



Southwest Power Pool

STRATEGIC PLANNING COMMITTEE TASK FORCE on ORDER 1000 MEETING

AEP Office – Dallas, Texas

Thursday, November 10, 2011

Agenda Item 1 – Call to Order

Mel Perkins called the meeting to Order. Guests participated in person or via phone (Attendance – Attachment 1).

Agenda Item 2 – Task Force Deliverable and Timeline

Staff noted that the October 11, 2011 is the compliance filing deadline. A goal was set for the TF to seek Board approval of policy proposals by the April 2012 Board meeting and to seek Board approval of tariff language by the July Board meeting. It was also noted that there would be parallel Membership Agreement modifications that the CGC would need to resolve and seek Board approval by the July Board meeting.

Agenda Item 3 – Background Discussions

Staff recapped presentations summarizing the Staff-developed whitepapers regarding Order 1000 (Order 1000 presentation and additional background material – Attachment 2). In response to inquiries regarding what other ISO/RTOs were doing, staff noted that they are following SPP's lead and that ERCOT's process had not yet been reviewed by staff. Mel recapped that 3 options are to be considered: 1. The Sponsorship model; 2. Competitive solicitation; and 3. Hybrid.

Agenda Item 4 – Compliance Options

Dennis Reed offered that Westar had developed a hybrid approach. The approach would be for projects that did not have a ROFR anymore. In such cases SPP would default to the Transmission Owner and open a 90-day window and if an entity proposed a project during that 90 day window, SPP would then proceed to a vendor selection process. Details were to be furnished later.

Jake Langthorn offered that OGE had also developed a hybrid approach with two parts. The first part consists of a 4 step process in which SPP planning process would identify "needs". SPP would then issue RFPs, to which sponsors would respond and SPP would evaluate and determine the best solution. The second part deals with cost allocation: SPP would raise the threshold for regional allocation to projects 200KV or greater (or in other words, zonal allocation would be for facilities 0-200 kV. Details were to be furnished later.

Agenda Item 5 – Next Steps

The TF agreed on the proposed timeline as noted above (Seek BOD Approval of SPC Policy in April set of meetings for Criteria and Evaluation and seek BOD Approval of RTWG's language in July set of Meetings).

Regarding the Order 1000 Selection Criteria and Process:

1. OG&E will write up and provide details for its proposal.
2. Westar will write up and provide details for its proposal.
3. SPP Staff will research and provide details for ERCOT & CAL-ISO's selection process of projects.
4. SPP staff will research and provide details for how other RTOs are handling the Selection Criteria.
5. SPP staff to assess risk of "Do Nothing" (argue for ROFR with existing allocation)

Strategic Planning Committee
January 13, 2011

Regarding the Order 1000 Research of Impact on Changes to the H/B:

1. SPP Staff look at scenarios of changes in the H/B.
2. SPP Staff look at Impacts in ATRR if the Highway is 200Kv and above.
3. SPP Staff look at Impacts in ATRR if the H/B remains the same but zonal allocation move up to 200Kv.

Finally:

1. SPP Staff will Complete State Siting White Paper
2. SPP Staff to draft criteria to be a transmission builder under Order 1000
3. SPP Staff to draft evaluation and reevaluation criteria

Respectfully Submitted,

Michael Desselle
Secretary



Southwest Power Pool, Inc.

STRATEGIC PLANNING COMMITTEE TASK FORCE on ORDER 1000 MEETING

Thursday, November 10, 2011

9 AM – 2 PM

AEP Office, Dallas, Texas

• A G E N D A •

1. Call to Order Mel Perkins
2. Task Force Deliverable and Timeline Mel Perkins
3. Background Discussion Items Matt Binette/Paul Suskie
 - Order 1000 & ROFR Issues
 - 4 limitations on FERC Order 1000 & ROFR
 - Regional Funding & SPP's Highway/Byway
 - Applicability to ROFR to Reliability Projects
4. Compliance Options Paul Suskie/Others
5. Next Steps..... Mel Perkins

<u>Name</u>	<u>Company</u>
Michael Desselle	SPT
Paul Sustip	SPI
Matt Brette	WTT
IRENE A. Gimpbell	OKLAHOMA CORPORATION COMM.
Katherine Prewitt	SPP
Terri Gallup	IAEP
Match Elmore	Xcel Energy, SPS
TODD FRIDLEY	KCP&L
Antoine Lucas	SPP
Carl A Hurlis	ITC Great Plains
Dave Grover	ITC Great Plains
Michael C. Moffet	Sunflower Electric
TOM NESTERMANN	Sunflower Electric
Dennis Reed	Westar
Bryan Pushitz	LS Power
Sharon Segner	LS Power
Jake Langthorn	OG&E
Mel Perkins	OG&E

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Keith Phoe East Texas Coops	Dan Witt OPPD
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Harry Skilton Director	Gerald Deaver - Xcel/SPS
Josh Martin Director	Jim Krajcedi - CES
Julian Briv Director	Dan Jones - SPP staff
Dorothy Bennett - Climateenergy.org	Speed Ahead - FERC
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Dan Witt

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Gerald Deaver

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Order No. 1000

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

Strategic Planning Committee
Task Force on Order 1000
Compliance

November 10, 2011



Order 1000 – ROFR Ruling

- Order 1000 requires all public utility transmission providers to eliminate from their FERC-jurisdictional tariffs and agreements any provisions “that establish a federal right of first refusal (“ROFR”) for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.” [PP 253, 313]

