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P R O C E E D I N G S

CHAIRMAN BAY: Good afternoon everybody. Who knew that order one thousand would attract such a large crowd but we're now six years into order one thousand. A tremendous amount of work has gone into order one thousand, both here at the Commission and at the RQS ISOs, the planning regions and industry appreciate the work of our stakeholders on order 1000. Notably competitive projects have been put out to bid in the RQS ISOs.

And now that we have some experience here under order one thousand, today's conference gives us an opportunity to take a step back and to examine a number of issues that have arisen. One being cost containment, provisions and competitive development processes and how they should be evaluated. Rate-making issues associated with cost containment provisions, the relationship between Commission incentives and competitive development processes, inter-regional transmission coordination issues as well as other regional issues.

I look forward to hearing the views from all the panelists. I thank them for coming here today. I appreciate the hard work of staff in putting together today's conference. Let me note that after the conclusion of this technical conference the Commission will review the record in this proceeding and in the near future issue a notice inviting post-conference comments. The notice will identify certain issues regarding which the commission is particularly interested in receiving comments. If anyone else is wearing seersucker here today your comments receive extra credit, so. Cheryl?

COMMISSIONER LEFLEUR: Thank you, yes. Imitation is the sincerest form of flattery as clear who my style icon is. Very excited about today's and tomorrow's tech conference. I appreciate all of the comments we received in advance and people traveling from near and far to share their thoughts. It's axiomatic, our Nation is going through big changes in how we generate and deliver electricity and a robust transmission network is needed to support those changes.

Order one thousand was issued five years ago next month, recognizing that transmission would be important to ensure liability, allow access to lease/cost resources, and meet State and Federal public policies particularly carbon policy. The central purpose of the rule was require regional planning and cost allocation to make sure that the transmission that built was cost effective and best suited to meet customer needs. A key part of achieving that objective was our belief that opening transmission development to competition was a part of making it just and reasonable. As I think through all the issues over the next couple of days I am going to be really trying to listen to them on two levels. The first is I'm very interested in the specific questions that staff framed on the agenda. I issued a statement last week to underscore some of those questions, interested in how the competitive processes are going, what we have learned, how cost control proposals have been and should be considered and whether there are changes that we need to make to our rate-making or incentives policy to reflect Order One Thousand.

As always, at every tech conference I hope folks can be as clear and specific as they can and any recommendations for further Commission actions so we can build a good record but more fundamentally, at a higher level I'm interested in how Order One Thousand implementation is working out and whether it's achieving its core purpose of making sure that regional and intraregional transmission is planned and built where needed.

I try to follow the regulatory Hippocratic oath, "Don't make things worse" and I know we intentionally gave regions and transmission owners a lot of flexibility and I've been really closely watching how that flexibility has been applied, not just with reference to the letter of the law but the spirit of the law as well.

In particular, I've been concerned for a while that the threat of competitive processes may be having an unintended impact on transmission planning itself since we seem to be seeing a profusion of the types of projects and categories that are not subject to competition such as local and near-term projects and a relative dearth of projects, bigger projects that are subject or regional projects that are subject to competition and you know, that kind of goes against the central purpose of the rules so I just want to see if that is happening, why is that happening, to make sure that we got it right and it's actually advancing the purpose of doing what's right for customers. Thank you very much.

CHAIRMAN BAY: Thank you, Cheryl.

COMMISSIONER CLARK: Thank you Mr. Chairman and thanks to everyone for being here this afternoon and for tomorrow when we continue our discussion. One of the challenges it seems of putting this together was attempting to create some sort of structure so that the Commission could gather some information that then we could act upon. One of the things that's challenging about Order One Thousand is that it's such a big topic that if there isn't some focus brought to exactly the questions that we are trying to ask, that it could just be sort of a two-day gripe session about what's working and I like this part of it and I don't like this part of it.

We need to have a little more focus than that.

So the way the Commission, the Staff has laid this out I think makes a lot of sense. Broadly speaking, the way I would group and categorize the topics that we're going to be dealing with over the next couple days, there is a, the first two panels have a sort of natural affinity towards these other, which is a fairly discreet question about this issue of cost-containment measures and cost containment caps.

This is something that has come up in a number of proceedings in a number of different venues that have come before the Commission both discreet filings as well as some petition has dealt with. So this tees up a rather specific question with regard to cost-containment measures and transmission incentives and how all of these things work together. With regard to that, what I'll be looking for in particular, and I'd ask the panelists to see if you can address this specifically, is to answer the question of how prescriptive the commission should be in the laying out how cost-containment measures and transmission incentives might work.

The reason that I tee up that particular question is this: The question becomes does the Commission give stakeholders the book and say if you're going to do transmission incentives and cost-containment measures, this is how they're to be done. Or is it a little but more generic than that where the Commission looks at it in terms of here the four corners of the things that we will probably be looking at but doesn't specifically lay out how some of these measures will take effect.

In other words, how much latitude do we give the industry, understanding there could be a trade-off between certainty and the benefit of letting a number of ideas bloom. So I will be looking at that and secondly identifying areas where traditional rate-making principals may need to be tweaked in order to accommodate some of these things that we see coming forth through the regional processes. I have run into very few people who say cost-containment measures are a bad thing. Rather it's "If we're going to do it, how do we make it work in a way that meshes with Commission precedent and the rules that we have on the books.

Panels, the last few panels that we have especially tomorrow, deal a little bit more with interregional planning and regional planning. These are a little bit more general in terms of what I would classify as a little but more of a diagnostic checkup in terms of how the Order One Thousand planning processes are working both inter-regionally and regionally.

We will hear more about that tomorrow but I think in the case of those panels what we're looking for is not so much "is this particular model good, is that particular model good" but rather in terms of "it is good for incumbents, non-incumbents, public power, so on and so forth" but really analyzing it through the lens of FERC's mandate, which is just and reasonable rates and which is broadly defined as "are consumers getting a good deal but is it being done in such a way that the public interest is protected such that we have viable utility companies who are able to make a business model of this process the Commission has set up.

So, some big topics. Obviously it's a group of topics that has a lot of interest and I'm looking forward to the next few days, thanks.

CHAIRMAN BAY: Thank you Tony, Colette?

COMMISSIONER HONORABLE: Thank you, Mr. Chairman. Good afternoon. FERC really knows how to throw a party.

(Laughter)

And I feel right at home with my colleagues Tony and Cheryl wearing our Southern fare and seersucker. Thank you for reminding me about what's so wonderful about the South. I too would like to welcome all of you to this Competitive Transmission Development Technical Conference. Some of you have been referring to it as the Order One Thousand Technical Conference but I really see it as broader focus than that. Certainly with Order One

Thousand the Commission has set a great number of processes into motion. Now, nearly all of the compliance stylings have been approved and we really are starting to see the processes taking shape and I think we can see the road ahead in some ways. I also think this is an opportunity in time to stop and listen to you and to learn what's happening in the real world and this is a great opportunity to do that. I'd like to thank our staff that you guys have done an incredible job, not only with I was mentioning the days before we began addressing the stylings and the substance at work but also to aide us in preparing for biting off almost more than we can chew with two days of incredible dialog. I'm really looking forward to it.

I really have benefitted greatly from speaking with a number of stakeholders during my tenure here and hearing from you regarding a number of issues concerning Order One Thousand and competitive transmission development. I'm particularly interested in a few areas. One is whether the Commission should provide additional guidance regarding the interplay between cost-containment measures such as cost caps and incentives. Are these things coordinated? Should the Commission provide more guidance there?

Some of you are aware I'm very, very interested in what's happening with regard to interregional coordination and the effort to develop projects that address and provide value and relieve congestion along seams between regions. This is a particularly thorny issue for us but it is one that we must focus on and tackle together. I know that a number of you think that this look may be a bit premature but because of some concerns I heard from a number of stakeholders, I think there is no better time than the present to analyze if there are issues that we need to correct. There is no better time than the present to do that.

I continue to be interested and concerned about seams in modeling issues, harkening back to my days as a state regulator and also of course regional planning and cost allocation processes and also how the processes are working at the regional level. It is imperative that our policies help to achieve the right projects, in the right places and at the right costs. We need to make sure that of course that we are fulfilling the reliability, economic and public policy needs of transmission and especially ensuring that we are not over burdening consumers who ultimately bear the cost of these projects.

Most of all I want our efforts to support the build-out of the infrastructure that we so desperately need to address the dynamically changing landscape as we are looking at ways in which energy is generated and consumed so different than even 5 or ten years ago. With that, I look forward to hearing from all of our Panelists and Mr. Chairman I should mention that because we are talking about Order One Thousand, I'm almost at one thousand Twitter followers, so I know there is one or two of you out there that has not looked me up and it's chonorableFERC. I think I may get to one thousand today.

(Laughter) With that, thank you all for being here.

CHAIRMAN BAY: Thank you Colette. Just one quick announcement, there are some seats open in the front row so for people who are standing in the back, please feel free to come forward and to take one of the seats. In addition, we have opened up hearing Room 1, so that can accommodate many additional people. With that, let's start with our first panel Cost Containment Provisions and Competitive Transmission Development Processes. Each Panelist is supposed to make opening remarks within two minutes I believe, is that right David?

MR. TOBENKIN: Yes.

CHAIRMAN BAY: We will start with Craig Glazer from PJM. Thank you Craig.

MR. GLAZER: Mr. Chairman and Commissioners, I have to start with a true confession. I'm not sure how I drew this card to open this. I never won a lottery ticket in my life, I've never had one pay off but somehow I drew this card, so --

CHAIRMAN BAY: It's your day, Craig.

(Laughter)

MR. GLAZER: I am honored and but given that I'm going to actually start this whole conference off with something a little bit different because the author Stephen Covey, in his words in his book "The Seven Habits of Highly Effective People" reminds us that, using his words, the main thing is to keep the main thing the main thing. Our message today, quite frankly, at least from PJM is that that's part of what we all need to do, to keep out eye on the prize. Mainly bringing competitive forces to the planning process to spur innovation and competitive costs of new transmission.

I say that because at the end of the day the P in planning still has to stand for planning. We can't lose sight of the need to continually get the job done of upgrading the transmission system efficiently and timely. I know we are all committed to that, but as a corollary to that, the P in planning, the letter L in planning shouldn't stand for litigation. Because quite frankly my biggest fear is if it does the L word will rapidly subsume the P word in planning. I have just been thinking letters this week.

We at PJM have gone all in on Order One Thousand. We've had six different proposal windows, received over four hundred proposals for evaluation and the good news is we've gotten some really innovative proposals. We've awarded one of the largest projects to a non-incumbent, taken a recommendation to the board on another one soon and have seen a lot of good innovation with that. We're better for that process so I thank you and the staff for that.

But we've also seen, frankly, the L word beginning to creep in and starting to overwhelm the best of the process, a lot of paper-chasing on small projects that really aren't paying benefits as well as this sort of my fear that we are so documenting the process and tariffs that it may become a compliance trap for all of us that we can't get ourselves out of.

Let me just quickly go to cost caps because cost caps are essentially challenging. Commission Clark, you said "I've never seen anybody that doesn't like a cost cap". I agree. Cost caps are great. When I was a State Commissioner, we loved cost caps. But what is a cost cap? In essence, it's an alternative allocation of risk between the investor and the rate payer. That in essence is what it is. That's also the good part of it but also the problem. I say in my testimony we are kind of at the ragged edge where planning and regulation meet each other because something about cost caps, dealing with what are just and reasonable rates.

It's something where due process rights of load, to be able to come in and comment mean a whole lot. So I will close by saying my request to all of you, all of us is that we all have to be cognizant of each other's mission as we move forward, our best expertise, who has what expertise and responsibility as we maneuver through these unchartered waters. I tried to lay out some ideas in my testimony of things we could do as we in Stephen Covey's words, all of us together "search for the main thing" I look forward to your questions.

MS. HANEMANN: Thank you. It's a pleasure to be here today. My name is Kim Hanemann. I'm the Senior Vice President at PSE&G. I'm responsible for managing all aspects of PSE&G's transmission portfolio including construction, permitting, operations and maintenance. My comments here I'll deliver today are a summary of my written comments. First point I'd like to make, PSE&G does not view Order One Thousand right now as improving the transmission planning process or bringing value to our customers.

We encourage the Commission to take a hard look to evaluate whether the rule has delivered its intended benefits. Sound transmission planning requires consideration in many factors besides just the initial construction costs. Projects with the greatest overall value may be more expensive in the short term but they might provide other ancillary benefits as reducing congestions and replacement of aging infrastructure. Simply put, the project with the lowest bid cost is not necessarily the best project or value for our customers.

The second point has to deal around with the skill sets of the RTOs. While our RTOs are strong engineers and planners, they don't currently possess at the required skill sets to adequately administer the Order One Thousand open window process. Knowledge of commercial practices, environmental permitting requirements, local regulations, equipment procurement practices and construction cost estimating are all required. Currently the RTOs don't have adequate proficiency or resources in those areas.

Third area is around cost containment. We believe cost-containment provisions are of limited value. Reputable developers already have cost-containment measures in place through their internal project execution processes and have a track record to demonstrate whether they can deliver projects on budget. In addition, you have the existing prudency review process at FERC.

Further, when cost-containment provisions are included in the evaluation process, right now they seem to get over-valued creating a situation where more important considerations receive insufficient weight, like the overall project costs including all the inner connections like the long-term value of the project and the developers ability to permit and construct in the required timeframe.

There is also many practical issues around the cost-containment provisions that limit what theoretical value they may have. Cost caps typically have exclusions such as changes in laws and regulations or TO directed changes and importantly the ultimate meaning and effect of such caps will be determined in the context of a dispute and ensuing litigation. (Your L word). If the Commission believes that some form of construction cost caps should be included, then FERC should provide guidance on how these caps will be enforced and require the RTOs have clear guidelines for evaluating them.

Plans should include development of clearly understood and judicially recognized cost-containment provisions for use by all bidders. These provisions should be predictable, commercially reasonable and enforceable. Thank you for your time.

MR. IVANCOVICH: Chairman Bay, all the Commissioners, my name is Anthony Ivancovich. I'm the Deputy General Counsel for the California ISO. I appreciate being given the opportunity today to come and discuss the ISO's competitive solicitation model. To date, we have completed nine competitive solicitations and we've dealt with a host of cost containment issues. Our tariff sets forth the standard and the criteria that we apply to select and approve project sponsor.

For each competitive solicitation we identify what we believe at the key selection criteria for that particular solicitation. Under our tariff, cost-containment is required to be a key selection factor for every solicitation and it is. However it is not the only relevant consideration. All criteria in our tariff are relevant and we must consider the totality of all the facts. The ISO acknowledges that concerns have been raised nationwide about the ability of planning regions to objectively and transparently evaluate dissimilar proposals.

We believe it's critical to instill confidence in the selection process. However, based on our experience, imposing predetermined weights, mathematical formulas and simplistic rules is not the answer. That can embed arbitrariness into the process, it can dictate inappropriate project sponsor selection decisions. Nor should least project cost be the sole driver of decision-making. That would inappropriately devalue or ignore other factors.

Our experience shoes that cost containment takes a variety of great diversity in form and substance. The proposal with the lowest construction cap may not even be the best proposal from a cost perspective. Least cost does not mean cost-effective, it does not mean least risk and upon closer examination, it may not even mean least cost for the life of the project. We believe that hardwiring cookie-cutter rules under these circumstances is inappropriate.

Planning regions should be able to holistically look at all of the facts and evaluate and compare proposals based on their merits and the specific needs of each project. In return, the Commission should hold planning regions accountable for following their tariffs, for running fair and transparent processes, for fully explaining the reasons for their decisions and the role of each of the selection criteria and basing their decisions on meaningful differences between projects. We believe that will increase transparency and allow participants to better understand why decisions were made in the end and instill greater confidence in the process. Thank you.

PRESIDENT MROZ: Mr. Chairman and Members of the FERC. It's good to see you all and thank you for having me today. When I was appointed to be the President of the Board of Public Utilities in New Jersey in 2014 I did something that some might not think to do, but I pulled out the statutes just to take a look and remind myself of what my duties were. What my responsibilities and obligations were so that I could remind myself but also just to remind what other audiences I took up the position.

It is, as you know, a role where we need to balance often inconsistent interests or decisions or requests. The financial viability of the companies who regulate safety and soundness of the systems, the planning in our state, the energy policy planning function and ensuring reliable service. All at just and reasonable rates. This balancing is what we do every day and at the end of the day, I need to make sure as I know you do in your role, to make sure that when you make decisions at the end of the day, the impact, the rate impact is what has been taken into account.

If for no other reason, at least for me, oftentimes when there is a rate impact, I'm the first person that gets the phone call from the rate payer or in many occasions from political figures that are calling on behalf of their constituents. So at the end of any process, I need to make sure that the decisions were made with consideration of cost because it will impact rates and therefore I need to be assured that those decisions were made and that the cost was appropriate or just and reasonable.

Now I come from a marketplace that's a deregulated marketplace so we don't have a direct role over transmission or generation, but I still have a very important role and our Board is very active in these issues. Whether it's focusing on an oversight of the activities of the planning, of the delivery of projects, the engineering, we need to know that they are being delivered in an appropriate manner. That's the role where I come in, in my Commission that I need to do.

I'm concerned from matters that we're involved in that cost is not appropriately focused upon, not just in any particular procedure. In fact, the term cost containment as I think you already know and most acknowledge is really a tactic for procedure. For my mind, what really needs to be done and maybe to refer to what Craig Glazer said, the prize here is to make sure that there is a sense of cost-consciousness throughout the process. Not just cost-containment in the procedures although that is a very important and I think required element.

