



Southwest Power Pool, Inc.

STRATEGIC PLANNING COMMITTEE TASK FORCE on ORDER 1000 MEETING

Wednesday, April 25, 2012 - 9 AM – 3 PM

OG&E Office, Oklahoma City, OK

• A G E N D A •

1. Call to Order ..... Mel Perkins
2. Review of Past Action Items ..... Michael Desselle
3. TO Qualification Criteria & TO Managerial Experience Criteria (See §§ 3.1 & 3.2) ..... Paul Suskie
4. TO Selection Criteria for a Competitive Solicitation Process (See §§ 2.3 & 2.4) ..... Antoine Lucas
5. Proposed Language to Remove ROFR from SPP's Membership Agreement (See §§ 4.1)..... Matt Binette
6. Next Steps..... Mel Perkins



## Southwest Power Pool

### STRATEGIC PLANNING COMMITTEE TASK FORCE on ORDER 1000 MEETING

AEP Office – Dallas, Texas

Thursday - Friday, March 8-9, 2012

#### **Agenda Item 1 – Call to Order**

Mel Perkins called the meeting to Order. Guests participated in person or via phone (Attendance – Attachment 1). Of particular note, Paul Malone (NPPD) gave his proxy to Dennis Reed (Westar), Brian Thumm (ITC) gave his proxy to Dave Grover (ITC), and Todd Fridley (KCPL) gave his proxy to Terri Gallup (AEP). Mel noted one addition to the agenda (a recap of MISO's draft Order 1000 proposals) would occur at the beginning of the meeting.

#### **Agenda Item 2 – Review of Part Action Items**

Michael Desselle reviewed past action items. All the action items were incorporated into the background material for the meeting. It was noted that the sponsors of each option under consideration had not reached convergence, and accordingly a vote on the competing options (Option A: the Sponsorship Model and Option B: the Competitive Bid Model) would be taken.

#### **Added Agenda Item – MISO Draft Order 1000 Proposals**

Matt Binette (Wright and Talisman) reviewed MISO's February 29, 2012 presentation to their stakeholders on their Order 1000 ROFR draft proposals (MISO work on Order 1000 – Attachment 2). He noted that MISO is just beginning this effort, but does not currently favor the Sponsorship model. He noted that they wanted the competitive solicitation model but did not want to "pick the winners".

#### **Agenda Item 3 – Convergence Group Outcome**

As noted, the option sponsors did not reach convergence with their competing options. Accordingly, Mel asked Dennis Reed to briefly present the Competitive Bid Model option (Option Comparison by ITC, NPPD, Sunflower, Westar and Xcel – Attachment 3) and Terri Gallup to present the Sponsorship Model option (Planning vs. Construction Comparisons – Attachment 4) and (Front End/Back End of ITP Process – Attachment 5). Presentations by each were made without interruption, except for a few clarifying questions.

#### **Agenda Item 4 – Selection Criteria for Builder and Project Models (Competitive Bid and Sponsorship, respectively)**

Antoine Lucas presented staff's position of the proposed options for ROFR elimination (Presented on ROFR Elimination Proposal Options Criteria – Attachment 6 and Staff Selection Criteria for Planning and Developer Models Draft – Attachment 7). Antoine noted in summary that both models have advantages and disadvantages and that it was difficult to finalize criteria until a model is chosen. When pressed by task force members for staff's preference (Sponsorship v. Competitive Bid), Lanny Nickell noted a slight preference for the builder option (i.e., Competitive Bid option), but noted that either option could be made to work.

#### **Agenda Item 5 – Model Selection**

Mel noted that the task force was finally at the point to debating and voting on Option A (Sponsorship Model) and Option B (Builder Selection Model also known as the Competitive Bid model). Accordingly, Mel moved for the task force to vote on Option A or B and Noman Williams seconded followed by Mel opening the floor to questions/comments. Mel noted that he was "taking off his chair hat" and that while he participated in the convergence group supporting Option A, he was now changing his support to the builder selection model (i.e., the Competitive Bid model). Kelly Harrison (Westar) noted that he could see

both sides of the debate. Ricky Bittle noted that he has always supported postage stamp rates, but was concerned about a process that disrupts the strong planning process in place today and that he was not ready to take that risk. Noman Williams echoed Ricky's concern and noted that the planning approach (i.e., Sponsorship model) does not bring anything more robust to the current planning process and that we would still need a constructor process anyway. Terri Gallup noted that going forward without ROFR degrades the current planning process, thereby inhibiting creative transmission solutions. Bryan Rushing (LS Power) stated a preference for the Sponsorship model and its non-discriminatory attribute, noting that the Competitive bid model has the potential for discrimination. Paul Hassink (AEP) expressed concerns about "copycat" transmission proposals by bidders who would submit lower cost bids in the Competitive Bid model. Dennis Reed expressed concern about developing 2 processes in SPP. Dave Grover (ITC) noted that as a transmission developer the Sponsorship model is an attractive option, but preferred consistency of solutions by SPP and MISO and noted that builder selection at the back-end (i.e., the Competitive bid model) was the right approach. He also noted that choosing the Sponsorship model would move SPP backwards causing SPP to lose its collaborative process already in place today.

