

PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)	
In the Matter of)	
)	
Axon Enterprise, Inc.)	
a corporation,)	Docket No. 9389
)	
and)	
)	
Safariland, LLC,)	
a partnership,)	
)	
Respondents.)	
_____)	

**ORDER ON NON-PARTIES’ MOTIONS
FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission (“FTC” or “Commission”) and the Scheduling Order entered in this matter, certain non-parties, identified below, filed motions for *in camera* treatment for designated materials that FTC Complaint Counsel and/or Respondent Axon Enterprise, Inc. (“Respondent”) have listed on their exhibit lists as materials that might be introduced at trial. Neither Complaint Counsel nor Respondent has filed any oppositions to any of these motions.

II.

Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence “be placed *in camera* only [a] after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment or [b] after finding that the material constitutes sensitive personal information.” 16 C.F.R. § 3.45(b).

A. Clearly defined, serious injury

“[R]equests for *in camera* treatment must show ‘that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.’” *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1961 FTC LEXIS 368 (Mar. 14, 1961). Applicants must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, at *10 (Mar. 10, 1980). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of FTC decisions is “the principal countervailing consideration weighing in favor of disclosure.” *Id.*

The Federal Trade Commission recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 1961 FTC LEXIS 368, at *5-6. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to persons affected by the Commission’s actions and helps to deter potential violators of the laws that the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* at 1188. Moreover, there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old. *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *15 (June 26, 1996) (citing *General Foods*, 95 F.T.C. at 353; *Crown Cork*, 71 F.T.C. at 1715).

In order to sustain the burden for withholding documents from the public record, an affidavit or declaration is always required, demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). To overcome the presumption that *in camera* treatment will not be granted for information that is more than three years old, applicants seeking *in camera* treatment for such documents must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive. In addition, to properly evaluate requests for *in camera* treatment, applicants for *in camera* treatment must provide a copy of the documents for which they seek *in camera* treatment to the Administrative Law Judge for review. Where *in camera* treatment is sought for transcripts of investigational hearings or depositions, the requests shall be made only for those specific pages and line numbers of transcripts which contain information that meets the *in camera* standard. *In re Unocal*, 2004 FTC LEXIS 197, *4-5 (Oct. 7, 2004).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time. . . .” 16 C.F.R. § 3.45(b)(3). “Applicants seeking indefinite *in camera* treatment must further demonstrate ‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . . [and] that the circumstances which presently give rise to this injury are likely to be forever

present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *2-3 (April 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment. However, based on “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry,” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at *5-6.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *Hood*, 58 F.T.C. at 1189. Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged. *Hood*, 58 F.T.C. at 1189; *General Foods*, 95 F.T.C. at 352; *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (Apr. 26, 1991).

In contrast to trade secrets, ordinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 1961 FTC LEXIS 368, at *13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (Aug. 17, 2012); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14. When *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *E.g., McWane, Inc.*, 2012 FTC LEXIS 143; *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 (May 25, 2011).

B. Sensitive personal information

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge shall order that such material be placed *in camera*. 16 C.F.R. § 3.45(b). “Sensitive personal information” is defined as including, but not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” 16 C.F.R. § 3.45(b). In addition to these listed categories of information, in some circumstances, individuals’ names and addresses, and witness telephone numbers have been found to be “sensitive personal information” and accorded *in camera* treatment. *In re LabMD, Inc.*, 2014 FTC LEXIS 127 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (Sept. 17, 2012). *See also In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *5-6 (Jan. 25, 2006) (permitting the redaction of information concerning particular consumers’ names or other personal data when it was not relevant). “[S]ensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

III.

The non-parties listed below filed separate motions for *in camera* treatment. Each motion included the documents for which *in camera* treatment is sought and was properly supported by a declaration of an individual within the company who had reviewed the documents at issue. These declarations supported the applicants' claims that the documents are sufficiently secret and sufficiently material to their businesses that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of FTC decisions. *See Kaiser Aluminum*, 103 F.T.C. at 500 ("A public understanding of this proceeding does not depend on access to these data submitted by these third party firms."). Moreover, in evaluating the specific motions of each of the non-parties under the standards set forth above, requests for *in camera* treatment by non-parties warrant "special solicitude." *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967); *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, *4 (May 25, 2011). *See also Kaiser Aluminum*, 103 F.T.C. at 500 ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.").

