

LS Power Transmission, LLC
Comments on FERC Order 1000 – Elimination of ROFR and Qualification Criteria

- I. Removal of the ROFR from SPP Regional Tariff and Membership Agreements to eliminate provisions that establish a federal right of first refusal for incumbent transmission provider with respect to projects selected in a regional transmission plan for purposes of cost allocation.**
- a. LS Power Position on SPP ROFR removal:
- i. ROFR must be removed for **ANY** project for which **ANY** of its costs are allocated regionally, rather to the local utility;
 - ii. All transmission facilities with a voltage of 100 kV and above that are allocated on a Highway or Byway basis shall have the federal right of first refusal eliminated (regardless of percentage) and be competitively administered. This includes:
 1. Byway Projects (100 kV – 300 kV);
 2. Highway Projects (300 kV and above);
 3. Stakeholder identified transmission projects; and
 4. Customer funded transmission projects.
 - iii. Transmission facilities that shall retain a right of first refusal shall include:
 1. Generation Interconnection Projects (GIPs);
 2. Local Projects/Zonal Projects (100 kV and below that are solely within a retail distribution service territory or footprint);
 3. Transmission Delivery Service Projects (TDSPs); and
 4. Transmission projects that represent an upgrade to an incumbents own facilities.
 - iv. The SPC Order 1000 Task Force has indicated through a straw poll (13 in favor versus 1 against) that the elimination of the federal right of first refusal should only apply to Highway Projects (300 kV and above), not projects below 300 kV. However, LS Power Transmission believes that this position is inconsistent with FERC Order 1000 and misses the intent and spirit of the Order.
- II. FERC “requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which is 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 provider. These criteria must not be unduly discriminatory or preferential. 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.” (Paragraph 323, FERC Order 1000)

a. LS Power Position:

- i. Appropriate qualification criteria should be fair and not unreasonably stringent when applied to either the incumbent transmission provider or non-incumbent transmission provider. (Paragraph 324, FERC Order 1000)
- ii. The qualification criteria should allow for the possibility that the existing public utility transmission provider already satisfies the criteria. (Paragraph 324, FERC Order 1000)
- iii. The qualification criteria should allow any transmission developer the opportunity to remedy any deficiency. (Paragraph 324, FERC Order 1000)

b. LS Power Qualification Proposal

i. Qualification Process

1. All interested transmission developers, including new entrants, existing transmission owners, and affiliates of existing transmission owners, should be required to go through a formal qualification process.
2. The qualification process should take place prior to the start of the planning process so as not to act as a potential barrier to entry in an SPP competitive process or assignment of transmission projects.
3. This qualification process should ensure that an entity interested in proposing projects has the necessary financial and technical expertise for developing, constructing, owning and maintaining facilities.
4. Beginning on the date of filing the FERC Order 1000 compliance filing (October 12, 2012), SPP shall immediately commence a qualification process.
5. Stakeholders would be eligible to apply for qualification any time during the calendar year.
6. SPP should provide notice of qualification or denial within 30 days of the submittal of the standardized qualification application.

7. Such qualification would be good for three years from the date granted; however sponsors would be subject to verification of continued status upon the assignment of any sponsored project.
 8. If denied, the transmission developer would have right to remedy any deficiencies in its application.
 9. Once qualified for three years, information would have to be updated annually. If there are any material adverse changes in information, the qualification could be revoked by the SPP.
- ii. Required Qualification Criteria to Propose a Project for Selection into the SPP Regional Plan for Purposes of Regional Cost Allocation include.
1. Willingness to join SPP when the project is assigned and Willingness to become a Transmission Owner, with all rights and responsibilities, when eligible under SPP tariff
 2. Willingness to Register with NERC **when required and eligible** under the applicable NERC Regulations;
 - a. All entities, incumbents and non-incumbents alike, that are users, owners, or operators of the electric bulk power system must register with NERC for performance of applicable reliability functions. (Paragraph 342, FERC Order 1000)
 - b. “However, if there are still concerns regarding the lack of clarity as to when compliance with NERC registration and reliability standards would be triggered, we would conclude that the appropriate forum to raise these questions and request clarification is in the NERC process.” (Paragraph 343, FERC Order 1000)
 3. Financial Criteria that must be met
 - a. Demonstrated capability of a parent company, affiliate, or project company financing U.S. energy projects equal or greater than the lesser of \$500 million dollars or the capital cost of the proposed transmission project.
 - b. Material degradation of the financial condition of the entity once qualified can be grounds for termination of qualification status and project re-assignment.