So that sense of cost-consciousness is what drives me and what I think should drive the process for everyone, the developers, the RTOs, the companies that are involved and us as regulators. Now the methods that we can employ include elements and procedures that bring about effective competition that keep cost-consciousness in check and contain costs. So I know you want some specific suggestions and I have a few from both my role as the President of the Board of Public Utilities but my years having worked in engineering, working with companies that were developers and the construction industry.

So procedures such as having RFPs, they need to be specific and have informed cost estimates, not just what are referred to in the industry as "office estimates". The scope of work should be drafted in a manner that invites responses with engineering and permitting details and calculations. The scope of work should also provide the latitude to determine the scope of the project and then a selection criteria could be drafted.

Some RTOs have even looked at the use of a two-step process for the planning and scoping of projects and then the delivery of the projects. I've also seen that some of the RTOs suggest that they don't have sufficient resources to provide the technical expertise. In my mind, they could and should whether it be on staff or to have third party consultants as consultants or an extension staff as the engineers would refer.

There are a number of procedures that we can use to continue to ensure that cost consciousness is in place across the board and it meets the spirit of Order One Thousand as FERC had hoped. Thank you.

MS. SEGNER: Chairman and Commissioners, LS Power appreciates the opportunity to participate on the panel and provide our views on the state of the Order One Thousand process. LS Power actively participates in planning processes all over the United States and we are involved in the majority if not all of the regions across the United States. In implementing Order One Thousand as you know, the Commission allowed each region to devise its own competitive solicitation process and as you scan the country, the country has many different competitive models, ranging from a competitive process in California to a sponsorship model in New England and PJM in New York and a hybrid model in SPP which has bonus points for sponsoring a project, and a put competitive process in California in MISO.

There's been a learning curve for sure in each of the different regions to be expected but one thing is very clear from the last few years of experience and the one thing that is very clear is that the qualification process in each of the regions has been a success and what you had is in each of the regions, highly qualified participants. Formidable energy companies stand ready to compete for projects. Pre Order One Thousand there were fears that "two men and a laptop" would line up and try to compete for complex transmission projects that they were not qualified for but the qualification process in Order One Thousand has been a striking and significant success in that formidable energy companies stand ready in each of the regions and they are qualified and ready to compete.

With this foundation of qualification, because this is what you have in each region of the country, this is now the appropriate point to address the issue of cost-containment because the backdrop of this discussion is that in each of these regions you have highly qualified entities ready to compete for the customers and for the rate payers and for the various projects. That is the point in the backdrop that we now stand in the context of this discussion.

There are many critics as you know who will say that the Commission's policies of the last two years have not worked. We would say there haven't been enough projects that have gone out for bid in the various regions. Most of the regions across the country whether it's ISO New England, MISO NTTG, New York, West Connect and others have yet to complete their first Order One Thousand process. In stark contrast in PJM in California there have been many windows and they are rapidly and have done very well in implementing Order One Thousand.

So one action item is to address most of all the various and stark differences across the country and how Order One Thousand has been implemented and the number of proposal windows. So first of all you have qualified entities across the country that are ready to compete, in our view not enough competitive windows in many parts of the country and PJM in California have done, in our view, very well and where now the cost-containment issue is front and center of those regions because there are so many windows.

We would say a starting point for addressing cost-containment issues and cost-containment projects is looking at market efficiency projects in terms of getting the policy right there. The very basis of a market efficiency project is to relieve economic congestion and so in terms of where cost and cost caps should be significantly weighted in our view it clearly should be significantly focused and significantly weighted in markedly efficiency projects because that is the very definition of why a market efficiency project exists.

We definitely have seen some examples in some of the regions today where cost-containment and cost caps have been proposed in various regions, associated with market efficiency projects and in our view there's been inadequate focus on market efficiency and cost caps. Lastly, we would say that we do not support at this juncture efforts to standardize cost-containment and innovative rate structures. We think that cost-containment proposals will vary from region to region and from project to project because different projects truly are different and there's different types of project development risk.

We would be very cautious and weary of policies that would standardize cost caps across the board for this regard. That in turn though we would say that over time these issues will be addressed in terms of different forms of cost-caps. The Commission at this juncture should not standardize the types of proposals that entities can propose. The market is still evolving.

However in closing, we would say that once these terms and conditions are finalized and the various cost caps are proposed and the terms and conditions are finalized with the electing condition, the binding terms and conditions in a cost cap absolutely should be an integral part of entity's ultimate work/rate case as well as the designated entity agreement or ultimate awarding agreement as well. We understand that cost caps are absolutely legally binding terms and conditions, thank you.

MR. SHEEHAN: Good afternoon. On behalf of NextEra Energy transmission, I thank the Commission for the opportunity to speak before you here today and participate on this panel. The Commission eliminated the right of first refusals from tariffs so that transmission competition would lead to customer benefits including greater innovation and cost savings. Cost caps benefit customers through cost savings and certainty. Shifting the risk of cost overruns from customers to the developers equity shareholders.

In KSO and PJM, NextEra Energy Transmission and other non-incumbent developers have been selected in the competitive process in large part because of the cost-containment commitments in their bids. In implementing Order One Thousand, a few RTOs recognize the significance of cost containment in evaluating bids by including language in their tariffs and pro forma developer agreements with respect to the use of cost caps by developers. But overall in our experience most RTOs do not give sufficient weight to cost containment in these evaluations commensurate with the value it provides to customers.

NET recommends that RTOs use a transparent scoring system based on benefits provided in each proposal that reflect the adequate weighting for cost factors. Such scoring systems and methodologies are needed so that RTOs will fairly evaluate the relative benefits of competing proposals and meet the objectives of Order One Thousand.

Finally, NextEra Energy Transmission believes that RTOs should not define in advance which categories of cost are covered or not covered by binding cost-contained bids. Consistent with Order One Thousand's goals of fostering innovation in the transmission, development sector, bidders should be allowed to submit cost-contained bids reflecting the risk tolerance in various elements of transmission development. I thank you for allowing me to participate today and I welcome the further discussion on this topic.

MR. SMYTH: On behalf of Transource Energy, American Electric Power and Great Plains Energy, I'd like to thank the commission for allowing me to be here to speak today. Transourse was formed in 2012 specifically to compete for projects in the Order One Thousand space and we've been active in virtually all of the planning regions in the U.S. as well as the competitive processes in Alberta, Canada as well so we bring to the table some real world experience and hope to share that with you today.

We commend the Commission for implementing competitive developer reforms via the Order One Thousand rule-making. Competition for transmission development opportunities can and will result in significant benefits to customers. As an active, non-incumbent participant in the post Order One Thousand competitive solicitation process, we have gained perspective on which competitive dynamics are likely to maximize consumer benefits in a manner that's workable for developers, planning regions and the Commission.

Based upon our broad real-world experience to date, customer benefits are maximized to the sponsorship model such as that employed by PJM as compared to a competitive solicitation model for financial bidding. By encouraging developers to tap into their design experience and ingenuity to craft innovative solutions to an identified problem, the sponsorship model fosters a more creative competitive environment that will produce and efficient 21st century transmission grid.

While cost estimates and cost-containment are among the many factors considered in the sponsorship model, featuring cost containment as the deciding factor where project construction begins two to three years from project award creates an environment where little to no consideration of the increased risk of project execution is given. The savings from picking the right project under the sponsorship model are much larger than the potential savings from picking the cheapest developer for a single project and a bid-based competitive model.

While cost containment or fixed revenue requirements bids would seem to benefit consumers, each approach is fraught with challenging issues that may actually ultimately increase cost to customers. For example, the level of risk undertaken by developers with state processes and permitting challenges can create instances where customers may be worse off if projects are abandoned or otherwise financially injured. In addition, Order One Thousand did not change the regulated nature of transmission as it costs the service business.

Cost-containment still utilizes the cost of service framework where developers are able to recover the lower of their capped expenditure or their actual cost.

Cost containment ultimately shifts risks to investors and will ultimately result in driving up both the cost of equity and the cost of debt for projects. It's not clear whether consumers are left in a better position as a result thereof.

Further, fixed revenue requirement bidding is market-based and does not result in a cost-based rate and it's not clear that the level of competition is sufficient to produce just and reasonable rates. It is also unclear how a fixed revenue requirement bid would impact the rights of developers and customers under Sections 205 and 206 of the Federal Power Act. Voluntary cost containment as opposed to revenue requirement bidding seems much more manageable within the current competitive frameworks approved by the Commission under Order One Thousand.

In short, we believe that the sponsorship model offers the best opportunity to harness the benefits of competition for consumers. While cost containment may play a role in parallel with a sponsorship model, it should be among the many factors considered by the planning region. Regions should account for the limitations associated with both cost estimates and cost containment commitments made by developers for projects that are inherently 2-3 years from actual construction.

The Commission should continue to take a balanced and long-term view of these markets and continue to explore these and other issues raised by competitive transmission development efforts and adapt in its rate incentive policies to this new competitive model with guidance and feedback from stakeholders. Thank you.

MR. WILLIAMS: Mr. Chairman, Commissioners and staff, I am the GriLiance Senior Vice President of Engineering and operations and their chief operating officer. I want to thank you for the opportunity to provide GridLiance's views on Order One Thousand competitive transmission development processes based on our experience as an independent transmission-only company focused on addressing public powers and cooperative powers and desire for RTO investment opportunities.

Our operating companies and partners intend to compete to construct transmission projects in SPP, MISO and PJM. The goal of competitive transmission development processes should be to maximize the value to rate-bearers. To reach that goal this process, like any procurement process, must rely upon transparency, integrity and a practical and reasonable cost of participation. Companies that participate in the process must be confident that they will be treated fairly when bidding on a project.

By promoting competition through transparent solicitations, evaluations and award decisions, RTOs will build trust with stakeholders and develop healthy developer pools that perpetuate the cycle of robust competition that delivers the best value to rate-bearers. Recent RTO RFPs have demonstrated competitive transmission processes have the potential to provide tremendous value to rate-bearers. However, in our experience current RTO rules allow the RTOs too much arbitrary indiscretion in regard to qualified low bids.

In select higher-cost options with no corresponding benefits to rate-bearers. These and other barriers to full participation in the RTO competitive processes need to be eliminated, otherwise competitive entrants like GridLiance will likely limit their participation to the RTORPs where they will be treated fairly. In reasons where competitive RFP processes are used we would submit the following procedural reforms are needed to ensure maximum rate-bearer benefit.

First, cost and associated binding cost containment mechanism should be a deciding factor in the bid evaluation processes. Second, RFPs should incorporate as much as possible in the prequalification processes and limit the bid itself to actual engineering design and cost aspects of the projects such as the bid proposals are scored only on project-specific criteria that was not addressed in the pre-qualification process. Third, we believe the Commission should issue a policy statement adopting a set of uniform best-practices for RTO competitive solicitation processes for determining whether there can be a rebuttal presumption that the rate outcomes from a given RTO solicitation are just and reasonable.

A detailed description of our proposal for uniform best practices included in our preconference comments and just to close I'd like to remind the folks on the Panel here that our view is Order One Thousand was really about just and reasonable rates. So cost really does matter so having cost-containment or looking at cost as a major factor is important in determining whether or not we are providing just and reasonable service to consumers. That concludes my remarks and I look forward to our discussion.

CHAIRMAN BAY: Thank you. I want to thank all of our panelists for your comments today. I think a key question for all of us is regarding cost containment provisions is how some regions can perform an apples-to-apples comparison of proposals given that some will contain cost-containment provisions and others will not and even those proposals that contain cost-caps may vary in terms of what's included and what's not included. So, and this is really reflecting a comment that Tony and Collette made, but is there a need for more structure or uniformity with respect to cost containment and I know some of you already weighed in on that regard but I'd be interested in hearing your views with respect to that question.

MR. GLAZER: Mr. Chairman, I think you put your finger on it. It is a very difficult area for us but the bigger problem than just the doing the comparison is to me there is a giant "who decides" question and I really feel that cost caps in many cases have a regulatory element to them. At the end of the day, that choosing is really setting rates, effectively setting what we are saying is an acceptable level of cost that the customer ought to pay.

Yes, there could be a process afterwards and then a rate case but you know, effectively you are setting RTO in discussion or in a bid is setting rates, that's a funny place for us to be and I think it's not just a question of difficulty but a question of what's the right role for us versus a regulatory body to be honest. Some cases it's easy; cost caps are not the factor but in those cases where it's close then effectively we're setting rates at that point and that's what makes us nervous. I think on those we suggested a process to be able to come to you all to sort of certify that question to you all if we've got two competing proposals, if they're not close -- an easier situation.

CHAIRMAN BAY: Thank you Craig. Anyone else?

MR. IVANCOVICH: For starters, I think you know, in the California ISO the days of evaluating proposals with no cost caps versus those with cost caps is probably over. In our last competitive solicitation every project sponsor proposed a cost cap and the one before that all but one proposed a cost cap and the one that didn't was really not cost competitive. We work very closely with an expert consulting firm to evaluate cost. We basically put together an illustrative revenue requirements for all of the project sponsors, taking into account what's capped, what's not capped.

We run a multitude of scenarios and sensitivity studies to assess the various risks and differences. At the end of the day they say you can't really just look at simplistic formulas, cap levels very dramatically. The number of outs number dramatically and the scope of those outs, it's not just we have an out for force majeure. We've seen outs that include every cost beyond our control. We have an out for that.

Now, obviously that begs the question, what's the value of that cost cap? But it really runs the whole gamut. Folks even condition their outs. There's also a big difference in the number of items being capped. I mean, it's not just construction costs. It could be return on equity, it could be debt, it could be O&M for a limited term. It may or may not include inflation. It may or may not include AFUDC. Another factor I think you've got to look at I think is the sort of inherent cost characteristics of projects. They are not always the same.

Sometimes folks will have existing right-of-way that they could use. Others may have existing power positions that they could use. Others may be proposing to underground a proposal as opposed to overheading it which could increase costs. I think the message I want to convey is that there really is no simple answer to doing this. It depends on the specific facts of the cast and really getting down there and evaluating the differences between sponsors, what's the relevance in those differences, what's the significance and how much risk do they present?

MS. SEGNER: Two points. First of all, our view would be that yes, the regions need to develop the adequate capabilities to evaluate the cost cap proposals whether or not it's the financial, the legal, the resources to evaluate the capabilities whether it's in house or externally. The reason these capabilities need to be developed and why it's important, it's because at the end of the day the cost caps is what could bring significant consumer value and part of the reason that the Rover was removed in the first place in Order One Thousand was that there could be value to the consumers at just and reasonable rates. So building the capabilities, yes -- it will take some time. It will take some effort by the regions but in our view it's a very worthwhile function because building the capabilities relating to cost caps is what can bring this ratepayer savings home.

Secondly I would say that there are some good examples from Nesco in their filed comments as it related to cost caps. Nesco referred to their recent clean energy RFP that was issued in New England and in that clean energy RFP they stated that proposals including cost containment features such as fixed price components, cost overruns or other cost bandwidths to limit customer risk will be viewed more favorably. Essentially they use that as a general policy statement as folks could take into account when they were putting their bids together in the Clean Energy RFP and there could be some very good policy statement precedence that the Commission should also consider in terms of what Nesco has proposed in New England. Thank you.

CHAIRMAN BAY: Thank you.

ANTONIO SMYTH: Yes, thank you. I thought it was maybe a good time to talk about some of the real world experience that we've had when we talk to difference vendors and contractors when we go to negotiate and put forth a cost cap. We've observed a very inefficient distribution of risks that have ultimately driven the cost of projects up. So for example we will encounter in discussions with contractors that they will not want to take the rock risk on foundations when they are drilling and that will result ultimately because since we don't have cost assistance, we don't have site control. That will result in a contractor pricing in 100 percent of rock in the foundations when in reality that's probably not realistic when you go to build the project.

But again, they'll come back to us and say "well, you don't have the route so we can't, you know tell you that we're going to be safe on this. So we've actually seen some inefficiencies in creating these cost caps. Before we got to the point where we talk about these and you know implement them in the regions. I think we need to have the conversation about whether or not they're having the desired effect one layer removed from the acheoprocesses.

CHAIRMAN BAY: Thank you. Kim.

MS. HANEMANN: You can see right now most developers basically are feeling that they have to put in cost caps to have their proposal to be in the mix for consideration. You know, one of the things that I've said is there shouldn't be an overreliance on cost caps. You have to really analyze the project, the value of the project, the developer and the competencies. It's very complicated. Can you evaluate them? Are they economically reasonable, commercially reasonable and enforceable.

Like Antonio said, I equate it to my commercial contracts with my contractors building these projects and you find out how good your contract is, how good your caps are is when you get into a dispute time with them and that's where it has to carry through. I make the same parallels with cost caps so people have to understand the commercial basis of it and how dispute resolution would occur as well.

CHAIRMAN BAY: Thank you. Rich.

MR. MROZ: Let me just make an observation and it reinforces something that I mentioned in my opening statement I think it's coming through in some of the comments that were just made. Talking about several different issues all at one time. The cost containment cost and a cost cap ultimately is something that probably needs to be considered at the end of the process for a project is the scope. What is the scope? What is the solution? And often, there are several different solutions that are being proposed.

I think it's incumbent upon a process to identify the scope first and then that leads to at a later point in time the issues in and around what the cost is to deliver the particular solution. That's something that can get lost in the process if we're just talking about any cost cap and not determining what the scope of the project is from the get-go.

CHAIRMAN BAY: Thank you. So one other question

I have is, oh, I'm sorry. Noman?

MR. WILLIAMS: Yes, I think a couple thoughts, cost cap, cost-containment really is whose going to take the risk you know, in an uncapped or in a standard process the ratepayer takes the risk and then the company has to determine whether that was just and reasonable. We do a cost cap, cost-contained and the bidder or the builder is taking the risk and there's lots of risks to building. I've built lots of transmission over my career, lost of unknowns, even when you know the route, even when you know who your contractor is you have risks for various things. So if the developer is willing to take that risk that brings value back to the consumer.