CentralSquare Technologies, LLC ("CentralSquare")

Non-party CentralSquare seeks *in camera* treatment for a period of five years for one exhibit. CentralSquare supports its motion with a declaration from its chief executive officer. The declaration describes in detail the confidential nature of the document, the competitive harm that CentralSquare would suffer if this document were to be made publicly available, and the measures that CentralSquare takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive information concerning the company's financial condition, forecasts, revenue, sales bookings, expenses, profit margins, research and development, pricing strategies, staffing, employee compensation, investment strategies, product roadmaps, competitive market analyses, techniques for marketing its products, geographical analyses, and other secret details.

CentralSquare has met its burden of demonstrating that this document is entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the document identified as PX50138.

City of Aurora, Colorado ("Aurora")

Non-party Aurora seeks *in camera* treatment for excerpts of deposition testimony provided by one of its police lieutenants in which the deponent describes responses to a currently open Request for Proposals ("RFP") for a contract for body worn camera equipment and services and the process for selecting a vendor. Aurora supports its motion with an affidavit from a lieutenant with the Aurora Police Department. According to the affidavit, portions of the deposition transcript contain information about responses to the RFP, the selection process, the lieutenant's views regarding potential applicants and their qualifications, and issues important to the City in the selection process. The affidavit explains that, while RFPs and the steps involved

in Aurora's solicitation process are public information, portions of the proposals submitted to Aurora in response to a RFP, if properly designated, are confidential. The affidavit further explains that Aurora, in its RFP, stated that it would not release information that a company designated confidential unless compelled to do so.

Aurora has met its burden of demonstrating that excerpts of the deposition testimony provided by one of its police lieutenants are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the requested excerpts of the deposition of Lieutenant Martin Garland.¹

Digital Ally, Inc. ("Digital Ally")

Non-party Digital Ally seeks *in camera* treatment for varying lengths of time for seventeen documents, or portions of documents, and excerpts of deposition testimony. Digital Ally supports its motion with a declaration from its chief executive officer. The declaration describes in detail the confidential nature of the documents, the competitive harm that Digital Ally would suffer if these documents were made publicly available, and the measures that Digital Ally takes to ensure that the information contained in these documents remains confidential. The declaration explains that the documents contain Digital Ally's sales, costs, revenue, borrowings and financial standing, marketing strategies, strictly confidential corporate merger, sale, and acquisition strategies, and other secret and competitively sensitive information to the business of Digital Ally.

Digital Ally has met its burden of demonstrating that the documents are entitled to *in camera* treatment. With respect to the documents for which Digital Ally seeks *in camera* treatment for a period of five years, the motion is GRANTED. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified as: PX50012, PX50068-015 (aka PX50062), PX50063, PX60013-001, paragraphs 7-15, PX50065, pages 1-3, RX001204, PX50116-001, PX50116-002, PX50116-008, PX50116-018, PX50116-019, PX50116-020, PX50116-021, PX50116-022, PX50116-023, PX50116-024, PX50116-025, PX50116-027, PX50116-028, PX50116-030, PX61002, paragraphs 4-9 and for the following deposition transcript excerpts from PX81038: 25:23-26:1; 26:20-28:9; 30:14-33:3; 33:23-34:22; 35:23-38:1; 38:21-39:16; 40:9-40:11; 40:23-43:3; 43:9-43:25; 44:7-44:15; 44:21-46:21; 47:3-47:8; 48:1-49:25; 51:7-51:19; 51:24-53:21; 54:10-55:6; 55:17-55:22; 57:15-57:19; 60:2-61:11; 64:4-65:1; 65:20-65:24; 71:5-72:19; 73:16-73:17; 73:22-75:23; 77:19-78:7; 79:22-79:25; 80:14-80:16; 81:7-81:22; 82:3-82:4; 82:9-82:12; 82:17-83:6; 83:21-84:11; 84:23-85:10; 85:22-86:23; 87:7-87:20; 88:1-90:4; 91:1-93:18; 93:24-94:1; 94:13-98:4; 98:17-99:18; 100:3-102:7; 103:14-104:9; 104:20-105:8; 106:6-121:17; 122:3-124:8; 124:20-126:7; 129:2-129:7; 129:15-129:22; 132:17-133:4; 133:12-133:14; 134:7-134:14; 135:5-136:14; 138:15-141:13; 142:5-143:24; 145:4-145:6; 146:2-147:10; 148:14-149:17; 150:16-150:18; 151:16-151:19; 152:7-152:11; 155:20-156:14; and 156:23-157:14.

