; and when the actual online date was. And the total year, as a result.

It's simply a compilation of public information that's factual, that identifies the beginning of a process and the end of a process.

MR. COOLEY: And it's factual, but misleading, in the sense that my contention would be that the time associated with these various activities should be added to the time that he calculates is the average for these projects. That's what we'll argue in brief.

But we'll get back to that later.

MS. HOLMES: If Edison would like to file testimony on the additional amount of time that's required, they have the opportunity to do so and chose not to.

MR. COOLEY: Well, Your Honor, on that point we did not have a chance to reply to this rebuttal testimony. It was submitted on the same day that we were required to submit our rebuttal

testimony.

We've never had a formal opportunity to address this testimony. That's a fact.

CHAIRPERSON DESMOND: We'll take those comments under advisement, as well, and look for an expansion in the reply brief.

MR. COOLEY: Now, with regard to your testimony, Dr. Jaske, on page 2 of your rebuttal testimony in attachment H in the first -- second full paragraph, you state: On the other hand, quarterly and annual versions of these same variables would not provide these opportunities and the ALJs directed that such versions of these information be made public without distribution restrictions."

Do you see that testimony?

DR. JASKE: I do.

MR. COOLEY: By that testimony do you mean to imply that Edison was required to produce quarterly and annual bundled customer demand information as a result of the Haligan-Thorson ruling?

DR. JASKE: That's my interpretation of the May 9th ruling.

MR. COOLEY: And do you have in mind the

testimony from Southern California Edison's witness, Mr. Hemphill, to the effect that, in fact, that is not the requirement of the Thorson-Haligan ruling?

DR. JASKE: I don't particularly recall that, but -- so --

MR. COOLEY: Will you accept that, subject to check, that he took issue with your characterization you've just given?

DR. JASKE: Sure.

MR. COOLEY: Do you think he's in a better position than you are to know what Edison did provide?

DR. JASKE: Ah, thank you, Mr. Cooley. I believe, quite frankly, that Edison didn't do what the ruling required. The ruling goes into the history of the provision of load forecasts; it describes quite explicitly that in the 2004 procurement proceeding Edison provided monthly bundled energy.

It goes on to talk about the requests of the intervening parties; and it seems quite plain on its reading that what was to be produced was bundled energy on a quarterly basis. And that matches up with the resource plan information that

is to be provided, which, of course, is only on a bundled customer basis.

Edison does not have URG projections for its system or for a planning area. Edison has them for its bundled customers. And Edison did not provide bundled customer energy on a quarterly basis. However, I believe San Diego did, and PG&E provided it both ways.

MR. COOLEY: Can you point me to language in the May 9th ruling by Haligan and Thorson that requires Edison to provide bundled customer demand information?

DR. JASKE: Shall we get out the ruling and go through it sentence-by-sentence? Happy to indulge you if that's your pleasure.

CHAIRPERSON DESMOND: Please do.

(Pause.)

DR. JASKE: Page 11, paragraphs 30: "Utilities are concerned" near the end of that paragraph. "For example, as part of 2004 procurement" blah, blah, blah, "Edison provided monthly forecast load." Look at the document that was provided in 2004 procurement. It's bundled energy; it's labeled bundled energy. That's the beginning reference to load forecasts in this

entire ruling.

Now, if we go to page 26, which is the beginning of the section called CCC data request 01-2, it says -- it recites: CCC requesting utilities to provide current forecast of hourly system demand" and a bunch of other elements that are part of that, including direct access loads, customer migration, et cetera.

It's obvious from this sentence that what was originally intended was an ability to separate between system and bundled energy.

It goes on to talk about what the state of negotiations between Edison and that intervenor are, and what they're willing to accept. And goes on then in the concluding paragraph, starting: The information requested" and says, as the final sentence: Utility shall provide quarterly demand forecast without protective order."

I think it's entirely possible to read this ruling, as interpreted -- to read this ruling to mean bundled customer. And I believe San Diego interpreted it that way and provided that data.

MR. COOLEY: All right. That's your interpretation, is that correct?