The other part, back to some of the comments I made earlier, looking for transparency in the bid process that we want to know how things are going to be treated. I think it's only fair that the RTOs can expect that when there is a cost-contained bid, cost cap bid that it is very transparent how that's applied, how it's measured and then how it's enforced and that the bidder should be willing to live by their containment language.

So it becomes a contract, so they're taking the risk and what risks they're not taking or they're laying off would be very clearly defined in the process and that way the RTO could determine with the various different ways people are going to contain our cost cap bids, how those will lay together so I think it's coming on us when we say we want those opportunities and we don't want to have structure that we also explain how those cost-contained cost cap bids are to be applied. Thank you.

CHAIRMAN BAY: So I want to return to a comment that Craig made where you raised the risk of litigation. Certainly from my perspective I would not want Order One Thousand to create a cottage industry of litigation. I think that would not be a very good thing. So I'm curious to hear whether or not there is anything that FERC could be doing that could minimize the risk of collateral litigation.

MR. GLAZER: Great question Mr. Chairman. Here's one think that I'm concerned about is Order One Thousand is driving transparency, so it's driving us to put more and more things in our tariff. I get that. I understand the rationale for it. the problem is back to my P in planning, the problem is if you document every last aspect of how you make discretionary decisions, given the fact that this Commission's standard of review when it looks at a complaint is not "was the end result just as reasonable" was "did you follow your tariff?"

Well the tariff has such a level of specificity, it's a trip point. It's a trip point for the planners, it's a point where the planners almost at some point are going to feel they have to have their lawyer next to them before they can make any decision and planning is as much an art as a science. So I think I would suggest one place perhaps is we all have to sort of step back when we are trying to find the balance between transparency and specificity in the tariff with not so much specificity that we've taken away the judgment and discretion part of planning.

You should be able to look at whatever we do, the term if it was just and reasonable but we document every last jot and tiddle of the process, that to me is creating the gotchas that we're all going to have to deal with. That's one suggestion.

MR. IVANKOVICH: Again the ISO has won nine competitive solicitations. We are very fortunate that we've not had any complaints filed against us. It's not that we don't think about that but at one point I want to get across this balancing the risk of litigation with embedding in your tariff rules that are going to lead to wrong decisions, you know a wrong decision that can be corrected by litigation is much better than a wrong decision that's embedded by in your tariff and can't be resolved by litigation because it's the final rate and again we think you know just echoing Craig, there needs to be a careful balance here and at the end of the day I think it's the planning regions like the ISO, like PJM that have to go out and instill confidence in the process and be fully transparent, fully explain what we're doing and why and I think at the end of the day that will help cut down the litigation risk.

CHAIRMAN BAY: Thank you. Anyone else? Sharon?

MS. SEGNER: I think it's important for the Commission to consider as there's a discussion of litigation in terms of what really has happened over the last few years related to litigation. Yes, there was a complaint filed in PJM but the Commission dealt with it in three months. There's been very limited litigation and complaints filed to date on Order One Thousand processes/projects and yes there's been a lot going on related to the compliance filings on Order One Thousand but that's a natural part of tariff formation. But if you actually look at had there been a lot of complaints related to Order One Thousand projects, I think that you would see that's a very short list and the complaints were dealt with in three months.

CHAIRMAN BAY: Yes, Michael.

MR. SHEEHAN: I would say that it comments right on litigation but comments or controversy kind of become apparent in two different phases so in the competitive bidding model stakeholders inject and have comments about what is the project that should be built throughout the transparent stakeholder planning process. Then it goes out to bit and we've seen very few, no litigation at the end of when the California ISO is selected an improved project sponsor at the end of the process. People can be upset about not being picked but the report is a transparent reflection of a comparative analysis by the California ISO.

That's not to say that all bidders said the project that got awarded should have been the project that's going to get built. As opposed to in the sponsorship model, we see the complaints happen in the selection process because it's which project should have been picked and then why was it picked and there's not transparency in that process so we look for instance, it's a two-pronged approach on the sponsorship model. It's the project and also the project sponsor as opposed to any competitive bidding model, it's more the project.

CHAIRMAN BAY: Alright, thank you. Kim?

MS. HANEMANN: Just a real quick. I bring it back to the goal of FERC One Thousand is to get transmission built. I've built hundreds of miles of transmission in the most densely populated state in the country and it's not an easy business. It's about getting it built, not about litigation. It should be transparency of rules and people know how you're going to evaluate the process going through and I think that will, if there's transparency and clear understanding of that RFP process and the evaluation process, then I think that will help in terms of reducing litigation in the future.

CHAIRMAN BAY: Alright. Thank you. Cheryl?

COMMISSIONER LEFLEUR: Where to start. I think I'm going to start with the two different models of competitive transmission processes that we've seen. It's striking I think that the two regions, really the only two regions that have done a lot of successful windows so far; one has a sponsorship model -- PJM and one has the competitive bidding model. As I see with the sponsorship model certainly allows a more creativity and a broader range of proposals but perhaps a tougher selection process and harder to easily integrate some of these cost guarantees and so forth that we've talked about.

The competitive bidding is more structured. It's also very similar I think to what Alberta has done, more structured and easier to compare but perhaps loses some of that creativity. I'm interested, I think only one person really made a clear statement. Folks think that because we have all the other regions that haven't done this yet that might be looking at these examples, as we weight theses pros and cons, is one model better for customers in terms of getting. The goal is to get the best transmission project, the most cost effective that can be built I guess I'd start with the developers that worked in both systems but I'm interested in anyone's views.

MR. WILLIAMS: Well, I think really to get the innovation I think sponsorship model probably drives more innovation because you end up having the idea compete and then price is part of that process or cost is part of that process. so ultimately to drive the you know, what I would say the innovation or creative projects I think you see them come out of the sponsorship model a lot faster out of maybe you do the competitive bid model. I think both of them can get there but from the standpoint of driving the innovation I think the sponsorship model is probably there.

They both have their pros and cons. You can put cost-containment on in a sponsorship model you run the risk there of you may not, the developer may not be in a position to want to take as much risk there because you're still dealing with a lot more unknowns than you would be with a defined project in the competitive bid side of the model. So pros and cons of both, I think both can work but I think you're seeing a lot more success currently from a sponsorship model because it does drive a little bit more innovation at the front end and it's a project that is decided wins the day rather than the price and so the price or the competitive price.

MR. SMYTH: Yes. Thank you. We have actively participated in both models like I stated and I think we've seen evidence of the sponsorship model being much more powerful with respect to consumer savings as compared to the bid-based model. In a bid-based model, I think you're playing on the edges with respect to what you can do versus another competitor.

There are only so many constructors out there. There are only so many suppliers out there with equipment. There is only so far you can go on an ROE so you're really only playing on the edges with respect to saving to customers. I think that the creativity that the sponsorship model puts forth really results in some powerful savings. So I don't think it's cost.

MR. IVANOVICH: I think California would argue that it's a very flawed assumption that the sponsorship model automatically produces greater savings than the competitive bidding model. I'm sure our transmission planners would agree with me. Our tariff requires and Order One Thousand requires that every planning region look at the more efficient or cost effective proposal and identify those solutions and our planners do that before the competitor's solicitation process.

They would with stakeholders, they evaluate a variety of proposals and not just from developers but from various state agencies, municipal utilities, consumer groups are all in there, arguing on what we should choose as the model to be bid out for competitive solicitation. I would argue that our model absolutely provides more benefits because we are choosing the most cost-effective solutions in the planning stage and then we are bidding out that more cost-effective solution through a competitive solicitation to get those benefits on the edge.

We've had independents. LS Power is one who has come in with creative ideas during the planning stage and one of those projects, the Harry Allen El Dorado Project was bid out for competitive solicitation so I don't think we can automatically say that just because you have the competitive bidding model that you're not bringing benefits to ratepayers.

COMMISSIONER LEFLEUR: So just to follow up, are we miscategorizing? Do you think you have something of a sponsorship consideration and then followed by the competitive bidding? I mean are these not, they're not hermetically sealed.

MR. IVANOVICH: No we basically in the planning process it's you know, a collaborative effort between ISOS stakeholders and the ISO to basically sit and decide what we think is the best solution that ought to be bid out and if anybody thinks that you know somebody in California where there's a strong focus on cost that we can choose a high cost alternative and then think that somebody's going to be able to go to the California public Utilities Commission and get that cited, that's just an incorrect assumption. We need to look at what's the most cost-effective proposal in the beginning of the process and redo that.

MS. SEGNER: We would say a couple of things. First of all, as a general preference, LS Power prefers a sponsorship model. However, we see merits in the California model and we also see that the California model works and that there is room in Order One Thousand for regional differences. What I would say characterizes is there are actually three models nationwide. One is there's a sponsorship model. Second, there is the competition model in California, which in our view works as well and thirdly, there's the competition model with a defined point system, which is different than California.

Essentially MISO and SPP have competition model with a defined point system tied to various project characteristics which is different than California. So I would respectfully say there's three different models and in our view the model that is most challenging is actually the competition with the defined point system because right now the point system in MISO and SPP does not majority weight cost and so there is not in terms of in the selection process.

So if someone comes in with a cost cap, even for a market efficiency project in MISO or SPP, essentially the competition model doesn't reward the cost-containment innovation in SPP and MISO. Clearly its new insurance and others have won projects MPJM in California. The model MPJM in California is producing cost-containment proposals. The challenge is in the SPP and MISO models if anyone ever proposes a cost cap on whether or not there is really any credit for it in the model. That's where the tariff changes need to occur in those two markets.

MR. SHEEHAN: So our position would be every region, you know every project, every developer is unique. It's not a one-size-fit all approach to transmission planning that based on densely populated areas, rule areas, mountainous, desert -- transmission planning should be a one-size-fits all approach whether it be two big pictures, competitive bidding model or sponsorship model. It needs to be, every region needs to figure out its best planning process.

I think the real moral of this story is here, given if you go to the three miles, the hybrid that Sharon mentioned, every single project; there is an example of a project in every single model. That's delivered savings for customers compared to what the estimate was and what the binding cost has been. So it's delivering value for customers. It might be a little messy in certain regions but it's working for the benefit of customers.

MS. HANEMANN: Just to follow up on Sharon's point. She described the three models. I will give you a little different view of the MISO model versus how Sharon described it. Yes, the MISO model uses a point system where they have part of the points are the cost and the cost cap. I would say just as important as well is the developer's ability to operate and maintain those facilities for many, many years to come. The rigor and the design, the contracts, the assurance of delivery, the team that is going to deliver the project and build it and get it into service, so to me those are all very important variables when you're choosing somebody to build a transmission line.

COMMISSIONER LEFLEUR: Do you think there's a lot of unqualified bidders out there? That seems to be the kind of under -- I mean, because there's some folks who haven't done much of this and as I've said before building transmission is not easy. It's fun, but it's not easy. I want to probe in a different dimension and that's kind of standardization versus flexibility. We did let a thousand flowers bloom in the way Order One Thousand was written and in the compliance filings and I heard at least 3 or 4 people say don't standardize, it's not one size fits all. Yet, almost every single person made a suggestion that that suggestion would require some level of policy statement or standardization or best practice, you know, require something on market efficiency. Have a transparent scoring system. President Rose talked about standardizing certain aspects of the process and there were others.

So do you think we should put out some kind of policy statement standardizing something or pushing in some directions or just let this flow a little longer? Nobody ever wants standardization for the things they like but yet almost every change recommendation seemed to point that way.

MR. GLAZER: The short answer is yes. I think standardizations of buzz word, people will automatically say no, one size fits all. We all know the sort of sound bites but there are certain things that I think if we don't get our handle on we're going to crash and burn. Some of them for example is this question, it's not should there be cost caps. What about revenue requirement caps versus construction caps?

When you're dealing with a revenue requirement cap, the RTO is going to be doing this which we're trying to suggest we need to share this more but if we're going to be doing this, that's really difficult because then we are prognosticating on what kind of ROE, what kind of capital structure. Comparing an entity A that might have a cost cap with entity B that might not. Over the lifecycle of the transmission line, which is cheaper? That's a lot of assumptions about frankly what this Commission will do both when it gets the case and in the future so I think again sort of respecting our own missions and expertise, I would ask that you would clarify that that's in your lane.

We don't need us necessarily to be in that lane. It's tough enough to compare construction cost. I think that would be helpful and frankly reduce the litigation at least on that point.

COMMISSIONER LEFLEUR: I have a feeling we might go there in the next Panel on ratemaking. Anthony?

MR. IVANOVICH: Listening to this discussion I'm reminded of the adage from the old Supreme Court case that says cost allocation is not a matter for the slide rule. I would pause at neither is competitive transmission development. Again, we would urge against standardization. I think folks ought to be proposed whatever cost containment or other measures they feel are appropriate given the risks of the particular project and we can address those.

I think we would prefer to have guidance from the Commission on matters such as what do when somebody proposes a fixed revenue requirement and you don't know whether the Commission is going to accept that or not. You treat it as a cap subject to Commission action or not.

I think another area where we could use guidance is on rate of return. Somebody caps their return on equity, another entity doesn't. Yes, there is a risk that the person that didn't cap their return could have a higher, you know down the road, have a higher return on the equity but how realistic is that for an entity that has basically one project. If they're setting on a 10 percent return on equity a day is it possible that twenty years from now and inflation goes up that they're going to be given a 15 or 16 percent return on equity? I think some guidance on how we would handle that in the process.

I think a third item, where we would like guidance. Our decisional reports, we would like to post the cost containment measures of all of the project sponsors. I know when Harry Allen solicitation for the first time we posted the cost-containment measures of the winning sponsors but I think that was extremely beneficial but we've gotten push back on the folks that haven't won about publishing that information. I think we would ask that we be able to do that, that way we're being fully transparent in our decisional process and everybody can see that and basically everything is on the table.

MR. MROZ: Commissioner, I just want to clarify in my comments that I would not want you to think that I would suggest that my recommendation would be that you mandate or that you standardize this process across all regions. I think that conversation does point out, and I think people realize there are regional differences.

Secondly, my comments should be taken as just there should be guidance in the different phases of the development of projects and that's really what my perspective is because whether it's in the planning, whether it's in the procurement and the delivery of the project. I think they're all different and they have different elements than you have heard today, different aspects of how procedures can be implemented to contain cost in the different phases.

That's really my perspective is that all along the way of delivery of a project from the planning to the ultimate delivery, those procedures can't support or guidance can't be implemented.

MS. SEGNER: I'd suggest, we'd suggest four -- excuse me -- five main areas for policy guidance in this area. First of all, a directive to the various regions that cost caps has the potential to bring consumers benefits and so therefore the regions are instructed to develop the financial and legal capabilities in order to evaluate the bids. Because this is an important potential part of bringing value to the consumers.

Secondly, a clear directive to the developers that cost caps are not PowerPoint slides and that the developer should expect to see their cost containment proposals in their ultimate rate case and in their agreement with the RTO.

Thirdly, guidance -- specific guidance to the regions on how to weigh the cost cap versus the cost estimate when the regions are confronted with that decision. That seems to be the challenge in terms of evaluating cost estimates versus cost caps and so really providing more guidance to the region specifically on that.

Fourthly, guidance and a directive following what Nesco proposed with clean energy RFP related to market efficiency projects, that when related to market efficiency projects that cost caps when proposed should be decisive in the selection process with market efficiency projects and then fifthly in MISO and SPP, given the small waiting on cost in those regions there should be further Commission action related to whether or not costs are appropriately weighted in those regions given the creativity and the strong cost cap proposals that have been proposed.

COMMISSIONER LEFLEUR: thank you very much. I might have another question if we loop around but I doubt we'll have time to do that. Thank you.

CHAIRMAN BAY: Thank you Cheryl. Tony?

MR. CLARK: Thank you. So if Staff's goal was to make sure that we had a variety of opinions on the Panel I think they succeeded extraordinarily well. I've taken notes and it sounds like Order One Thousand is either partially a success, generally a failure, cost containment is either important, unnecessary or unneeded, should be flexible or very well-defined.

(Laughter)

Let me hearken back to some of the questions that were teed up in the agenda that the Commission put out. Although there's lots of disagreement that we've heard so far today, one area that didn't seem to be any disagreement at all is on this idea of transparency. However it plays out in terms of whether it's the selection process or what happens after the project is selected. There is a high degree of transparency in how that happens so there is general agreement on that.

While I'm very supportive of the comments of both of our planning regions have made with regard to PJAM and CAL so with regard to this concern about putting too much into the tariff and being too descriptive and inviting litigation. It's been something that I've been talking about for a long time under Order One Thousand which is my biggest concern is that the process becomes so overwhelming that we're blocking otherwise needed transmission projects that would just get built.

So I'm sensitive to that concern yet there must be some sort of middle ground of balance that we can find with regard to this issue of transparency. Because it does seem that if there is going to be transparency then there has to be rules of the road that everyone pretty well understands and knows about going in. I'm wondering if anyone has suggestions for us here today, certainly I'd welcome them in follow up comments, with regard to whether the regions should in advance define certain categories that should, for example, be exempt from cost containment where in looking at how developers structure their bids they simply say, "Look, these sorts of things are not the kinds of things that are going to be in cost-containment and can those things be defined or set to something that we can't define", number one.

Then number two, how proactive should the regions be in or maybe they are already. If they are in advance telling project developers here is how we are going to handle situations where there are cost overruns and being rather specific about how that's going to be handled in terms of the contractual language. Craig?

