

MEMORANDUM

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

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Re: SPP Upgrades Subject to Order No. 1000 Right of First Refusal Requirements

This memorandum responds to the SPP Strategic Planning Committee Task Force on Order No. 1000’s request that SPP staff determine to which transmission network upgrades the Federal Energy Regulatory Commission’s (“FERC”) Order No. 1000¹ mandate to remove the federal right of first refusal (“ROFR”) applies. A reasonable interpretation of Order No. 1000 indicates that SPP is required to eliminate from its Open Access Transmission Tariff (“Tariff”) and Membership Agreement ROFR for the following categories of upgrades:

1. Upgrades developed through SPP’s Integrated Transmission Planning process (“ITP Upgrades”);
2. Upgrades included as part of a Balanced Portfolio (“Balanced Portfolio Upgrades”); and
3. Upgrades recommended based on the results of a high priority study (“High Priority Upgrades”).²

A reasonable interpretation of Order No. 1000 holds that other upgrades (i.e., upgrades related to transmission service requests (“Service Upgrades”), upgrades related to generation interconnection service requests, and Sponsored Upgrades) would not be subject to the requirement to eliminate the federal ROFR.

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 This determination is subject to several limitations that are articulated in Order No. 1000. In the event that an upgrade in one of these categories qualifies for one of the Order No. 1000 ROFR limitations, the requirement to eliminate the federal ROFR would not apply. The limitations to FERC’s ROFR mandate include: local transmission facilities (as defined in Order No. 1000); upgrades to a Transmission Owner’s existing facilities; or facilities constructed along existing rights-of-way. *See id.* at PP 63, 318-19.

I. ORDER NO. 1000

In Order No. 1000, 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 for an incumbent transmission provider *with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.*”³ The Commission also indicated that its “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.”⁴

Therefore, pivotal to determining what facilities fall within FERC’s mandate to eliminate federal ROFR is the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation.” Order No. 1000 indicates that:

Transmission facilities selected in a regional transmission plan for purposes of cost allocation are *transmission facilities that have been selected* pursuant to a transmission planning region’s Commission-approved regional transmission planning process *for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs.* . . . Such transmission facilities often will not comprise all of the transmission facilities in a regional transmission plan; rather, *such transmission facilities may be a subset of the transmission facilities in the regional transmission plan.*⁵

FERC elaborated that:

In some regions, transmission facilities not selected for purposes of regional or interregional cost allocation nonetheless may be in a regional transmission plan for informational purposes, and *the presence of such transmission projects in the regional transmission plan does not necessarily indicate an evaluation of whether such transmission facilities are more efficient or cost-effective solutions to a regional transmission need,* as is the case for transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁶

³ *Id.* at P 313 (emphasis added); *see also id.* at PP 7, 225.

⁴ *Id.* at P 318; *see also id.* at P 226.

⁵ *Id.* at P 63; *see also id.* at P 5 (“A ‘transmission facility selected in a regional transmission plan for purposes of cost allocation’ is one 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.*”) (emphasis added).

⁶ *Id.* at P 64 (emphasis added); *see also id.* at P 148 (“Through the regional transmission planning process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process. *This could include transmission facilities needed to meet reliability requirements, address economic considerations, and/or transmission needs driven by Public Policy Requirements.*”) (emphasis added); *see also id.* at P 47 (indicating that Order No. 1000’s regional planning requirement “seeks to ensure that each public utility transmission provider will work within its

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This language suggests that Order No. 1000 requires that the federal ROFR be eliminated for transmission facilities that are developed through the regional planning process to address regional transmission needs, such as reliability, economic, and public policy needs, that are eligible for cost allocation through the cost allocation mechanism(s) adopted by the region. The language also suggests that other transmission facilities that are included in the transmission plan for other purposes or that are not eligible for cost allocation through the cost allocation mechanism(s) adopted by the region would be permitted to retain the federal ROFR under Order No. 1000.