DR. JASKE: That is correct.

MR. COOLEY: And what I'm trying to find out is whether you did the research or the analysis to determine what Edison did provide.

DR. JASKE: In preparation for this hearing I went back and reviewed all of the materials that were submitted by the utilities one more time. And I found that, as I have just mentioned, that utilities did things differently than I interpreted this paragraph.

So, Edison did not provide bundled; they provided system. San Diego provided what I believe to be bundled. And PG&E provided energy in two different responses; one of which was bundled and one of which was system.

So there's a variation among the three of you, but I will agree Edison did not provide bundled.

MR. COOLEY: Thank you. I'd like to understand your recommendation regarding the disclosure of the IOUs' confidential information. Under your recommendation would the CEC require any ESP to disclose their customer information equivalent to what the IOUs are required to disclose?

DR. JASKE: I believe that we identified

earlier today that the Commission Staff has not yet proposed to individually release load-serving entity data -- I mean, ESP data.

MR. COOLEY: Under your recommendation would the CEC require any prospective suppliers of energy or capacity to provide information regarding their cost and availability of generation?

DR. JASKE: Supplier data is outside the scope of this proposal.

MR. COOLEY: Well, the specific question I have is whether your recommendation would require any prospective suppliers of energy or capacity provide information regarding their cost of availability of generation.

DR. JASKE: The aggregation proposal we're dealing with does not address supplier data.

MR. COOLEY: That concludes my cross-examination.

CHAIRPERSON DESMOND: Any further questions from anyone on the witnesses? Please. And then we also have, I guess IEP is next. Very good.

I'm hoping I can say good morning to someone here.

(Laughter.)

(Off the record.)

CHAIRPERSON DESMOND: Are we ready to resume?

MS. HOLMES: We are.

CHAIRPERSON DESMOND: Thank you, go ahead.

MS. HOLMES: Thank you. I have one question of Dr. Jaske.

REDIRECT EXAMINATION

BY MS. HOLMES:

Q Earlier this evening Mr. Cooley asked you several questions about staff's releasing or proposal to release data from various load-serving entities in California.

Can you tell us whether or not the California Energy Commission Staff has already published utility-specific data for the municipal utilities?

DR. JASKE: We have in two forms. First of all, I guess I should say is to give you the appropriate background.

The aggregation proposal, of course, is a consequence of the Executive Director having earlier established that for those utilities

asked, which was -- or those LSEs, the IOUs and some of the ESPs, and one of the POUs that the resource plan data on a monthly resource-specific basis should be classified as confidential. And the Executive Director did that.

Or either one or two of the ESPs, and I believe 12 of the 13 POUs, there was no such request. And so the aggregation proposal does not address the need to lump together, to aggregate their data, because all of it is public.

So, the appearance of the aggregation proposal is that it singles out IOUs. But it does so because it is dealing with, you know, the tail end of a process, not the beginning of a process.

So, in the planning area tables, of course, all of the POUs' data and all of the ESP data is present there lumped together.

However, because the basic architecture of the staff report that released the data that was not appealed is by control area or planning area, for those POUs that are independent control areas, which are SMUD and LADWP and IID, those POUs had data released both on a planning area basis and individual LSE basis.

SMUD, as you know, has become a control

area, and two smaller munis, Redding and Roseville, are part of SMUD control area. So SMUD data was actually published on two bases. One as a control area with some of the three of them, and one with SMUD all by itself.

LA, I believe, also has a relationship with one of the Burbank-Glendale-Pasadena that I can't remember which one it is right now, so those were published both as, I believe, combined control area, and then LADWP individually.

MR. COOLEY: I have one follow up.

CHAIRPERSON DESMOND: Go ahead.

RECROSS-EXAMINATION

BY MR. COOLEY:

Q Do any of the POUs, as you refer to them, have exposure to direct access?

DR. JASKE: You're requiring me to go way back, Mr. Cooley. I believe 1890 allowed individual POUs to choose to enter into retail choice arrangements if they wish. Whether any of them are -- and some did at least for awhile -- whether any are currently operative I do not know.