MR. GLAZER: Thank you, Commissioner. I wanted to first get to the 2nd question because up to this point we haven't talked about enforcement and I'm glad you brought that up because that's a really interesting issue and to me back to this sort of difficult who decides question. I'll give you the scenario. The project's moving forward so from a construction viewpoint we're pleased.

As the RTO it's getting done. But the costs are blooming. President Morrow is very upset. He sees these costs ballooning. We transparently are having the developer produce and present that information to stakeholders. He sees that information. He's upset. Who does he call? Does he call the RTO Board and say "oh, Mr. or Mrs. RTO Board you need to do something about this." What do we do at that point? Do I yank the project? Well from a reliability point of view the project is getting done. I don't have penalty authority over that. Do we do that, or does he file a complaint here at FERC.

Again, this sort of muddy area when we get into the cost caps been accepted, who enforces it? Who is the contract with? Back to my point where I think you have to sort of think down the road what is our turf and what is the Commission's turf because I can see this enforcement issue being very, very difficult so let me just stop there as one I've been thinking a lot about and I think we all need to think about who does he call and how does his redress get resolved?

CHAIRMAN BAY: Sure, thanks.

MR. MROZ: I would just agree with the suggestion that is a problem and certainly to not have a cost containment construct somehow, someway leads to those problems. We would, the states would, I know my colleagues in other states would be in the same position to raise concerns and then we would be coming back here to FERC after the fact to file a complaint and that is not a great place, quite frankly for the industry, the RTOs or for us as state commissions or for the FERC to be in.

MR. CLARK: Thanks. Kim?

MS. HANEMANN: There is a question about enforceability and once again I make the parallel to actually executing these projects and construction contracts. It starts with you know, what's your RFP, what's your scope of work and then what's your process through construction where you're managing change? You're going to have to figure all that out in terms of what is a change notification form, who's monitoring it through construction if somebody is using cost containment but it's very similar to a process you would use, a construction execution contract and how you're managing change.

I think you've got to walk the process all the way through with rules that everybody understands around how you've managed that and determine where your line is and where FERC's line begins with that process.

MR. CLARK: Yes, and so the question becomes I mean that's sort of contractually binding language. Is it too late for the ISO or the planning region, whoever to award that out after the project has been selected or does that need to be done more transparently in advance through the planning process?

MR. GLAZER: The way it worked in the artificial island is that we entered into a designated entity agreement which contained the cost cap language. We couldn't take it just at exactly as it was filed because every project there were little changes that were made. We put that in. This part of the process I think actually worked. You had us file that with you. There were protests -- and others to it and then this Commission approved it.

So I view that as almost then at that point you have put your stamp on it. The only oddity at that point is it kind of shifted the burden of proof because my board had already approved it. At that point if PSIG or somebody wants to challenge it or a consumer advocate wants to challenge it, it's almost a fate accompli, I'd have to go back again. So but I think the process was a good one, I just think the timing of it -- but is it worked out up front? It is in the sense that we have to sign a contract.

Again, a little strange when I'm signing the contract on behalf of the load for this thing which is effectively what I'm doing with regard to the cost cap. But that is how it works.

MR. CLARK: Anthony?

MR. IVANCOVICH: Yes, at the California ISO we basically allow project sponsors to voluntarily propose whatever cost containment measures they want. The measures proposed by the winning project sponsor get reflected into our approved project sponsor agreement. We're not negotiating them after the fact. We're taking the binding commitments they made, putting them into our contract.

I think it's that expectation that that contract be enforced. If not, then the cost containment measures are illusory, the basis for our decision basically gets undone. I think it needs to be enforced or else it's going to basically undermine the entire competitive solicitation process if it's not.

MR. CLARK: We'll start at Noman and then just go down the line from there. I'm not sure who had their tin card up first.

MR. WILLIAMS: Thank you. I look at cost containment would be a contract, just what Anthony said. I mean it's a contract between the developer and the region to build underneath whatever containment measures they have but I also look at how do you manage the ones that aren't cost contained. So you look at SPP. SPP has a bandwidth that they look at and if their projects deviate outside that bandwidth there is a review by the RTO and the Board has to either approve or disapprove of everyone outside that bandwidth.

So you almost have to balance between what normal project cost measures are and make sure you are tracking and not seeing a lot of overruns and then also look at how you do cost contained. I think, again, cost-contained would be contractually bound to do something unless there was an agreement by all parties that there was something that created a significant change in circumstance and the RTO said we got to do this, we got to look at this a little bit differently.

But again that changes the project potentially that was awarded underneath that as opposed to projects that get awarded under the normal process that have a bandwidth and they just continue to escalate in cost and the only thing you do is either deny it, remove the MTC and the SBP vernacular or you just approve additional cost and it just keeps on going. There is really no check and balance there other than just saying "yup, we've got to build a project and it's now fifty or sixty or seventy percent higher than what we originally thought it was going to be."

So you can look at it either way but you need to know up from exactly how you are going to measure those and then what the stepping points are in the process of building the project and if you get to a stop point or a view point how you are going to be treated with that project and at cost-contained, my view is it's contractually bound.

MR. CLARK: Tony?

MR. SMYTH: Yes, thank you. We support an optional process but with clear rules regarding and transparency regarding what is going to be scored and how. We think that's very, very important. It think it's difficult to standardize anything, even in the Alberta Model where it's very, very rigid, there is still a multitude of items that you can come back for and seek relief on after the fact so I think that points the difficulty of building when your infrastructure whereby you don't have site control, whereby you don't know what's going to happen and it's very, very uncertain but either way I think the costs go up when you're in a situation where it's uncertain whether or not you'll get recovery when and if you run into those uncertainties.

MR. CLARK: Michael?

MR. SHEEHAN: When using our, NextEra has been fortunate to have been awarded two projects in the California ISO so we view our approved project sponsor agreement, it is a binding obligation on NextEra energy with the California ISO. It was filed that agreement, contains cost, as Anthony said, has the cost-containment provisions in it, it was filed at FERC when we filed for our Section 205 application and it's important to note, it's not a snapshot in time.

We have ongoing reporting obligations with the California ISO. Every 90 days we file a construction plan status report. From the day we were awarded the project through construction. That has milestone updates, that has regulatory updates, and it's got budget updates. That plan if filed with the ISO and shared with the interconnecting transmission owner for an update on the project because it's germane if this project is going to be viable or not.

It's also important to note that it's not NextEra's sole discretion to increase costs. There is language in the Project Sponsor Agreement that if we discover a cost which is outside of the cost cap and may increase the cost above the cap that we need to consult with the ISO before we incur such costs. NextEra and the ISO will determine with that increased cost if the project is still viable and if so NextEra will come up with a new cost estimate or add it to the binding cost cap and amend the agreement.

So it's not in a vacuum. There is checks and balances here and there is robust reporting obligations from the developer.

MR. CLARK: Thanks. Let me follow up quickly on my first question because I think we mainly got to my second one which was this idea of enforceability and the responses were helpful. With regard to this first question about whether the region should in advance be exempting certain binding cost containment measures. Maybe I'll ask it this way, is that for the regions to do or is that something that the Commission should be looking at because it gets so into the idea of rate setting that you had talked about Craig and which really leads to our second Panel discussion which is that section between FERC rate-setting and cost-containment measures and ensuring that something that is committed to over here doesn't end up over here and rates getting recovered just in another way.

So I'll tee that up to anybody who wants to discuss. Is the idea of what can actually be contained in cost containment measures, is that something for the Commission to define? Should we be defining it or is that something just best left hands off? Sharon? I'll go to Sharon first and then Craig.

MS. SEGNER: We would say that really the market should decide at the proposal level which costs are excluded from the cap and what is in their cap. It's their proposal and that's what they're submitting to the region. So we would say initially it should be the marketplace of ideas and of proposals that come in in terms of relating to the cost gap. It's the regions' role to essentially develop broad capabilities to evaluate the financial and the legal aspects and doing the review of the cost cap as a preliminary rule in their evaluation process.

But ultimately it's the Commission's approval of the DEA and the rate case and the selection process and ultimately the Commission has the ultimate oversight over whether or not the region correctly ran the process, but the regions absolutely need to develop the initial capabilities. They are not, we would not agree that the regions are of a sudden becoming regulators. The Commissions are essentially developing the initial review. But ultimately it is the Commission's review.

MR. CLARK: Craig.

MR. GLAZER: Commissioner, I would argue that you've effectively done that. You probably did it for different reasons but when you said that upgrades go to the transmission owners' projects allocated in a single zone you have effectively said that we're going to use the existing regulatory rate-setting process as the way to police costs on those. So I think you kind of back-doored it. I don't think it's a bad thing that you've done that.

We've got ourselves in a little bind now, a case in front of you to try to get out of this sort of box that we find ourselves in, we're putting everything out. I think you've effectively done that by virtue of saying you know, there's a certain class of projects that you want to just go to the TO. They're smaller projects. We can argue if they're too large or not, that category but effectively by doing that you're saying just use the existing regulatory process. We don't need cost caps because there's no competitor in effect.

So I think you're there already and for the smaller projects I would argue that probably makes sense.

MR. CLARK: Thanks, anybody else?

CHAIRMAN BAY: Thank you, Tony. Collette?

COMMISSIONER HONORABLE: thank you, Mr. Chairman. Thank you all for your comments and your points or view and most of all your candor because you really shed light on how cost-containment is working in various regions throughout the country and this is a great time for us to take a look at whether this is an appropriate time for additional guidance from the Commission, if so -- how much?

Me too, I mean Craig I appreciate your concern. You don't want to be a regulator and we don't want to be heavy-handed here. I think that cost caps can be a very useful tool in keeping costs down for consumers if they in fact keep the cost down. So we will talk about that another day I suppose. I greatly appreciate Tony's questions regarding enforcement because we don't want this to be a runaway train and I especially appreciate Michael's talking about the process of the reporting and the check and balance of keeping an eye on costs.

We have to keep in mind the main thing and that's to get infrastructure built, to ensure reliability affordably and making sure the developer is able to at a reasonable rate and has an opportunity to earn a reasonable rate of return and that we take into account risk as well. So it is a balance.

A couple of my questions have been answered as we've gone through the Commissioners' questions but there is one that I think I've heard glimpses of and I really want to get to the heart of if not best practices, sometimes I hate to use that word, but practices, better practices. I've heard some of them today. For instance, from LS Power, the ways in which regions are weighting costs and the fact that we need to take a look at that and I want to ask you who in your opinion is doing that well. You mentioned a couple that maybe we could work on that.

Mr. Ivancovich, it seems that your work is going well if we take a look at the fact that we don't have as many lawyers coming here --

(Laughter)

About your processes and maybe it would be better for some of the developers who work in Cal-ESO to tell us why that is. That's what I'd like to know. What is working so well that it's efficient and litigation free or there is minimal litigation. I say that as a lawyer to the many lawyers in the room. And then, going back to Mr. Sheehan's point about enforcement. So it seems as though you think that the enforcement mechanism or process in CAL ISO is working well. Are there others that are working well? So I wanted to ask that pointed question. We've heard about concerns for sure, where are the glimpses of hope and light that could be replicated by our colleagues around the country? Yes?

MS. HANEMANN: I think it's just too early to tell. I mean where you think where we are in actual execution of these projects, I don't think we've gotten to that point of maturity where we've tested it really.

COMMISSIONER HONORABLE: And I greatly appreciate that. Time certainly will tell. Anthony?

MR. IVANOVICH: I mean, in terms of the CAL ISO it has all the audits, it hasn't always been smooth sailing. It was you know, difficult to implement at first but we've learned a lot and basically after every round of competitive solicitations we conduct our own sort of internal lessons learned process to look at it. What could have gone better, how can we improve the application, how can we improve the decisional report?

We recently completed a stakeholder initiative where we made some commitments you know to be more forthcoming in the decisional report, to give better explanations of why we made decisions. We also beefed up our application in terms of the information we seek for cost but you know I think at the end of the day you have to be fair. There's no magic formulas, you just have to be fair.

You have to look at all of the facts and fully explain your decisions. What are the differences between project sponsor. Why are they important. You know, what benefits and risks do each of the projects propose for you and again, you've got to look at all of the facts and you've got to explain it really well. Again, I think looking at fairness we have five project sponsors that have lost competitive solicitations and those same five project sponsors have won competitive solicitations.

I think you've just got to look at the individual facts of each one and just really get down, I hate to say it, get your hands dirty and really go through the facts which is why we're so strongly opposed to any types of mathematical formulas or anything like that because we think it's going to imbed bad decisions and we could get numerous examples of why we think that's the cases but I think first and foremost you've got to establish integrity and credibility that you're going to be fair in looking at this.

I hope we've accomplished that, we've been fortunate so far with no litigation and it's certainly our commitment I think to manage this with integrity and to be fair.

COMMISSIONER HONORABLE: Thank you and one of my questions for you would have been to talk more about your process but you've done a great job of that through this panel. I echo what you've said and certainly litigation has its proper role because it's an attempt to have a dispute resolved in a manner that is open and transparent where there are impartial arbiters over the facts that you have mentioned, the law and applying policy as well to reach the proper result that is in the public interest. I don't want to suggest that my goal is to eradicate litigation because that is how we resolve our disputes in a civil society.

MR. IVANCOVICH: I think another important factor is that you issue decisional reports that project sponsors can actually look at and learn from that going forward and there's, we've noticed by some of the project sponsors that have participated in a number of competitive solicitations. They've learned their lessons as well and have modified their proposals going forward to make them stronger after having getting dinged for certain deficiencies and I think that's what makes the process work well when people can learn and improve their process and make it more competitive going forward.

COMMISSIONER HONORABLE: Indeed, and then they win projects as well. Sharon?

MS. SEGNER: I would say that both PJM and California have in our view figured out how to make cost caps enforceable and the reason that we say that is because in the awarded projects in PJM and California that all have cost caps associated with them, essentially the entities propose the cost caps, the cost caps became part of the Project Sponsor Agreement that was signed with the region, or in PJM the Designated Entity Agreement was filed at FERC.

Secondly the cost caps ultimately became part of the rate filing as well, adding another layer of enforceability. And of course in these Designated Entity Agreements or Project Sponsor Agreements in PJM in California, if the developer breeches the material terms and conditions in the designated entity agreement the developer could lose the project. So there's real enforceability right there.

In addition, there's real enforceability with cost caps because it's in the rate case so what the developer is dealing with is that they are in breach of the cost cap ultimately what's in play is both the project and the rates. That's a lot. In our view, the PJM in California has figured out how to make the cost caps enforceable and not just a PowerPoint presentation. In terms of other regions what they're doing as well, we've noticed in particular that in New York while they haven't had as many windows and they are not quite as far ahead as PJM in California in actual number of windows we certainly have noticed in our discussions with the New York ISO they do a lot of looking and learning what's been going on in PJM especially as relate to cost caps. They certainly have been very watchful of all of these market developments.

Also, we've noticed that in New England with Nesco that they've had several workshops related to how cost caps should factor into the selection process in New England and we see the potential for some very positive consumer policies potentially coming from New England driven by some of Nesco's initiatives.

COMMISSIONER HONORABLE: Excellent. Thank you for mentioning it. Michael?

MR. SHEEHAN: Well, responding to your question Commissioner regarding what's worked well from a transmission developer perspective in California, I think big picture is when the rules are known and the methodology is consistently applied business functions best. What you have in the California ISO is a list of 20+ selection criteria for which the project will be evaluated and the project developer. Before any project is bid, the California ISO identifies key selection criteria that rides or should be given weight above all the others.

That's known. It's transparent. The market can respond to that and craft its proposal accordingly. With that then is the feedback and as Anthony has mentioned the robust selection report that says where did I stand versus my competitors in the world. You might not be happy where you wrapped up but you're going to know. Did I score well in engineering or financial resources? Was I off on land acquisition? Was my engineering construction costs high? Did I have too many carve-outs in my cross-cap? All that is in the report.

So at the end of the day, that's what's driving the process and making it work well and you're getting repeated bidders coming back to competitions in that market because it's clear, transparent, consistently applied and you're getting feedback.

COMMISSIONER HONORABLE: And by the way, I want to thank GridLiance for your submission because you ticked off quite a few, both in your comment and today about some of the things that you think are best practices but please proceed.

MR. WILLIAMS: Thank you. Maybe what I'll, here's maybe what I don't think are necessarily best practices because we've got some limited experience. I think we would agree that California because of the way they've structured it probably provides the transparency up front which gives you the ability as a participant to know where your focus should be or how you're going to focus your bid, which is a good practice.

I think some of the concerns we have maybe not best practices is the lack of transparency or lack of knowing how you did. I mean, if you're -- going back to construction side, if you're a construction contractor bidding on a project and you don't win, you like to know why you didn't win or what were you failing in. I think in some cases, at least in our experience at this point, it's not been very clear of why. It was ambiguous so taking the ambiguity out I think would be something to work forward to, give it a little more clarity.

Even for the folks that don't win, at least you know where you're falling down. I would agree with Macaulay down at New Jersey, we're still in the infancy in some cases. I think you've got the two left and right coast RTOs that are moving the process along and have a lot more experience with the middle of the country still in its infancy and you've got others that are still embryonic really. We've got to get more projects out. I think that's really the one issue that would bring out is that we've got a lot of planning going on but there's not a lot of competitive projects coming out of that planning process. That's a concern.

How do we know the process is going to work if we don't run the process? So getting more projects to a competitive position will tell us whether or not we are going down the right path or not and where we need to fix it. Thank you.

COMMISSIONER HONORABLE: Indeed and I too acknowledge that it is certainly early but you guys have heard me say this before, being from the South when we know better we do better. Just the mere fact that we're all sitting around having this conversation on a beautiful Monday afternoon brings really an illumination to the ways in which we can improve our work so I want to thank each of you. Thank you Mr. Chairman.