Order 1000 – ROFR Ruling (cont'd)

- The focus of the ROFR ruling is transmission facilities that are evaluated at the regional level and selected in the regional plan for purposes of cost allocation, as opposed to facilities that are planned exclusively in the public utility transmission provider's local planning process and simply "rolled-up" and listed in the regional transmission plan for informational purposes and analysis. [P 318 and n.299]

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Order 1000 – ROFR Limitations

- Order 1000 contains several limitations on the ROFR ruling. The requirement to eliminate ROFR does not:
 - Apply to "local transmission facilities" and facilities not selected in the regional transmission plan for cost allocation. [PP 63, 318]
 - Apply to upgrades to an incumbent transmission owner's existing facilities (including tower change outs and reconductoring). [P 319]
 - Alter an incumbent transmission owner's use and control of existing rights-of-way or limit any right of an incumbent transmission owner to build, own, and recover the costs of upgrades on existing rights-of-way. [P 319]
 - Limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities. [P 287]

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Order 1000 – SPP ROFR

- Section 3.3(b) of the SPP Membership Agreement and Section VI.4 of Attachment O of the SPP Tariff contain a ROFR for incumbent SPP Transmission Owners:
 - Both provisions indicate that after SPP approves a project for construction, SPP “direct(s) the appropriate transmission owner(s) to begin implementation of the project.”
 - The “appropriate transmission owners” are the incumbent SPP transmission owners to whose existing facilities the new project will interconnect. Both provisions give the Owner(s) the option to construct or not to construct.
 - FERC has previously determined and SPP has previously acknowledged that this language creates a ROFR for incumbent SPP Transmission Owners.

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Order 1000 – Additional ROFR Requirements

- Order 1000 contained several additional requirements to facilitate nonincumbent developer participation:
 1. Establish qualification criteria to submit a transmission project for selection in the regional transmission plan for purposes of cost allocation;
 2. Adopt information requirements and a timeline for project submission;
 3. Develop a process to evaluate proposals for selection in the regional transmission plan for purposes of cost allocation; and
 4. Ensure eligibility for cost allocation for projects selected in the regional transmission plan for purposes of cost allocation regardless of whether the developer of the project is an incumbent transmission owner or a nonincumbent transmission developer.

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Order 1000 – Qualification Criteria

- Each regional transmission planning process must establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation. The criteria must: [PP 323-324]
 - Apply to both incumbent transmission providers and nonincumbent transmission developers.
 - Not be unduly discriminatory or preferential.
 - Allow for the possibility that an existing public utility transmission provider already satisfies the criteria, and allow any transmission developer the opportunity to remedy any deficiency.
 - Provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.

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Order 1000 – Qualification Criteria (cont'd)

- FERC provided a great deal of latitude in this requirement.
- Therefore, SPP can structure its qualification criteria to ensure that only qualified entities that have the financial and technical ability to construct and own transmission facilities are allowed to propose projects in the SPP planning process.

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Order 1000 – Project Submission

- Each public utility transmission provider must revise its tariff to identify: [PP 325-327]
 1. The information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and
 2. The date by which such information must be submitted to be considered in a given transmission planning cycle.
- These information requirements must identify in sufficient detail the information necessary to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects.

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Order 1000 – Project Submission (cont'd)

- The project submission requirements can include items such as relevant engineering studies and cost analyses, as well as other reports and information from the transmission developer as necessary to facilitate evaluation of the transmission project in the regional transmission planning process.
- The requirements must not be so cumbersome as to effectively prohibit transmission developers from proposing transmission projects, yet not so relaxed that they allow for relatively unsupported proposals.

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Order 1000 – Project Submission (cont'd)

- SPP can structure the project submission requirements in such a manner as to reduce the possibility of transmission developers proposing multiple, duplicative, or unnecessary projects in an effort to flood the process and increase the likelihood of a project being selected. For example:
 - Require that a project proponent present a *prima facie* showing of need for a project.
 - Require a deposit for any project proposal.
- Any such requirements, however, must be applied on a comparable and nondiscriminatory basis to incumbent transmission owners and nonincumbent transmission developers alike.

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Order 1000 – Project Evaluation

- Each public utility transmission provider must amend its tariff to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation. [PP 328-331]
 - This process must comply with the Order No. 890 transmission planning principles ensuring transparency and the opportunity for stakeholder coordination.
 - The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.
 - Regions may, but are not required to, use competitive solicitation to select projects.

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Order 1000 – Project Evaluation (cont'd)

- FERC encouraged public utility transmission providers to build on existing Order 890 regional transmission planning processes that already set forth the criteria by which the public utility transmission provider evaluates the relative economics and effectiveness of performance for alternative solutions offered during the transmission planning process.

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Order 1000 – Project Reevaluation

- Order 1000 requires each planning process to have a mechanism to reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions to ensure that the incumbent transmission provider can meet its reliability needs or service obligations. [P 329]
 - This requirement does not apply to delays that do not materially affect the ability of an incumbent transmission provider to meet its reliability needs or service obligations.
 - This requirement applies only to transmission facilities selected in a regional transmission plan for purposes of cost allocation.