- c. Examples of documents to be provided confidentially to SPP to demonstrate compliance.
 - i. A list of projects equal or greater than the lesser of \$500 million dollars or the capital cost of the proposed transmission project financed by the parent company, affiliate, or project company.
- 4. Technical Criteria must be met
 - a. Demonstrated capability of a parent company, affiliate, or project company developing, constructing, operating and maintaining U.S. energy projects of similar or larger complexity, size and scope of the proposed project.
 - b. Must show that it has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate.
 - i. Please note that the above criteria in (b) is identical to FERC's current requirement in natural gas pipeline and hydroelectric applications.
- 5. Willingness of entity to apply for state public utility status.
 - a. Please note that in FERC's current requirements for natural gas pipeline applications, FERC does not require an entity to have public utility or natural gas company status.
- 6. Willingness of entity to apply for eminent domain authority at the appropriate time under state law for the project.
 - a. Please note that in FERC's current requirements for natural gas pipeline and hydroelectric permit applications, FERC does NOT require an entity to have secured the lands needed for the project.

III. FERC “requires that each public utility transmission provider revise its OATT 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 in a given transmission planning cycle.” (Paragraph 325, FERC Order 1000). “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. They may require, for example, relevant engineering studies and cost analyses and may be request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.” (Paragraph 326, FERC Order 1000).

a. LS Power Position

i. Information required to be submitted with any Project Submittal by any Qualified Developer include:

1. Contact Information
2. Date of Completion of Qualification Process
3. Name of Project Entity to Be Assigned Project
4. Project Description

a. Scope of Project;

- i. Points of Interconnection to Existing System (including buses);
- ii. Voltage Level;
- iii. AC / DC;
- iv. Project configuration (single circuit, double circuit);
- v. Impedance Information;
- vi. Approximate Circuit Mileage;
- vii. Location and conceptual project routing corridors, including general permitting considerations and challenges;
- viii. A clear description of project and a description of the problem addressing;
 1. Modeling studies, as needed;
 2. Single contingency performance with respect to relevant criteria violations, congestion events, or energy transfers;
 3. Depth of supporting analysis could be used as a determining factor in assignment to build when comparing similar proposals;

b. Capital Cost Estimate;

- i. All projects passing initial screens should be subject to independent cost estimate review for capital costs;
 - ii. Estimated revenue requirement, including the proposed ROE and whether the sponsor is willing to fix the revenue requirement regardless of ultimate project cost;
 - c. Proposed Schedule for Development, Construction, and Operation Date;
 - i. Identification of Internal Organizational Expertise;
 - d. Plan for post construction, maintenance, and operation of the project;
 - i. Intention of joining SPP and becoming a Transmission Owner must be clearly stated;
 - e. Identification of applicable CPCN requirements and applicable state jurisdiction requirements;
- 5. Deposit Required with Each Project submittal - \$25,000
- 6. Adjustments to Proposed Projects
 - a. If a proposer seeks to adjust or modify a proposed project, the adjustments can be allowed if:
 - i. The technical and cost data is updated to reflect better information obtained from the independent cost estimate (i.e. Impedance data updates due to more accurate data from independent cost estimate) or from the overall transmission planning process; or
 - ii. The scope of the revised project is materially similar to the originally proposed project;

IV. FERC “requires that each public utility transmission provider to amend its OATT 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. 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.” (Paragraph 328, FERC Order 1000).

- a. LS Power position:
- i. LS Power Transmission believes that there are two basic approaches to award transmission projects to constructing transmission developers.
 1. Project Sponsorship
 2. Competitive Solicitation

Under a Project Sponsorship approach, qualified incumbent and/or non-incumbent transmission developers would propose transmission projects into the ITP process for approval by SPP. If the proposed project is approved by SPP, the project would then be assigned to that transmission developer for development and construction. If the project sponsor decides that they are no longer interested or capable of developing and constructing the project, the project would proceed to a Competitive Solicitation.