II. ANALYSIS OF SPP UPGRADES

Attachment O of the SPP Tariff identifies several categories of upgrades that may be included in the SPP Transmission Expansion Plan (“STEP”). Specifically, Section I of Attachment O indicates that:

New and proposed transmission facilities can come from several different areas of the Tariff. These areas are: 1) transmission service requests; 2) Generation Interconnection Service requests; 3) the integrated transmission planning process (ITP Upgrades); 4) the Balanced Portfolio process; 5) the high priority study process (high priority upgrades); and 6) requests for Sponsored Upgrades.⁷

This memorandum examines the characteristics of each of these categories of upgrades and the language of Order No. 1000 to determine which of these categories of upgrades fall within the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation” to which the requirement to eliminate the federal ROFR would apply.

A. Upgrades for Which SPP Must Eliminate Its Federal ROFR

Based on the interpretation set forth above, ITP Upgrades, Balanced Portfolio Upgrades, and High Priority Upgrades fall within the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation,” and SPP must eliminate from its Tariff and Membership Agreement any ROFR governing these categories of facilities (except for those facilities falling within one of the Order No. 1000 ROFR limitations, *see supra* note 2). These projects are developed through the SPP regional planning process and are identified as more efficient and cost-effective solutions to regional needs. Moreover, the costs of these upgrades are recovered through SPP’s regional cost allocation methods set forth in Attachment J of the SPP Tariff.

ITP Upgrades are identified through the ITP Process, which is designed to “provide a grid flexible enough to provide benefits to the region across multiple scenarios” and to “meet the system needs.”⁸ The ITP process requires SPP to study the regional transmission system

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transmission planning region to create a regional transmission plan that identifies transmission facilities needed to meet *reliability, economic and Public Policy Requirements.*”) (emphasis added).

⁷ SPP Tariff at Attachment O § I.

⁸ *Id.* § III (Introductory Paragraph).

reliability, economic, and public policy needs,⁹ assess the cost-effectiveness of proposed solutions,¹⁰ and recommend ITP Upgrades for approval by the SPP Board of Directors.¹¹ The costs of ITP Upgrades are allocated through the Base Plan Upgrade provisions of Attachment J, SPP’s regional cost allocation mechanism.¹² Thus, ITP Upgrades fall within the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation.”

Likewise, Balanced Portfolio Upgrades and High Priority Upgrades are “transmission facilities selected in a regional transmission plan for purposes of cost allocation.” Both categories of upgrades are identified through the SPP regional planning process set forth in Attachment O to provide economic benefits to the SPP Region,¹³ and both are subject to SPP regional cost allocation mechanisms set forth in Attachment J. Specifically, High Priority Upgrades (except those included in a Balanced Portfolio) are considered Base Plan Upgrades¹⁴ and allocated through the Base Plan Upgrade provisions of Attachment J.¹⁵ Balanced Portfolio Upgrades are allocated 100% on a regional basis and recovered through the Region-wide Charge.¹⁶

Because these categories of upgrades satisfy the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation,” Order No. 1000 requires SPP to eliminate any federal ROFR applicable to these upgrades, unless they qualify under one of the limitations identified in Order No. 1000.¹⁷

B. Upgrades for Which SPP May Retain Its Federal ROFR¹⁸

Based on the interpretation set forth above, upgrades related to generation interconnection service requests, Service Upgrades, and Sponsored Upgrades are not subject to the requirement to eliminate the federal ROFR, and thus SPP may retain its existing ROFR process for these upgrades.

⁹ *Id.* § III.6.

¹⁰ *See, e.g., id.* §§ III.3.c, III.4.c, III.8.d.

¹¹ *Id.* § V.1.d.

¹² SPP Tariff at Attachment J § III.

¹³ SPP Tariff at Attachment O §§ IV.2, IV.3-5.

¹⁴ *See* SPP Tariff, Definitions–B (definition of “Base Plan Upgrade”).

¹⁵ SPP Tariff at Attachment J § III.

¹⁶ *Id.* § IV.

¹⁷ *See supra* Note 2.

¹⁸ While some of these upgrades may be eligible for revenue crediting under Attachment Z2 of the SPP Tariff, their eligibility for future revenue crediting should not change the analysis because, at the time the upgrade is listed in the STEP, it is not included in the STEP “for purposes of cost allocation” as a “more efficient or cost-effective solution to a regional transmission need.”

