



Southwest Power Pool, Inc.

STRATEGIC PLANNING COMMITTEE TASK FORCE on ORDER 1000 MEETING

Thursday July 12, 2012 – 9 AM – 3 PM

AEP Offices, 1201 Elm Street, Dallas, TX

• A G E N D A •

1. Call to Order ..... Mel Perkins
2. Approval of Minutes & Review of Past Action Items..... Michael Desselle
3. TO Selection Process ..... Antoine Lucas
4. Financial Criteria and Timeline to get financing once selected ..... Michael Desselle
5. Draft 2<sup>nd</sup> Report from the SPCTF on Order 1000 ..... Paul Suskie
6. Update on Activity of other SPP Committees on Order 1000 ..... Paul Suskie/Sam Loudenslager/Dennis Reed
7. Update on Meeting with FERC and Motion for an Extension..... Paul Suskie/Matt Binette
8. Next Steps..... Mel Perkins



## Southwest Power Pool

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

AEP Office – Dallas, Texas

Thursday, June 7, 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). The agenda was rearranged to move item 12 following item 9.

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

Michael Desselle reviewed past action items. Following the update the Task Force moved to Staff Analysis and Informational Briefings Agenda Items 3, 4 and 5.

#### **Agenda Item 3 – Summary of FERC's Order 1000-A**

Matt Binette (Wright and Talisman) presented an overview of the FERC Order 1000-A (Presentation of 1000-A – Attachment 2 and Summary of 1000-A – Attachment 3).

#### **Agenda Item 4 – ROFR in Multi-Owner Zones Analysis of SPP's Zonal Cost Allocation**

Paul Suskie presented analysis demonstrating which SPP zones have only a single transmission owner versus multiple transmission owners (Supplemental Analysis of Order 1000: Zonal ATRR within Each Zone – Attachment 4). The presentation showed that SPP has 17 Transmission Owning zones in SPP and the zonal ATRR within each. He noted that 12 of the 17 zones have a single TO, while 5 zones have multiple TO within their respective zones. Matt Binette presented analysis of Order 1000 applicability of ROFR in Multi-Owner zones (Order 1000 Applicability of ROFR in Multi-Owner Zones – Attachment 5). He noted that slide 4 articulates the heart of the issue. Slide 9 concludes that SPP could argue that for the five zones with multi-owners, projects that are allocated 100% to the zone would be considered "local transmission facilities, and that the primary TO retain ROFR for such projects. He additionally noted a caution regarding FERC's acceptance of such a conclusion. Mel Perkins noted that the Task Force had reached a decision point regarding compliance and called for a motion based upon the conclusion Matt articulated with respect to multi-owner zones. Dennis Reed moved that SPP seek to retain its existing federal ROFR tariff language/process for 100% zonally allocated projects in the 5 SPP zones with multiple TOs. Noman Williams seconded and following discussion the motion passed unanimously. Sharon Segner (LS Power) noted her opposition to the motion.

#### **Agenda Item 5 – Analysis Using Past Data of How Many Projects Would Have Been Subject to ROFR Removal**

Antoine Lucas presented analysis to determine how projects would have been subject to ROFR removal using Project Tracking data (Supplemental Analysis of Order 1000: How Many Projects would Have Been Subject to ROFR Removal – Attachment 6). Antoine noted that analysis is for illustrative purposes. Further the analysis used current project tracking portfolio database and that projects with existing ROW were excluded. Following his presentation the Task Force moved on to the Parking Lot issues from the April SPCTF Meeting, Agenda Items 6-12.

#### **Agenda Item 6 – Applicability of Mobile-Sierra Doctrine**

Matt Binette presented analysis focused on the question of whether SPP should assert that the *Mobile-Sierra* doctrine bars FERC from mandating that SPP eliminate ROFR from its Membership Agreement (MA) and/or Tariff (Order 1000 *Mobile-Sierra* Presumption – Attachment 7). Matt concluded that SPP may reasonably argue that *Mobile-Sierra* precludes FERC from ordering SPP to modify the MA to

eliminate ROFR absent a public interest finding. He noted FERC has not yet made such a finding and success of the argument was unclear, but that the time to make the argument would be in the compliance filing. Following the discussion Mel Perkins moved that SPP seek to retain its ROFR rights under a *Mobile-Sierra* argument in SPP's Order 1000 compliance filing. Paul Malone seconded the motion. The motion passed with one abstention (AECC). Following a question by Mitch Elmore (Xcel) regarding assertion of *Mobile-Sierra* applicability to other parts of the Membership Agreement beyond ROFR, Staff took an action item to perform a legal review.

#### **Agenda Item 7 – Use of State Law Threshold Criteria in Light of Order 1000-A**

Paul Suskie presented the clarification the FERC issued in Order 1000-A regarding the use of state law as a threshold criteria (Use of State Law Threshold Criteria – Attachment 8). He noted the Order clarifies that such a provision would be an impermissible barrier to entry. The Task Force consensus was to remove the criteria from SPP's draft compliance proposal (Straw Proposal for Transmission Owner Qualification Criteria – Attachment 9). Noman Williams moved and Mitch Elmore seconded a motion that SPCTF on Order 1000 remove the state legal qualification criteria included in the threshold eligibility criteria in the current draft and that the staff develop a straw proposal on establishing a timing requirement process for a selected TO to obtain necessary state authority. Following expression of concerns regarding the delay in the process of getting transmission built with the introduction of this uncertainty and the potential for impacting reliability, the motion passed unanimously.

#### **Agenda Item 8 – Incumbent TOs and ATO Applications**

Matt Binette presented the Order 1000 qualification criteria applicable to incumbent utilities (Order 1000 Qualification Criteria applicable to Incumbents – Attachment 10). He noted that the question presented by the Task Force previously was whether Order 1000 permits SPP to exempt incumbent utilities from demonstrating that they satisfy SPP's transmission owner qualification criteria, either in general or within the incumbents territory or state. Matt concluded that his review of both Order 1000 and Order 1000-A suggests that the qualification criteria apply both to incumbents and non-incumbents. Following his presentation Mel Perkins motioned that the SPCTF on Order 1000 moves that both incumbents and non-incumbents must make an application to be a QTO in SPP's TO selection process. Dennis Reed seconded the motion which passed with one opposed (OPPD).