MR. COOLEY: Do you think it's a major issue for the POUs whether they have direct access? Is that a major issue?

DR. JASKE: I don't think it's a major issue.

MR. COOLEY: And with regard to any of these POUs, do they have community choice aggregation as an issue?

DR. JASKE: Well, some of them could have the opposite direction, like SMUD acquiring part of PG&E.

MR. COOLEY: We're talking about losing load.

DR. JASKE: Well, no, there's actually uncertainty on both directions, Mr. Cooley. So losing load and gaining load are both questions of what you're -- what customers you're serving.

UNIDENTIFIED SPEAKER: If we get into that we'll be here another several hours.

(Laughter.)

MR. COOLEY: I don't intend to do that. And do any of these POUs have exposure to core or noncore proposals in the legislation that's pending before the Legislature?

DR. JASKE: I wasn't aware that we actually had a core/noncore bill at this time, Mr. Cooley.

MR. COOLEY: Is there any legislation to

establish a core/noncore arrangement for publicly owned utilities that you're aware of?

DR. JASKE: I am not aware of such a thing.

MR. COOLEY: Thank you.

CHAIRPERSON DESMOND: Any further questions?

Mr. Jaske, I'd like to ask you a question, somewhat related. The PUC currently has a proceeding related to resource adequacy. Their phase two decision is expected sometime in October. That envisions the implementation details of compliance demonstration for a 12-month forward capacity obligations. It is in relation to the question asked, legislation, as well as the PUC's policy that all load-serving entities have that same obligation to demonstrate compliance.

So the question I have is the market also now contemplates, and the ISO, at some point in the future, having a capacity market, possibly a central capacity market.

So the question I guess I'm asking is to relate the information disclosure that would be required 12 months in advance relative to capacity, annual capacity, or on a month-by-month

basis, as the case might be, back to some of the issues that we have here today and how they interrelate.

DR. JASKE: There's a complicated answer to that question, and it's probably at the earlier rather than the later stages. The phase two workshop process, and therefore the workshop report, address the issue of the nature of the information that would be reported, and the degree to which parties think it ought to be confidential and how it ought to be accessed.

We are at the stage of the process where parties have filed comments and reply comments. And there's a assessment of that very issue in the context of what that final decision will be.

In the meantime Judge Wetsel issued a protective order through a ruling for the load forecast portions of that process, which are already underway, and declared that those data are confidential on an interim basis. And so when the Energy Commission Staff has received those and is now processing them as we speak -- well, maybe not right now, since it's 8:54 at night -- we are treating them confidentially.

There is, the last thing that I can

think of that's pertinent is that there is, in fact, a meet-and-confer process, I believe it's called, to propose modifications to that protective order for -- I think all of that data -- it may be all of the data, but certainly the load forecast data, because there were some quibbles, at a minimum, if not disputes, some of the parties had with what the judge issued.

And that has been, I believe, just this week submitted to the PUC. And how it will fare as a replacement for the original one issued in June we don't know.

But the long and short of it is that there are many of the very same issues; there are actually in contrast to the procurement process for the three IOUs in the protective orders that have existed, there are parties who don't want anyone other than the staff of the two Commissions to see these data. So, TURN and other nonmarket participants who have been able to examine IOU procurement data would not be allowed to look at these resource adequacy filings should that form of protection be enacted by the PUC.

CHAIRPERSON DESMOND: Thank you. I have no further questions. Any of the Commissioners?

Okay.

We have the next witnesses?

MR. CRAGG: IEP's witness is Steven Kelley; and we have previously distributed his written testimony. I have extra copies here if anybody needs one.

CHAIRPERSON DESMOND: Do we have everyone's name for the record?

MR. CRAGG: I'm Brian Cragg representing IEP. And next to me is Mr. Kelley.

DIRECT EXAMINATION

BY MR. CRAGG:

Q I'll first ask Mr. Kelley if he has -- if this document was prepared by you or under your supervision?

A Yes, it was.

Q Do you have any corrections to make to this document at this time?