¹ Aurora did not provide the exhibit number for the deposition of Lieutenant Martin Garland. The parties are directed to provide the exhibit number and supply the page and line number references to identify the information that has been granted *in camera* treatment by this Order.

Digital Ally states that some of the documents for which it seeks *in camera* treatment are designated as “Attorneys Eyes Only” subject to a protective order issued by the United States District Court in the case captioned *Digital Ally, Inc. v. Taser International, Inc.*, Case No. 2:16-cv-02032 (D. Kan.) (“*Digital Ally v. Taser*”) and that the protection was declared by the federal court to “survive termination of this litigation” without limit. Thus, Digital Ally seeks indefinite *in camera* treatment for those documents. According to Digital Ally, the Attorneys Eyes Only documents in *Digital Ally, Inc. v. Taser* contain extremely sensitive intellectual property, trade secret, financial, product, and marketing confidential materials, whose disclosure to another party or non-party would create a substantial risk of harm to the competitive position of Digital Ally. Indefinite *in camera* treatment is GRANTED to the documents labeled as Attorneys Eyes Only in *Digital Ally v. Taser*, and designated in this action as: PX50059, PX50068-001 through PX50068-014, PX50068-016 through PX50068-027, PX50060, PX50111, and PX70053.

Digital Ally seeks indefinite *in camera* treatment for certain documents that relate to confidential strategic planning matter and proprietary customer information. These documents consist of ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. Digital Ally has not demonstrated that the need for confidentiality of the material is not likely to decrease over time. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified as PX50115, PX50065, page 4 and PX50066.

Digital Ally also seeks indefinite *in camera* treatment for a page of a document, which, according to Digital Ally, conveys “proprietary customer information.” This page states only, “Digital Ally is Customer Focused” and displays icons of various companies under the heading, “The Power of Partnership.” Digital Ally has not made the requisite showing that this document is entitled to *in camera* treatment. Thus, *in camera* treatment is DENIED WITHOUT PREJUDICE for the document identified as PX50116-016. Digital Ally may submit a renewed motion by October 7, 2020.

Digital Ally also seeks indefinite *in camera* treatment for a document that relates to confidential employment matters and reveals the identity of certain individuals. This document is entitled to indefinite *in camera* treatment. Indefinite *in camera* treatment is GRANTED for the document identified as PX50116-026.

Getac Video Solutions Inc. (“GVS”)

Non-party GVS seeks permanent *in camera* treatment for certain business documents and for portions of the declaration and deposition transcript of its president. GVS supports its motion with a declaration from its president. The declaration describes in detail the confidential nature of the information and the competitive harm that GVS would suffer if this information were to be made publicly available and the measures that GVS takes to ensure that it remains confidential. The declaration explains that the information includes confidential financial information, evaluations of the body worn camera and digital evidence management marketplace and competitors, product and technology road maps, strengths and weaknesses of GVS, updates and sales terms on responses to customer requests for proposal, potential mergers and acquisitions, and internal discussions on marketplace competitive strategy.

Except as described below, GVS has met its burden of demonstrating that these documents and information are entitled to *in camera* treatment. The documents are ordinary business records, and not trade secrets, and are not entitled to permanent *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified as: PX50008, PX50009, PX50010, PX50021, PX50022, and PX50140.

In addition, *in camera* treatment for a period of five years is also GRANTED for two documents that have not been identified by exhibit number, but are identified as: GVS_FTC000497-498 dated 6/1/2018 and GVS_FTC021721.²

With respect to GVS's request for *in camera* treatment of excerpts from a declaration and a deposition, GVS has properly narrowed its request to selected excerpts. However, upon review, it is not apparent that all of the requested excerpts merit *in camera* treatment. For example, with respect to the deposition excerpts, GVS has requested *in camera* treatment for testimony relating to a past date when one of its products became available for sale; an acquisition that was completed in 2018; and a description of how the company is organized. For the declaration, GVS seeks *in camera* treatment for a general description of its company. Therefore, the motion is DENIED WITHOUT PREJUDICE as to the requested portions of PX81049 and PX60005. GVS may submit a renewed motion by October 7, 2020.