#### **Agenda Item 9 – Other Criteria in Light of Order 1000-A**

Antoine Lucas presented the Transmission Owner Selection Criteria (Transmission Owner Selection Criteria – Attachment 11 and SPP Draft Straw Proposal for Transmission Owner Selection Criteria – Attachment 12). With respect to timing as depicted on slide # 7, Mitch Elmore noted that the process to meet Order 1000 adds 150 days to the ultimate construction of transmission facilities. Accordingly, he asked the question of whether NTCs should be 5 years now versus 4 years. A recommendation was made to add an additional month on the timeline. Batching of evaluations was also questioned. Harry Skilton noted that the proposed process to select and issue NTC's per Order 1000 now introduces a question surrounding governance. The current Board voting process relies upon a straw poll of the Member Committee representatives. An action item was noted to refer to Corporate Governance the issue of members participating in the Board Selection Process and the potential for modifications to the Bylaws.

Additional clarification was requested regarding bonus points for innovation and criteria. Concerns were expressed regarding the engineering evaluation and it was suggested to have some specific time set aside to focus on the details of the selection process.

Finally, staff was tasked to develop a proposed fee to participate in RFP Submissions with the direction that it be cost-based with a true-up mechanism.

#### **Agenda Item 12 – Changes to Highway/Byway Cost Allocation?**

Paul Suskie presented the analysis staff performed to determine the impact on SPP Zones if voltage levels of the current Highway/Byway cost allocation method were modified (Supplemental Analysis Order

1000: Studies of Cost Allocation Changes to the Highway/Byway – Attachment 13). He noted that staff had been asked to prepare that analysis and was using the past a reference point. Paul noted that two scenarios were studied (Change Case #1, 200 kV Bright line whereby 200 kV and above would be 100% Regional and 199 kV and below would be 100% zonal; and, Change Case #2, Reduced Byway whereby 300 kV and above are 100% regional, 200kV thru 299 kV are 33% Regional and 67% Zonal, and Under 199 kV is 100% Zonal). Mel Perkins noted that the question before the TF in light of Order 1000-A was whether we needed to change: 1). the current strategy; 2). Conduct competitive solicitation for all transmission voltage levels; 3). Change the cost allocation; or, 4). Eliminate the Byway, (i.e., just have Zonal and Highway). Todd Fridley asked whether the sponsorship model should be reconsidered.

Mel noted that this would be a decision point for discussion on the next meeting of the SPCTF on the 26<sup>th</sup>.

#### **Agenda Item 10 – Treatment of Short-term Reliability Projects**

Sam Loudenslager presented alternative approaches to address the concern raised in previous TF meetings regarding the ability to respond and construct reliability projects in the short-term (Assignment of Reliability Projects – Attachment 14, Assignment of Projects Needed short term for Reliability – Attachment 15, and Supplemental Analysis Order 1000: Short Term reliability Projects – Attachment 16). He noted that Order 1000 stated the focus was on ensuring adequate processes were in place to determine whether delays associated with completion of transmission did not adversely affect an incumbent's ability to fulfill its reliability needs or service obligations. The direction the TF provided was to allow incumbents the ability to meet the need. The Task Force also recognized that the issue must be addressed in SPP's compliance filing.

#### **Agenda Item 11 – Activity of other SPP Committees on Order 1000**

Michael Desselle provided a status report of the Finance Committee activities to address financial criteria. Dennis Reed reported on the RTWG efforts, Sam reporting on the RSC efforts on interregional cost allocation.

#### **Agenda Item 13 – Next Steps**

The TF plans to meet again on June 26.

Action Items include:

1. Review Membership Agreement for *Mobile-Sierra* Issues.
2. Staff to develop proposals for Fee with RFP Proposal Submissions.
3. Staff to develop proposals for a timeline for Selected TOs to obtain state authority.
4. Change TO Selection Process white paper as discussed:
  - a. Refer to Corporate Governance issue of members participating in Board Selection Process. Look at changes to the Bylaws.
  - b. Develop Staff straw proposal for a financial criteria & timeline to obtain financing.
    - i. Upfront criteria.
    - ii. How to evaluate financial strength in the Project Selection Process.
    - iii. Timeline to get financing once selected.
  - c. Proposal for Short-term Reliability Projects
5. Refine/Further detail Greenfield issues on slides.
  - a. ROFR Removal Applicability slides
  - b. Short-term Reliability slides
6. Draft the Supplemental Report from the SPCTF.

Respectfully Submitted,

Michael Desselle  
Secretary



# **SPP Draft Straw Proposal for Transmission Owner Selection Criteria**

July 12, 2012  
SPCTF Meeting  
Dallas, TX

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## **Overview**

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Transmission projects (300kV and above) in which a Right of First Refusal (ROFR) does not exist that are selected in the Integrated Transmission Planning (ITP) process and approved for construction by the SPP Board of Directors (BOD) pursuant to Attachment O of the SPP Tariff will be awarded to Qualified Transmission Owners (QTO) selected as a result of a transparent and not unduly discriminatory Request for Proposal (RFP) process.<sup>1</sup>

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## **Request for Proposals (RFP)**

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An RFP will be issued to allow interested QTOs to submit proposals as part of SPP's Competitive Solicitation process established to select Transmission Owners to construct, own, and operate SPP BOD approved transmission projects that were selected in the ITP process for purposes of cost allocation. At a minimum, the RFP will contain the following information;

- (1) General:** The RFP will include an overview of the purpose for the RFP including the need for the transmission project(s), regulatory context and authority, confidentiality statement, and other necessary information.
- (2) Proposal Submission Content Requirements and Procedures:** The RFP will include a deadline for all proposal submissions. The RFP will also identify all minimum bid submission requirements. Each RFP respondent will be required to include all bid conditions in its proposal.
- (3) Project Design Requirements:** The RFP will include minimum design specifications for transmission projects in the SPP tariff footprint.
- (4) Cost and Financial Requirements:** The RFP will require each respondent to provide financial information specific to each transmission project for which it submits a proposal. This information will include, but not be limited to: demonstration of financing and itemized revenue requirement calculations.
- (5) Engineering:** The RFP will require each respondent to provide engineering information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to engineering design of the project and technical requirements.
- (6) Construction:** The RFP will require each respondent to provide construction information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to anticipated project timeline, demonstration of past transmission construction

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<sup>1</sup> The RFP Process will not apply to transmission facilities that are upgrades to a current SPP Transmission Owner's existing facilities or are to be constructed on a current SPP Transmission Owner's existing right-of-way.

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experience, equipment acquisition processes, description of applicable ROW / real estate acquisition process, description of routing process, description of permitting, description of construction clearance processes, and identification of responsible party for construction inspection.

**(7) Operations and Maintenance:** The RFP will require each respondent to provide operations and maintenance information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to: demonstration of operations, statement of which entity will be operating and maintaining the transmission facility, storm / outage response plan, maintenance plan, staffing, equipment, crew training, and record of past maintenance and outage performance.