A Yes, I have one on the statement of qualifications. There was a typographical error in the third paragraph. I have a masters of arts degree from the University of Colorado in public policy, not California.

Q And with that correction is this testimony true and correct to the best of your

knowledge?

A Yes, it is.

Q And although you're not under oath, do you promise to tell the truth in your responses, to cross-examination and to questions here tonight?

A I do. I think we are all under oath at this point.

Q Do you have any additional comments you wish to share with the Commission at this time?

A Yes, I would, in the context of kind of following all my colleagues, I would like a few minutes just to kind of summarize the issue as we see it.

First, I want to, before I get into brief comments, I want to characterize this as we're looking at this issue in the context of the Energy Action Plan that's been approved, and the one that is before the various Commissions to be approved. It speaks to the need for open, transparent competitive procurement processes.

We look at this in the context of the fact that the utilities, when they go out to procurement, are employing a least-cost/best-fit evaluation criteria for the selection of

resources. And we look at this in the context of the fact that the Public Utilities Commission has been implementing, and presumably will continue to implement, a hybrid market structure that allows utility-owned and utility-hybrid or turnkey projects to compete against the IPP projects in the same kind of proceedings.

So, the big question that comes up is why is there a need for what I'll call IOU-specific data versus the planning data. And this is a focus of a lot of discussion today.

First and foremost, I think everybody's aware that it takes a long time to develop new projects. And while a number of the procurements that have occurred to date have been sopping up existing excess capacity, we're now getting to the point where we're going to have to be getting new projects developed in California to meet new load growth.

And in that vein, and under the context of a least-cost/best-fit evaluation criteria for the utilities, I want to point out that that is an IOU-specific evaluation tool. I do not believe that it applies to a planning area.

So when they apply that technology or

that methodology for selecting resources under the PUC guidance, they are looking at their own service territory needs, as far as I understand, not a planning area. So that speaks for why you need a more disaggregated data than you need planning area data.

And then the next question is why is there a need for quarterly aggregated data. And first and foremost, the least-cost/best-fit methodology, as I understand it, is relatively time and location specific. And it's certainly product specific. The utilities will go out for baseload products, dispatchable units or so forth.

Those kinds of units and how you will bid your projects and those kinds of RFPs are going to be dependent on some understanding of when the need is going to occur in the future.

For example, if the utilities are looking for a dispatchable resource, a bidder is likely to want to know what are the probabilities that it's going to run in the peak season and in the offpeak should seasons. And it will use that information to anticipate how much it will be operating during the course of the year. And that information will be fed into its bid.

If it doesn't have that kind of information then, in my view, it's going to be at a slight disadvantage in bidding into these RFOs.

So, finally, then what is the impact of the absence of transparency. First, as I'd indicated, there's a competitive advantage to those who know this information. And I indicated that will include the utilities, because they will be competing in the procurements.

And secondly, the absence of the transparency, as has been raised before, and I certainly agree, is going to diminish the likelihood that there will be new entrants into the California marketplace.

That, ironically, will increase the likelihood that there's going to be the potential of market power being exhibited in any procurements, which I think is counter to the public policy. It's certainly not something that we support as an association.

It's important to realize also that this environment is not static. There are existing entrants that we don't know about that potentially can come into this marketplace. Capital is liquid. And if California implements an open

transparent competitive process and this data were made available I think you're going to find new entrants into California that you haven't even contemplated yet.

So the fact that there's only six or seven companies, or 15, whatever it is, I'm not aware of the information about who's bidding these RFOs to date, but I'm pretty confident that because capital is fluid, you will find new entrants coming into California if they understand and can anticipate the needs of the state and where locationally and time-specific those are going to occur.

Those are my comments.

MR. CRAGG: Mr. Kelley is available for cross-examination.

CROSS-EXAMINATION

BY MR. COOLEY:

Q Mr. Kelley, what are the names of the members of the Independent Energy Producers?

A I'm representing IEP as a trade association, not the individual members.

Q I want a specific answer to the question of what are the names of the members of the independent producers, as an organization.

A I'm representing a trade association. I'm not representing the individual members. My testimony is on behalf of the trade association.