CHAIRMAN BAY: I'd like to thank our panelists and with that we will take a break and resume at 3:15. Thank you very much.

Break 2:57p.m.

Back 3:20p.m.

CHAIRMAN BAY: So we now turn to our second Panel examining rate-making issues associated with cost containment provisions and that result from competitive transmission development processes. I want to thank all of our panelists for being here today and we will start with Ed over on this side of the room.

MR. TATUM: Thank you much. Delighted to be here. Ed Tatum, American Municipal Power. I got there about seven months ago to help them out with transmission and the comments today I'm offering are my own and may not reflect the official positions of AMP or its members, but there you go. AMP views this conference as part of the Commission's continuing effort to enhance the quality of open-access service, at the benefit of consumers. We are enthusiastically supporting everything that you've done so far. We've had a lot of progress. Much more needs to be made and this is a great opportunity to continue to address some of those issues.

We are a transmission-dependent utility. We have approximately 1.9 gigawatts of a fuel-diverse generation portfolio but at the same time we depend heavily on open-access service over our facilities that are owned by others. We have a 133 members, 9 states, 15 different transmission zones and two RTO regions. Our resources meet about sixty percent of our needs and we're heavily dependent on the RTO markets so in a nutshell transmission is a huge factor for AMP and a huge part of our cost structures.

Before we get into details of our discussion I have four points I'd like to raise. First, recent history has shown that rate incentives are not really necessary to encourage transmission investment. EEI correctly points out the transmission investment has been on the upswing for the last several years for a number of reasons, having nothing to do with incentives. In fact, we've seen in recent years the number of companies who have pulled out of merchant generation facilities where the returns were uncertain and redeploy capital towards regulated business sectors, especially transmission.

Second, no one should view cost containment provisions as a panacea, partly because this trend of a container has not really been tested yet. We need to know, we know of many non-competitor projects whose final cost widely exceed the RTOs original planning estimate and we still feel that something the Commission ought to think about examining perhaps in a separate docket. But for our purposes today, the point is the developers who win a project should be required to live with the cap if actual cost turns out to be higher than expected.

Third, because the actual risk of cost exceeded in construction cost cap is real, we should expect the developers will do what they can to hedge the risk. In the end though the cost of those hedges eventually will be recovered from consumers and if a large number of developers build cost-containment into their project proposals and factor related hedging costs into their bids, all votes will rise and the overall cost of transmission for consumers necessarily will go up.

Simply put, cost-containment provisions aren't a good deal for the consumer if the cost of the developers hedges or even the impact on developers' borrowing cost wind up being greater than the construction cost kept out. I'm trying to read this -- am I out of time or can I have one more point to make? May I?

(No response)

I'm going to go ahead and make it. Last apparently means least so thank you for that. The fundamental purpose of the Federal Power Act is to protect consumers and this is not a platitude. It's what the Federal Courts have said time and again in applying the Act. That purpose would be seriously undermined if the Commission were to adopt the presumption expressed or implied at the cost of a transmission project selected through a competitive process are just unreasonable.

In practice, such a presumption would effectively shift the burden of proving the justice and reasonableness of rates away from utilities and impose on consumers the burden of showing these costs are unjust and unreasonable. I was looking for glimpses of hopes and light. I think the glimpses of the hope and light in order to address this is by continuing to take the Order One Thousand process and applying the Order 890 Planning Principles to make sure we have as much transparency. The gentleman from California was talking about everyone at the table knowing exactly what everybody was doing.

I thought that was helpful. But until we get to that point we think there is a lot more effort needed there. We think the rebuttable presumption should not be pursued. I look forward to your questions.

CHAIRMAN BAY: Alright. Thank you, Raja.

MR. SUNDARARAJAN: I do know that I have a unique last name so please therefore call me Raja and I won't take that very personally also.

(Laughter)

I do like to thank the Commission for providing the opportunity and providing a particular perspective in terms of this unique topic. As we all know AEP user transmission is one of the nation's largest transmission subsidiary of transmission in all of the United States. AEP and its transmission holdings subsidiaries including operating has eleven operating companies, six transmission-only companies and the joint ventures and influence the entity that is solely created for Order One Thousand.

We actually think that the former rates that currently are today have the mechanism to incorporate all of the flexibilities and the cost containment bids the Commission is thinking about. What Craig was talking about is the keys to maintain what's working. In our opinion the former rate concept that the Commission has provided and embraced and provides a significant clarity to all the investors and the equity investors and the rate-holders, provides a significant amount of transparency in terms of how the regulatory contract works. The cost-containment element can be built into the formal rate contract.

Under the current policies the developers have the flexibility to find the terms of the cost containment bid and exceptions to the cost-containment bid. It can be clearly stated in the existing former rate construct the fact where there's AEP Subsidiary companies including Transource has bidded former rate contracts which are up to rates and basically provides an element where the cost of service rate is being calculated and at a discount to premium cost of service rate being set based on the cost of cost-containment bid that we'll be filing for the Commission. So we believe that construct lends well into this space without a significant change to the former rate construct.

The one other thing that I will talk about is any time when there is a meaningful cost-containment mechanism there is a risk factor between ratepayers and to these, whenever there is a risk transfer and clearly one would argue that the competitive transmission projects are incrementally more risky than the non-traditional cost of service based project because of what it takes to secure the project. Making that the risk transfer can be litigated on a two primary basis.

The first one being is the Commission providing significant clarity in terms of what incentives the developer can secure, whether it is incumbent or non-incumbent for these projects so that they can crack these bids in a more efficient manner. In absence of obtaining clarity on what incentives that the project is authorized, it becomes significantly difficult for the developer to propose projects and to especially tailor the cost-containment mechanism uniquely for that project.

The second method obviously is the project developer takes the risk of coming back and later securing incentives once the entity is designated and in our opinion the former approach of the Commission providing clarity and incentives predominantly non-ROE incentives would go a long way in terms of providing us effectively in terms of wrapping these bids and submitting these bids in a more efficient manner with significant constraint on the cost-containment mechanism.

The last one I will talk about is the concept of fixed APRR. If the Commission were to consider allowing fixed APRR we fundamentally think that departs significantly from what Order One Thousand's space was. We thought the Order One Thousand's space does not change the regulatory mechanism of the Commission. We think still think that these are regulated transmission assets and a fixed APRR mechanism that both exhaust the capital cost-based bid provides a significant departure from that Order One Thousand space it initially was contemplating for.

With that I have, those are predominately my comments. I'm open to any other questions that you may have in the future.

MR. HUGHES: Chairman and Commissioners, I appreciate the opportunity to participate on this panel. I'm speaking on behalf of ELCON which I am President and CEO. I am also speaking on behalf of eight regional and state industrial consumer groups that joined ELCON in proposing a petition for declaratory order filed by ITC Group development last year. Transmission costs have become the most uncertain and fastest growing component of electric rates. U.S. Manufacturers are generally skeptical in all cases the benefits succeeded the costs.

Nonetheless, rate-setting based on competitive and efficient electricity market is extremely important to the economic viability of the U.S. Manufacturing community. As a representative of consumer interests, my objective is to explain how cost containment constructs and various forms of incentives when not properly implemented can distort competition and increase cost to consumers.

The main point I want to make is that using competitive practices such as a competitive sourcing and auctions is an expected business behavior of any unregulated or regulated entity, not the exception that needs to be subsidized or promoted with incentives. Nor in the case of relatable entities should there be a rebuttable presumption that any competitively bid investment or expense be freed from any ongoing regulatory scrutiny.

Cost-containment is the same and begs the question, is the lack of cost-containment the expected norm under the Federal Power Act? I think not. The Commission is perhaps unwittingly complicit in creating an investment environment in which nothing gets done without some form of incentives. In reality, these incentives are subsidies that only create the illusion of success. Success to promote responses by independent transmission subsidies to promote responses like independent transmission companies through the competitive solicitation mandated under Order One Thousand do not create competitive markets. Easy money does not promote innovation.

At best, they negate the cost-savings if any that might be achieved by auctions for soliciting transmission projects. At worst, they simply impose added cost to what has to be recovered from consumers. The primary purpose of the Federal Power Act as Ed spoke of moments ago is to protect consumers, not to protect transmission project developers from risks associated with their voluntary choices to submit binding bids.

Transmission project developers should not be allowed to shift risks from consumers by severely limiting rate payers, substantive and procedural rights and abilities to protest future transmission rates in the false name of cost containment. There's no way Section 219 can be read to encourage this. In particular we strenuously oppose any binding cost-containment construct that would have granted the transmission project developer the extraordinary incentive of Mobile Sierra protection, locking in rates for forty years or so and precluding future claims that rates are no longer just and reasonable would be detrimental to consumers and an aggregation of the Commission's responsibility under the Federal Power Act. Transmission project developers can and do condition their bid on conditions that would otherwise trigger rate increases. There are many reasons to do so, some good, some bad that require regulatory scrutiny on a case-by-case basis. Rate payers should always have the benefit of lower bid price or should conditions change in the future, cost of service plus reasonable rate of return.

The appropriate FERC action should be to continue case-by-case review of the need for any new incentives for other special rate treatments and that includes a determination that consumers receive benefits in their bills. Thank you again for this opportunity and I look forward again to the discussion that follows.

MR. HARVILL: Good afternoon. I'd also like to thank the Chairman and Commissioners for allowing ITC to present its positions on the questions that were posed to us in advance at the Technical Conference today. My name is Terry Harvill and I am here to represent ITC Holdings. As a foundational issue, I'd like to note that ITC supports competitive transmission development, however the current Order One Thousand process is fundamentally flawed. At its core there's a disconnect between the Federal Power Act's cost of service regulation and the competitive construct created by Order One Thousand.

To that end, ITC's petition for declaratory order highlighted the issues where additional guidance is needed to make the bidding encouraged by solicitation workable. We are pleased that the Commission has seen fit to provide this forum through this technical conference to address those issues. My comments will be specific to the bids in cost containment but I would like to preface my statement today by clarifying there are many other issues impeding the success of Order One Thousand today.

Improved bidding, while important, does not solve the solicitation process problems including concerns with project evaluation. To begin the Commission's policies must address three important issues: number one, the integrity of the process; number two, cost containment and how to make it work effectively for all stakeholders and three, regulatory certainty for customers and developers.

As explained in this petition, we understand and respect the Commission's need to insert just and reasonable rates. To that end, ITC has suggested only bids submitted through a competitive process which the Commission can review only on a case-by-case basis for each winning bid be deemed just and reasonable. If the regional solicitation processes are not competitive then the Commission must continue traditional rate of return regulation.

ITC supports the establishment of criteria for judging whether given the regional stakeholder process is competitive to avoid applicative processes that are time-consuming and costly. Those criteria could be used to create a rebuttable presumption whereby our region's solicitation process is deemed competitive and stakeholders have the ability to challenge that presumption for a particular solicitation.

A determination of the solicitation process' competitiveness can help shorten the process and remove uncertainty for developers constructing bids going into the solicitation process. Inherent characteristics of a solicitation process should ensure that any one bidder does not have significant market power. To the extent that a selected bid contains a cost-containment mechanism, those cap costs should be considered just and reasonable for rate-making purposes pursuant to the rebuttable presumption of a competitive solicitation process, save for any challenges to the competitiveness of the individual solicitation.

I'd like to note here, it's important to note we haven't heard the word "symmetry" yet today and I think it's very important from both a customer perspective as well as a transmission development perspective that the risks that we talked about and the transfer of risks between customers, developers and other stakeholders recognize there needs to be symmetry on the part of all involved.

With respect to cost containment mechanisms, cost is just one of the many selection criteria using all FERC-approved Order One Thousand solicitation processes. We've heard earlier today many established developers have comparable experience, cost has become a primary differentiator among what is typically a large field of developers. This is particularly true in regions that employ a competitive solicitation model rather than a sponsorship model which allows for differentiation of the project solution.

Bids that include a 40-year revenue requirement, development to a competition based on forecast data that's not binding absent of cost-containment provision. As a developer with experience in many regions, ITC has observed the challenges of implementing cost-containment mechanisms are greater in regions that require a long term, full revenue requirement debt. I note that customers are typically more significantly impacted by a project's cost than a developers rate of return.

Thus, it may be appropriate to reevaluate the benefits versus the complexity of a process that seeks to capture both elements in debt.

MR. TOBENKIN: Please try to conclude your remarks, sir.

MR. HARVILL: Sure. On a final note, the Commission has frequently articulated its goals of incenting transmission investment and lowering cost. Transmission investment can and does lower the cost of power to customers by providing them access to lower cost power. However that should not be extrapolated to mean that the lowest cost transmission project in any competitive solicitation is always the best solution. Further, a process that pushes returns too low may in fact reduce the needed investment by making project opportunities unattractive to developers. Thank you.

CHAIRMAN BAY: Thank you, Terry. Craig?

MR. GLAZER: Thank you. I don't have any Steve Covey quotes for this Panel but let me instead pose a scenario where I think the rate case model may need some reform given cost caps but let me give you a sort of a scenario here.

Let's suppose a situation where the RTO chooses developer A based on their cost cap. They reach agreement and they have selected developer A. A consumer advocate comes along and says "you know what, the RTO gave the store away. That's too high for a cost cap, the exclusions are too many. We don't think that's just and reasonable." The consumer advocate comes here or the developer comes here and the Commission says "you know we don't have any ownership of what that RTO did. So we are going to look at this thing fresh", as you should and let's say you agree with the consumer advocate. The cost cap was too high, too many exclusions, it was not worth the paper it's printed on and you do one of two things. You either send it to an AOJ or you reject it, okay.

So that happens, then the developer says "wait a minute, wait a minute. The Commission is rejecting my cost cap? I'm not going to go forward and build this project otherwise. There's too much risk." So now you've got a little bit of a standoff here where the Commission has said "we don't accept this cost cap". The developer said "I ain't building it without this cost cap, without this level of risk and these exclusions and there's a standoff.

In the old days the transmission owner would have to just build it and live with the results. I'm not suggesting we go back to those days by any means. I think the competition has been very helpful but I think all this drives for me is we've all got to sort of think about, the model has to be different. The timing of Commission review, the timing of Commission action, when you review the cost cap, how quickly your process to review the cost cap to get everybody's concerns and how do you do that all when the RTO's already made a decision and yet there's some due process that's required here.

It was easier in the old days, it's tougher these days but I think we have to sort of think about and perhaps perform the rate-case process to have a more prompt Commission review and forum associated with that cost cap review. I'll close with that. Thank you.

MR. CUPPARO: Good afternoon, I'm John Cupparo. I'm responsible for Berkshire Hathaway energies competitive transmission business unit. Also our comments today are rooted in our experience in participating in competitive processes both in Canada and regions here in the U.S. In issuing Order One Thousand the Commission took a fresh approach to development of transmission projects and to effectuate the reforms in Order One Thousand we believe the Commission needs to take a next step and completing its work by taking a fresh approach to ratemaking to further realize the goals of Order One Thousand.

Today's panel discussion regarding the ratemaking treatment of cost-containment provisions is therefore particularly important because although cost-containment provisions directly benefit customer by allowing developers to assume all or some of the risk associated with potential cost overruns. Those same provisions do not fit neatly within the cost of service framework established by the Commission. To address this issue, we recommend the Commission establish rebuttable presumption that rates set by an effective competitive process are just and reasonable.

This approach would produce a balanced outcome that provides solicitation participants an incentive to contain costs while preserving a stakeholder's ability to challenge rate outcomes that they believe may be unjust and unreasonable. Moreover the Commission could provide a degree of certainty to developers without binding its hands with the Mobile Sierra Doctrine or requiring that stakeholders overcome the heightened mobile CRS standard of review.

In creating this rebuttal presumption the Commission would not cede its ratemaking authority to another entity but would instead shift its focus toward promoting effective competitive processes and away from adjudicating debates over individual outcomes. BHE U.S. Transmission has proposed in our preconference comments specific criteria for evaluating whether a selection process is competitive focusing on whether the process is open, clear and objective. These criteria are consistent with the concepts enumerated in Order 74 with an additional emphasis on transparency.

Additionally, this proposal would not obligate planning organizations to assign any particular level of value to cost or cost containment. Our proposal makes it possible for developers to offer an array of options in this regard, the selection of which would always be subject to the preferences of the particular region and its stakeholders. However, by adopting proposed evaluation criteria, the Commission would lend support and guidance to regional planning organizations that are already taking steps to improve competitive solicitations along the same trajectory.

We appreciate the opportunity for this discussion and look forward to your questions, thank you.

MR. ADDEPALLI: Good afternoon, Chairman and Commissioners. My name is Raj Addepalli. I'm the managing Director of rates and service at the New York State Public Service Commission. First, thank you for hosting this technical conference and thank you for allowing me to be on this Panel. Cost-containment for transmission is a very timely topic for us in New York. We have two public policy solicitations in play currently with potential total investment ranging over a billion dollars. The New York ISO is about to start its second cycle soliciting additional ideas for public policy projects.

Currently the New York Commission is considering a proposal to meet 50 percent of customer consumption from renewables by 2030 and to accomplish this goal it's likely there will be need for more transmission to help move renewable from sources onshore and offshore. So based on the two that we have in front of us, there are some lessons learned that I wanted to recite and see if they can be helpful.

In the first case, we have invited developers before even the FERC Order One Thousand was finalized to submit proposals to move a thousand megawatts of power from upstate to downstate. In addition to the incumbent there are other developers who came forward. We appreciate that but all the proposals or most of the proposals require extending the existing rights-of-way and that led to an enormous amount of consumer concern and community concerns and we had to go back and ask developers to take another look at their proposals to see if they could come up with designs that would limit them to the existing rights-of-way to minimize community opposition and concerns.

The developers did respond positively and came back with designs that pretty much stayed within the rights-of-way. So the first lesson to learn is in terms of siting and scoping just to get a better feel for it before we jump in and spend a lot of time.