Following discussion a roll call vote was taken for Option A or B. OGE, Sunflower, ITC, Westar, AECC, NPPD and SPS Xcel voted for Option B, the Construction Competition Model (aka, Builder Selection Model, or Competitive Bid model). AEP and KCPL were thus not supportive of Option B: voting instead as a second preference Option A, the Planning and Construction Model. Terri Gallup expressed AEP/KCPL's preference for Option C, the Planning Competition Model (aka, Sponsorship Model) but it was not offered for the vote(see Attachment 4, pages 5-7).

#### **Agenda Item 6 – Aggregate Study and SPP Sponsored Projects Clarification Straw-Proposal**

Paul Suskie presented the sub-group recommendation regarding SPP Sponsored Upgrades and SPP Transmission Service Upgrades/Ag study (Summary of Parking Lot Issues Subgroup Recommendation – Attachment 8). Paul noted that the sub-group recommends establishment of 3 categories of "Sponsored Upgrades" and to keep ROFR. With respect to Transmission Service Upgrades/Ag Study Upgrades, the subgroup recommends seeking to retain the ROFR for these type upgrades also. Following discussion of some "clean-up" in the supporting recommendation document Dennis Reed moved acceptance of the TF subgroup recommendation and Terri Gallup seconded. The TF unanimously approved the motion.

#### **Agenda Item 7 – Other Policy and Parking Lot Issues**

Regarding the *timing of when Order 1000 is applicable to facilities in the current ITP plans* Dennis Reed moved and Noman Williams seconded a recommendation that Order 1000 applicability would begin at the start of the next ITP Planning cycle after FERC approves Order 1000 modifications. The motion was unanimously accepted and direction was given that staff should begin to modify and "sync-up" the ITP Planning manual.

Regarding *the incorporation of Order 1000 "Public Policy" requirement*, the TF indicated a belief that we already comply and that nothing further needed to be added. Matt Binette noted that we may need to "tweak" the tariff language.

Regarding *Information requirements for non-participating Merchant transmission developers*, Paul noted that the TWG was working on interconnection criteria and that PJM may already have language that would serve as a model for SPP. Staff will come back to TF with a proposal.

#### **New Agenda Item 8 – Builder Qualification Criteria and Builder Selection Criteria**

Having finished early on the first day and having selected Option B (the Builder Selection Model also known as the Competitive Bid Model) staff prepared presentations overnight to discuss and propose Selection criteria and Qualification Criteria.

Antoine Lucas presented a high level overview of the existing SPP Business practice 7150 (SPP Draft Builder Model Criteria Options – Attachment 9). Questions were raised about the Oversight Committee makeup and expertise and selection of evaluators and how to remove subjectivity of evaluation criteria. It was noted that some of the criteria in BP 7150 could be done up front in pre-qualification. There was some discussion that if the SPC adopts the BP as policy, that some group would need to convene a

session to fully develop the criteria. Staff was tasked to bring a straw-proposal to the meeting on the 29<sup>th</sup> for the 6 weighted selection categories in BP7150. Staff was tasked to develop straw-proposal options for the selection committee in BP7150 to include the existing OC, staff, or a completely new committee. Bary Warren (EDE) suggested that the Task Force should consider adding system restoration and planning as additional qualification and/or selection criteria.

Paul Suskie presented an overview of builder qualification criteria and a staff recommendation to consider adopting existing OATT and Business Practices that govern qualification of alternate entities seeking to build transmission that a designated TO is unable or unwilling to build (Order 1000 Builder Qualification Criteria – Attachment 10). It was noted that there may be a disconnect with the recommendation contained on Slide 9 (#1 threshold eligibility requirement) and that was assigned to Staff and counsel to sort out. The TF seemed content with the 3 qualification criteria noted in the presentation and staff is tasked to bring details to the meeting on the 29<sup>th</sup>.

2 items were added to a parking lot list of concerns: 1. TO credit requirements; and, 2. Tracking process.

**Agenda Item 9 – Next Steps**

The TF plans to meet again on March 29 to consider straw-proposals on the criteria to be used to select the builder, criteria to be used to qualify builders in advance of RFPs, and the draft report and recommendation to the SPC.