**(8) Information Exchange:** The RFP will include information exchange requirements such as identification of data required to be provided to the SPP in accordance with NERC reliability standards, data of design of the facilities for the Transmission Provider, and CEI requirements.

**(9) Safety program/Current/Past Statistics:** The RFP will require each respondent to provide safety information such as identification of the internal safety program, contractor safety program, and safety performance record.

**(10) Evaluation Procedure:** The RFP will include a description of the proposal evaluation procedure, including the statement of proposal evaluation methodology, criteria for acceptable proposals, and identification of applicable proposal evaluation fees.

**(11) Attachments:** The RFP will be a standard form that the respondent must fill out and may supplement with attachments demonstrating the information outlined above.

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### **Industry Expert Panel (IEP) Selection Process**

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The SPP Oversight Committee (OC) shall establish a pool of candidates to serve on an IEP to evaluate transmission proposals resulting from the RFP annually. The IEP candidates shall have expertise in Engineering Design, Project Management (i.e. Construction), Operations, Rate Analysis, and Finance/Credit. To qualify for the IEP, each Industry Expert must disclose to the OC any affiliation with SPP stakeholders or any other entities vying to construct a transmission project. In the event an affiliation exists, the OC will evaluate whether the affiliation may adversely impact the Industry Expert's ability to independently evaluate proposals. In the event the OC determines the affiliation adversely impacts an Industry Expert's ability to independently evaluate proposals, the OC shall disqualify that Industry Expert. The OC shall present its recommended pool of IEP candidates to the BOD for approval prior to the BOD meeting in which ITP transmission projects are approved.

Upon BOD approval of a transmission expansion plan, SPP staff shall solicit QTOs to respond to an RFP to build, own, operate, and maintain the approved projects pursuant to the following process:



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(1) SPP staff will notify the Chairman of the BOD and the Chairman of the Oversight Committee (OC) of projects eligible for bid.

(2) The OC shall designate an Industry Expert Panel (IEP) from the approved IEP candidate pool to evaluate proposals resulting from the RFP. The IEP shall be the primary source from which the BOD shall obtain a recommendation of which QTOs are selected for BOD approved transmission projects. SPP staff shall facilitate the IEP's efforts to develop recommendations to the BOD. The IEP shall consist of four (4) to ten (10) panelists.

(3) If a member of the designated IEP becomes affiliated with an SPP stakeholder or other entity vying to construct a transmission project, the Industry Expert shall immediately notify SPP staff and the OC. The OC will evaluate whether the affiliation may adversely impact the Industry Expert's ability to independently evaluate proposals. In the event the OC determines the affiliation adversely impacts an Industry Expert's ability to independently evaluate proposals, the OC shall disqualify that Industry Expert and designate another candidate from the IEP pool if necessary. Each Industry Expert must sign the SPP confidentiality agreement prior to participating in the selection process.

(4) The IEP will evaluate all aspects of each proposal submitted for its review. Once all evaluations are complete, the IEP will develop a single recommendation for the BOD.

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**RFP Process & Timeline**

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(1) **Issuance of RFP:** SPP staff will issue RFP(s) within 7 calendar days of BOD approval of a transmission expansion plan or no later than 18 months before anticipated financial expenditure is to begin. The RFP will only be issued to those entities that have met the Transmission Owner Qualification Criteria.

(2) **Response Window to RFP:** Each responding QTO shall respond to the RFP within 90 calendar days of the date the RFP is issued to the QTO ("Response Window").

(3) **Initial Review of Proposal Submissions:** SPP staff will immediately review each response to the RFP it receives for completeness. SPP staff will promptly return any response to the QTO that is incomplete; however, the QTO may resubmit a corrected or modified response if the re-submittal is made within the Response Window. Any QTO that fails to respond to the RFP within the Response Window will be deemed to have waived its right to respond to the RFP.

(4) **No Responses to RFP:** If no response to the RFP is received, then SPP staff will inform the BOD that SPP received no responses to the RFP. Upon such a report, the BOD shall issue a NTC to the incumbent transmission owner as the Transmission Owner of last resort as specified under SPP's OATT.

(5) **IEP Evaluation:** Upon the closing of the Response Window, SPP staff shall provide the RFP responses to the IEP, including identity of the RFP respondents. The IEP shall review, score, and

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rank all RFP responses and submit its recommendation to the BOD based upon selection criteria outlined below. The IEP's recommendations shall be submitted to the BOD within 60 calendar days of the initiation of the IEP's review. The identity of RFP respondents shall not be disclosed to the BOD as part of the IEP's recommendation.

**(6) IEP Communications & Recommendations:** During its review, the IEP may initiate communication with RFP respondents to obtain and document answers to any additional questions about proposals that may be necessary to develop a recommendation to the BOD. Lobbying of the IEP is prohibited. The IEP recommendation shall score and rank each QTO in a non-discriminatory manner based upon the information supplied, or obtained through the review period.

**(7) IEP Reports:** The IEP will compile an internal report detailing the process, participants, data and results of their deliberations for each project. Each report will be provided to SPP staff. The reports will also be published by SPP staff; however, the public reports shall not contain any confidential information obtained during the selection process. The public reports shall be made available to all QTOs and SPP stakeholders prior to the final selection of the BOD. The IEP recommendation will be provided to the BOD within 14 calendar days prior to the BOD meeting that the transmission owner selection will be made. The SPP BOD shall select a QTO for the project (Selected Transmission Owner or "STO") and a backup QTO.

**(8) STO & Issuance of NTC (including NTC-C):** Upon the selection of the STO by the BOD, SPP staff shall notify the STO that it has been selected to become the Designated Transmission Owner (DTO) for the project with the issuance of an NTC. All NTCs issued will be subject to SPP's existing project cost tracking processes. The STO shall sign any necessary agreement(s) obligating it as the DTO to assume all of the rights and responsibilities related to the project and the NTC pursuant to the SPP Membership Agreement and the SPP OATT.

**(9) Failure of STO to Accept NTC:** If the STO does not respond within 7 calendar days of receiving an NTC or notifies SPP that the STO is no longer willing to become the DTO for the project or is unwilling to sign the necessary agreement(s), the STO shall be deemed to have waived its right to become the DTO for the project. Upon such circumstances, SPP shall notify the BOD and SPP staff of the results. SPP shall then contact the backup QTO and offer the project to the backup QTO on the same terms the project was offered to the first STO.