Second, the stakeholders have demanded that we do a solid benefit-cost analysis for these investments, that the benefits exceed costs. Thanks to the New York ISO, an analysis was done to the benefit roughly in the ballpark of 1.2 billion dollars in future benefits as a result of the investment. That's where it leads to the conclusion you shouldn't be spending more than that, otherwise the project may be uneconomic. So that sort of leads you to should there be some kind of cost cap or containment provisions to bring discipline to the costs that go into the project.

And the third, New York is perhaps unique. We do look at not just transmission but other choices, generation and demand responds to alternatives to be considered in the selection process. There have been advocates who ask that we look at them seriously to promote those instead of transmission. That again provides a benefit cost analysis and cost discipline for the numbers that we are using. Given these I think we believe cost containment is an important variable that should be considered in this selection of projects. And in fact we have suggested that the developers put in bids in one of the existing policy projects with an 80/20 percent sharing but that any cost overruns beyond the estimate should be shared 20 percent. It's a symmetric mechanism to discipline costs.

We believe the RTO ISO should accord such cost-containment proposals, the appropriate weight in selecting the project and the tariffs as we discussed in the last panel should ensure that an enforcement mechanism is included to make sure the developers bids are binding. An issue we may discuss further is how does this play into return on equity and capital structure when they put in the bids. If they do not know what it is that they may be averted by FERC, that should be a variable whether they get the approval ahead of time from you on the capital structure and the returns that would be allowed for the project and then they would use that information to but in their bids or --

MR. TOBENKIN: Please try and conclude your remarks.

MR. ADDEPALLI: So with that, again I want to emphasize that cost-containment should be an important variable in the selection of transmission projects and I look forward to the discussion.

CHAIRMAN BAY: Thank you, Raj. For this round of questioning we'll start with Collette.

COMMISSIONER HONORABLE: Well, why thank you, Mr. Chairman. So just before the break I was letting the two of them have it saying "by the time you get to me you've asked all of my questions". It's Christmas in June, thank you Mr. Chairman.

CHAIRMAN BAY: Well, I also want to thank Tony and Cheryl because they agreed to reverse the order.

COMMISSIONER HONORABLE: So we did this for the Clean Power Plan as well, thank you. So I appreciate the comments that you all have submitted as well as your comments make here today. I wanted to start in jest by saying "tell us what you really think". Some of you had very firm opinions about our pathway forward and I want to explore those.

Craig I'd like to start with taking your hypothetical further because we really are at a crossroads. I seek cost caps as one tool to aide in providing transparency and certainty with regard to cost. One tool and there are many. But, with your hypothetical you were concerned that bringing this matter to FERC, if we decided that the cost cap was inappropriate or not just and reasonable then the developer may walk away, which could be the case.

What is our pathway forward then and I want to invite the other panelists to weigh in on your thoughts about what this future world looks like as we determine the right role of the regions along with stakeholder involvement and the regulatory role because we don't want developers, particularly ones that are well-qualified and experienced to walk away but at the same time we're in the process of developing competitive processes to ensure that we have others who can step in if needed.

So I want to ask you first to respond and I would love to hear from the other panelists as well.

MR. GLAZER: Thank you for that great question. It's been a long time since I've actually done a rate case. Fortunately I don't have to do those anymore but it's a very long process at the Commission, as you know it's a very fact-intensive process. Often cases get sent to AOJs, settlement conferences, etc. All a fine process, but here given the fact that we've got this competitive proposal.

I guess my request is some more early action from the Commission in this because one problem in this scenario that I didn't get to mention while all this is going on and we're debating and is the developer going to walk or not, we're trying to get a project built. Especially if it's a liability project we might have wasted a lot of time and worse yet at the end we may end up just giving it to the TO and then the consumer still ends up paying the cost to the developer who walked away. Kind of an ironic result, so my plea in terms of solutions which is the heart of your question, build in some processes outside of the traditional send it to an AOJ, suspend it for five months to get early action on the cost cap and it's reasonableness.

COMMISSIONER HONORABLE: Thank you and I'd like to thank the representative from LS Power on the last panel who referenced our quick action in one docket but we certainly haven't mastered that in all areas. I'll take that constructively so thank you for the recommendation. Edward.

MR. TATUM: Well, Craig as I sat and listened to your hypothetical I said "well, what do you mean they might not want to build it?" because as I'm looking at these, the ones I'm thinking about are actually to address known reliability constraints and in our old model I guess I was coming up with and remembering we had this idea of the transmission are under obligation to built and I was thinking that "gee, I was kind of hoping that would go along with it especially if a competitive project was indeed designed to solve reliability concerns. But in the path forward though, and I did like what you said on this panel.

The glimmers of hope and opportunity I think are in making sure that we've got a sufficiently robust Order One Thousand overall planning process. Holistically, we're making sure that we see everything. Every opportunity to address a problem, have a good understanding of the nature of the problems, have a good understanding of the alternatives brought to bear, have a lot of people at the table so they can really go through that. I like the idea of having some guidance.

I know that we've had the whole spectrum on the last panel but we do need some guidance here. This is a new process. We've never done stuff like this before. We're still trying to figure out how to plan in a deregulated world so I would take those.

COMMISSIONER HONORABLE: I'm going to try Mr. Sundararajan.

MR. SUNDARARAJAN: Thank you, Commissioner. The way we actually see this is as I think Ed was mentioning, as an incumbent or a non-incumbent, we firmly believe there's an obligation to build to the extent I think to Craig's hypothetical question of when you propose a cost cap and the Commission deems that the cost cap is not just and reasonable our fundamental premise would be that the cost cap would be eliminated and you operate in the cost of service environment.   So as of this project was awarded when there are two filters to it. One is the first determined that the cost cap was efficient because that's the reason why they were rewarded the project as compared to others. Secondly they actually were awarded the project and then you come back to the Commission and say the Commission actually thinks that the cost cap was based on all of the evidence provided by the stakeholders that the current cost cap was excessive for lack of a better word. Then you would say the cost cap is no longer reasonable we will just operate on a cost of service base environment which is no different from any other project that they are building.

In our opinion that'll be the typical way they would think about these projects as opposed to a treatment of different kinds of rates for a comparative project that is different from a cost of service project.

MR. HUGHES: I think my first word of advice is don't exaggerate what you can get with competition and you're not creating a competitive market. My definition of competitive market for electricity would be one in which we don't need the Federal Power Act and your agency anymore. When you folks implement competitive practices under the Federal Power Act it often results in more regulation, certainly an awful lot of work for Joe Bowring and David Patton.

To me, it's counterintuitive and so kind of tone down what you think you're going to get out of competition you know because the developers are going to try to drive a truck through that and extract and awful lot of money as a premium for getting something that you can say is competitive. So I would just urge you to be careful on that. Our belief is still go to a rate case and let's trade horses on all the variety of issues that are involved in this and that includes any form of incentive, any form of any special rate treatment, any form of price cap. We're not necessarily excluding them but there's got to be a very strong test that they're absolutely necessary to accomplish the objective and not just a fear that the developer is going to call your bluff and say "we're going to walk".

COMMISSIONER HONORABLE: I'm shocked and I'm going to move onto the second question. So I'm going to invoke Craig again because on the previous panel -- is someone's microphone still on? In the previous panel, Craig Glazer's issue of his concern being RTO of taking on a regulatory role and the fact that they don't want to do that. I appreciate that Craig, heard it loud and clear.

Well, then here in this panel I heard from a couple of you, the gentleman from ITC and from Berkshire Hathaway that you would implore the Commission to allow the creation of a rebuttable presumption that proposals selected through the competitive process are just and reasonable and also entitled to the Heighten Mobile Sierra standard if challenged. So I have a very simple question. Why? Why should we favor that perspective and then I'd ask the other panelists to weigh in. Thank you, gentlemen.

MR. HARVILL: Yes, harkening back to my prepared comments I mentioned the word symmetry and as I look at the Order One Thousand process as it's developed across the country, the last panel was notable in the sense that there were a lot of diverging opinions. I think that was reflective of the fact that you have many different ways of approaching Order One Thousand if this Commission is approved.

As a developer one of the things that we find challenging is that there is an asymmetry that exists today when it comes to cost-containment and ultimately what we would bid in a competitive process for a particularly project and what I mean by that is that if we're allowed to bid on a project and propose a cost cap and we're ultimately held to that cost cap for the life of the project but yet parties are allowed to avail themselves of the 206 complaint case to come in 5, 10, 15 years down the road and say "those costs are no longer just and reasonable".

The original presumption under which we actually bid that project, constructed that project and have essentially operated and maintained that project for those previous five, ten or fifteen years essentially crumbles at its foundation. There needs to be some kind of recognition that if we are bidding a project for a 40-year, essentially the course of a 40-year total revenue requirement as many of the RTOs have proposed and have put in place then there needs to be some certainty over that period of time that parties can't come in then and challenge that over a subsequent time period.

I can guarantee you also that as we go through this process that if a party like ITC were to propose a project, propose a cost cap and a specific return or specific capital structure, I don't believe we could avail ourselves with the 205 process and to come in and raise that rate either. So again, going back to that symmetry all we're asking for it that if we bid something beginning the process essentially that could be held to be the standard to be the life of that project if that's the process the Commission has put in place or the RTO's have put in place that the Commission has improved.

I'd also note if you look even beyond the borders of the United States, everywhere they have competitive processes established for transmission it's a process whereby you bid essentially a full revenue requirement bid for a project for the life of that project. There is no presumption that after the project's in operation that you actually go back and can essentially rebut that and come back and say "no, the return is too high" at that point in time.

COMMISSIONER HONORABLE: John.

MR. CUPPERO: I would like to clarify my comments because I did say that establish rebuttable presumption but because there is evaluation criteria or guidance around evaluation criteria. A challenge to that wouldn't necessarily have to beat the Mobile Sierra Standard but would have to, the burden of proof would be against that competitive process and the criteria that was used in the spirit of all bidders.

In terms of why we believe that, I think, a very simple example, these are procurement processes like procurement that we've done for years and I think an example has been provided on this panel. Typically if you enter into a procurement process and you enter into a fixed bid contract, that contract carries the entire weight of that relationship between the bidder and the entity and the entity in this case would be the RTO.

So we believe that should be preserved unless there was something significantly flawed in terms of the process or the way that contract was termed. Double-jeopardy I guess would be another way to state that for both the developers in the ISO.

COMMISSIONER HONORABLE: What I hear you both saying is you would be, otherwise the developers being held to a more rigid process going forward while others are not. They can come in and file 206 and other things. So I had done in my past life some work and bidding litigation and there's plenty of that too unfortunately. But your points are both well-taken and I'd like to hear from the other members of the panel. Raj?

MR. ADDEPALLI: As a fellow regulator I feel the more regulatory certainty you can provide to the process and to the developers the lower cost of capital will be and the lower the cost of the project will be. So anything we can do collectively to reduce the risk of deregulatory uncertainty that would be very helpful.

COMMISSIONER HONORABLE: Thank you. Do you also believe as a regulator that ensuring that there is an open and transparent process for the challenge of such bids is also in the public interest and serves.

MR. ADDEPALLI: Absolutely, there should be room for that. That said, the processes and the transparency in the process is important to give everybody comfort, the rules of the road, what they are and that they are being followed.

COMMISSIONER HONORABLE: For everyone.

MR. ADDEPALLI: Yes.

COMMISSIONER HONORABLE: Thank you. Raja.

MR. SUNDARARAJAN: We from AEP view this a little differently. We actually see that at least two processes that ITC if referring to MISO and SBP process that it is fundamentally forecast 40-year revenue requirements. It is by no means is a fixed revenue bid that is being implemented in other parts outside of the United States. Those are merely an attempt to forecast what an entities revenue requirement will be over the span of 40 years. We view that fundamentally differently than between and fixed and a bid.

The second thing I would like to caution is well let's talk about an entity that actually submits, an incumbent entity that has negotiated a raise, including ROEs and everything else that the negotiator as part of the settlement package for all other foundation projects. How do you actually change that contract for a specific project and you actually -- we talk about symmetry from a developer not from an incumbent point of view. I think by the same logic you should have made sure this incumbent is no less disadvantaged or is not disadvantaged in the same process because of a higher threshold that is being set up by the developer.

We view that fundamentally that would be the primary reason why. The fact that we have an incumbent entity that actually has negotiated rates and reached an agreement of ROE and cap structure through a settlement process of regular stakeholders, now suddenly able to deviate that and for a comparative project apply a different contract that is different for a full project as opposed to a -- project, we feel that to be a different contract.

That's why we actually view this as two points, one is the MISO SBP are merely a forecast that do not fix any requirements by any imagination. The second thing is the fact that clarity should apply to both sides. A non-incumbent should be able to apply the same rates that the developer actually has in this case.

COMMISSIONER HONORABLE: Thank you. I appreciate you raising that point. Edward?

MR. TATUM: I might take a different approach to the first two commenters on this. I think that from standpoint of the theory behind it is if you've got real competition and if you've got all the transparency then perhaps you could do something like this. I think the state of the play right now is we don't necessarily have all of those things, nor do we have a lot of the details worked out as to how costs would be formed, how costs might have to be changed back and forth.

A public power guy throughout my entire career, if you were going to have your actual cost to construct something and you were going to then be able to recover either your actual or your hypothetical debt as well as the return on equity, those are still some nice components there that provide I was hoping overall rate return that would incent people to build regardless of whether it's a competitive project or not. So coming up with a resumption of benefit to consumers I think that's a hard one to take at this point of our play.

COMMISSIONER HONORABLE: Now I wondered when that tin card would go up. Let me guess what you're going to say.

(Laughter)

I have a 15-year-old and I should --

MR. CUPPARO: I wanted to give him his chance.

(Laughter)

COMMISSIONER HONORABLE: I have a 15-year-old. You're telling me I should not pay her for good grades? That's what you're saying?

MR. CUPPARO: I would just let it go one step beyond what Ed said and say you know, given the lack of transparency you can, given how a lot of what's going on in some of the RTOs is nothing more than a food fight when it comes to trying to decide these projects. We think right now, we fear that any cost cap or cost-containment proposal is nothing but a Trojan horse from the perspective of the consumers. You know, who knows what's buried in the exemptions and other provisions that are there.

Regarding symmetry, you know cost of service if done right is marvelously symmetrical if the costs legitimately and prudently go up in the future the owner of the asset should be allowed to recover those with a fair rate of return. So our faith is in the beauty of the fact that we live in a capitalist society and innovation is ongoing and increases over time. Therefore our expectation is for costs to go down over time and so we want the benefit of those. Developers know that and they don't want, they want to lock in the higher costs that are endemic right now, forever. So that's basically our concern.

COMMISSIONER HONORABLE: Thank you and Mr. Chairman thank you for the opportunity to inquire.

CHAIRMAN BAY: Thank you Collette. Tony?

COMMISSIONER CLARK: Thanks. Just a few questions. First for John and Ed because I want to make sure that I'm understanding your position with regard to cost-containment measures generically. Is your position "well we just don't think cost containment is a good idea? It's just a rabbit hole we don't want to go down for all sorts of reasons." Or is it, which would mean "we don't even think transmission developers should be putting in cost containment type bids through the Order One Thousand planning process." Or is it "well that's all fine and well if you want to commit to certain cost containment measures as long as it doesn't as part of a package inhibit our future 206 filing rights to have a regular full cost of service case?"

MR. TATUM: John I'll start and if I may, thank you for that. No I think that cost containment is a good idea. I think there's opportunities for it but I wonder about how it's going to work. You know, what's the devil, where's the details? How is that going to all work there?

I'll just give you an example, in PJM they have the sponsorship model, which is great. I mean and the first panel talked about that a lot. A lot of great ideas. How best, we've got a problem here, how best to solve it? but then when we're taking a look at it and we pick a project from that I'm comparing apples to oranges to maybe a watermelon or a kumquat somewhere. It's really hard to say what is the best of those projects.

Now if you go into the bid models, I guess they call them sometimes solicitation models. We've got a project. Say we need 115 KB line from A to B. You all get in there and build it. And then all of a sudden if you had lots of people bidding on it and if they're really sharpening their pencils and getting down to it and if we as the stakeholders and you all as a Commission have a good understanding of in general, what's the current cost per mile of transmission line? What's the current cost to build a rocky foundation back and forth? We can make a good decision that yes, that's a good cost containment. But absent those types of things I think it might be difficult.

The other thing and I appreciate what you said is about the perpetuity of it. we think that something lasting over 20 years would be set for life is something that shouldn't be there. You should have the ability to go after a 206 and seek to get it back in line.

COMMISSIONER CLARK: Okay, thanks. John.

MR. CUPPARO: I guess what puzzles me is why cost containment has been so elevated as being so extraordinary in this industry. Why isn't it just the normal way of doing business and why don't regulators treat it as such and have regular expectation; this is what they should be doing. Not something that's extraordinary that's got to be lavished with what former Commissioner that used to sit up here, used to call "FERC candy".

COMMISSIONER CLARK: But is it a question of regulators or and I suspect the reason it's become such a big issue is that the projects have gotten picked in the planning regions at least in part on the basis of the fact that they had some sort of cost containment measures. So is your position simply that cost containment doesn't work so why go there? Or -- I mean in that case I think it would be FERC rather proactively stepping out and saying "Regions, don't even look at cost containment. Not even if they picked a project developer off the top.

MR. CUPPARO: I think the burden on you has to be that, show us the benefits okay and in light of that -- again, why isn't the normal expectation contained cost be part of the normal way that regulators expect utilities to behave. I'm just aghast that somehow they're not expected to contain their cost. Now I can appreciate the need for very extraordinary, actual really extraordinary conditions but identify those. It shouldn't be just run-of-the-mill transmission projects.