Action Items include:

1. Staff to finalize other policy parking lot issues.
2. Staff to propose Builder selection criteria details.
3. Staff to propose Builder qualification criteria and timeline details.
4. Staff to present draft report and recommendation to SPC and timeline forward.

Respectfully Submitted,

Michael Desselle  
Secretary



## Southwest Power Pool

### STRATEGIC PLANNING COMMITTEE TASK FORCE on ORDER 1000 MEETING

AEP Office – Dallas, Texas

Thursday, March 29, 2012

#### **Agenda Item 1 – Call to Order**

Mel Perkins called the meeting to order. Guests participated in person or via phone (Attendance – Attachment 1). Of particular note, Brian Thumm (ITC) gave his proxy to Dave Grover (ITC), and Todd Fridley (KCPL) gave his proxy to Terri Gallup (AEP). Mel Perkins called for acceptance of two sets of minutes (Minutes 2/10 and 3/8-9 – Attachment 2) which were accepted by acclamation following some suggested correction/changes to the 3/8-9 meeting minutes. The agenda was rearranged to combine items 3 and 4 to follow agenda item 5 (Draft Report and Recommendation to the SPC).

#### **Agenda Item 2 – Review of Part Action Items**

Michael Desselle reviewed past action items.

#### **Agenda Item 5 – Draft Report and Recommendation to the SPC**

Paul Suskie presented an overview of the SPC Order 1000 draft report (SPC – Order 1000 Draft Report Overview – Attachment 3) which accompanied the SPC Task Force on Order 1000 Draft Report (SPCTF on Order 1000 Draft Report dated 3/22/2012 – Attachment 4). There were a number of clarifying questions regarding the overview and related sections of the draft report. Discussions also identified specific SPP Working Groups and/or Committees and deadlines to complete detailed tariff modifications, state authorizations, threshold eligibility criteria, financial criteria, Managerial criteria, cure periods and other processes. Mel Perkins moved and Ricky Bittle seconded a recommendation which passed unanimously that the Qualification Criteria be developed by the following SPP groups: Threshold Eligibility Criteria (SPCTF); Financial Criteria (Finance Committee); and, Managerial Criteria (SPCTF).

With Respect to changes to the SPP Membership Agreement, the Task Force consented unanimously that the SPCTF will propose specific language modifications to the SPP Corporate Governance Committee by April 30. With respect to changes to the SPP OATT, the Task Force consented unanimously that the RTWG would propose specific language modifications. With respect to how SPP should handle “Public Policy” under Order 1000, the Task Force consented unanimously that the RTWG in consultation with the TWG and ESWG would propose specific language modifications. With respect to how SPP should handle data and information that merchant transmission providers that do not participate in SPP planning and cost allocation, the Task Force consented unanimously that the TWG would propose specific language to the RTWG by June 30 and that staff would define “merchant transmission developer”.

Following discussions regarding the timing associated with these additional efforts to meet the goals set by the SPC and the compliance deadlines established by FERC, Noman Williams moved and Terri Gallup seconded a motion to seek a 60 day extension from FERC to make the compliance filing. The motion passed unanimously.

#### **Agenda Item 3 and 4 – Builder/Transmission Developer Qualifications and Selection Criteria**

Antoine Lucas presented staff’s draft transmission developer selection process business practice (SPP Draft Transmission Developer Selection Process Business Practice and Presentation – Attachment 5). Questions were raised about the Industry Expert Panel (IEP) identified in the Business practice. Bary Warren (EDE) noted his concern about raising the cost profile of the organization with the addition of the IEP. Concerns were raised that the 60-day response time frame was insufficient. The question of whether the Board would issue NTC’s or CNTC’s was unresolved. Regarding the suggested point allocations for the Transmission Developer Selection Criteria (see slide 20 – Attachment 5),

Strategic Planning Committee  
March 8-9, 2012

disagreements were expressed regarding the amounts proposed for certain ranking categories: most notably cost. Some shared the view that 35 points was too high; others shared the view that 35 was too low. Chairman Eckelberger noted that the focus should be on "best value, not least cost".

**Agenda Item 6 – Future Efforts on Order 1000**

The discussion of this item was captured in the report and recapped in Recommendation #8 of the SPCTF Report on Order 1000.

**Agenda Item 7 – Next Steps**

The TF plans to meet again on April 25 to consider straw-proposals on the Transmission Owner Qualification Criteria, Transmission Owner Managerial Experience Criteria, Transmission Owner Selection Criteria for the Competitive Solicitation Process and other tasks assigned the Task Force as recommended in the Task Force report to the SPC and Board.