Motorola Solutions, Inc. (“Motorola”)

Non-party Motorola seeks *in camera* treatment for certain documents and portions of testimony and declarations offered by Motorola. Motorola supports its motion with a declaration from its senior corporate counsel. The declaration describes in detail the confidential nature of the information and the competitive harm that Motorola would suffer if these documents were made publicly available and the measures that Motorola takes to ensure that they remain confidential. The declaration explains that the documents contain confidential sensitive business information including internal strategy discussions and presentations, sales and revenue information, research and development data, prices, bid data, and customer information, including sales information and contracts.

Motorola has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified in Exhibit A to its motion.³

² The parties are directed to provide exhibit numbers for these documents.

³ Motorola did not provide exhibit numbers for all of the documents for which it requested *in camera* treatment. The parties are directed to provide this information. With respect to deposition testimony excerpts that have been highlighted in Motorola's motion, the parties shall supply page and line number references to identify the information that has been granted *in camera* treatment by this Order.

Panasonic i-PRO Sensing Solutions Corporation of America (“PIPSA”)

Non-party PIPSA seeks *in camera* treatment for eight documents and two declarations it submitted to the FTC. PIPSA supports its motion with a declaration from its director of corporate planning and I.T. infrastructure. The declaration describes in detail the confidential nature of the documents and the competitive harm that PIPSA would suffer if these documents were made publicly available and the measures that PIPSA takes to ensure that they remain confidential. The declaration explains that the documents and deposition transcripts contain competitively sensitive information, including customer lists, bid data, sales data, pricing information, and strategic business plans.

With respect to the documents, PIPSA has met its burden of demonstrating that the documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified by exhibit number as: PX50016, PX50057, PX50130, PX50133, and PX50134, and for documents that have not been identified by exhibit number, but are identified as: Panasonic_000001, Panasonic_000003, and PIPSA0000531.⁴ With respect to the two declarations, some of the information contained therein relates to general, non-confidential material. Therefore, PIPSA’s motion is DENIED WITHOUT PREJUDICE as to PX60004 and PX61001. PIPSA may submit a renewed motion by October 7, 2020.

Safariland, LLC (“Safariland”)

Non-party and former respondent Safariland seeks *in camera* treatment for 173 documents (out of a total of 943 proposed exhibits identified as produced by Safariland) and for excerpts of four deposition transcripts. Safariland supports its motion with a declaration from its vice president of legal. The declaration explains that the documents for which it seeks *in camera* treatment contain confidential, sensitive, proprietary information, including: sales data, pricing plans, customer relationships, strategic business plans and analysis, market and competitive assessments, business methods and decisions that Safariland considers to be competitively sensitive. The declaration further explains that Safariland keeps such information confidential; it is not available to Safariland’s competitors or other market participants; and that the disclosure of this information would provide Safariland’s competitors with insight into its operations and strategies, resulting in serious competitive and commercial injury to Safariland.

Safariland has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified in exhibits B and C to Safariland’s motion and for the excerpts of deposition transcripts identified in exhibit D to its motion.⁵ In addition, Safariland requests *in camera* treatment for non-public personal contact information disclosed in the

⁴ The parties are directed to provide exhibit numbers for these documents.

⁵ Safariland did not provide exhibit numbers for all of the documents or for the depositions containing the excerpts for which it requested *in camera* treatment. The parties are directed to provide this information. With respect to deposition testimony excerpts, the parties shall supply page and line number references to identify the information that has been granted *in camera* treatment by this Order.

deposition of David Kingston. This information, at page 63, line 16 of the deposition of David Kingston (July 31, 2020) is GRANTED indefinite *in camera* treatment.

Safe Fleet Holdings, LLC (“Safe Fleet”)

Non-party Safe Fleet seeks *in camera* treatment for several documents and excerpts of one deposition transcript. Safe Fleet supports its motion with a declaration from the vice president of Safe Fleet’s law enforcement business unit. The declaration describes in detail the confidential nature of the information and the competitive harm that Safe Fleet would suffer if these documents were made publicly available and the measures that Safe Fleet takes to ensure that they remain confidential. The declaration explains that the documents contain sensitive and confidential information about Safe Fleet’s strategic planning, confidential responses to RFPs containing proprietary information, internal analyses of RFPs, internal comparative assessments of its own and competing products, market due diligence, actual and potential acquisitions, forthcoming smart solutions by Safe Fleet, and research and development.

