

**Special PC: Consideration of Cost Cap/Containment Provisions for Competitive Proposals:
Participating TO Sub-Group¹ Alignment Points**

I. Focus of Discussion Should be Cost Containment and Cost Consciousness

The term cost containment should not immediately be defined as cost caps. There are a number of measures and mechanisms to contain costs associated with the development of transmission infrastructure. A utility's obligation to serve requires responsibility to design, build, own, operate and maintain transmission assets prudently and subject to state and federal ratemaking oversight has stood as a built-in cost containment mechanism for many years. The proof of its success is evident in the reliability and long asset lives of the entire PJM transmission grid. The concept of cost caps encompasses many complexities and can have unintended consequences for the development of critical energy infrastructure if not carefully and thoughtfully implemented, including the evaluation and enforcement mechanisms.

II. PJMs "Going Forward Principles"

Although the Participating TOs remain concerned about the potential impact of cost caps to complex transmission projects, particularly cost cap application to reliability projects, we do not oppose incorporation of PJMs "Going Forward Principles" into Manual 14F as we do believe the principles as communicated provide some structure around how cost containment provisions will be valued and evaluated, specifically in the competitive transmission planning process for Order 1000 projects.

- (i) Cost cap proposals are voluntary – **AGREE**
- (ii) Consideration of cost caps limited to cap on construction costs – **AGREE**
 - a. COMMENT: In the event costs caps are utilized in the selection process, based on the data PJM reviewed with the stakeholders, the Participating TOs agree that it makes sense to limit its evaluation to caps on initial capital costs (total costs associated with bringing the project into service).
 - The Participating TOs agree with PJM that caps on initial capital cost, and resultant inclusion in rate base, are the most enforceable and are consistent with current ratemaking practices and regulatory oversight.
 - Initial capital cost has the most material impact on revenue requirement for a project, as recognized and outlined in the information PJM presented on May 24th.
 - PJM is not a rate regulator.
 - PJM's approach properly avoids consideration of items that are capped but are difficult to track and measure, could be changed with future Section 205 or 206 filings, are difficult to enforce or could be detrimental to the future integrity of the grid (e.g. O&M, depreciation rates, base ROE and capital structure).

¹ Participating TO Sub-Group: The TOs participating in this alignment posting initiative and actively participating in the Special PC: Cost Cap/Cost Containment stakeholder discussions are collectively aligned and include AEP, Duke, Duquesne, Exelon, FirstEnergy and PSEG (hereinafter "Participating TOs").

- For purposes of comparing the cost effectiveness of differing proposals, the Participating TOs support PJM continuing to include a third party assessment of the developer-provided cost estimate and, if provided, the capped cost (subject to scrutiny discussed herein)
- (iii) Cost cap is one factor in overall project review – **AGREE**
- a. COMMENT: PJM’s principle evaluation criteria should continue to be a technical analysis that selects the project(s) which best address the problem statement and long term needs of the system. Inclusion of a cost cap should not influence this primary technical analysis. If cost caps are going to be utilized, the Participating TOs agree with PJM that it is appropriate for cost caps to be used as one factor in deciding between otherwise technically similar projects that equally address the problem statement. Other key factors should include the project’s constructability, and the developer’s design, construction and permitting experience and operations and maintenance capabilities.
- (iv) Confidentiality Requests limited to specific construction phase detail – still available to stakeholders thru NDAs. – **AGREE**
- a. COMMENT: After consultation with the submitting entity, information that PJM considers inappropriately labeled as confidential will not be given consideration in the evaluation of the proposal cost cap and cost commitment.
- (v) Exclusions – Cost caps and cost commitments must be clearly articulated in the proposal at the time of proposal submittal with specific details regarding the components that are covered by the cost caps and cost commitments and any exclusion to the cost caps and cost commitments. Proposal submittals must include the proposed contractual language on covered and excluded items. Cost containment language shall ultimately be included in the Designated Entity Agreement as a non-standard term and filed with FERC. – **AGREE**
- (vi) Exclusions – Entities must submit rationale and supporting information to be provided by project developer, including, but not limited to detailed information such as past experiences relevant to construction of such projects, past experience with the events giving rise to the exclusion and discussion of why the developer has chosen to exclude the particular risk from the cost caps and cost commitments. – **AGREE**
- (vii) Exclusions - PJM will consider the risk of excluded event and the potential cost impact of exclusions - **AGREE**
- a. COMMENT: PJM’s evaluation should factor in a review of the type of exclusions to capital cost containment provisions, as certain types of exclusions can diminish the value of the cost containment provisions. PJM must have the necessary internal expertise to evaluate cost containment provisions and exclusions.
- (viii) Reporting---Err on the side of transparency in reporting - **NEUTRAL**
- a. COMMENT: PJM should require quarterly updates on the progress of the project, including general status of the engineering, siting and construction; percentage of project complete; timely completion of milestones, including projected in service date,

and updates on project costs and any additional project information to provide transparency in reporting.