Action Items include:

1. Modifying the March 8-9 minutes as discussed in the meeting.
2. Modify the Recommendation of the SPCTF to the SPC consistent with the modified Report.
3. Schedule more TF meetings to deal with unresolved policy questions on Qualification process and Selection process.

Respectfully Submitted,

Michael Desselle  
Secretary

## STRAW PROPOSAL FOR DEVELOPER QUALIFICATION CRITERIA

### 3.1 Recommended Transmission Developer Qualification Criteria

#### (1) **Threshold eligibility criteria:**

Any Application received by SPP from an Applicant Transmission Owner (“ATO”) must contain information necessary to allow SPP to make a determination as to whether or not the ATO meets the requirements to be a Qualified Transmission Owner (“QTO”) in SPP.

**Legal Criteria:** An Application from an ATO must include a showing as to whether the ATO has the authority under any state law, rule or regulation to construct, own, and operate electric transmission facilities in a particular state. A showing of proof could be made with one or more of the following:

(1) an order, letter or any legal document from any state regulatory authority or authorities that the ATO has the authority under state law to construct, own, and operate electric transmission facilities in a particular state;

(2) If the ATO is not able to acquire an order, letter, legal document, or opinion from a state regulatory authority, the ATO should provide an affidavit, with supporting legal authority, stating that the ATO has the authority under state law, rule or regulation to construct, own, and operate electric transmission facilities in a particular state, pursuant to state law, rule or regulation;

(3) if there are no state approvals required, the ATO should provide any orders, letters, legal documents or opinions from any state regulatory authority or authorities stating that the ATO is not required to obtain any state regulatory approvals in order to construct, own, and operate electric transmission facilities in a particular state; and

(4) If the ATO is not able to acquire an order, letter, legal document, or opinion from a state regulatory authority, the ATO should provide an affidavit, with supporting legal authority, stating that no an order, certificate, or other legal documents from a state regulatory authority is required in order to construct, own, and operate electric transmission facilities in a particular state.,

In Order for an ATO to become a QTO, the ATO should have documentation regarding the legal criteria provided to SPP in advance of the initiation of the next transmission planning period. Specifically, the ATO should provide this documentation as a part of the ATO’s Application by June 30 of the preceding year. This will provide adequate time for the ATO to correct deficiencies, if any, and the establishment of a process for review by SPP and its members.

**Membership Criteria:** An Application from an ATO must provide a showing that SPP's Membership criteria is (or can be) met by the ATO before participating in the Competitive Solicitation process.

**FOR THE SPCTF ON Order 1000 To DECIDE:**

**OPTION 1:**

Any Application must provide a showing that the ATO is a member of SPP.

**OPTION 2:**

Alternatively, the ATO could be required to indicate a willingness to sign the SPP Membership Agreement if the ATO is selected as part of the Competitive Solicitation process to construct, own, and operate transmission facility.

**(2) Financial Criteria:** [BEING DEVELOPED BY FINANCE COMMITTEE].

**(3) Managerial criteria**

*The recommended managerial eligibility criteria would require an ATO to demonstrate certain managerial expertise.*

*The SPCTF on Order 1000 recommends that SPCTF on Order 1000 be tasked with developing the will managerial expertise criteria by June 30, 2012.*

**SPP STAFF RECOMMENDS LOOKING AT PRIOR DRAFT – See Below.**



**THIS INFORMATION IS FROM A PRIOR WHITE PAPER PRESENTED TO THES SPCTF on ORDER 1000:**

As part of the effort to develop a process for selection of alternative builders as required by Attachment O, SPP's Transmission Owner Selection Task Force published in January 2010 a Transmission Owner Selection Process document ("Process Document"). The Process Document outlined SPP's procedures for establishing a Transmission Owner Selection Committee to conduct Request for Information ("RFI") and Request for Proposal ("RFP") processes to identify an alternate builder when a Designated Transmission Owner is unable or unwilling to commit to construct a transmission project. The Process Document listed several requirements for RFP bids, many of which relate to the bidder's qualifications to develop, construct, own, operate, and maintain transmission facilities.