COMMISSIONER CLARK: So.

MR. CUPPARO: I mean LCON was in the position when Order One Thousand was adjudicated. We opposed eliminating right of first refusal. We thought the incumbents would probably in the long run do a better job. I think most of my members would probably still feel that way. I know some of them are vindicated but very much so by looking at their bills every month and how much transmission costs have been escalating over the past several years and seeing absolutely no benefit for it.

COMMISSIONER CLARK: Yes, it seems like there are two issues being discussed and debated on the Panel. One is the theoretical issue of cost containment themselves. I think it's probably hard to make a case when a developer says "Hey I'm going to limit myself to this" because they don't do that. Like somebody named Craig from the first Panel said "if you were a former regulator and someone's going to offer you it's hard to say no."

So then that theoretical assumption becomes a question. Okay, if you're going to have cost containment how do you structure it in such a way that it makes sense? Can it be structured in such a way that it makes sense? Can it be transparent so there's apples to apples comparison? It's all the things we talked about there.

There's a second issue that I think is being discussed here which is really more of a, it's an old regulatory theory debate, which is the theory of price cap regulation I think FERC parlance we call it, what fixed revenue requirement-type regulation which is the separate sort of subset of the debate. I have a question under that subset for anyone on the Panel who wants to take it up, setting aside the policy issue of price cap regulation which I think we all sort of know the tradeoffs and costs and benefits. It's been used somewhat internationally. It's been used in the telecom industry, it's I mean something those are what regulators are familiar with.

I'm interested in seeing if anyone has any comment with regard to not the policy of cost cap or price cap but is it permissible under the Federal Power Act because those questions have been raised. So even if the Commission bought off on the idea and said "hey, I think this would make sense." Are there statutory hurdles that prevent us from getting there in terms of a just and reasonable rate under the FPA itself or are there things that where there are FERCs own rules and precedent that prevents us from getting there? Ed? I think you may have teed this up when you --

MR. TATUM: I didn't mean to.

(Laughter)

As the electrical engineer on the Panel, I will just briefly say that we spend a lot of time in dealing with markets and back and forth and a presumption that competition in markets will provide just and reasonable rates so I think what you're teeing up there is another variation of that discussion for transmission and it's interesting because transmission is indeed a regulated asset and so with all due respect, that's as far as I go with that.

I would like though if I may just to be very clear with our position on cost and price caps and back and forth. We're not saying don't do it. We're not saying you shouldn't look at it. We're not saying we shouldn't try to figure it out. What we're saying is that there's a lot of additional work we need to do and understand. There is a lot of reality that we're going to have to deal with. If we really, you have an order 784 I believe which has some principles? Well, let's make sure that we can satisfy those principles and that would be a prerequisite.

As John was saying and I touched off a little bit is I think we should be taking a look at the cost not just for these competitive projects but the ones that aren't because as a transmission planner, even when we plan them, we don't know. They are fairly broad cost estimates. You can see costs coming in either higher or lower dependent on the situation.

COMMISSIONER CLARK: Craig.

MR. GLAZER: Yes, just thinking about this. I think it's a great question. When you think back to the old days, when did cost caps get resolved, they got resolved in settlement conferences probably down the hall here as part of a rate case. It was negotiated. It was part of the deal "Okay, I would do a cost cap."

Now what's happened is we've sort of moved that up and we've made it part of the selection process. that's not a bad thing to do but as part of that we're also eliminating other projects that might have come because we chose Project A because we the RTO liked it's cost cap. The problem is what about all those people who were in that room before that still want to get their bite at the apple that are kind of not there anymore but they want to be there so I think we've got to come up with some newer processes.

I don't think you would go back to the old days but I think we're merging something of "wait, get to the rate case, do it down the hall in the settlement conference" versus "if we're going to push it up in the selection process, give everybody their say through some kind of process". On the other hand, don't let the selection process turn into a rate case on the other hand. That's the rub here.

So maybe it's like we suggested, maybe just in close calls where the selection is actually coming down through the cost cap. Which isn't that many quite frankly. There are lots of other reasons to exclude projects, make choices before we even get to the cost cap but in those where it's a close call, maybe those ought to come with some kind of mini process here so all the people that were down the hall can get their say before it's a fait accompli.

COMMISSIONER CLARK: Raja?

MR. SUNDARARAJAN: Commissioner, to your point.

We actually view the price caps element to be, I believe that the Commission can clarify to the extent cost-containment mechanisms are considered in the selection process be limited to capital costs as opposed to cost of capital. I think that will go a long way. Because in our opinion right now there's mixing and matching of issues. One of the capital cost which is actual cost of the project and the cost of capital being the cap structure, the ROE, the cost of debt, those get into the fixed APRR and along the O and M costs.

COMMISSIONER CLARK: Yes.

MR. SUNDARARAJAN: I think that fundamentally poses a different set of issues which is different from the capital cost of the project. Capital costs of the project can be allocated through vendor negotiations or contracted with suppliers albeit it has its own issues surrounding it but that issue is much, much smaller than comparing two entities ROEs. One with the settled rate and one entity wants to live with it at ROE for the next 40 years. Another entity with a floating ROE, somebody's got to forecast what the capital conditions will be and the cost of equity will be over 40 years. Good luck. I mean what the Brexit is for lack of a better word.

(Laughter)

But my point being is I think to the extent the

Commission can clarify that the RTOs when they make a selection be limited to capital costs as supposed to cost of capital. In my opinion the MISO SPP forecast of APPR becomes a much simpler equation because then the arc in the ROE doesn't come into the mix, the actual cap structure doesn't come into the mix. A lot of the issues that are being negotiated through incumbents versus non-incumbents issues, doesn't come into the mix because the ROEs are present. The ROEs are a nonfactor for selection and the cap structure is a non-factor for selection. So I will actually you know, that's the one thing that we would like to propose is to the extent the Commission can clarify that and they will.

COMMISSIONER CLARK: Thank you. That's helpful. John?

MR. CUPPARO: On the longevity issue, I wonder how much you can bind future Commissions? I mean just what you're trying to do right now, I'm surmising that you know kind of changed a regulatory paradigm today because of all the changes in the economy and the technology compared to what took place maybe ten years from now. Ten years from now people sitting over here may want to undo what you're trying to do today. So you need that regulatory flexibility and I'm pretty sure the Federal Power Act was a masterful document given when it was written and how it was written it has that flexibility in it and if it's not it should be in there.

COMMISSIONER CLARK: Raj?

MR. ADDEPELLI: Initially starting off with just limiting the cost containment to the installed cost to the up-front cost is fine but we've got to be careful about developers seeking significantly enhanced returns to compensate that risk on the other side that consumers may be net worse off. So it gets a little bit more complicated but that could be a first step before we are going to maybe getting a fixed revenue requirement for a period of time.

COMMISSIONER CLARK: Terry.

MR. HARVILL: I think, just responding quickly to that. I think that what that does is it puts it in the proper forum for the Commission to make that determination so that if a project that a developer has proposed is indeed riskier for whatever reason, it's then up to the Commission to make that determination and say yes there is enhanced risks so there should be an enhanced return associated with that. It also addresses John's concerns about incentives and whether actually you need an incentive for that type of a project because I do think there are going to be situations where there are projects that are attractive enough to a developer or a group of developers such that you know, they're going to be bidding as aggressively as they can.

If developer number one doesn't want the project because of a Commission determination there is probably going to be 2 or 3 more standing by to take its place.

COMMISSIONER CLARK: Thanks for all the very thoughtful responses. The second part of discussion which we got into really did intrigue me when ITC had the PDO that was before the Commission. I thought ITC really raised some interesting points with regard to the asymmetry that you talked about, Terry. That probably just wasn't the right venue to vet all of these things out. Having this kind of tech conference I think does help a lot in trying to understand and come to grips with what a change in Commission policy would be and how it could be effectuated so thanks to everybody.

CHAIRMAN BAY: Thank you, Tony. Cheryl.

COMMISSIONER LEFLEUR: Thank you, Norman. I know I'm supposed to ask questions and I will but I want to start with an answer, at least to try to answer a question that John Hughes asked. I think you're absolutely right that under a cost-of-service regime regulators are supposed to look and try to make sure that cost control was applied and that costs that go through are prudent and that things are used and useful and etc, etc, etc. That's what cost of service regulation is all about. The premise of Order One

Thousand which the majority of Commissioners agreed with at that time was that if we inched this competition there might be savings for customers and better projects come out to try to use those competitive forces than cost or service. That was the premise, which we have freedom of thought in this room and freedom of thought in our dockets. Not everyone has to agree with that, but it's striking to me in the last panel we were in love with cost caps.

(Laughter)

We had two regions that have done most of the competitive bidding extolling how good it's been for customers and several developers and now that we're talking about paying for them --

(Laughter)

The ardor has dimmed very considerably on this panel.

(Laughter)

With that, my first question, I want to come back to the timing question that I think Craig teed up so you have in the old bidding trends, doing a transmission project they either have a formula rate or they would come in for incentives or ROE or some clarification but they would know they were doing the project and then we would just evaluate the project vis- -vis the company.

Now you have a process where developers be they incumbents or non-incumbents are trying to bid in to say "this is what I need to build this project" and if the rate case or whatever it is that the Commission follows you have a timing mismatch between people being able and I'm interested if you think there are things, any of you think there are things that we can do to address that be they more generic clarification on some of the non-ROE incentives, abandonment and quip; I think that was teed up in some of the comments whether it's some kind of quickie process to weigh in on things or holding something in advance because obviously you can't have somebody bidding or it seems illogical to have somebody bidding in and saying "give me this thing, I can do it for this price" and then coming to the Commission and saying "I just took so much risk. Give me more money". I mean that's obviously a circle, so comments?

MR. GLAZER: Two I'll raise. One is I think there's no perfect answer here, but I think two ways to sort of manage the problem. There's one point that I think Raja from AEP raised which is at least in the selection process if we limited it to capital costs, construction costs, that would at least bound the problem instead of the RTO taking testimony on what the future ROE is going to be 40 years from now and making prognostications.

So I think that combined then with, and again,

this is not every case. Some, what I call it, a declaratory judgment action, some way we can come to you for a resolution just on the cost cap, say it's two competing proposals and exclusions which are half the battle is just what's excluded from the cost cap, never mind what's in the cost cap. I think those two might help to sort of bound the problem. Then later there will be a rate case. People can fight about ROE and incentives and all that.
They're still parts of the project but at least we've isolated the competitive selection process to something that's a little more manageable.

COMMISSIONER LEFLEUR: But I thought in that case you were coming forward not to get some rate clarity from the Commission but just getting a Commission imperator on the selection you know to avoid later dispute. So is in that hypothetical you just said was there ever any actual rate issue we'd have to --

MR. GLAZER: It would be in review of the cost cap and the exclusions to the cost cap and whether those are reasonable. So it's not the ultimate rate.

COMMISSIONER LEFLEUR: Okay.

MR. GLAZER: You will need a lot of due process for the ultimate rate but at least eyeballing it and again the exclusions are as much a big deal with this as the actual number because people can low-ball the number and have lots of exclusions.

COMMISSIONER LEFLEUR: And if we were to say because of this timing issue that we don't want any fixed rate you know all-in proposals anymore. Those are the ones where PBR in the UK and some states that Tony referred to if you do it for less you keep the money, if you do it for more you lose the money. Do you think we're leaving value on the table for customers if we say "don't put any of those proposals. We don't want to hear those. Strictly limit yourselves to capital costs."

MR. GLAZER: Commissioner, great point. Let me clarify. I think there still is an avenue for those. Those would come in the rate case itself, the settlement conference down the hall is the rate case.

COMMISSIONER LEFLEUR: You would have already chosen the project.

MR. GLAZER: I would have chosen the project based on the capital costs but in the question of what's the right rate if the developer wants to offer a fixed rate revenue requirement to just end the litigation that's great. That could happen so I'm sort of separating out that part of the negotiations from the actual selection because I've got to get some projects.

COMMISSIONER LEFLEUR: Economically you would think they might bid lower if they had some upside potential as well as downside but I mean maybe that just doesn't fit in the timing.

MR. GLAZER: What I'm into is relatively uncomplicated what is already a complicated and time-sensitive part of the process.

COMMISSIONER LEFLEUR: Lots of cards are up. Raj?

MR. ADDEPALLI: It seems to me for a developer to put in a bid and take risks on the installed costs, not knowing what it is that the Commission is going to give them in incentive returns seems a little bit not having accurate information for putting in the rate bid. So this is a tricky issue perhaps but the developers should get some guidance ahead of his bid into the RTO ISO projects as to what cap structure and what kind of returns he should expect for this kind of a project.

To the extent of project parameters are well laid out is to what is the cost containment? Is it 100, 0, 80, 20, 50/50? What are the exclusions and all of them are known perhaps the Commission would be in a better position to judge what is a risk and make a decision on the allowed returns and caps structure.

COMMISSIONER LEFLEUR: We've certainly had non-incumbents coming in and say "give me some going in accounting so I can bid" and we seem to be dealing with those, but not specific project funds. Terry, I don't know who's next. Raja. Whoever had it, I didn't look at the order.

MR. SUNDARANAJAN: From our point of view, and I think we are the ones who kind of ask for some up-front clarity on incentives for competitive projects, primarily the non-ROE incentives because we understand the issue of ROE incentives because those are: A. project specific; B. that you know at the end of the day, we understand. These are cost of service based projects and to that extent we are putting cost-containment mechanisms we can tailor the cost containment mechanisms more finely if the up-front clarity of incentives, especially non-ROE incentives are obtained from.

There are two reasons associated. The one is you know, given the fact that the non-ROE incentives not only provides benefits to developers, it also provides benefits to rate-bearers and there is you know Quick and Abandonment have provided that certainty to both the rate-bearers and developers which might disagree with me.

But the second aspect is the fact that the non-ROE incentives is can be more generic. You can come up with the criteria for a list of projects that will be more applicable for a non-ROE incentive so that the paperwork ruling on a project that the project makes might be cumbersome and especially for a sponsorship-based model? It becomes even more cumbersome in those cases. The idea itself is totally different. I don't want to reveal the idea to the Commission because then what good would the idea be?

That other issue is with the sponsorship based model that makes it even more complicated. When I'm proposing a cost-cap in cost-containment mechanism along with the idea itself. So that's why we kind of, when we thought about it and sat down and said what is the incremental step that the Commission could take and we felt that the non-ROE incentives at least coming up with some criteria for undefined and non-ROE incentives up front, the competitive process would go a long way, in terms of this.

MR. HARVILL: In my original prepared comments I noted one of the important factors for the Commission to consider is the integrity of the process. From an ITC perspective you know, we weren't an advocate for the refusals so we recognize that's what the Commission's policy is today. We can operate under a sponsorship model, we can operate under a competitive bidding model. There's a variety of ways that we can compete. I think the real issue here is we're trying to put our square peg into a round hole. We're trying to apply competitive forces to a regulative process.

In doing so, you know most competitive processes as you said this is the lowest bid, the lowest bid wins. But what we're proposing to do here is this is the lowest bid and if you don't like the lowest bid well in three years you can come back and complain about it. You know, I looked to the generation side of the electric sector. We have a long history of approving PPAs through our competitive procurement process. There doesn't seem to be a history though of second guessing our decisions or the Commission decisions in that. We approve PPAs for 5, 10, 15, 20 years and essentially those are held to a standard.

So as we sit here today I struggle with not taking away the flexibility of the RTO because I think what PJM has put in places is functionally workable. I think what California has done is workable too. The jury is still out on SPP and MISO because they are still in the early stage of this process. but I don't think we can wait because we do have competitive projects that are being advanced and if ultimately we are waiting for a point in time in the future to make a determination as to what's worked and what hasn't worked I think what you're going to see is the robustness of the opportunity here to fall away very quickly.

COMMISSIONER LEFLEUR: Ed?

MR. TATUM: Thank you, Commissioner. I just started off saying building on what Craig started us off with, the capital costs and I like Terry what you said. We are trying to see if we can do a competitive environment with a regulated asset. I go back to it. You've got your actual cost, you're covering your debt and you've got a return on equity that's set by the Commission. That's pretty good business and actually people are seeing a lot of that as we speak. As you listen in on the earnings reports and focusing where our strategy for growth is to invest on transmission and putting dollars behind that.

So it really comes up to do we really need incentives at all? Which is as what I raised in my opening comments. But going back to I think the matter of price caps and those I think certainly there's a place for that but as far as upfront information I think the more is better and we could say okay. Maybe we do have a sponsorship model and I like when the gentleman from California was talking about it but he comes to the table and all of a sudden there's one project and then folks start going to focus in on that.

When you have an ability to compare apples and apples, then all of a sudden you are getting some competition there. You are still getting questions, do you have enough and back and forth. But then you take that additional information with information we're already capturing. As I talked about before, the estimated just general cost. What does it cost to construct something? Trying to track these things on a continuous basis to make sure that the last time somebody built a 230 KB line it came in I don't know, I'll make up a number, 1.2 million dollars a mile for a certain conductor size. Those types of metrics.

I think those are the opportunities where we can really move forward and take a look and see whether or not we can really move forward and the benefit of price caps for transmission.

COMMISSIONER LEFLEUR: Yes, John.

MR. CUPPARO: I just wanted to reinforce the idea that transparency is an important part of some of the comments that are made in any decision that might come before the Commission and we would encourage similar to the comments that were made on the last panel and I think Commission Arnold has said I don't want to be heavy-handed and so putting more guidance up front in terms of how are the regions evaluating these bids and what's being valued? Whether that be a capital cost cap or a revenue requirement but that's clear. Not necessarily dictating one way or the other as well as what is considered a traditional set of exclusions so it's pretty clear what would come under scrutiny if that were to be the case.