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Order 1000 – Cost Allocation Eligibility

- Nonincumbent transmission developers must have the same eligibility as incumbent transmission developers to use the regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation. [P 332]
- Each transmission facility selected in the regional transmission plan for purposes of regional cost allocation must be eligible for such cost allocation; eligibility for regional cost allocation is tied to the transmission facility's selection in the regional transmission plan for purposes of cost allocation and not to a specific sponsor. [P 335]

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Order 1000 – Cost Allocation Eligibility (cont'd)

- Transmission facilities not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or nonincumbent transmission provider, may not be recovered through the transmission planning region's cost allocation method or methods. [P 332]
- Projects for which an entity seeks to use the region's cost allocation method(s) must be included in the regional transmission plan for purposes of cost allocation, and such projects cannot retain a ROFR for an incumbent transmission owner (subject to the exceptions specified in Order No. 1000 such as upgrades, projects utilizing existing rights-of-way, etc.).

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Order 1000 – Developer Selection

- SPP currently assigns transmission projects to the “appropriate transmission owner(s)” per the ROFR language in the SPP Membership Agreement and Tariff.
- As part of the process of eliminating federal ROFR for all incumbent SPP Transmission Owners, SPP will need to develop a process for selecting an entity to build each transmission project identified in the SPP planning process.

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Order 1000 – Developer Selection (cont'd)

- SPP Staff has identified three potential options for the selection of entities to build SPP transmission projects, based on language in Order 1000:
 - **Sponsorship Model:** Each project will be assigned to the entity that proposed or “sponsored” it in the SPP planning process.
 - ROFR limitations could apply (i.e., incumbents continue to build upgrades to existing facilities and facilities on rights-of-way).
 - **Competitive Solicitation Model:** Each project identified in the SPP planning process would be put up for bid and any entity that satisfies the qualification criteria is eligible to bid.
 - ROFR limitations could apply (i.e., incumbents continue to build upgrades to existing facilities and facilities on rights-of-way).
 - **Other?**

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Order 1000 – Developer Selection (cont'd)

- **Sponsorship Model:**
 - FERC declined to mandate a sponsorship model or adopt its proposal that would give a project sponsor the future right to construct and own a transmission facility it sponsored in the regional planning process. [PP 334, 338]
 - However, Order 1000 suggests in several places that regional planning processes could assign projects based on sponsor. [PP 267, 332]
 - If SPP opts for a sponsorship approach, SPP will need to develop a process for what to do if a selected project is modified from its original proposal, two sponsored projects are combined into a single project, or SPP selects a project that does not have a sponsor in the planning process.
 - Project sponsors would be required to meet SPP's qualification criteria.

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Order 1000 – Developer Selection (cont'd)

- **Competitive Solicitation:**
 - Throughout Order No. 1000, FERC indicated that transmission planning regions may adopt a competitive solicitation process to identify transmission projects and developers to build those projects. [PP 321, 336]
 - SPP could use as a basis for this approach its current process set forth in Section VI.6 of Attachment O of the SPP Tariff for selecting an alternate entity to build a transmission facility if the Designated Transmission Owner is unable or unwilling to construct an assigned transmission facility.
 - Any entity seeking to bid on a project in the SPP planning process would be required to satisfy SPP's qualification criteria.

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Order 1000 – Developer Selection (cont'd)

- Order 1000 suggests sponsorship, competitive solicitation, or some other mechanism in its cost allocation requirement:
 - “We also require that public utility transmission providers in a region establish, in consultation with stakeholders, procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation. This mechanism could be, for example, a non-discriminatory competitive bidding process. The mechanism a regional planning process implements could also allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project. In that case, however, the regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional plan for purposes of cost allocation. There may also be other mechanisms, or combinations of mechanisms, that may comply with our requirements.

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Questions?



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Order No. 1000 – ROFR Ruling Applicability to Reliability Projects

Matthew J. Binette
November 10, 2011

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Order 1000 – ROFR Ruling

- **Does the Order 1000 ROFR ruling allow an exception for reliability projects?**
 - **Order 1000 does not appear to allow incumbent public utilities to retain ROFR for reliability projects.**

Order 1000 – ROFR Ruling



- **Several parties during the rulemaking process proposed an exemption for reliability projects from the requirement to eliminate ROFR.**
- **Order 1000 mandated elimination of federal ROFR for “transmission facilities selected in a regional transmission plan for purposes of cost allocation” without distinguishing between reliability-based facilities and other facilities. [PP 253, 313]**
 - **FERC’s focus “is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.” [P 318]**

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Order 1000 “Limitations”



- **In Order 1000, FERC expressed several “limitations” to its ROFR ruling, including (among others):**
 - **Order 1000 does not require removal of a federal ROFR for “local transmission facilities.” [P 258]**
 - **Transmission facilities located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation [P 63]**
 - **Order 1000 continues to permit public utility transmission providers to retain ROFR for upgrades to existing facilities (i.e., tower change outs and reconductoring) and facilities along existing rights-of-way. [P 319]**

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Order 1000 Clarifications



- FERC “clarified” that its ROFR ruling was “not intended to diminish the significance of an incumbent transmission provider’s reliability needs or service obligations. [P 262]
- However, rather than exempting reliability upgrades from the ROFR ruling, FERC indicated:
 - Order 1000 continues to permit an incumbent transmission provider to meet its reliability needs or service obligations by building new transmission facilities that are located solely within its retail service territory or footprint that are not submitted for regional cost allocation. [P 262]
 - Alternatively, an incumbent may rely on facilities selected in the regional plan for purposes of cost allocation. [P 262]

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Order 1000 Reliability Solutions



- Because incumbent transmission owners may need to rely on facilities built by others to satisfy reliability and service needs, FERC adopted certain additional provisions.