The procedures outlined in the Process Document were subsequently incorporated into SPP Business Practice 1.16. Specifically, Appendix 3 of Business Practice 1.16 lists the requirements for submitting an RFP. Additionally, Appendix 4 of Business Practice 1.16 sets forth the factors SPP utilizes in its process to select among entities that respond to an RFP. Several of the RFP requirements and selection factors could form the basis for SPP's qualification criteria, including:

- Managerial qualifications.
- Transmission Project Construction Expertise: engineering, permitting, environmental, right-of-way acquisition, procurement, project management, construction, commissioning, technology content, demonstration of applicable qualifications and certifications to construct in the state(s) in which construction is required; demonstration of past transmission construction experience; equipment acquisition process; description of applicable right-of-way and real estate acquisition process; description of routing process; description of permitting processes; eminent domain status; process for obtaining easements; surveying responsibility.
- Safety Qualifications: internal safety program, contractor safety program, safety performance record (program execution).
- Operations Expertise: demonstration of control center operations (staffing, etc.), demonstration of NERC compliance process and compliance history, demonstration of registration or ability to register for compliance with applicable NERC Reliability Standards, storm/outage response plan, past reliability performance, statement of which entity will be operating and maintaining completed transmission facilities, staffing, equipment, and crew training.

- Maintenance Qualifications: staffing, maintenance plans, equipment, crew training, record of maintenance performance, maintenance expertise, NERC compliance process and history.
- Identification of major partners, contractors, and associated contracts.
- Ability to comply with Good Utility Practice, SPP criteria, industry standards, and applicable local, state, and federal requirements.

#### **(4) Opportunity to Protest Applications**

**Posting an Application from an ATO and Notice:** Applications from an ATO will be posted on the SPP website upon receipt by SPP. Within two-business days of receipt of the Application from an ATO, the SPP will notify state regulatory authorities that an Application from an ATO has been received.

Any stakeholder will have up to thirty days after posting of an Application to protest an Application from an ATO. The protest will be provided to the SPP Legal Department and notice of the protest will be posted on the SPP website and provided by the protesting stakeholder to the ATO that has provided the Application being protested.

## SPP Draft Transmission Owner Selection Criteria Options

SPCTF Meeting  
April, 25 2012  
Oklahoma City, OK

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## Overview

- SPC approved the SPCTF Order 1000 Report on 4/9/12.
- Report included Builder Selection Model as approach to select Transmission Owners (TO) for projects without a federal ROFR.
  - This model utilizes RFP process to facilitate TO selection.
- Industry Expert Panel (IEP) independently evaluates proposals and recommends TO selection to OC & BOD.
- Categories and corresponding criteria for TO selection must be developed for IEP evaluation.
  - SPCTF will make recommendation to SPC on categories & criteria.

## Objective

- Develop the final list of evaluation categories for TO selection.
- Determine appropriate TO selection criteria under each category.
  - May include identifying/forming organizational group(s) within SPP with the necessary skill sets to define criteria.
- Develop point allocation for each category.

## TO Selection Categories

- Project Expertise
- Safety program/Current/Past statistics
- Cost to customer
- Reliability/Quality/General Design
- Operations
- Maintenance
- Proposal Submission (Not previously considered by SPCTF)
  - Incent innovation/creativity in transmission solution development.

## Qualification Vs. Selection Criteria

- Aspects of the following categories are being considered for inclusion in Transmission Owner Qualification Criteria;
  - Project Expertise
  - Safety program/Current/Past statistics
  - Reliability/Quality/General Design
  - Operations
  - Maintenance
- TO selection criteria under these categories would evaluate competing TO's level of qualification on a relative basis.

## Point Allocation Considerations

- Once categories and criteria are established, point allocation should be considered.
- Previously considered point allocations.

Category	SPCTF Meeting 3/9/12 (Points)	SPCTF Meeting 3/29/12 (Points)
Project Expertise	20	30
Safety Program	15	5
Cost to Customer	20	35
Reliability/Quality/General Design	15	10
Operations	15	10
Maintenance	15	10
<b>Total</b>	<b>100</b>	<b>100</b>

## Project Expertise Criteria Considerations

- Project Expertise
  - Engineering
  - Permitting
  - Environmental
  - ROW Acquisition
  - Procurement
  - Project Management (including scope, schedule management)
  - Construction
  - Commissioning
  - Technology content
  - **Experience/Track Record**

## Safety Program Criteria Considerations

- Safety program/Current/Past Statistics
  - Internal safety program
  - Contractor safety program
  - Safety performance record (program execution)
  - RFP conformance
  - **Safety metrics**

## Cost to Customer Criteria Consideration

- Cost to Customer
  - Estimated total cost of Project
  - Financing costs
  - FERC Incentives
  - Revenue Requirements
  - Lifetime cost of the project to customers
  - **ROE**
  - **Material On Hand, ROW approval, Assets on hand**
  - **Credit Worthiness**
  - **Earnest Money**
  - **Time frame to construct**

## Reliability/Quality Criteria Considerations

- Reliability/Quality/General Design
  - Type of Construction (wood, steel, design loading, etc.)
  - Estimated total owning costs
  - Losses (design efficiency)
  - Estimated life of construction
  - **Reliability/Quality metrics**

## Operations Criteria Considerations

- Operations
  - Control Center operations (staffing etc.)
  - NERC compliance –process/history
  - Storm/Outage response plan
  - Past reliability performance
  - **Reliability metrics**
  - **Restoration Experience/Performance**

## Maintenance Criteria Considerations

- Maintenance
  - Staffing
  - Maintenance plans
  - Equipment
  - Crew training
  - Maintenance performance/expertise
  - NERC compliance-process/history



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## NEXT STEPS?