**(10) Failure of Backup QTO to Accept NTC:** If the backup QTO also fails to sign the necessary agreement(s) to become the DTO within 7 calendar days of notification, SPP shall notify the BOD of the results. Upon notification, the BOD shall approve issuance of an NTC to the incumbent transmission owner as specified under SPP's OATT.

**(11) RFP Suspension:** The BOD shall have the authority to forego the RFP process and select transmission owners for transmission projects that must be addressed on an accelerated schedule to mitigate near term system reliability needs. Near term system reliability needs are considered reliability needs for which 1) non transmission based mitigation is not feasible and 2) transmission based mitigation cannot be achieved considering the RFP timeline. For such projects, the BOD shall

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select the incumbent transmission owner as the Transmission Owner for such projects as specified under SPP's OATT.

**(12) RFP Fees:** All RFP participants will be assessed a fee to compensate for all costs incurred to administer the RFP process. This fee allocates each RFP participant a pro-rated share of total RFP administrative costs based on the number of proposals submitted by each RFP participant relative to the total number of proposals submitted. Each RFP participant shall submit a deposit payment along with its proposal. This deposit will represent an estimate of that participant's fee for participation in the RFP process. Actual RFP costs will be determined at the completion of the process. RFP participants will make additional payments or obtain deposit refunds based on the reconciliation of fees collected and actual RFP costs.

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### **Transmission Owner Selection Criteria & Scoring**

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**(1)** Minimum requirements, as described in the Transmission Owner Qualification criteria must be met in order for a proposal to be included in this process. The IEP will convene to develop a final score for each respondent's proposal and submit a recommendation to the BOD for Transmission Owner selection. The IEP evaluation and recommendation shall not be administered in an unduly discriminatory manner. The proposal with the highest total score may not always be recommended. The IEPs may recommend that a proposal(s) be eliminated from consideration due to a low score in any individual category.

**(2)** There are 1000 possible base points for each proposal. An additional 100 points is available to incent stakeholders to share their ideas and expertise to promote innovation and creativity in the planning process.

#### **Base Categories and Points:**

**Engineering Design (Reliability/Quality/General Design):** – 200 points: Measures the quality of the design, material, technology, and life expectancy of a transmission project. Criteria considered in this proposal evaluation category are as follows;

- Type of construction (wood, steel, design loading, etc.)
- Losses (design efficiency)
- Estimated life of construction
- Reliability/Quality Metrics

**Project Management (Construction Project Management):** – 200 points: Measures a QTO's expertise in implementing construction projects similar in scope to the project that is subject of the RFP.

- Environmental
- ROW Acquisition
- Procurement
- Project scope
- Project development schedule (including obtaining necessary regulatory approvals)

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- Construction
- Commissioning
- Timeframe to construct
- Experience/Track Record

**Operations (Operations/Maintenance/Safety):** – 250 points: Measures safety and capability of a QTO to operate, maintain, and restore a transmission project.

- Control center operations (staffing etc.)
- Storm/Outage response plan
- Reliability metrics
- Restoration Experience/Performance
- Maintenance Staffing/Training
- Maintenance plans
- Equipment
- Maintenance performance/expertise
- NERC compliance-process/history
- Internal safety program
- Contractor safety program
- Safety performance record (program execution)

**Rate Analysis (Cost to Customer):** – 225 points: Measures a QTO's cost to construct, own, and operate the transmission project that is the subject of the RFP over a 40 year period.

- 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
- Cost certainty guarantee

**Finance (Financial Viability and Creditworthiness):** - 125 points: Measures a QTO's ability to obtain financing for a transmission project that is the subject of the RFP.

- **Insert Finance Committee Criteria**

## Incentive Category and Points:

**Incentives (Project Proposal Submission):** – 100 points: Awards bonus points to QTOs that proposed the transmission project that are selected and the subject of the RFP.

**Incentive Eligibility:** A QTO that submits a proposal that is selected in the ITP and approved by the BOD shall receive 100 points as part of the Competitive Solicitation Process if the QTO responds to a RFP for that project subject to the following;

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A QTO must state in its RFP response which BOD approved project it submitted and that it is seeking incentive points for the submission.

During the ITP process, SPP will notify stakeholders of identified transmission needs and provide a transmission planning response window of 30 days to allow stakeholders to submit transmission project proposals to meet those needs. Each proposal must provide sufficient information to facilitate SPP's evaluation of the proposed transmission project(s). This information should confirm that the proposed transmission project(s), at a minimum, mitigates an issue that was observed in the ITP process. SPP will provide models used in ITP assessments to support this information submission requirement. Information requirements shall include: a description of the issue(s) identified in the ITP Process to be addressed by the proposed project, notification of any changes in modeling assumptions from those used in the current ITP Process, full description of project, required current ampacity (capacity) of project, any known environmental impacts caused by the addition of the project transmission project, analysis Power System Simulator for Engineering (PSSE) cases, FCITC if applicable, results of transmission project economic analysis if applicable, and any other information available to support the selection of the project.

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# **SPP Draft Straw Proposal for Transmission Owner Selection Criteria**

June ~~7~~<sup>12</sup>, 2012  
SPCTF Meeting  
Dallas, TX

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**IEP Selection Process** 4

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**Overview**

Transmission projects (300kV and above) in which a Right of First Refusal (ROFR) does not exist that are selected in the Integrated Transmission Planning (ITP) process and approved for construction by the SPP Board of Directors (BOD) pursuant to Attachment O of the SPP Tariff will be awarded to Qualified Transmission Owners (QTO) selected as a result of a transparent and not unduly discriminatory Request for Proposal (RFP) process.<sup>1</sup>

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**Request for Proposals (RFP)**

An RFP will be issued to allow interested QTOs to submit proposals as part of SPP's Competitive Solicitation process established to select Transmission Owners to construct, own, and operate SPP BOD approved transmission projects that were selected in the ITP process for purposes of cost allocation. At a minimum, the RFP will contain the following information;

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**(1) General:** The RFP will include an overview of the purpose for the RFP including: the need for the transmission project(s), regulatory context and authority, confidentiality statement, and other necessary information.

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**(2) Proposal Submission Content Requirements and Procedures:** The RFP will include a deadline for all proposal submissions. The RFP will also identify all minimum bid submission requirements. Each RFP respondent will be required to include all bid conditions in its proposal.

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**(3) Project Design Requirements:** The RFP will include minimum design specifications for transmission projects in the SPP tariff footprint.

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**(4) Cost and Financial Requirements:** The RFP will require each respondent to provide financial information specific to each transmission project for which it submits a proposal. This information will include, but not be limited to: demonstration of financing and itemized revenue requirement calculations.