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Order 1000 Reliability Solutions



- **Reevaluation of Transmission Plan**

- **Order 1000 requires regional planning processes to have a mechanism to reevaluate the transmission plan to determine whether delays have the potential to adversely affect an incumbent's ability to fulfill reliability or service obligations, and to develop alternative solutions, including solutions proposed by incumbents. [PP 263, 329]**

- **FERC indicated that incumbents can express concerns that the transmission plan does not address reliability needs during the planning process. [P 264]**

- **If, during the reevaluation process, an incumbent's transmission solution is selected, the transmission solution can be eligible for cost allocation through the regional method even if located exclusively in the incumbent's retail service territory or footprint. [P 329]**

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Order 1000 Reliability Solutions



- **Local Transmission Facilities**

- **Nothing in Order 1000 restricts an incumbent's ability to develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own retail distribution service territory or footprint. [P 329]**

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Order 1000 Reliability Solutions



- **Waiver of NERC Penalties**
 - **FERC clarified that if a violation of a reliability standard results from a nonincumbent transmission developer’s decision to abandon a project, the incumbent transmission provider is not required to build the facility. [P 344]**
 - In such a circumstance, the incumbent must identify the specific reliability standard that will be violated along with a mitigation plan.
 - If the incumbent follows the NERC-approved mitigation plan, the incumbent will not be subject to an enforcement action for the specific NERC reliability standard violation(s) caused by the nonincumbent transmission developer’s decision to abandon the facility.

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Commissioner Moeller Dissent



- **In his dissent, Commissioner Moeller criticized FERC’s decision to eliminate ROFR, including ROFR for reliability projects. [Dissent at 2]**
 - **Commissioner Moeller observed that “notably absent” from the exceptions to the ROFR ruling is the “right of a utility to build a project within its franchised service territory in order to maintain the reliability of the existing network – regardless of whether the cost of that project is allocated on a regional basis.”**
 - **Commissioner Moeller also criticized FERC’s “blanket waiver” of reliability penalties.**

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Questions?

MEMORANDUM

To: SPP Strategic Planning Committee Task Force on Order No. 1000

From: Paul Suskie
General Counsel & Senior Vice President–Regulatory Policy
Southwest Power Pool, Inc.

Matt Binette
Wright & Talisman, P.C.
Counsel for Southwest Power Pool, Inc.

Date: November 3, 2011

Re: Order No. 1000 Nonincumbent Participation Requirements

In Order No. 1000,¹ the Federal Energy Regulatory Commission (“FERC”) directed all public utility transmission providers to (among other things) eliminate from their FERC-jurisdictional tariffs and agreements any provisions “that establish a federal right of first refusal (“ROFR”) for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.”² As part of this requirement, FERC directed all public utility transmission providers to adopt other provisions to facilitate the participation of “nonincumbent transmission developers”³ in regional transmission planning. Elimination of ROFR will necessitate that regional transmission planning processes have a mechanism in place to determine which transmission developer will build and own each project selected in the regional transmission plan for purposes of cost allocation.

I. SPP’S EXISTING PROCESS

SPP currently has a ROFR in its Membership Agreement and Tariff that SPP will need to modify to comply with Order No. 1000. Specifically, in both Section 3.3(b) of the SPP Membership Agreement and Section VI.4 of Attachment O of the SPP Tariff, after SPP approves a project for construction, SPP “direct(s) the appropriate transmission owner(s) to begin implementation of the project.” The “appropriate transmission owners” are the incumbent SPP

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, III FERC Stats. & Regs., Regs. Preambles ¶ 31,323 (2011) (“Order No. 1000”).

² *Id.* at P 313. Order No. 1000 continues to permit an incumbent transmission provider to meet its reliability needs or service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not included in the regional transmission plan or subject to the regional cost allocation methodology. *Id.* at P 262.

³ “Nonincumbent transmission developer” refers to two categories of transmission developers: (1) a transmission developer that does not have a retail distribution service territory or footprint; and (2) a public utility transmission provider that proposes a transmission project outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of the project. *Id.* at P 225.

transmission owners to whose existing facilities the new project will interconnect.⁴ FERC previously has determined that this language establishes a ROFR for incumbent transmission owners in SPP.⁵ SPP also acknowledged that its governing documents contain a ROFR in its comments in the rulemaking proceeding that culminated in Order No. 1000.⁶ Because both the SPP Tariff and Membership Agreement are FERC-jurisdictional agreements, SPP must modify them to eliminate this ROFR for incumbent transmission owners.