***Order No. 1000 Implementation Requirement #5  
Removal of ROFR from the SPP Membership Agreement***

**Order No. 1000 Requirement:**

In Order No. 1000,<sup>1</sup> 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.”<sup>2</sup> The current SPP Membership Agreement contains a federal ROFR for incumbent transmission owners that SPP must address.

**SPCTF Report:**

In the Strategic Planning Committee Task Force on Order No. 1000 (“SPCTF”) Final Report on Order No. 1000 compliance,<sup>3</sup> the SPCTF recommended that Section 3.3 of the Membership Agreement be modified to eliminate federal ROFR language.<sup>4</sup> The SPCTF Report recommended that the SPCTF develop revisions to the Membership Agreement by April 30, 2012 for consideration by the Corporate Governance Committee in May 2012 and by the Markets and Operations Policy Committee and Board of Directors during the July 2012 meeting cycle.<sup>5</sup>

As the SPCTF Report indicated, Section 3.3(b) of the Membership Agreement currently states that:

If the project forms a connection between the 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 the respective new facilities. The parties will agree among themselves as to how much of the project will be provided by

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

<sup>2</sup> *See, e.g., id.* at P 313.

<sup>3</sup> *See* SPC Task Force on Order No. 1000, Final Report (Apr. 3, 2012) (“SPCTF Report”), *available at* <http://www.spp.org/publications/SPC040912.pdf>.

<sup>4</sup> SPP previously adopted revisions to the Membership Agreement definition of “Transmission Owner” to include nonincumbent entities that SPP designates to construct new transmission facilities. *See* Submission of Membership Agreement Revisions to Modify Transmission Owner Definition of Southwest Power Pool, Inc., Docket No. ER11-2101-000 (Nov. 12, 2010) (“MA Definition Filing”). FERC accepted the MA Definition Filing on January 7, 2011, to be effective on January 12, 2011. *Sw. Power Pool, Inc.*, Letter Order, Docket Nos. ER11-2101-000 *et al.* (Jan. 7, 2011).

<sup>5</sup> *See* SPCTF Report at 19-20, 28-29.

each entity. If agreement cannot be reached, SPP will facilitate the ownership determination process.<sup>6</sup>

Furthermore, Section 3.3(c) of the Membership Agreement states:

A designated provider for a project *can elect to arrange* for a new entity or another Transmission Owner to build and/or own the project in its place. If the designated provider(s) *does not or cannot agree to implement the project* in a timely manner, SPP will solicit and evaluate proposals for the project from other entities and select a replacement.<sup>7</sup>

Together, Sections 3.3(b) and 3.3(c) create a federal ROFR.<sup>8</sup> Section 3.3(b) obligates SPP to assign the responsibility to construct new transmission facilities selected in the SPP transmission planning process to incumbent Transmission Owners, and Section 3.3(c) provides the designated Transmission Owner(s) with the option either to construct the project, assign the project to another entity, or decline to construct the project.<sup>9</sup>

### **SPP Staff Recommendation**

SPP staff proposes that the SPCTF recommend that the Corporate Governance Committee adopt minimal changes to the Section 3.3 of the Membership Agreement to remove the federal ROFR language to comply with Order No. 1000. Because the developer selection and construction assignment process will be set forth in detail in Attachment O of the SPP Tariff, SPP staff recommends replacing the existing construction assignment language in the Membership Agreement with a reference to the Attachment O process.

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<sup>6</sup> SPP Membership Agreement § 3.3(b) (emphasis added). The term “party” is not defined in the Membership Agreement.

<sup>7</sup> *Id.* § 3.3(c) (emphasis added).

<sup>8</sup> In reviewing parallel language in Attachment O of the SPP Tariff, FERC determined that the language of Attachment O establishes a federal ROFR for incumbent transmission owners in SPP. *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.”). SPP also acknowledged that its governing documents contain a federal ROFR in its comments in the rulemaking proceeding that culminated in Order No. 1000. *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.”).

<sup>9</sup> The SPP Membership Agreement also contains a requirement that Transmission Owners “use due diligence to construct transmission facilities as directed by SPP.” *Id.* § 3.3(a). This language requires a designated Transmission Owner to retain its responsibility to construct a transmission facility if SPP is unable to select a replacement.