Q Who are the members of your organization?

A That will vary by year, by month, by week.

Q Who are they currently?

A Quite frankly, I don't think I can tell you off the top of my head right now, even if I were inclined to do so.

Q You can't even tell me who say the top three are?

A Not, it would be akin to asking who are your customers within your service territory.

Q Is it true that IEP has refused to disclose in other proceedings even the names of its members, is that correct?

A I don't know what proceedings you're referring to, but --

Q Well, let's --

(Parties speaking simultaneously.)

MR. KELLEY: -- we represent the trade association, we don't represent our members individually. That's the nature of the --

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BY MR. COOLEY:

Q You're unwilling to reveal, as far as I know, who your members are?

A I see no need to it for right now. I'm not representing them.

Q In earlier requests of you in the avoided cost proceeding, for example, I believe you were asked who your members were. And you declined to provide that information, is that correct? Is that a factually correct statement?

A I don't know that I was asked that, but as a --

Q IEP was --

(Parties speaking simultaneously.)

MR. KELLEY: -- trade association we might have been asked that. And I suspect that should have been the answer, yes.

BY MR. COOLEY:

Q And what are the names of the affiliates that are owned or controlled by the members of the IEP that sell into the California market?

A I wouldn't have any idea.

Q And what's the generating units that are owned or controlled by IEP members who have

capacity available to sell into the California market?

A I'm not aware of that right now.

Q And what is the megawatt rating of each of the generating units of the IEP members that have capacity available to sell into California?

A I'm not aware of that now.

Q Okay. And would IEP be willing to provide, on behalf of its members, information regarding the marginal cost of production from each of the units that its members have available for sale into the California market?

A No, we wouldn't at this point. I don't have that information available to me.

Q Well, if you had the information available would you be willing to provide it?

A If we were directed by an appropriate regulatory agency, yes, we would.

Q And would you resist attempts to provide that information?

A If it was -- if we were directed by the appropriate regulatory agency we would do that, of course.

MR. CRAGG: I might point out that there is -- IEP would be in some legal jeopardy by even

attempting to assemble that information, whether it's under a court order or not. There are antitrust laws that would prevent that from taking place.

BY MR. COOLEY:

Q Well, are there antitrust laws that would preclude IEP from revealing the names of its members? Yes or no?

MR. CRAGG: Are yo asking me or Mr. Kelley?

MR. COOLEY: Well, you said there were antitrust laws that would preclude --

MR. CRAGG: You're asking about assembling marginal cost information of the individual members?

MR. COOLEY: What I'm asking is are there any antitrust laws that would preclude IEP from revealing the names of its members.

MR. CRAGG: Not that I know of, but I'm not an antitrust expert. But I have some sensitivity when you develop marginal cost information from competitors, and the individual members of IEP do compete with each other. That creates legal problems. And that's what I was referring to.

MR. COOLEY: Competition amongst your various members does not preclude Mr. Kelley from revealing the names of the members of the IEP organization, does it?

MR. KELLY: If the individual members wanted to present testimony in this proceeding they were open to do that. And I don't know that they did, if they didn't, they can defend themselves. I'm representing the trade association here.

MR. COOLEY: I think I've tried to make a point that, you know, this is very sensitive information. And from the suppliers' side of the equation they consider virtually anything that would be related to, you know, the demand/supply equation to be highly confidential. They won't even tell you who their members are. I think that's something for you to consider in your evaluation.

MR. WARNER: Thank you. I have a brief cross-examination exhibit I'll distribute.

CHAIRPERSON DESMOND: Does that conclude the examination of the witness by Edison, counsel?

MR. COOLEY: No, that isn't all my questions; I do have some more.

MR. WARNER: Would the Commissioners like copies of the cross-examination exhibit?

CHAIRPERSON DESMOND: Yes, please.

CROSS-EXAMINATION - resumed

BY MR. COOLEY:

Q Mr. Kelley, in your testimony at page 2, you state that the release of utility load and resource information is important due to the hybrid market nature of California's electric market, is that correct?