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**(5) Engineering:** The RFP will require each respondent to provide engineering information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to engineering design of the project and technical requirements.

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<sup>1</sup> The RFP Process will not apply to transmission facilities that are upgrades to a current SPP Transmission Owner's existing facilities or are to be constructed on a current SPP Transmission Owner's existing right-of-way.



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**(56) Construction:** The RFP will require each respondent to provide construction information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to anticipated project timeline, demonstration of past transmission construction experience, equipment acquisition processes, description of applicable ROW / real estate acquisition process, description of routing process, description of permitting, description of construction clearance processes, and identification of responsible party for construction inspection.

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**(76) Operations and Maintenance:** The RFP will require each respondent to provide operations and maintenance information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to: demonstration of operations, statement of which entity will be operating and maintaining the transmission facility, storm / outage response plan, maintenance plan, staffing, equipment, crew training, and record of past maintenance and outage performance.

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**(78) Information Exchange:** The RFP will include information exchange requirements such as identification of data required to be provided to the SPP in accordance with NERC reliability standards, data of design of the facilities for the Transmission Provider, and CEII requirements.

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**(89) Safety program/Current/Past Statistics:** The RFP will require each respondent to provide safety information such as identification of the internal safety program, contractor safety program, and safety performance record.

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**(910) Evaluation Procedure:** The RFP will include a description of the proposal evaluation procedure, including the statement of proposal evaluation methodology, criteria for acceptable proposals, and identification of applicable proposal evaluation fees.

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**(101) Attachments:** The RFP will be a standard form that the respondent must fill out and may supplement with attachments demonstrating the information outlined above.

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### Industry Expert Panel (IEP) Selection Process

The SPP Oversight Committee (OC) shall establish a pool of candidates to serve on an IEP to evaluate transmission proposals resulting from the RFP annually. The IEP candidates shall have expertise in Engineering Design, Project Management (i.e. Construction), Operations, Rate Analysis, and Finance/Credit. To qualify for the IEP, each Industry Expert must disclose to the OC any affiliation with SPP stakeholders or any other entities vying to construct a transmission project. In the event an affiliation exists, the OC will evaluate whether the affiliation may adversely impact the Industry Expert's ability to independently evaluate proposals. In the event the OC determines the affiliation adversely impacts an Industry Expert's ability to independently evaluate proposals, the OC shall disqualify that Industry Expert. The OC shall present its recommended pool of IEP candidates to the BOD for approval prior to the BOD meeting in which ITP transmission projects are approved.

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Upon BOD approval of a transmission expansion plan, SPP staff shall solicit QTOs to respond to an RFP to build, own, operate, and maintain the approved projects pursuant to the following process:

(1) SPP staff will notify the Chairman of the BOD and the Chairman of the Oversight Committee (OC) of projects eligible for bid.

(2) The OC shall designate four Industry Expert Panels (IEPs) from the approved IEP candidate pool to evaluate proposals resulting from the RFP. The four IEPs shall consist of an Engineering Design Panel, Project Management (i.e. Construction) Panel, Operations Panel, and Rate Analysis Panel. The IEP s shall be the primary source from which the BOD shall obtain a recommendation of which QTOs are selected for BOD approved transmission projects. SPP staff shall facilitate the IEP's efforts to develop recommendations to the BOD. The four IEPs shall consist of no less than two Industry Experts from each of the aforementioned electric utility industry are four (4) to ten (10) panelists as.

~~(3) To qualify for the IEP, each Industry Expert must disclose to the OC any affiliation with SPP stakeholders or any other entities vying to construct a transmission project. In the event an affiliation exists, the OC will evaluate whether the affiliation may adversely impact the Industry Expert's ability to independently evaluate proposals. In the event the OC determines the affiliation adversely impacts an Industry Expert's ability to independently evaluate proposals, the OC shall disqualify that Industry Expert. If, after an Industry Expert has been approved by the OC, a the member of the designated Industry Expert IEP becomes affiliated with an SPP stakeholder or other entity vying to construct a transmission project, the Industry Expert shall immediately notify SPP staff and the OC. The OC will evaluate whether the affiliation may adversely impact the Industry Expert's ability to independently evaluate proposals. In the event the OC determines the affiliation adversely impacts an Industry Expert's ability to independently evaluate proposals, the OC shall disqualify that Industry Expert and designate another candidate from the IEP pool if necessary. Each Industry Expert must sign the SPP confidentiality agreement prior to participating in the selection process.~~

(4) ~~Each The~~ IEP will evaluate all aspects of each proposal pertaining to its specific area of expertise submitted for its review. IEPs may consult with each other as necessary to effectively complete the evaluations. Once all evaluations are complete, the IEPs will convene to develop a single recommendation to for the BOD.

### RFP Process & Timeline

(1) **Issuance of RFP:** SPP staff will issue RFP(s) wWithin 7 calendar days of BOD approval of a transmission expansion plan or no later than 18 months before anticipated financial expenditure is to begin, SPP staff will issue an RFP. The RFP will only be issued to those entities that have met the Transmission Owner Qualification Criteria.

(2) **Response Window to RFP:** Each responding QTO shall respond to the RFP within 90 calendar days of the date the RFP is sent issued to the QTO ("Response Window").

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assume all of the rights and responsibilities related to the project and the NTC pursuant to the SPP Membership Agreement and the SPP OATT.

**(9) Failure of STO to Accept NTC:** If the STO does not respond within 7 calendar days of receiving an NTC or notifies SPP that the STO is no longer willing to become the DTO for the project or is unwilling to sign the necessary agreement(s), the STO shall be deemed to have waived its right to become the DTO for the project. Upon such circumstances, SPP shall notify the BOD and SPP staff of the results. SPP shall then contact the backup QTO and offer the project to ~~it~~ the backup QTO on the same terms the project was offered to the first STO.

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**(10) Failure of Backup QTO to Accept NTC:** If the backup QTO also fails to sign the necessary agreement(s) to become the DTO within 7 calendar days of notification, SPP shall notify the BOD of the results. Upon notification, the BOD shall approve issuance of an NTC to the incumbent transmission owner as specified under SPP's OATT. The IEP shall review the remaining applications and submit another recommendation to the BOD. If no other QTO can be found to construct the project, then the incumbent Transmission Owner shall be deemed the transmission owner of last resort.