SPP staff therefore recommends the following revisions to Section 3.3 of the Membership Agreement (in redline):

### 3.3 Construction

- (a) As part of its planning activities, SPP shall be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and to coordinate such efforts with the appropriate state authorities, including the Member's governing board where it serves as that authority. Transmission Owner shall use due diligence to construct transmission facilities as directed by SPP in accordance with the OATT and this Agreement, subject to such siting, permitting, and environmental constraints as may be imposed by state, local and federal laws and regulations, and subject to the receipt of any necessary federal or state regulatory approvals, including, as necessary, the Member's governing board where it serves as that authority. Such construction shall be performed in accordance with Good Utility Practice, applicable SPP Criteria, industry standards, Transmission Owner's specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements), and in accordance with all applicable requirements of federal or state regulatory authorities. Transmission Owner shall be fully compensated to the greatest extent permitted by FERC, or other regulatory authority for the costs of construction undertaken in accordance with the OATT.
- (b) After a new transmission project has received the required approvals and been approved by SPP, SPP will direct the appropriate Transmission Owner(s) to begin implementation of the project in accordance with Attachment O of the OATT. ~~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. The parties will agree among themselves as to how much of the project will be provided by each entity. If agreement cannot be reached, SPP will facilitate the ownership determination process.~~
- (c) A designated provider for a project can elect to arrange for a new entity or another Transmission Owner to build and/or own the project in its place. If a designated provider(s) does not or cannot agree to implement the project in a timely manner, SPP will solicit and evaluate proposals for the project from other entities and select a replacement.

SPP staff's recommendation seeks to minimize changes to existing Membership Agreement language to the extent possible while complying with the Order No. 1000 requirement to eliminate federal ROFR. The SPCTF may also consider whether to recommend revisions to Section 3.3(c) to eliminate a designated Transmission Owner's ability to refuse to construct a project or to assign a project to another entity (a/k/a SPP's assignment and novation process). While not expressly required by Order No. 1000, retaining the right to refuse to construct and the assignment/novation process could result in further delay in the construction process beyond the delay created by the addition of the transmission owner selection process.

**LSP Transmission Comments  
On FERC Order 1000 Implementation  
Transmission Developer Qualification Criteria and Project Builder Selection Process**

LSP Transmission Holdings, LLC (“LSP Transmission”) believes that as the various transmission organizations throughout the United States look to comply with FERC Order 1000 (“Order 1000”) and put in place their processes and criteria to eliminate the Right of First Refusal (“ROFR”), we should not be looking solely at (1) the transmission developer qualification criteria or (2) the transmission project builder selection process. Rather, it is our belief that these criteria and methods should be viewed holistically with each serving a role in creating an open, comprehensive, and not unduly discriminatory process that allows incumbent and non-incumbent transmission developers alike the opportunity to compete for and potentially be awarded new transmission projects for construction.

***Transmission Developer Qualification Criteria***

LSP Transmission proposes that the SPP Order 1000 process of qualifying transmission developers and selecting transmission builders should start with the identification of criteria that would be used to qualify transmission developers to be eligible to be selected for the development and construction of transmission projects (sponsorship or competition) selected in the regional planning process.

LSP Transmission proposes that SPP commence a qualification process for non-incumbent and incumbent developers, immediately upon filing the FERC compliance filing in October 2012. Non-incumbents and incumbents would both have to meet the qualification criteria, and the qualification process should allow a remedy process if an applicant does not meet the initial requirements. LSP Transmission proposes that the qualification status would be good for three years from the date of qualification, and a material adverse change in financial condition or change in willingness or legal ability to meet qualification standards could be grounds for SPP and its Directors to revoke such qualification. Entities could apply for qualification status across the entire SPP footprint, within an individual state(s) or for a narrow project type (ie. SVC).

LSP Transmission proposes that the following qualification criteria should be met by prospective transmission developers in SPP prior to being designated as a qualified transmission developer eligible to participate and be selected to develop and construct a transmission project selected for regional cost allocation in SPP.

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 and Comply with NERC Regulations when required and eligible;
3. Willingness to meet SPP’s specific Financial Criteria to develop, construct, own and maintain transmission facilities as a Transmission Owner;
  - i. Suggested qualification criteria: “Demonstrated capability of parent company, affiliate, or Project Company of financing US Energy projects of similar or larger complexity, size, and scope of greater than the **lesser** of \$300 million or the proposed project. Material degradation of financial strength can be grounds for removal of qualification eligibility.”