Under a Competitive Solicitation approach, qualified incumbent and/or non-incumbent transmission developers would be invited to participate in a defined RFP process and bid on transmission projects that have been selected for development and construction in one of the ITP processes. If awarded a transmission project through the RFP process, the qualified incumbent or non-incumbent transmission developer would be responsible for the successful development and construction of that SPP transmission project.
 - ii. LS Power Transmission recommended approach to awarding transmission projects to constructing transmission developers.
 1. LS Power Transmission recommends a hybrid approach to award proposed transmission projects to constructing transmission developers. Under our proposed hybrid approach (also known as the Planning and Construction Competition Model in the SPCTF), a project sponsorship model would be used for transmission projects submitted for evaluation in the ITP for approval and a competitive solicitation process would be used for projects approved for purposes of cost allocation but do not otherwise have a project sponsor. Under this hybrid approach SPP would be the project selection administrator and we would encourage a third-party cost estimator providing costs at the beginning of the planning phase for evaluation purposes.
 2. For Projects Proposed by SPP.

- a. An incumbent and non-incumbent transmission shall both have the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional plan for purposes of cost allocation. (Paragraph 336, FERC Order 1000.)
 - b. SPP designed projects cannot automatically go to the incumbent utility.
 - i. “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 non-incumbent 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.” (Paragraph 336, FERC Order 1000)
 - c. Competitive bidding should be used if there are two or more interested bidders on a SPP-generated solution
 - i. SPP should provide adequate notice to respond with interest
 - d. If there are no interested parties to the SPP-generated solution, the solution should go to the incumbent entity
 - iii. The Evaluation Process;
 - 1. A process must be established to evaluate potential solutions to regional transmission needs, with the input of interested parties and stakeholders. (Paragraph 331, Page 261)
 - iv. Efficient and Cost-Effective Solutions Should be the Most Important Component of the ultimate Evaluation Matrix for a Project;
 - 1. “Whether or not public utility transmission providers within a region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is an efficient or cost-effective solution to their needs.” (Paragraph 331, FERC Order 1000)
 - 2. Rigorous technical analysis shall be performed to determine the best technical solution;
 - v. Project Evaluation Matrix for Sponsored Projects:
 - 1. Whether the proposed transmission facility is the most efficient or cost-effective solution to the transmission needs – 70 percent weight;
 - a. Use of Independent Cost Estimates/Independent Consultant Review;

- i. Use one consultant for all “finalist” projects in a given area;
 - ii. Final consultant review will be conducted, if required, of a limited number of most effective projects;
 - b. The independent consultant shall review the cost estimates of new entrant and non-incumbent utilities for accuracy and consistency, as well as permitting feasibility;
- 2. Independent “Fatal Flaw” Analysis on siting – 20 percent weight;
- 3. Whether the transmission facility provides multiple system benefits (reliability, economic, and public policy) – 10 percent weight;
- vi. Project Evaluation Matrix for Competitive Projects:
 - 1. Whether the proposed transmission facility is the most efficient or cost-effective solution to the transmission needs – 100 percent weight;
- vii. Additional Assignment Criteria
 - 1. If project sponsorship is the model, assignment must go to the project sponsor unless there is a not unduly discriminatory and/or preferential reason not to assign the project to the sponsor.
 - 2. Assignment must be consistent with FERC Order 1000.
 - 3. Transmission projects can only be assigned to qualified transmission providers.
 - 4. A Local Project Retains a ROFR for the incumbent utility (paragraph 318, FERC Order 1000)
 - a. “A local transmission facility is 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”.
 - b. The local project must be a) solely within the retail distribution service territory or footprint **and** b) not in the regional transmission plan for purposes of cost allocation. (Paragraph 63, FERC Order 1000)
 - c. Local transmission projects must still be evaluated under the criteria for project evaluation and determined to be the most efficient or cost effective for the region.