A Are you referring to the third full paragraph there, beginning with the word second?

Q Yes.

A Yes.

Q Okay. Are you familiar with decision 0412048 --

A Yes, I am.

Q -- from the Public Utilities Commission?

A Yes, I am.

Q And that adopt rules for the three California IOUs regarding long-term procurement?

A Yes, I am.

Q Are you aware that that decision that we just referenced requires an independent evaluator?

A Yes. That the utilities participate in

the procurement.

Q And that independent evaluator's involved in the design, administration and evaluation stages of the competitive solicitation process where affiliates of the IOUs are participants, is that correct?

A Yes, but I believe that's under a request for rehearing because of the lack of clarity in the decision about what the role of the independent evaluator would actually do.

Q But your understanding of the decision as it currently stands, absent some modification by the Commission, is that the independent evaluator would be involved in the design, administration and evaluation stages of the competitive solicitation process where affiliates of the IOU are involved, is that correct?

A In some form.

Q And are you aware of whether IEP, as an organization, supported the use of an independent evaluator?

A Yes, we did.

Q And are you aware that utilities are expected to inform their procurement review groups regarding solicitation, design, implementation and

awards?

A I know they're working with the procurement review groups; I am not familiar with the communications between them.

Q Are you aware that the CPUC must approve the results of an RFO?

A I'm aware that they have to approve the advice letters that go for them before you enter into contracts. I think -- is that what you're talking about?

Q Well, is it your opinion that the oversight and review by the PUC is insufficient?

A For what?

Q For determining whether the process was designed and administered and evaluated effectively when affiliates are involved.

A I don't think there's been any experience under the new program yet. But I'm not aware of the independent evaluator being invoked in any RFO today.

Q You're not aware of Edison's current RFO involving an independent evaluator?

A No, I'm not. I didn't know there was an independent evaluator involved in your current RFO.

Q Was there one involved in San Diego's RFO?

A I don't believe there was an independent evaluator, as described in the procurement decision that was used in San Diego. I believe there was a PUC liaison person.

Q So the essential functional role of an independent evaluator?

A I'm not that familiar with it. I know that there was some filings made in front of the PUC that raised issues related to that role.

Q On page 4 of your testimony you claim that new generation developers need to know the size, location and timing of future resource needs, is that correct?

A Could you point me to the paragraph, please.

Q Page 4, --

A Got that.

(Pause.)

MR. KELLY: I think you're in the first full paragraph, about mid-section?

BY MR. COOLEY:

Q Yeah, and also in your testimony at page 1 --

A Okay, I've got my finger on the middle of the first full paragraph.

Q Yeah, it's right in the middle there.

A Yeah.

Q It's also another reference on page 1 --

A Okay.

Q -- at the third-to-the-last -- fourth-to-the-last line of that paragraph. You see that?

A Say that again?

Q Well, looking at your testimony, --

A Okay.

Q -- page 1, there's a sentence that begins: Third.

A Got it.

Q Okay. And there's a parenthetical that talks about when and where resources are needed.

A Right. Okay.

Q And then there's the sentence you pointed to on page 4.

A Okay.

Q And in sum of those statements by you, you're claiming that new generation developers need to know the size, location and timing of future resource needs, is that correct?

A That's correct.

Q Have you read the CPUC's long-term procurement decision that's dated December 16, 2004?

A I believe I have. I'm not sure which -- if you have a decision number, it might trigger -- is that the --

Q Are you aware that this decision identifies SCE's needs for peaking and intermediate dispatchable resources?

A I can't recall that now.

Q Are you familiar with Edison's filing in the 2004 resource planning OIR proceeding?

MR. CRAGG: Excuse me. I suspect that Edison had more than one filing. Is there one you're referring to?

MR. COOLEY: The initial filing. Excuse me, procurement.

MR. KELLY: In the procurement decision for the 2004 procurement decision?

BY MR. COOLEY:

Q The resource planning OIR, I believe there was a filing by Edison of --

A Just your long-term plan? Procurement plan? Your long-term procurement plan?

Q Right.