4. Willingness to meet SPP's specific Technical Criteria to develop, construct, own and maintain transmission facilities as a Transmission Owner including:
  - i. "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. FERC hydroelectric and pipeline licensing criteria precedent specifically allows for the technical capability requirement to be met with contracting capability.
  - ii. "Must exhibit ability to construct and operate the project, including the ability to hire contractors to construct and operate" (*Note – This is identical to FERC's current requirement in natural gas pipeline and hydroelectric applications*).
  - iii. Such evaluation will include review of the following, including the ability to hire contractors to perform, for US Energy Projects:
    1. Project Management Expertise, including contracting ability: Engineering, Permitting, Environmental, ROW Acquisition, Procurement, Construction, Commissioning and Technology content.
    2. Operations Experience, including contracting ability
    3. Maintenance Experience/Plan, including contracting ability
    4. Safety Program Plan
5. Willingness to apply for state public utility status, if needed (*Note - 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 (*Note - 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*).

This proposed 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 a SPP competitive process or assignment of transmission projects. The qualification process should ensure that an entity interested in proposing transmission projects has the necessary financial and technical expertise for developing, constructing, owning and maintaining transmission facilities. Further, all interested transmission developers, including new entrants, existing transmission owners, and affiliates of existing transmission owners, would be required to go through this formal qualification process. The formal qualification could also include a remedy and arbitration process. The qualification process could be administered by the Industry Executive Panel discussed below.

### ***Transmission Project Developer and Builder Selection Process***

LSP Transmission proposes that the transmission cost to the customer (including estimated total owning costs over life of asset) be the primary factor that should be considered in selecting which transmission developer and builder should construct a transmission project selected for regional cost allocation<sup>1</sup>. LSP

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<sup>1</sup> The legal basis for FERC's Order that the right of first refusal be removed is that the existence of the ROFR and just and reasonable rates are not consistent. The ultimate selection process must ensure just and reasonable rates, and therefore cost effectiveness should be the vast majority of the selection points.

Transmission further believes that eligible transmission developers should go through a rigorous qualification process in advance of being able to participate in the transmission developer selection process, but once qualified all transmission developers should be equally eligible to be selected to construct regionally cost allocated transmission projects selected in the ITP process. In the end, it should come down to the transmission developer that can construct the approved project at the lowest cost to the transmission customer (including estimated total cost of the Project, Financing costs, FERC incentives, and lifetime cost of the project to customers) calculated using an annual revenue requirement approach. Extra points in the evaluation process should be granted to parties willing to fix annual revenue requirements / total costs.

SPP might consider a third party Industry Expert Panel appointed by the SPP Board of Directors and the Regional State Committee to select winning transmission developers in a competitive bid process. The Industry Expert Panel should be made up of three to five individuals with industry knowledge that are not SPP employees, SPP stakeholders, consultants for SPP stakeholders, or employees or consultants for any of the entities (or affiliates of entities) vying to construct transmission projects in SPP. Such an Industry Expert Panel will keep the process open and transparent and remove SPP from the obligation/burden of having to select winners and losers.

In an effort to control costs, LSP Transmission proposes that all transmission projects, including incumbent transmission owner proposals, in the ITP process should be put through an initial screening and be subject to an independent estimate/review for capital costs if the projected cost is greater than \$50 million. Additionally, we believe that SPP should use an independent consultant for all transmission projects that are selected as finalists for inclusion in the immediate transmission expansion plan. The independent consultant should be a third party selected by SPP but shall not be a SPP employee, SPP stakeholder, consultant for a SPP stakeholder, or employee or consultant for any of the entities (or affiliates of entities) vying to construct transmission projects in SPP. The independent consultant shall review the cost estimates of incumbent and non-incumbent transmission developers for accuracy and consistency, as well as permitting feasibility<sup>2</sup>. SPP needs to develop an approach that addresses costs that exceed initial estimates equitably across all types of transmission and should not treat cost recovery for transmission projects built by third parties in a different manner than costs for projects built by incumbent transmission owners.

Finally, in an effort to prevent project construction delays qualified project developers and SPP (or an Industry Expert Panel) should meet to review/update the proposed development schedule and establish critical path milestones. After the transmission projects have been assigned for the planning year, the selected transmission project developer should provide quarterly status updates to SPP and its Board of Directors on the project. In the event that there is a delay of six months or more for any critical path milestone and there is material evidence of abandonment or lack of commercially reasonable competence by the project developer to advance the transmission project, the project should be taken to SPP and its Board of Directors for possible reassignment.

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<sup>2</sup> An example of the independent cost estimate format used in PJM is below.

<http://www.pjm.com/~media/committees-groups/committees/teac/20111103/20111103-mep-a-1-byron-cherry-valley-pleasant-valley.ashx>