For most documents, Safe Fleet seeks *in camera* treatment for a period of five years. Safe Fleet seeks indefinite *in camera* treatment for certain documents that relate to strategic planning and RFPs. These documents consist of ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. Safe Fleet has failed to demonstrate that the need for confidentiality of the material is unlikely to decrease over time. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for all the documents identified in its motion: PX50014, PX50106, PX50013, PX50101, PX50102, PX50103, PX50015, PX50104, PX50105, and for the following excerpts of the deposition of Mark Griffin, identified as exhibit PX81054: 36:2-11; 37:25-38:9; 38:20-41:7; 132:4-133:14; 135:19-140:6; 32:1-2; 42:15-45:17; 57:4-58:1; 66:11-67:2; 67:10-19; 69:22-69:25; 78:5-6; 78:8-24; 79:12-14; 93:20-94:3; 94:13-18; 95:18-21; 96:12-97:21; 100:19-101:13; 101:25-102:14; 102:20-24; 103:6-104:6; 104:8-25; 108:16-109:2; 30:5-8; 31:4-20; 106:2-107:5; 107:19-108:14 and 124:10-127:18.

Utility Associates, Inc. (“Utility”)

Non-party Utility seeks *in camera* treatment for nine documents and excerpts of one deposition transcript. Utility supports its motion with a declaration from its cofounder, former chief executive officer, and current chief innovation officer. The declaration explains that the documents for which it seeks *in camera* treatment contain highly secret and material information, such that disclosure would result in serious injury to Utility and would advantage Utility’s competitors at Utility’s expense. The declaration further explains that Utility keeps such information confidential; it is not available to Utility’s competitors or other market participants; and that the disclosure of this information would provide Utility’s competitors with insight into its operations and strategies, resulting in serious competitive and commercial injury to Utility.

Utility seeks *in camera* treatment for a period of ten years for documents that contain business plans and strategies, contracts and negotiations with customers, customer specific information, and market and competitive analyses, and sales and financial information. These documents consist of ordinary business records and are not entitled to an extended period of *in*

camera treatment. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified by Utility in its motion as falling under categories A, B, D, F, and G.⁶

Utility seeks indefinite *in camera* treatment for documents it describes as containing intellectual property and proprietary information. Utility has demonstrated the need for an extended period of protection, but not for indefinite protection. Therefore, *in camera* treatment for a period of ten years, to expire on October 1, 2030, is GRANTED for the documents identified by Utility in its motion as falling under category C.

Utility seeks *in camera* treatment for a period of five years for documents that contain pricing strategy and cost information. *In camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the documents identified by Utility in its motion as falling under category E. In addition, *in camera* treatment for a period of five years, to expire on October 1, 2025, is GRANTED for the following excerpts of the deposition of Ted Davis, identified as exhibit PX81013: 64:17-76:5; 98:11-18; 162:10-163:1; 168:4-175:19 and 287:2-288:8.

IV.

Several of the non-parties requested that disclosure of their *in camera* documents be limited to only those persons enumerated in Paragraph 7 of the Protective Order issued in this case. That request is granted. All of the documents for which *in camera* treatment has been granted shall also be treated as confidential under the Protective Order and may only be disclosed to those entities covered by the Protective Order.⁷ In addition, pursuant to Rule 3.45(a), “material made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.” 16 C.F.R. § 3.45(a).

Several of the non-parties did not identify the documents for which they seek *in camera* treatment by a PX or RX number. If either party seeks to introduce these documents as exhibits, counsel shall prepare a proposed order indicating that, by this Order, the document has been

⁶ The parties are directed to confer with Utility to determine which documents fall under each of these categories and to provide the exhibit numbers of documents that have been granted *in camera* treatment by this Order.

⁷ Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question. Protective Order ¶ 7.

granted *in camera* treatment, the length of time *in camera* treatment has been extended, and identifying each document by its PX or RX number.

Each non-party whose documents or information has been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been provided for the material described in this Order. The parties are permitted to elicit testimony that includes references to, or general statements derived from, the content of information that has been granted *in camera* treatment. 16 C.F.R. § 3.45. However, any testimony revealing the confidential information from documents that have been granted *in camera* treatment shall be provided in an *in camera* session. Counsel shall segregate their questions of witnesses in such a manner that all questions on *in camera* materials will, to the extent practicable, be grouped together and elicited in an *in camera* session.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 2, 2020