- b. Although recognizing the desire for transparency, PJM ought to consider how it will continue to encourage innovation if it continues to publicly reveal developer ideas. The focus should be on after-the-fact transparency rather than divulging ideas during the process.
 - c. PJM should publish the full details of the cost cap on selected Order 1000 projects, including exclusions.
 - d. Recognizing the complexities involved with incorporating cost caps into transmission ratemaking, if PJM selects a cost capped project, it should be required to monitor and provide periodic updates on the status of the developer's efforts to meet the cost cap obligation.
- (ix) Challenges to the Cost Cap---Comments and any Protests to be submitted to FERC prior to finalizing DEA – **AGREE**
- a. COMMENT: Stakeholders retain the right, without limitation, to challenge cost recovery for any overage, exclusions or rate change, over and above the cost cap.
- (x) Enforcement: Done exclusively through FERC ratemaking process; PJM Board reserves the right to reconsider projects that are not timely progressing. **NEUTRAL**
- a. COMMENT: PJMs position appears to be that its responsibility is limited primarily to ensuring that necessary projects are progressing through construction and are placed in service.
 - FERC is the rate enforcement entity and that should continue to be recognized as these principles are implemented. Nothing being incorporated into Manual 14F should be contrary to this reality and current practice.
 - In that paradigm, actual enforcement of the cost cap is up to load primarily, with some involvement of other TOs affected by the Order 1000 project and the Developer itself.
 - PJM presumably acts as an information source for stakeholders to utilize as they deem appropriate, presumably in the FERC ratemaking process.
 - The Participating TOs are unclear that this paradigm by itself provides the best solution to the enforcement issue, but recognize the practicality of PJMs position.
 - Perhaps the most compelling justification for keeping cost caps as simple as possible is it remains completely unclear how PJM, some other entity that is engaged by PJM, or other stakeholders would have the resources and technical expertise to track complex cost caps through the potentially 40 year asset life of multiple assets, multiple entities and, quite possibly, multiple successors in interest.
 - Regardless of the paradigm, if cost caps are a component of transmission project development, there should be a clear mechanism for evaluating cost caps and the appropriate personnel and resources needed to properly administer and enforce those cost caps either within FERC or within PJM. Absent those resources, PJMs position appears to be a reasonable approach to implement for the present and evaluate as the process moves forward. The

ultimate objective for PJM must remain ensuring that necessary projects are timely built and placed in service.

III. Additional Participating TO Comments

Project Cost: PJM has the obligation to pick the best technical solution that addresses the problem statement and then use cost caps among the various secondary considerations that PJM would use to evaluate the technical solutions that address the problem statement. Cost is just one of many considerations for competitive bids along with reliability, operational need and a whole host of other planning considerations, including but not limited to the project's constructability, and the developer's design, construction and permitting experience and operations and maintenance capabilities. The Participating TOs agree with PJM that cost caps and cost containment provisions are for the exclusive purpose of providing guidance to PJM in deciding between otherwise technically similar projects that equally address the problem statement during evaluations of Order 1000 competitive project proposals.

Reliability and Critical Grid Infrastructure: PJM must closely evaluate cost cap and cost containment proposals when applicable to completion of critical grid infrastructure projects such as reliability projects. The acceptance of significant uncontrollable risks within the cost cap or cost containment without an obligation to serve could jeopardize the completion of projects, and as a result, significantly degrade grid reliability.

Weighting: A non-binding cost estimate supported by experience, track record and documented project understanding and comprehension should be afforded greater weight than a cost capped estimate with little fundamentals underlying it beyond a capped low bid. PJM should continue to use a third-party to provide validation of estimated project costs.

Incumbent TO Upgrade Costs Necessitated by Cost Capped Project: The cost estimating of the non-competitive upgrade components of competitive Order 1000 projects should be handled as any other non-competitive projects that are incorporated into the RTEP. Those non-capped costs are to be considered in whether or not to award the competitive bid. If the cost capped project is accepted, it shall be stated upfront what the assumptions are as to other costs to be incurred on the system. Specifically, if either (a) those assumptions must later give way to keep the cost cap, or (b) the cost cap must give way to retain those assumptions, then the entity that bound itself to the cost cap may be considered to be in violation of the cost cap requirements.