5. An incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own facilities. (paragraph 319, FERC Order 1000);
 - a. Upgrades include facilities “such as tower change outs or reconductoring” (paragraph 319, FERC Order 1000)
 - b. Any such projects must still be evaluated under the criteria for project evaluation and determined to be the most efficient or cost effective for the region.
 6. The “Final Rule does not . . . **grant or deny** transmission developers the ability to use rights-of-way held by other entities The retention, modification, or transfer of rights-of-way remains subject to relevant law or regulation granting the rights-of-way.” (Paragraph 319, FERC Order 1000)
 - a. Order 1000 does not state that there remains a ROFR for all right of way owned by an incumbent.
 - b. Unless a project is route specific, the ownership of ROW should not be evaluation criteria for assignment but final route and ability to use existing ROW will be determined in the CPCN state process if one is required.
 7. Assignment must be consistent with state and local laws.
- b. The Evaluator:
- i. FERC “declines to mandate the use of independent third-party observers, as suggested by the Western Independent Transmission Group. To the extent public utility transmission providers in consultation with other stakeholders in a region wish, they may propose an independent third-party observer and we will review such proposal on compliance.” (Paragraph 330, FERC Order 1000);
 - ii. LS Power Position:
 1. SPP appears to be open to assuming the role of evaluator and LS Power is supportive of SPP assuming this role. If SPP prefers not to assume the role of evaluator, they use of an independent third-party to be the evaluator may be a reasonable solution. The fees for evaluators could be paid from deposits paid when projects are submitted or awarded.
- c. Minimizing Disputes:

- i. FERC “encourages public utility transmission providers to consider ways to minimize disputes, such as through additional transparency mechanisms, as they identify enhancements to regional transmission planning processes necessary to comply with the Final Rule”. (Paragraph 330, FERC Order 1000).
- ii. LS Power Proposal
 - 1. SPP shall post all proposals immediately after the window for submittals is closed. If there is no window for submittals, the proposals should be posted immediately on the SPP website.
 - 2. SPP shall post all study results for all projects submitted.
 - 3. If identical projects are submitted during a proposal window by qualified developers and the project meets the technical criteria established by SPP, then SPP should allow the qualified proposers of the identical projects ten (10) days to meet to discuss ownership options.
 - 4. The utility transmission provider shall establish arbitration procedures to address any dispute regarding application of the qualification criteria or the evaluation process. Any project sponsor who is denied qualified sponsor status or whose project was not selected because another project was determined to be the most cost efficient or effective may initiate arbitration within 30 days of the decision before [an SPP stakeholder forum to identify arbitration]. The matter will be decided by a single arbitrator whose sole review will be to determine whether the qualification criteria or evaluation criteria were applied in an appropriate and non-discriminatory manner. The arbitrator shall render its opinion with 30 days of submission and not more than 120 days from initiation of the arbitration.

V. FERC requires “each public utility transmission provider to amend its OATT 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, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission provider can meet its reliability needs or service obligations”. (Paragraph 329, FERC Order 1000)

a. LS Power Position:

- i. Immediately prior to SPP assignment of a project, the Qualified Project Developer and SPP should meet to revisit the proposed Development Schedule and to establish Critical Path Milestones. The independent cost estimate and feasibility study commissioned by SPP can also recommend Critical Path Milestones for consideration. The Project Developer should update any proposed Development Schedule at that time. Board materials should reflect realistic and current development projections.
- ii. After project assignment, the assigned Project Developer should regularly provide quarterly status updates to SPP on permitting and development progress.
- iii. For reliability projects with a delay of more than six months of a Critical Path Milestone, notice should be given of the delay to SPP and the incumbent utility.
- iv. For reliability projects with a delay of more than six months of a Critical Path Milestone **and** when there is material evidence of abandonment or lack of commercially reasonable competence by the Project Developer to advance the project, the project could be taken to SPP for possible reassignment.

VI. FERC requires “that a non-incumbent 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. More specifically, each public utility transmission developer must participate in a regional transmission planning process that provides that the non-incumbent developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility through a regional cost allocation method or methods.” (Paragraph 332, FERC Order 1000)