II. ORDER NO. 1000 NONINCUMBENT PARTICIPATION REQUIREMENTS

A. General Requirement to Eliminate Rights of First Refusal from FERC-Jurisdictional Tariffs and Agreements

As discussed above, FERC ordered all public utility transmission providers to remove from their FERC-jurisdictional tariffs and agreements provisions “that grant incumbent transmission providers a federal [ROFR] to construct transmission facilities selected in a regional transmission plan for purposes of cost allocation.”⁷ The focus of this requirement is transmission facilities that are evaluated at the regional level and selected in the regional plan for purposes of cost allocation, as opposed to facilities that are planned exclusively in the public utility transmission provider’s local planning process and simply “rolled-up” and listed in the regional transmission plan for informational purposes and analysis.⁸

Order No. 1000 contained several additional requirements to facilitate nonincumbent developer participation in regional transmission planning and construction, including establishing: (1) qualification criteria to submit a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) information requirements and a timeline for project submission; (3) a process to evaluate proposals for selection in the regional transmission plan for purposes of cost allocation; and (4) eligibility for cost allocation for projects selected in the regional transmission plan for purposes of cost allocation regardless of

⁴ See SPP Membership Agreement § 3.3(b) (“If the project forms a connection between facilities of a single Transmission Owner, that Transmission Owner will be designated to provide the new facilities. If the project forms a connection between facilities owned by multiple parties, all parties will be designated to provide their respective new facilities.”); SPP Tariff at Attachment O § VI.4 (containing language substantially similar to Section 3.3(b) of the SPP Membership Agreement).

⁵ See *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,171, at PP 42-43 (2009) (“We find SPP’s clarification regarding its proposed right of first refusal in section VIII of its Attachment O complies with the requirements of the SPP Planning Order. . . . SPP’s proposed revisions address the ambiguity the Commission was concerned about by clarifying the application of the right of first refusal and further limiting it by imposing the 90-day deadline. . . . While we are accepting SPP’s right of first refusal here, the Commission will explore at the technical conferences later this year the impact that such rights of first refusal have on transmission development.”).

⁶ See Comments of Southwest Power Pool, Inc. Docket No. RM10-23-000, at 15 (Sept. 29, 2010) (“This limited right of first refusal for incumbent SPP Transmission Owners enables such Transmission Owners to ensure that they have an opportunity to build facilities necessary to satisfy their obligation to build and to serve customers.”).

⁷ Order No. 1000 at P 253.

⁸ *Id.* at P 318 and n.299.

whether the developer of the project is an incumbent transmission owner or a nonincumbent transmission developer. Each of these requirements is discussed in more detail below.

B. Limitations on ROFR Elimination

In Order No. 1000, FERC articulated several limitations on to the requirement to eliminate from all FERC-jurisdictional tariffs and agreements any federal ROFR for incumbent transmission owners. The limitations to the general requirement to eliminate all federal ROFR provisions for incumbent transmission owners include:

- Local Transmission Facilities and Facilities Not Selected in a Regional Transmission Plan for Purposes of Cost Allocation: Order No. 1000 does not require removal from FERC-jurisdictional tariffs and agreements a ROFR applicable to “local transmission facilities,”⁹ which are defined as “a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.”¹⁰

Moreover, Order No. 1000 does not require the elimination of ROFR for transmission facilities not selected in a regional transmission plan for purposes of cost allocation.¹¹

- Upgrades to Existing Facilities: Order No. 1000’s ROFR reforms do not affect the right of an incumbent transmission owner to build, own, and recover costs for upgrades to its existing facilities, such as in the case of tower change outs or reconductoring, regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation.¹² FERC explicitly indicated that “an incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own transmission facilities.”¹³
- Rights-of-Way: The Order No. 1000 ROFR reforms are not intended to alter an incumbent transmission owner’s use and control of existing rights-of-way or to limit any right an incumbent transmission owner may have to build, own, and recover the costs for upgrades on existing rights-of-way, even if the transmission facilities or upgrades associated with the existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation.¹⁴ Order No. 1000 also

⁹ *Id.* at P 318.

¹⁰ *Id.* at P 63.

¹¹ *Id.* at P 318 (“The Commission’s focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.”).

¹² *Id.* at P 319.

¹³ *Id.*

¹⁴ *Id.*

does not grant or deny transmission developers the ability to use rights-of-way held by other entities.¹⁵

- State and Local Laws: Order No. 1000 does not affect ROFR conferred by state or local laws and is not “intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.”¹⁶

C. Additional Requirements for Nonincumbent Participation

1. Qualification Criteria

Order No. 1000 required each public utility transmission provider to revise its tariff to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.¹⁷ These criteria must not be unduly discriminatory or preferential.¹⁸ The qualification criteria should allow for the possibility that an existing public utility transmission provider already satisfies the criteria, and should allow any transmission developer the opportunity to remedy any deficiency.¹⁹

The qualification criteria must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.²⁰ The criteria should be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developers.²¹ Aside from these general requirements, FERC left it to each region to develop qualification criteria that are workable for the region, including procedures for timely notifying transmission developers of whether they satisfy the region’s qualification criteria and opportunities to mitigate any deficiencies.²²

¹⁵ *Id.*

¹⁶ *Id.* at P 287.

¹⁷ *Id.* at P 323.

¹⁸ *Id.* The criteria are intended to apply only to entities that propose transmission projects and intend to develop the proposed transmission project if selected. Stakeholders that do not intend to develop transmission projects may continue to propose transmission projects for consideration in the regional transmission plan without being required to demonstrate compliance with the criteria. *Id.* at n.304.