There are typical things like force majeure and change in law versus broader exclusions that might be used.

COMMISSIONER LEFLEUR: I mean, I think there's an underlying assumption in a lot of the comments that we're going to act like we're choosing projects by competition and then still treat them like old-fashioned cost of service projects but I thought the generation analogy was apt. Generation under the Federal Power Act used to come in and get rates changed. If something went wrong with your power plant you just came in and told FERC and got more money. Now we seem to have no trouble holding generators to long-term rates and long-term contracts and the market decides what they get.

Is there a level of competitive integrity? Whether it's the 784 standards or something else that we would be able to look at transmission owners that way because they reinterpreted the Federal Power Act for generation and said yes, you have fixed cost. I mean, will we ever be there?

MR. CUPPARO: I think I would agree with Terry's comments and how you interpret that, Commissioner LeFleur that there is a history and it's on that precedent that we've done complex bidding at a lot of different areas of our businesses and I think that model applies. I think there's a maturity in terms of the process and so guidance in terms of the maturity of the process will be helpful, not that we won't get there.

COMMISSIONER LEFLEUR: We'll just down and then I'll shut up. Terry?

MR. HARVILL: I think there is, again it goes back to the rebuttable presumption that was raised earlier. You know, if the Commission deems that a competitive process is indeed competitive by evaluating a number of factors, how many people actually competed for the project and I think most importantly is the fact that the RTO's for the most part are experts in transmission planning. That being said, I think every project has a cost estimate that the RTO has done. Sometimes they release that publically. Sometimes they don't. But they're going to know whether or not a 60 million dollar project that's coming in 80 million dollars with it only being two developers is indeed competitive because they're doing their own homework.

Or in the other cases, if a 60 million dollar project comes in at 30 million dollars. So I think there are ways that you can evaluate that but I think ultimately it's up to the Commission whether it's a 7-day -- or something else, I think it's there.

COMMISSIONER LEFLEUR: John?

MR. HUGHES: Generation is a lot more tangible than transmission and so if my members know what they're getting from generation they don't know what they're getting from transmission and especially transmission that's sort of connected with all the big, heroic changes that the industry is supposed to be making in the next few years for reasons for which society is very much divided on. So I think that's part of the problem. Add to it cost allocation.

I know that's not really on the table here but my members are more concerned about cost allocation than how the projects are selected and the cost allocation they believe is a disaster with transmission. It hadn't really been so with generation.

COMMISSIONER LEFLEUR: Thank you. Raja?

MR. SUNDARANAJAN: We actually view the PP analogy to be a little bit different for the transmission space given the fact that we actually think that when Order One Thousand was created it was not trying to discriminate incumbent and non-incumbent. The PP analogy mostly you have the long-term PPA rates are under the market base authority that the Commission is granted but I don't know how that will translate with an incumbent which is actually bidding for a competitive project that adds both the cost service rate and the market based rate. There may be other clarifications that the Commission needs to provide if at all. We view that fundamentally differently and that's way that at AEP we actually believe the fixed revenue requirement space gets into a lot of issues that I don't know if the Order One Thousand was contemplated on.

COMMISSIONER LEFLEUR: That's a good point. Ed. We will give you the last word.

MR. TATUM: Thank you Commissioner. That's scary.

(Laughter)

I appreciate the question and you know as I listen to it being formulated I just kind of went back to where we first got going when we started putting LNP in and having competitive markets. The premise there is that we would have generation that was indeed competitive and we said "oh, how are we going to do that? And then we said "okay, well we're either going to spin you off into an independent company" and back and forth. We didn't make folks divest. But what we did say is we're going to have open access transmission and we've got to go on with all the orders, 88 and on up to today.

Transmission has always been that regulated asset that makes markets happen. We have competitive markets that supply demand curve and you have whatever, I can't remember the five principles but you want lots of buyers with lots of sellers. How do you do that? Well you have transmission.

You want low or no barriers to entry. Well, we have to have transmission to make all that happen. Terry Boston used to say "if you like wind, you like transmission. If you like solar, you like " he liked transmission.

It made all the things happen and so I appreciate what you are saying about whether or not transmission can be in the competitive space that resources are. I would say "no". However that doesn't mean that the premise of Order One Thousand by getting a little bit more folks into the transmission game is not a bad idea but it's again public power guy, you got your actual cost. If you're getting an overall rate of return of 8 percent a year or whatever that's a pretty good investment nowadays and that kind of goes with covering your debt and covering whatever return on equity is.

Getting more competition there is helpful. Public power guy, I've got to say letting public power get in and build some of these lines I think would be very, very helpful for competition. Thank you.

COMMISSIONER LEFLEUR: Thank you very much. Norman?

CHAIRMAN BAY: Thank you, Cheryl. So I'd like to do a little bit of a drill-down into the rebuttable presumption and Raja had suggested that one way of thinking about the rebuttable presumption is that perhaps it would only apply to capital costs as opposed to the cost of capital. By cost of capital you mentioned that would include the ROE. Is that what, John, is that what you and Terry, is that what you're advocating for or do you want ROE to be included within that rebuttable presumption?

MR. CUPPARO: We're not, I guess I'm not advocating the exact same position. I think my comments are more general than that. Or we could be part of it but what should be clear is that's actually being evaluated as part of the process so that you know how that's going to be treated on the back end and you're taking a position against that. If the region perceives that there is tremendous value in that then it's clear that's how we're, the bids being evaluated versus strictly capital costs so our position is not directly aligned with what Raja laid out.

CHAIRMAN BAY: Okay. Terry?

MR. HARVILL: Yes, I think similarly. Again it goes to the formation of the Order One Thousand process by the RTOs and they've all chosen a different path. I think what Raja has proposed would work in certain circumstances but again I think to John's point you know certain regions have a perceived value associated with including ROE and other components of the bid. You know, ultimately it's up to you to make that determination as to whether or not you feel that that's an important part of the overall bidding process.

CHAIRMAN BAY: The other question I have is, just so that I'm clear on this, when you talk about a rebuttable presumption, how strong would that presumption be? In other words, what kind of showing would be needed to overcome that presumption?

MR. CUPPARO: So we did lay out a series of criteria in our comments and realizing that this is one step and probably multiple, in the first step maybe a policy statement or guidance that said "here's what the Commission would be looking for against the rebuttal. Presumption would be the burden of proof that somehow the process did not meet that criteria that it was flawed in terms of qualified number of bidders that the criteria was consistently clear across the entire bidding community and that the mechanisms to evaluate the bidders were clear on the front end so during the RFP process there is actually clarity in terms of what's going to be valued and how it's going to be scored. And so --

CHAIRMAN BAY: The examination would be to the process only then? It sounds like that's what you're saying.

MR. CUPPARO: Yes.

CHAIRMAN BAY: And would it be harder to do that in an RTO that uses a sponsorship model where you're looking at many different kinds of projects all meant to address a certain kind of need? Is the competition as robust when there are a variety of factors that are being examined by the RTO, which uses its best judgment to select the project that best addresses the particular need?

MR. HARVILL: I think that, at least in my perspective, I think that shifts a bit of the burden on the RTO because from an ITC perspective I think that rebuttable presumption falls on the RTO to essentially have them make the best decision as opposed to it being on the developer itself because they're going to submit the idea but ultimately they are going to choose based upon.

CHAIRMAN BAY: Okay and I think I know where Craig is going to be going on this.

(Laughter)

No go ahead Craig.

MR. GLAZER: Yes, you know it's a double-edged sword. I mean on one hand yes it would be great to have all this discretion and deference. On the other hand I say to myself well, wait a minute. Wait a minute. Now, suddenly my decision has all these ratemaking implications.

CHAIRMAN BAY: At the litigation in part?

MR. CLARK: Yes, I mean we're at 2,000 and set up RTOs told me to do planning, didn't tell me to do rate-setting so that's where it's an added burden on the back that I'm a little bit worried about.

CHAIRMAN BAY: John?

MR. HUGHES: Rather quickly. I think I share John's view on this and I think a rebuttable presumption is maybe a long-term wish. I think it's only credible when all the stakeholders believe the whole process is very credible and competent and they trust it going forward but you're not there. I mean you're really not there right now. So I think my being takeaway from today so far has been this concern about putting all these ratemaking issues out there, outside of the hearing room and putting in a part of bids in their review process by the RTOs for these projects. I know with my members that's not going to fly.

CHAIRMAN BAY: You know if the 784 criteria were met, would we be there?

MR. HUGHES: I'm sorry?

CHAIRMAN BAY: If the 784 criteria were met, would we be there? That is if the process was transparent, that there was real competition, that there was an evaluation oversight and a definition?

MR. HUGHES: Those are nice words but I'd like to see it in practice first.

CHAIRMAN BAY: Raja.

MR. SUNDARANAJAN: Yes, I think Chairman, I think you identified the issue becomes significant more complicated in a sponsorship model. In a sponsorship model, the evaluation becomes not only the idea plus also the cost-containment elements it's kind of difficult to know how much role the cost containment actually played in the selection process. But that issue is obviously in our opinion at least the fact that all aspects of rate-paying should be done after the selection. That's why we understand all cost caps and are recurrent but what are the framework?

But even in a bid-based model, how do you attribute to an entity that has a right-of-way and has a significant edge over other entities? And what the selection process was primarily because of the fact that the entity had the right-of-way and that was the reason why the entity was selected for the project and true when a cost cap associated with it which has maybe a little teeth to it, but how do you make that an abuttable presumption because they're -- you know, even the bid-based model you have issues and instances where cost is predominantly maybe it's not the right reason why the project was selected and be what the entity was like.

We actually have multiple issues for getting to the rebuttable presumption argument and that's why we proposed what we proposed.

CHAIRMAN BAY: Ed. You're smiling Ed.

MR. TATUM: Well, I am and I'm going to ask you for my answer here, please assume that I've gotten over the idea that the Federal Power Act says it's okay. But that being said, what we would really be going for here is to determine if there is really a direct, price-based competition among parties to build the same transmission project. Then the other part of that, which would actually force prices towards marginal costs. So that would be the economic three running behind that.

Now, how are we going to do that? And as Raja said that the sponsorship model makes it kind of different because we've got apples to pears and back and forth comparisons. Now, if we're actually comparing a bunch of different 115 KB or 345 KB lines we might be closer but we're still not certain because there are additional things that an incumbent may have over the non-incumbent.

In answer to your question to John, 784 principles, no those are good principles. Those are good guiding principles. Perhaps there's a way to work with them in conjunction with some principles you all put out under order 890 that might feel some benefit there. So I'll leave you with that.

CHAIRMAN BAY: Thanks Ed. John?

MR. CUPPARO: Our assumption is that under a sponsorship model that again the weighting of the cost, I think which is kind of in the central theme is appropriately accommodated for and that would be clear up front so you know that it's not just the only component that a project is being revisited and evaluated on. It could change project to project or type of project so making sure that that's clear up front may be important in both models. Also recognizing that we do see this as a maturity thing that you're taking steps, that we don't go from where we are today to you know completion and then the next step with guidance and clarity around some of those principles would be important.

CHAIRMAN BAY: So I have one other question about the rebuttable presumption. How long should it last? Should it be over the entire useful life of the asset which could be 40 or 50 years or could it be a shorter period of time? Five years, ten years; something that provides greater regulatory servitude but at some point ends. You know, going to your point Terry about PPAs I mean you mentioned PPAs having a term to five years or ten years, maybe fifteen years. There probably aren't many PPAs of a 40-year term and so the counter argument is going to be from consumer groups is going to be you're locking in consumers to a really big bet and is that really necessary?

Maybe we need the contract you know, maybe that should be enough? But now you want to sweeten it but it doesn't have to be for the useful life of the asset if it's a 40 or 50-year period.

MR. HARVILL: I think I would start with the fact that when bidding a project from constructing a project, financing that project over the course of its useful life of 40 years so I'm not going to go out and get financing for a transmission project for 10 years or for 15 years. It's going to be for the life of that project. So that's the foundational issue. I guess my question back to you would be what is going to materially change over the course of that 30 or 40 year period that's going to justify going in and changing the capital structure of the ROE or the other components that have been subject to a cost-containment or some type of price cap associated with that.

So if I'm going in and I bid and I'm the lowest cost developer that actually wins the project, ultimately what could happen in the future that would cause the Commission or the consumer to have concerns that essentially we're over-earning or we're not doing what we're supposed to be doing on that project. So that's what I struggle with is that you know we're opening this up because we don't know what the future may hold but at the same time I can't predict today what that would actually be. So I actually go back then to how I actually get that project built in the first instance which is financing over the course of its life.

CHAIRMAN BAY: But isn't, this is in response to you that what you could do is that instead of offering a proposal with a cost cap you offer one without a cost cap, which is going to go through all the process that John Hughes over there, you know, wants that project to go through, right.

MR. HARVILL: Right, you could and I would hearken back to the fact that it seems we're on a trajectory at least in the Order One Thousand competitive process that there seems to be some benefit associated with having a cost cap in place. So without that you're going to be disadvantaged in the process.

CHAIRMAN BAY: Craig.

MR. GLAZER: Just very quick. I'm not a fan of the rebuttable presumption but if you just limit it to construction cost, you'd solve that problem that you've just raised. Because that's obviously a static fixed time so that would solve that problem, at least make it simpler.

CHAIRMAN BAY: John.

MR. CUPPARO: Just a comment on the cost cap, in SPP as an example in their recent bid, a cost cap didn't actually guarantee you getting the project realizing that they've got a bit of the sponsorship into their process but you could actually see in terms of their report how much a cost cap may be valued versus an uncapped bid so I think those are also important transparency items that would help with this issue.

CHAIRMAN BAY: Clearly that has been a theme that we've heard today that transparency would be helpful for transmission developers. Ed.

MR. TATUM: We have a lot of projects already under competition, competitive development, absent of rebuttable presumption. Transmission is a good business. We don't think we need it at all. The other point I wanted to raise is I think we seem to think and we might believe that cost caps where competitive transmission has benefitted consumers, at this point I don't think we have any empirical evidence to that. We have a hope and we understand that it might be the case but that's not a certainty.

CHAIRMAN BAY: Thank you. Colleagues, any other questions for follow up?

COMMISSIONER CLARK: Let me just ask a really quick question for follow up for anybody who wants to jump in on this. I thought Raja hit something right on the head that I've been thinking about for a while which is this issue of sponsorship versus competitive bid in relationship to cost containment measures like fixed revenue requirements. Is it, I think it's pretty self evident that it's tougher in the sponsorship model to try to get your head around how it works but I'm curious if folks have an opinion of whether, is it simply more difficult in a sponsorship model as compared to a competitive bid model or is it just so difficult that it's almost precluded. We don't even want to spend a lot of time thinking about it? Is it so tough that it's too tough to even get your arms around?

MR. SUNDARANAJAN: Commissioner, we actually think that it's fundamentally difficult on a sponsorship-based model than in a bid-based model because in a bid-based model first of all I think the concept that we are more familiar with is the MISO and SPP region which is predominantly Midwest and you know the project and you have a good six months to put in a bid.

In six months you could do siting studies, preferential route studies, potentially look at some Geodex studies to see what rock formations are there. To see what can be actually built and then you basically have a lot better scope on the project in the six months by the time you actually put in a bid that is meaningful with a cost-containment that is real. In a sponsorship model, you have four months to come with not only the idea, now you're asking the developer to come up with A) a potential idea that has we have no idea whether it's going to succeed at the end of the day; B) put in more dollars in terms of scoping the project, doing route studies, Geodex studies that becomes significantly more difficulty for a developer.

In our opinion that is one of the main reasons why a sponsorship based model, even though it's great in terms of generating ideas but doesn't lend itself to other rebuttable presumption concepts.

COMMISSIONER CLARK: Anybody else?

MR. TATUM: Raja talked about the developer's side of it from the customer or the regulator's side of it define and how do we evaluate these various different solutions? You know you can get the Geotech studies and back and forth it's just a limited timeframe you still can't get it all done. But then to really assure that we have all these projects, enough projects that are driving that marginal cost down but they are completely different. I think that makes it even more complicated.

COMMISSIONER CLARK: Yes, thanks. I mean, in folks who come through my office I hear all the time the same thing that I've heard here today which is "we didn't get the model to work." And you hear good things about either one if they're structured properly. It doesn't necessarily mean that everything that we could come up with in terms of potential regulatory solutions fits equally with each model and I think we're sort of finding that out.

HONORABLE: Thank you, Mr. Chairman. I have a very brief comment, just to thank the panelists. You've been very thoughtful. I think we've observed that you've also stretched a bit to be creative.

(Laughter)

Raja, you in particular, willing to branch out from your colleagues with thinking about ways that really embrace a broader stakeholder base. I greatly appreciate that because through this effort we can find solutions. Maybe they're not perfect but their better and they will aid us in ultimately getting the transmission built that we need so I just wanted to thank you. This was a robust and wonderful panel.

CHAIRMAN BAY: I'd like to thank all of our panelists today for our second panel. I really appreciated your remarks. Very thoughtful, very helpful to us. We had actually planned to bring you back tomorrow morning from 9 to 10 o'clock in the morning. I don't think that will be necessary now. Instead we will start with panel 3 at 9 o'clock in the morning the Staff will reach out to the members of Panel 3 to make sure that they are here but thank you very much.

(Whereupon at the meeting concluded at 5:03 p.m.)

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This is to certify that the attached proceeding before the FEDERAL ENERGY REGULATORY COMMISSION in the Matter of:

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Competitive Transmission Development

Technical Conference

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were held as herein appears, and that this is the original transcript thereof for the file of the Federal Energy Regulatory Commission, and is a full correct transcripton of the proceedings.

Larry Flowers

Official Reporter