A I'm roughly familiar with it, yes.

Q And are you aware that Edison, in that filing, stated that it has a need for peaking and intermediate dispatchable resources?

A Most of my recollection of that filing was that most of the information was redacted that spoke to specific needs. So if there was something buried in there about needing peaking or dispatchable resources, I don't recall it. I just recall most of the information was redacted.

Q Are you familiar with the CEC's IEPR reports, generally?

A Generally.

Q Have you seen any charts or graphs that identify needed resources in both northern and southern California?

A In the CEC report that was released a couple weeks ago they were talking about regional needs. I think there was some charts in that that spoke for needs, or various time horizons.

Q Is it your understanding that CEC produces those charts and graphs from aggregated load and resource forecasts in these different regions?

A I just know they create those charts and

graphs from initially the data submitted by the various filing entities. And then there's hearings on that, and then they make modifications to that and produce reports.

Q And do these charts give an indication of when resources are needed?

A They give an indication of when some -- when there might be some shortages on a general level.

Q Are you aware that the ISO produces similar charts and graphs to demonstrate the timing of when resources are needed?

A I'm not -- I'm generally aware of that. I haven't reviewed those.

Q And with regard to the location, is it your understanding that utilities know where transmission constraints resides, and they can better describe where new plants are needed?

A Yes.

Q You think that the utilities have access to the same information that the ISO does with regard to transmission constraints?

A I didn't say that. I said the utilities know where congestion is, because the utilities are the ones who, my understanding, submit the

transmission upgrade and expansion plans to the ISO for its review in its planning process.

So, I presume the utilities have some sense of what their needs are.

Q Well, are you familiar with the transmission planning process at the ISO?

A Roughly. I know it's started by utility filings, or utility plans, which are then subject to ISO review. And they do whatever they do, as engineers.

Q Do you understand that the ISO is developing this process because, quote, "the ISO has confidential economic data that is needed for transmission analysis purposes that the participating transmission owners do not have authorization to use?"

A I'm not familiar with that quote.

Q I have a letter from the California ISO dated August 1, 2005. I'd like you to take a look at the portions of that that I've highlighted.

A Do I have an opportunity to read the whole thing?

Q Sure.

A Thank you.

(Pause.)

MR. KELLY: Okay.

MR. CRAGG: Do I need that? Are you going to ask questions about it?

MR. COOLEY: I don't think so.

BY MR. COOLEY:

Q Do you also understand from the ISO's letter that it states that additionally -- it referring to the transmission planning process -- will serve as a locational signal to generators for developing resource opportunities in locations that will resolve transmission bottlenecks."

Did you see that quotation?

A I did see that.

MR. COOLEY: That concludes my cross.

MR. WARNER: I'll try to be quick.

CROSS-EXAMINATION

BY MR. WARNER:

Q Mr. Kelley, good evening.

A Good evening.

Q Am I correct in understanding that IEP's general policy is that it favors wholesale and retail electricity competition and customer choice?

A Yes.

Q Could you turn to the cross-examination

exhibit that I provided. It's entitled, opening comments of Constellation NewEnergy, Inc. dated August 5, 2005.

In the CPUC confidentiality OIR, and if you could turn to page 4 under the subheading A, data confidentiality for ESPs, do you see that?

A Um-hum.

Q In that paragraph there are a couple statements I'm going to read to you and ask you whether you agree with the statements or not.

The first statement relates to the first -- it's a followup to the first sentence which relates to sensitive market information, which includes business and procurement plans and retail service contract terms and wholesale trading activities and strategies.

And the second sentence states: The sensitivity of this information is most acute when it involves forecasts and/or specific information related to contracts for which delivery is ongoing or is scheduled in the future."

Do you agree with that statement?

A Well, I mean, I haven't read this, so I have no idea what the context of this filing is.

Q Take a minute to read the first

sentence, and that will give you the context, I'm sure.

(Pause.)