¹⁹ *Id.* at P 324.

²⁰ *Id.* at P 323. Nothing in the qualifications requirements of Order No. 1000 is intended to change any existing RTO procedure or practice regarding the operation of existing transmission facilities. *Id.* at n.303.

²¹ *Id.* at P 324.

²² *Id.*

SPP can structure the qualification criteria in such a manner that will ensure that any entity seeking to construct projects listed in the SPP Transmission Expansion Plan (“STEP”) is qualified to construct and own transmission facilities.

2. *Project Submission*

Order No. 1000 required that each public utility transmission provider revise its tariff to identify: (a) the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and (b) the date by which such information must be submitted to be considered in a given transmission planning cycle.²³ These information requirements must identify in sufficient detail the information necessary to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in the regional transmission planning process.²⁴

The project submission requirements can include items such as relevant engineering studies and cost analyses, as well as other reports and information from the transmission developer as necessary to facilitate evaluation of the transmission project in the regional transmission planning process.²⁵ The requirements must not be so cumbersome as to effectively prohibit transmission developers from proposing transmission projects, yet not so relaxed that they allow for relatively unsupported proposals.²⁶

SPP can structure the project submission requirements in such a manner as to reduce the possibility of transmission developers proposing multiple, duplicative, or unnecessary projects in an effort to flood the process and increase the likelihood of a project being selected. For example, Order No. 1000 contemplates the possibility that a regional transmission planning process could include a requirement that a project proponent present a *prima facie* showing of need for a project,²⁷ or require a deposit for any project proposal.²⁸ Any such requirements, however, must be applied on a comparable and nondiscriminatory basis to incumbent transmission owners and nonincumbent transmission developers alike.

3. *Project Evaluation*

Order No. 1000 required each public utility transmission provider to amend its tariff to describe a transparent and not unduly discriminatory process for evaluating whether to select a

²³ *Id.* at P 325.

²⁴ *Id.* at PP 325-326.

²⁵ *Id.* at P 326.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See id.* at P 327 (“[t]he Commission believes that it is not necessary to require here the additional procedural protections such as the posting of deposits, as suggested by LS Power. To the extent stakeholders in a particular region believe such procedures have merit, they may consider them during the development of OATT proposals that comply with the requirement of this Final Rule.”).

proposed transmission facility in the regional transmission plan for purposes of cost allocation.²⁹ This process must comply with the Order No. 890 transmission planning principles, ensuring transparency, and the opportunity for stakeholder coordination.³⁰ The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.³¹

FERC did not provide specific requirements for how regional transmission planning processes must select among qualified entities to build a transmission facility, instead leaving it to each region to propose a method. Regions may, but are not required to, use competitive solicitation to select the entity to build projects selected in the regional transmission plan.³² As a result, while not expressly required by Order No. 1000, regional transmission planning processes will need to develop a mechanism to select among various entities to build projects identified in the regional transmission plan. This additional implicit requirement of Order No. 1000 is discussed in more detail below.³³

4. *Transmission Plan Reevaluation*

Order No. 1000 required each public utility transmission provider to amend its tariff to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions to ensure the incumbent transmission provider can meet its reliability needs or service obligations.³⁴ Order No. 1000 did not require reevaluation of delays that do not materially affect the ability of an incumbent transmission provider to meet its reliability needs or service obligations.³⁵ The focus of this requirement is to ensure that adequate processes are in place to determine whether delays associated with a transmission facility selected in the regional plan may potentially adversely impact an incumbent transmission provider's ability to fulfill its reliability needs or service obligations.³⁶

²⁹ *Id.* at P 328.

³⁰ *Id.* FERC encouraged public utility transmission providers to build on existing regional transmission planning processes that, consistent with Order Nos. 890 and 890-A, already set forth the criteria by which the public utility transmission provider evaluates the relative economics and effectiveness of performance for alternative solutions offered during the transmission planning process. *Id.*

³¹ *Id.*

³² *Id.* at PP 259, 321.

³³ *See infra* Section II.C.

³⁴ Order No. 1000 at PP 263, 328-329. The requirement to reevaluate transmission facilities applies only to transmission facilities selected in a regional transmission plan for purposes of cost allocation and not transmission facilities in local plans that are merely "rolled up" and listed in a regional plan without going through the regional planning process. *Id.* at P 7.

³⁵ *Id.* at P 329.

³⁶ *Id.*

5. *Eligibility for Cost Allocation*

Order No. 1000 mandated that nonincumbent transmission developers must have the same eligibility as incumbent transmission developers to use the regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.³⁷ Each transmission facility selected in the regional transmission plan for purposes of regional cost allocation must be eligible for such cost allocation; eligibility for regional cost allocation is tied to the transmission facility's selection in the regional transmission plan for purposes of cost allocation and not to a specific sponsor.³⁸ FERC also required that public utility transmission providers in a region establish, in consultation with stakeholders, procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation.³⁹

Order No. 1000 specified that transmission facilities not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or nonincumbent transmission provider, may not be recovered through the transmission planning region's cost allocation method or methods.⁴⁰ In short, this requirement means that projects for which an entity seeks to use the region's cost allocation method(s) must be included in the regional transmission plan for purposes of cost allocation, and such projects cannot retain a ROFR for an incumbent transmission owner (subject to the exceptions specified in Order No. 1000 such as upgrades, projects utilizing existing rights-of-way, etc.).