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**(11) RFP Acceleration/Suspension:** The BOD shall have the authority to ~~accelerate/forego~~ the RFP ~~timeline process to and accommodate urgent issues~~ select transmission owners for such as upgrades transmission projects that must be addressed on an accelerated schedule to necessary to mitigate near term system reliability needs. Near term system reliability needs are considered reliability needs for which 1) non transmission based mitigation is not feasible and 2) transmission based mitigation cannot be achieved considering the RFP timeline. For such projects, the BOD shall select the incumbent transmission owner as the Transmission Owner for such projects as specified under SPP's OATT.

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**(12) RFP Fees:** All RFP participants will be assessed a fee to compensate for all costs incurred to administer the RFP process. This fee allocates each RFP participant a pro-rated share of total RFP administrative costs based on the number of proposals submitted by each RFP participant relative to the total number of proposals submitted. Each RFP participant shall submit a deposit payment along with its proposal. This deposit will represent an estimate of that participant's fee for participation in the RFP process. Actual RFP costs will be determined at the completion of the process. RFP participants will make additional payments or obtain deposit refunds based on the reconciliation of fees collected and actual RFP costs.

**Transmission Owner Selection Criteria & Scoring**

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**(1)** The IEPs will use "Reasonable Professional" standard in evaluation of proposals from the various respondents. Minimum requirements, as described in the Transmission Owner Qualification criteria must be met in order for a proposal to be included in this process. ~~All four~~ The IEPs will convene to develop a final score for each respondent's proposal and submit a recommendation to the BOD for Transmission Owner selection. The IEP evaluation and recommendation shall not be administered in an unduly discriminatory manner. The proposal with

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the highest total score may not always be recommended. The IEPs may recommend that a proposal(s) be eliminated from consideration due to a low score in any individual category.

(2) There are 1000 possible base points for each proposal. An additional 100 points is available to incent stakeholders to share their ideas and expertise to promote innovation and creativity in the planning process.

**Base Categories and Points:**

**Engineering Design (Reliability/Quality/General Design):** – 225-200 points: Measures the quality of the design, material, technology, and life expectancy of a transmission project. Criteria considered in this proposal evaluation category are as follows:

- Type of construction (wood, steel, design loading, etc.)
- Losses (design efficiency)
- Estimated life of construction
- Reliability/Quality Metrics

**Project Management (Construction Project Management):** – 225-200 points: Measures a QTO's expertise in implementing construction projects similar in scope to the project that is subject of the RFP.

- Environmental
- ROW Acquisition
- Procurement
- Project scope &
- Project development schedule (including obtaining necessary regulatory approvals)
- Construction
- Commissioning
- Timeframe to construct
- Experience/Track Record

**Operations (Operations/Maintenance/Safety):** – 300-250 points: Measures safety and capability of a QTO to operate, maintain, and restore a transmission project.

- Control center operations (staffing etc.)
- ~~NERC compliance process/history~~
- Storm/Outage response plan
- Reliability metrics
- Restoration Experience/Performance
- Maintenance Staffing/Training
- Maintenance plans
- Equipment
- Maintenance performance/expertise
- NERC compliance-process/history
- Internal safety program
- Contractor safety program

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- Safety performance record (program execution)

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**Rate Analysis (Cost to Customer):** – 250-225 points: Measures a QTO’s cost to construct, own, and operate the transmission project that is the subject of the RFP over a 40 year period.

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- 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
- Cost certainty guarantee

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**Finance (Financial Viability and Creditworthiness):** - 125 points: Measures a QTO’s ability to obtain financing for a transmission project that is the subject of the RFP.

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**Incentive Category and Points:**

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**Incentives (Project Proposal Submission):** – 100 points: Awards bonus points to QTOs that proposed the transmission project that are selected and the subject of the RFP.

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**Incentive Eligibility:**

A QTO that submits a proposal that is selected in the ITP and approved by the BOD, shall receive 100 points as part of the Competitive Solicitation Process if the QTO responds to a RFP for that project.

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A QTO that submits a proposal that is selected in the ITP and approved by the BOD shall receive 100 points as part of the Competitive Solicitation Process if the QTO responds to a RFP for that project subject to the following:

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A QTO must state in its RFP response which BOD approved project it submitted and that it is seeking incentive points for the submission.

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During the ITP process, SPP will notify stakeholders of identified transmission needs and provide a transmission planning response window of 30 days to allow stakeholders to submit transmission project proposals to meet those needs. In order to be eligible to receive incentive points, a QTO submitting Each proposals for transmission projects to SPP during the ITP must provide sufficient information to facilitate SPP’s evaluation of such the proposed transmission project(s). This information should confirm that the proposed transmission project(s), at a minimum, mitigates an issue that was observed in the ITP process. SPP will provide models used in ITP assessments to support this information submission requirement. Information requirements shall include: a description of the issue(s) identified in the ITP Process to be addressed by the proposed project, notification of any changes in modeling assumptions from those used in the current ITP Process, full description of project, required current ampacity (capacity) of project , any known

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environmental impacts caused by the addition of the project transmission project, analysis Power System Simulator for Engineering (PSSE) cases, [FCITC if applicable](#), and results of transmission project economic analysis if applicable, [and any other information available to support the selection of the project](#).

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DRAFT



## **SPC Task Force on Order 1000**

### **DRAFT 2<sup>nd</sup> REPORT**

**Draft 75/2012**



**INTRODUCTION:**

On July 21, 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order 1000. Per the Order, Public utility transmission providers<sup>1</sup> must either amend their open access transmission tariffs (“OATT”) to comply with the requirements of Order No. 1000 or demonstrate how their existing OATT provisions already comply.<sup>2</sup>

In response to Order 1000, the SPP Board of Directors tasked SPP’s Strategic Planning Committee (“SPC”) to lead SPP’s response to the regional policy requirements contained in Order 1000 for a compliance filing. After initial meetings of the SPC to discuss the requirements of Order 1000, the SPC formed the SPC Task Force (“SPCTF”) on Order 1000. As a result, SPCTF was established to examine SPP’s existing OATT to determine whether SPP’s current transmission planning and cost allocation provisions comply with the requirements and whether additional revisions will be necessary. Further the SPCTF on Order 1000 was tasked to propose how SPP should make its compliance filing with FERC.