MR. KELLY: Well, let me say that I don't think you can read that sentence out of context, and I would take that sentence in the context of the following sentence. So if I may, I'll read both of them:

"The sensitivity of this information is most acute when it involves forecasts and/or specific information related to contracts for which delivery is ongoing or scheduled in the future. The sensitivity of historical information becomes less acute after a year or more when a wholesale market position, procurement strategies and obligations to customers are likely to have substantially changed."

BY MR. WARNER:

Q That's fine. That second sentence that you read relates to historical information, does it not?

A Yes, it does. But I think what it's saying is that, in my view when I read this, it's saying that short-term information is, from their perspective, sensitive information. And, in fact,

IEP has agreed in this proceeding and even at the Public Utilities Commission that short-term data, in some cases, ought to be redacted.

Q Would it help you in setting the context to read the first full sentence on page 5 that states, quote, "Forward looking forecast information that may reflect information about the ESPs' existing contracts, including the ESPs' expectation of customer attention levels, demand levels, load factors and market conditions is extremely sensitive."

Would that help you with the context of this?

A It's three sentences out of a long document that --

Q Again, this particular sentence, I was going to ask whether you agree with it.

A I don't disagree with that -- or I do disagree with that to the extent that the information is, in my view, two years or more in time horizon out.

Q So you would disagree with this sentence to the extent that it covers any ESPs forward looking forecast information that goes beyond two years?

A That's right.

Q Okay, so you would support, in this proceeding, requiring ESPs and other energy suppliers to disclose all their forward looking forecast information beyond two years?

A Yes.

Q Let me ask the question that I asked a couple of the Energy Commission Staff, just to follow up to Mr. Cooley's. Would IEP support, as a matter of making the market more transparent as part of this proceeding, that any supplier that wishes access to the information proposed to be disclosed by the notice of intent, get that access only if that supplier provides the level of forward looking forecast cost information and other specific information related to their forecast profits and other important planning information that would be considered beneficial to the buyers in the CPUC electricity RFOs?

A Well, my sense is you get that information in the bids if it's a competitive bid, and structured to be competitive, then you're going to get generators or developers to submit their lowest bids because they're in competition.

Q You're saying that the bids would supply

their forecast profit margins?

A Embedded in the bid is their operational costs and their reasonable rate of return. I think in my testimony, though, I have suggested that if the utilities were interested in that information, if they offered up the same deal that the utilities get, and a IPP were to win that 30-year deal at 11.5 percent rate of return with guarantee of future cost recovery, then that was conditioned on giving up their cost, you should test that marketplace.

Q So, IEP would agree to that as a condition of suppliers getting access to the utilities' bundled customer --

A No, I --

Q -- demand information?

A -- you mis-heard me. What I suggested was that we would agree that if, as a condition of receiving a 30-year contract with 11.5 percent rate of return which is equivalent to what the utilities get, plus cost recovery of any future reasonable costs incurred, once you receive that contract if you'd be interested in seeing their costs I think they'd probably be doing that.

Q So, what would be the difference between

that and supplying that information as part of the bid?

A Well, it's the same as the utilities, it's a quid-pro-quo. You get the guarantee and then you give up your information.

Q Well, no, we're maybe talking past each other. Late in the evening. And that is, we're talking about market transparency, are we not?

A Well, you, as a buyer, will see the transparency of the unit --

Q Well, no, under your --

A -- once you've got the deal.

Q -- scenario the buyer wouldn't see the transparency until after it's entered into the 30-year contract. That's not transparency, is it?

A Well, I think that's the same thing that basically occurs with the utilities today.

Q Again, I won't debate that with you. But the point is that as I understand it, IEP would not support conditioning suppliers' --

A There's no --

Q -- access to the data --

A That's correct.

Q -- proposed by the Executive Director --

A There's no --

Q -- on the suppliers providing --

A That's correct.

Q -- cost information.

A That's correct, we would not support that.

Q Thank you.

MR. WARNER: No other questions, Commissioners. And thank you very much for your patience and indulgence for the full evening.

CHAIRPERSON DESMOND: With that we wish you a good evening. The meeting is adjourned.

(Whereupon, at 9:33 p.m., the business meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, CHRISTOPHER LOVERRO, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 2003.