1. *Generation Interconnection Upgrades*

Order No. 1000 specifically excludes upgrades related to generation interconnection from the requirements of the order. Specifically, Order No. 1000 indicates that “issues related to the generator interconnection process and to interconnection cost recovery are outside the scope of this rulemaking. . . . This Final Rule does not set forth any new requirements with respect to such procedures for interconnecting large, small, or wind or other generation facilities.”¹⁹

2. *Sponsored Upgrades*

Sponsored Upgrades do not fall within the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation” and therefore the requirement to eliminate ROFR does not apply. First, Sponsored Upgrades are not in the STEP for cost allocation, because the costs associated with Sponsored Upgrades are paid by the Project Sponsor.²⁰ Thus, at the time that a Sponsored Project is included in the STEP, it is not included for purposes of cost allocation. Additionally, Sponsored Upgrades are built at the request of a Project Sponsor; they are not “selected pursuant to a transmission planning region’s Commission-approved regional transmission process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs.”²¹ The Order No. 1000 federal ROFR mandate, therefore, should not apply.

3. *Transmission Service Upgrades*

Service Upgrades identified through the SPP Aggregate Transmission Service Study process do not appear to be subject to the requirement to eliminate the federal ROFR. While Service Upgrades are included in the STEP,²² and all or a portion of the costs of some Service Upgrades may be eligible for allocation under SPP’s Base Plan funding (i.e., Service Upgrades associated with a Designated Resource that meet the conditions in Section III.B of Attachment J or have obtained a waiver of the requirements),²³ such upgrades do not appear to fall within the description of “transmission facilities selected in a regional transmission plan for purposes of cost allocation” for several reasons.

First, Service Upgrades that do not qualify for Base Plan funding are paid for by the customers in the Aggregate Transmission Service Study group that identified the need for the upgrades,²⁴ and thus are not subject to allocation through SPP’s regional cost allocation mechanisms. Additionally, Service Upgrades are identified pursuant to the Aggregate Transmission Service Study process set forth in Attachment Z1 of the SPP Tariff, rather than the Transmission Planning Process set forth in Attachment O, and are only included in the STEP for

¹⁹ Order No. 1000 at P 760.

²⁰ See SPP Tariff at Attachment J § V.A; Attachment O § IV.1.

²¹ See Order No. 1000 at P 63.

²² See SPP Tariff at Attachment O § III.7.a.

²³ See SPP Tariff at Attachment J §§ III.B – III.C.

²⁴ See SPP Tariff at Attachment Z.1 § IV; see also Attachment J § V.B.

informational purposes.²⁵ Finally, Service Upgrades are identified for the purposes of providing transmission service to the customers in the aggregate study group; they are not identified “because they are more efficient or cost-effective solutions to regional transmission needs.” Thus, based on the language of Order No. 1000, Service Upgrades appear not to be subject to the requirement to eliminate the federal ROFR.²⁶

III. CONCLUSION

Order No. 1000 requires SPP to eliminate federal ROFR for “transmission facilities selected in a regional transmission plan for purposes of cost allocation.” ITP Upgrades, Balanced Portfolio Upgrades, and High Priority Upgrades qualify as such transmission facilities, and therefore SPP must modify its Tariff and Membership Agreement to remove any federal ROFR for these projects. However, upgrades related to generation interconnection requests, Service Upgrades, and Sponsored Upgrades do not appear to be subject to the requirement to eliminate the federal ROFR, because such upgrades are either expressly excluded from the Order No. 1000 requirements or do not appear to meet the definition of “transmission facilities selected in a regional transmission plan for purposes of cost allocation.”

²⁵ See Order No. 1000 at P 64.

²⁶ This memorandum concludes, based upon the express guidance in Order No. 1000 regarding which facilities constitute “transmission facilities selected in a regional transmission plan for purposes of cost allocation,” that the mandate to eliminate ROFR does not apply. However, it is possible that FERC could determine otherwise, based on the fact that certain Service Upgrades may qualify for partial Base Plan funding.