C. Process to Select Among Competing Entities to Construct STEP Projects

As discussed above,⁴¹ while Order No. 1000 does not contain an express requirement that regional planning processes develop procedures to select among competing transmission providers to build projects identified in the regional transmission plan for cost allocation, implicit in the requirement to eliminate ROFR and to establish project selection criteria is the requirement that transmission planning regions have a mechanism in place to select an entity to construct each project selected in the regional transmission plan for cost allocation. Order No. 1000 recognized as much, stating that “[t]he extent to which any existing regional transmission planning process must be changed to implement the [Order No. 1000 framework] will depend on the mechanisms used by the region to evaluate competing transmission projects *and developers*.”⁴² The Order also indicated that FERC “decline[d] to adopt commenter suggestions to mandate a competitive bidding process for selecting *project developers*.”⁴³

³⁷ *Id.* at PP 332-335.

³⁸ *Id.* at P 335.

³⁹ *Id.* at P 336.

⁴⁰ *Id.* at P 332.

⁴¹ *See supra* Section II.B.3.

⁴² Order No. 1000 at P 320 (emphasis added).

⁴³ *Id.* at n.302 (emphasis added).

Accordingly, the elimination of existing ROFRs for incumbent transmission owners means that SPP will need to develop a process for selecting which entity will build each project identified in the STEP that is subject to cost allocation under one of SPP's cost allocation mechanisms. SPP's current process for identifying which entity will construct a transmission project in the STEP is tied to the SPP ROFR – specifically, SPP designates the “appropriate transmission owner(s) to begin implementation of the project,” which includes those transmission owner(s) to whose existing transmission facilities a new project will interconnect.⁴⁴ Because FERC has mandated elimination of ROFRs such as the SPP ROFR, SPP will need to have some mechanism in place to replace its current construction assignment and “Designated Transmission Owner” processes. SPP will provide in a separate document several options it has identified that it believes may potentially comply with the rule.

III. CONCLUSION

The Order No. 1000 requirement to eliminate ROFR from all FERC-jurisdictional tariffs and agreements carries significant implications for SPP's current transmission planning and construction assignment processes. SPP's existing process for designating construction obligations for transmission facilities identified in the STEP is linked to the SPP ROFR. SPP will need to establish a process for selecting, on a nondiscriminatory basis, which entity will construct each transmission facility identified in the STEP for cost allocation.

⁴⁴ See *supra* Section I.



SPP

*Southwest
Power Pool*

FERC Order No. 1000

**Transmission Developer Selection
Process**

**White Paper Published by:
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For the SPP Strategic Planning Committee Task Force on Order No. 1000

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DRAFT

1. HISTORY AND BACKGROUND

On July 21, 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order No. 1000,¹ which requires all public utility transmission providers to (among other things) facilitate nonincumbent transmission developer participation in regional transmission planning by removing from FERC-approved tariffs and agreements any language creating a federal right of first refusal (“ROFR”) for an incumbent transmission provider to construct transmission facilities selected in a regional transmission plan for cost allocation.² Implicit in the requirement to eliminate federal ROFR for incumbent transmission providers is that the regional planning process develop procedures for selecting which entity will construct each project selected in the regional transmission plan for purposes of cost allocation.

This white paper sets forth several options for transmission developer selection processes that SPP staff has identified to comply with the Order No. 1000 requirement to eliminate federal ROFR and allow participation by nonincumbent transmission developers on a nondiscriminatory basis. SPP Staff believes that the options specified below, if implemented on a nondiscriminatory basis and in compliance with the transmission planning requirements of Order Nos. 890³ and 1000, may be acceptable to FERC.

SPP has identified several potential options for transmission developer selection, as discussed in more detail in Section 3 of this white paper:

- (1) Project Sponsorship Model: Projects will be assigned to the entity that proposed or “sponsored” the project in the SPP planning process;
- (2) Competitive Solicitation: Each project selected in the SPP planning process will be subject to competitive bidding by qualified entities, with the winner to be selected by SPP on the basis of criteria set forth in the SPP Tariff and business practices; or
- (3) Other: SPP and its stakeholders develop a different process for selecting which entity will construct each project selected in the SPP planning process.

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, III FERC Stats. & Regs., Regs. Preambles ¶ 31,323 (2011).

² Order No. 1000 indicates that the elimination of federal ROFR from FERC-approved tariffs and agreements does not: (1) apply to transmission facilities not selected in a regional transmission plan for purposes of cost allocation; (2) apply to upgrades to existing transmission facilities, such as tower change outs or reconductoring; (3) affect existing rights-of-way; and (4) affect state or local laws or regulations regarding the construction or siting of transmission facilities.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, *order on reh’g*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

2. DEFINITIONS

Order No. 1000 uses the following terminology relevant to this white paper:

Incumbent transmission developer/provider: An entity that develops a transmission project within its own retail distribution service territory or footprint.

Nonincumbent transmission developer: An entity that either: (1) does not have a retail distribution service territory or footprint; or (2) is a public utility transmission provider that proposes a transmission project outside of its existing retail distribution service territory or footprint, where it is not the “incumbent” for purposes of the project.