The members of the SPCTF on Order 1000 were:

<b><u>SPCTF Order 1000 Member</u></b>	<b><u>Organization</u></b>
<b>Mel Perkins, Chairman</b>	<b>Oklahoma Gas &amp; Electric, Co.</b>
<b>Noman Williams, Member</b>	<b>Sunflower Electric Power Corporation</b>
<b>Brian Thumm, Member</b>	<b>ITC Holdings</b>
<b>Dennis Reed, Member</b>	<b>Westar Energy, Inc</b>
<b>Ricky Bittle, Member</b>	<b>Arkansas Electric Cooperatives</b>
<b>Todd Fridley, Member</b>	<b>Kansas City Power &amp; Light Company</b>
<b>Paul Malone, Member</b>	<b>Nebraska Public Power District</b>
<b>Terri Gallup, Member</b>	<b>America Electric Power</b>
<b>Mitch Elmore, Member</b>	<b>Xcel Energy</b>
<b>Michael Desselle, Staff Secretary</b>	<b>SPP Staff</b>

<sup>1</sup> SPP is a Public utility transmission provider.

<sup>2</sup> Order No. 1000 at P 795.

## **COMPLIANCE DEADLINES OF ORDER 1000**

FERC Order 1000 has different filing deadline for Order 1000's Regional and Interregional Requirements as stated below:

Regional Compliance Filing: Compliance filings addressing the Order No. 1000 regional transmission planning and cost allocation requirements must be submitted to FERC by October 11, 2012.

Interregional Compliance Filing: Compliance filings addressing the interregional coordination and cost allocation requirements of Order No. 1000 are due by April 11, 2013.

## **APPROVAL OF FIRST REPORT**

On April 24, 2012, the SPP Board of Directors approved the First Report of the SPCTF. The Report was also approved by the SPC on April 9, 2012. A part of the Report further tasked the SPCTF with the following:

### **2.4 Recommendation on Development of Detailed Transmission Owner Selection Criteria**

The SPCTF recommends the SPCTF develop in detail the evaluation criteria and associated scoring needed to evaluate/compare Qualified Transmission Owners ("QTOs") that are competing to build transmission projects within SPP's footprint. The general process, criteria and scoring is found in Attachment A and B which the SPCTF recommends be further vetted and developed by the SPCTF by June 2012.

\* \* \* \* \*

### **3.1 Recommended Transmission Owner Qualification Criteria**

The SPCTF recommends that SPP's compliance filing for Order 1000 contain Transmission Owner qualification criteria that must be met before a potential transmission owner can participate in SPP's Competitive Solicitation Process described in Sections 2.2 and 2.3 above. The Transmission Owner qualification criteria would apply only to those entities seeking to construct, own, and operate transmission projects that are subject to the SPP Competitive Solicitation Process.

The general basis upon which the SPCTF make its recommendation for Transmission Owner qualification criteria is the existing process outlined in Attachment O § VI.6 of the SPP OATT. These are:

**(1) Threshold eligibility criteria:** The recommended threshold eligibility criteria would include, at a minimum, some level of proof by an Applicant Transmission Owner (“ATO”) that the ATO has the legal authority under state law to construct facilities within a state in which a project will be built and some level of assurance that the ATO is or will be a member of SPP.

The SPCTF recommends that the SPCTF develop the threshold criteria by June 30, 2012.

[(2) is Omitted as it was assigned to SPP’s Finance Committee]

**(3) Managerial criteria:** The recommended managerial eligibility criteria would require an ATO to demonstrate certain managerial expertise.

The SPCTF recommends that the SPCTF develop the managerial expertise criteria by June 30, 2012.

\* \* \* \* \*

#### **4.1 Recommended Change to SPP’s Membership Agreement**

The SPCTF recommends that the following sections of SPP’s Membership Agreement be amended to remove the Federal ROFR, as stated below.

Section 3.3 of the SPP Membership Agreement, which governs construction of transmission facilities in SPP, contains Federal ROFR language that will need to be modified to comply with Order 1000. Specifically, Section 3.3(b) of the SPP Membership Agreement indicates:

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. 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 each entity. If agreement cannot be reached, SPP will facilitate the ownership determination process.

Thus, under the language of Section 3.3(b), SPP is obligated to designate an incumbent Transmission Owner to construct new transmission facilities (i.e., the owner of existing facilities to which the new facility will connect).

Furthermore, Section 3.3(c) of the SPP 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.

This language provides an option for the designated Transmission Owner to assign the project to another entity or to decline to “implement the project” (i.e., “refuse” to build the project).

When read together, Sections 3.3(b) and 3.3(c) provide incumbent Transmission Owners a Federal ROFR over transmission projects approved for construction by SPP. SPP is required to assign the construction obligations for new transmission facilities to incumbent Transmission Owners that own the existing facilities to which a new transmission facility will interconnect. Once a new transmission facility is assigned, the designated Transmission Owner(s) have the option either to construct

the project, assign the project to another entity, or decline to construct the project. As a result, the SPCTF recommends that SPP modify these sections to comply with Order 1000 in a manner that is consistent with this Report.

The SPCTF will provide language to the Corporate Governance Committee (“CGC”) by April 30, 2012.<sup>3</sup>

As tasked above, Section I of this report contains the SPCTF’s recommendations as to what Transmission Owner Selection Criteria should be used for SPP’s proposed Competitive Solicitation Process and Section II contains the SPCTF’s recommendation as to what Transmission Owner Qualification Criteria and Transmission Owner Managerial experience criteria should be used by SPP.

Additionally, since the SPP Board of Director’s approval of the SPCTF’s First Report, FERC Issued Order 1000-A on May 17, 2012. In Order 1000-A, FERC denied all rehearing request to Order 1000 but did provide clarification to Order 1000. As a result, Section III of this report provides additional recommendations from the SPCTF in part based upon clarifications provided by FERC in Order 1000-A.

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<sup>3</sup> The SPCTF previously provided the reference language to the CGC, therefore, it is not included within in this report.

## **RECOMMENDATIONS OF THE SPCTF ON ORDER 1000**

- I. Recommendation as to What Transmission Owner Selection Criteria SPP Should Use.**
- II. Recommendation as to What Owner Qualification Criteria SPP Should Establish for Applicant Transmission Owners.**
- III. Additional Recommendation on the Mobile-Sierra Doctrine.**
- IV. Recommendation on Establishment of a Need by Date, Notice of Such Date, and Requirement meet Deadlines.**

## **SECTION I:**

### **Recommendation as to the Transmission Owner Selection Criteria to be used in SPP's Competitive Solicitation Process.**

#### **1.1. Recommended Transmission Owner Selection Criteria**

The SPCTF recommends that SPP use the Transmission Owner Selection Criteria in an SPP Competitive Solicitation Process as detailed in Attachment A to this Report.