Transmission facility selected in a regional transmission plan for purposes of cost allocation: A transmission facility that has been selected, pursuant to a Commission-approved regional transmission planning process, as a more efficient or cost-effective solution to regional transmission needs. This term does not include: (1) facilities planned by local planning processes that are “rolled-up” into regional plans; (2) facilities for which the sponsor does not intend to seek cost allocation under the regional cost allocation methodology (i.e., merchant transmission facilities).

Transmission planning region: The region in which a public utility transmission provider, in consultation with stakeholders and affected states, has agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan. For Regional Transmission Organization (“RTO”) members, the transmission planning region is the RTO region.

3. OPTIONS FOR SELECTING AMONG COMPETING TRANSMISSION DEVELOPERS

3.1 Sponsorship Model

In the Notice of Proposed Rulemaking that resulted in Order No. 1000, FERC expressly proposed that an entity that proposes or “sponsors” a project in the regional planning process would be granted the right to build the project if it is selected in the regional transmission plan.⁴ In Order No. 1000, FERC decided not to adopt its proposal that would give a project sponsor the federal right to construct and own a transmission facility it sponsored in the regional planning process.⁵ However, while Order No. 1000 did not mandate a sponsorship model, neither did it

⁴ See, e.g., *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, IV FERC Stats. & Regs., Proposed Regs. ¶ 32,660, at P 93 (2010) (“We also propose to require that each public utility transmission provider to amend its OATT to describe how the regional transmission planning process in which it participates provides for the sponsor (whether an incumbent transmission provider or nonincumbent transmission developer) of a facility that is selected through the regional transmission planning process for inclusion in the regional transmission plan to have a right, consistent with state or local laws or regulations, to construct and own that facility.”).

⁵ See, e.g., Order No. 1000 at PP 334, 338.

prohibit such an approach to determining which entity will construct a project in the regional transmission plan for purposes of cost allocation. In fact, throughout Order No. 1000, FERC repeatedly refers to project “sponsors,”⁶ suggesting that a nondiscriminatory sponsorship model may satisfy the requirements of Order No. 1000.

Under a sponsorship model, an entity seeking to construct transmission projects in the SPP planning process would first need to demonstrate its eligibility to participate in the SPP planning process by satisfying a series of qualification criteria set forth in the SPP Tariff. Order No. 1000 requires each regional planning process to develop qualification criteria “for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.”⁷ SPP can tailor the qualification criteria to ensure that only qualified entities are permitted to propose projects and be designated as the Designated Transmission Owner if the project is selected in the SPP planning process.

If SPP opts for a sponsorship approach, SPP will need to develop a process for what to do if a selected project is modified from its original proposal, two sponsored projects are combined into a single project, or SPP selects a project that does not have a sponsor in the planning process.

3.2 Competitive Solicitation

Throughout Order No. 1000, FERC indicated that transmission planning regions may adopt a competitive solicitation process to identify transmission projects and developers to build those projects.⁸ While Order No. 1000 provided very little guidance on the design of a competitive solicitation process for selecting transmission projects and developers, SPP could use as a basis for this approach its current process set forth in Section VI.6 of Attachment O of the SPP Tariff for selecting an alternate entity to build a transmission facility if the Designated Transmission Owner is unable or unwilling to construct an assigned transmission facility. Any entity seeking to bid on a project in the SPP planning process would be required to satisfy the qualification criteria required by Order No. 1000.⁹

⁶ See, e.g., *id.* at P 267 (“The Commission recognizes that there may be circumstances when an incumbent transmission provider may be called upon to complete a transmission project that it did not *sponsor*. . . . There also may be situations in which an incumbent transmission provider has an obligation to build a project that is selected in the regional transmission plan for purposes of cost allocation but *has not been sponsored by another transmission developer*.”); *id.* at P 332 (“The Commission also requires that a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any *sponsored* transmission facility selected in the regional transmission plan for purposes of cost allocation.”) (emphasis added).

⁷ *Id.* at PP 323.

⁸ *Id.* at P 321 (“For example, this Final Rule permits a region to use or retain an existing mechanism that relies on *competitive solicitation* to identify preferred solutions to regional transmission needs.”) (emphasis added); see also *id.* at P 336 (“This mechanism could be, for example, a non-discriminatory *competitive bidding* process.”) (emphasis added).

⁹ See *supra* note 7 and accompanying text.

3.3 Other

SPP Staff does not believe that the two options identified above are the only options to address the issue of transmission construction and ownership assignment in the SPP planning process. It is possible that SPP and its stakeholders could establish a process that combines elements of the sponsorship and competitive solicitation models or some different process altogether. In any event, whichever option SPP selects will need to provide comparable and nondiscriminatory treatment to incumbent transmission owners and nonincumbent transmission developers.

4. CONCLUSION

As part of its filing to comply Order No. 1000, SPP will need to develop a process for determining which entity will construct each project selected in the SPP planning process for cost allocation. SPP staff believes that a properly-structured project sponsorship model or competitive bidding process may satisfy the requirements of Order No. 1000 to facilitate nonincumbent participation in the SPP planning process. However, SPP and its stakeholders could develop an alternative to these approaches, provided it is not unduly discriminatory and complies with the planning requirements of Order Nos. 890 and 1000.