## SECTION II:

### Recommendation as to Transmission Owner Qualification Criteria

**ORDER 1000 REQUIREMENT:** Transmission Owner Qualification Criteria: *Order 1000 requires each public utility transmission provider to revise its OATT 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<sup>4</sup> or a non-incumbent transmission developer. These criteria must not be unduly discriminatory or preferential.<sup>5</sup> [P. 323] 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.<sup>6</sup> [P. 323] Within these general parameters, FERC leaves 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. [P. 324]*

### SPCTF on Order 1000 Recommendation on Transmission Owner Qualifications

#### 2.1 Recommended Transmission Owner Qualification Criteria

The SPCTF recommends that SPP establish the following Transmission Owner Qualification Criteria that will apply to any entity – incumbent or non-incumbent -- that seeks to participate in SPP's Transmission Owner Selection Process for transmission facilities for which a Transmission Owner does not possess a right of first refusal. The entity must satisfy all Transmission Owner Qualification Criteria prior to being eligible to participate in the Transmission Owner Selection Process.

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<sup>4</sup> 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. [P. 324]

<sup>5</sup> 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. [n.304]

<sup>6</sup> Nothing in the qualifications criteria requirement of Order 1000 is intended to change any existing RTO procedure or practice regarding the operation of existing transmission facilities. [n.303]



Any Application received by SPP from an ATO must contain information necessary to allow SPP to determine whether or not the ATO meets the requirements to be a QTO in SPP.

**(1) Threshold Membership Criteria:**

**SPP Membership:** An Application from an ATO must provide a showing that the ATO is a SPP Member or is willing to sign the SPP Membership Agreement if the ATO is selected as part of SPP's Transmission Owner Selection Process.

**(2) Financial Qualification Criteria:** [Financial Qualification Criteria is being developed by the Finance Committee. As a result, the Financial Criteria are not addressed in this report].

**(3) Managerial Qualification Criteria:**

**Managerial Expertise:** An Application from an ATO must include a showing that the ATO has expertise to construct, own, and operate electric transmission facilities. Expertise to construct, own, and operate electric transmission facilities includes:

- Transmission Project Construction Expertise: engineering, permitting, environmental, procurement, project management, construction, commissioning, technology content,; 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 and Expertise: 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 and restoration plan, past reliability performance, statement of which entity will be operating and maintaining completed transmission facilities, staffing, equipment, and crew training.
- Maintenance Qualifications and Expertise: staffing, maintenance plans, equipment, crew training, record of maintenance performance, maintenance expertise, NERC compliance process and history.
- Ability to comply with Good Utility Practice, SPP Criteria, industry standards, and applicable local, state, and federal requirements.

In order for an ATO to become a QTO, the ATO must provide documentation regarding the ATO's satisfaction of the Managerial Qualification Criteria to SPP in advance of the initiation of the next Transmission Owner Selection Process.<sup>7</sup> 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 become a QTO to participate in SPP's next Transmission Owner Selection Process.

An ATO can demonstrate that it meets SPP's managerial criteria by demonstrating that the ATO:

- As an entity has the necessary managerial expertise to meet SPP's managerial criteria;
- Is affiliated or has a legal relationship with entities that collectively meet SPP's managerial criteria and has made arrangements with such entities to perform the functions for which the entity deemed to satisfy the qualification criteria if the ATO is ultimately selected to construct a transmission project; or
- Has contracts with entities that enable the ATO to meet SPP's managerial criteria and that the entities will be contractually obligated to perform the functions for which it was deemed to satisfy the qualification criteria if the ATO is ultimately selected to construct a transmission project.

#### **(4) Posting of Applications**

**Posting an Application from an ATO and Notice:** Applications from an ATO will be posted on the SPP website upon receipt by SPP, subject to any applicable confidentiality protections.

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<sup>7</sup> **Evaluation of Managerial Expertise:** SPP can evaluate an ATO's managerial criteria internally or by hiring a firm with expertise to evaluate the managerial experience.

## SECTION III:

### Additional Recommendations

#### 3.1. Recommendation related to the *Mobile-Sierra* Doctrine

In general, the *Mobile-Sierra* doctrine indicates that rates set by a freely negotiated wholesale energy contract are presumed to be just and reasonable. This presumption can only be overcome if FERC concludes that the contract “seriously harms the public interest.” Recent U.S. Supreme Court cases have indicated that the *Mobile-Sierra* doctrine applies both to FERC and third-parties, not just to the contracting parties.

In Order 1000, FERC found that the record in the generic rulemaking proceeding was not sufficient to address arguments that specific contracts are protected by the *Mobile-Sierra* doctrine and that FERC did not make the requisite showing to require modification of such contracts. As a result FERC determined to address such arguments on a case-by-case basis in the compliance filing proceedings.<sup>8</sup> Additionally, in Order 1000-A FERC clarifies, that parties seeking to assert *Mobile-Sierra* must also submit tariff/agreement revisions in their compliance filings to comply with Orders 1000 and 1000-A, which FERC will review only after addressing the *Mobile-Sierra* arguments.<sup>9</sup>

As a result, if *Mobile-Sierra* is asserted as a part of an Order 1000 compliance filing, FERC will first determine, based on a more complete record, whether the agreement is protected by *Mobile-Sierra*.<sup>10</sup> If the agreement is protected by *Mobile-Sierra*, FERC will then determine whether it has met the applicable standard of review to enable it to require revisions to the agreement to comply with Order 1000.<sup>11</sup>

Further, if the agreement is protected by *Mobile-Sierra* and FERC cannot meet the applicable standard of review, it will not consider the revisions submitted in the compliance filing.<sup>12</sup> However, if FERC determines that the agreement is not protected, or if FERC determines that the agreement is protected but that FERC has met the standard, then FERC will consider whether the compliance filing revisions satisfy the requirements of Order 1000.<sup>13</sup>

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<sup>8</sup> Order 1000 at P 292.

<sup>9</sup> Order 1000-A at P 389.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

As a result of the language in Order 1000-A, the SPCTF recommends that SPP include as a part of its compliance filing for Order 1000 arguments that the federal Right of First Refusal contained in SPP's Membership Agreement is protected under the *Mobile-Sierra* Doctrine.

## SECTION IV:

### Recommendation on Establishment of a Need by Date, Notice of Such Date, and Requirement meet Deadlines.

#### 4.1. FERC Order 1000-A and Timeline for Selected Transmission Owner to Obtain State Approvals

As part of the Transmission Owner Selection Process and related Request for Proposal (“RPF”) process, SPP must establish a date by which a Designated Transmission Owner (“DTO”) must obtain all state approvals necessary for the transmission facility. The SPCTF recommends that, as part of the SPP Integrated Transmission Plan (“ITP”) process, SPP staff will identify a date by which all state approvals must be obtained, and include such dates in the SPP Transmission Expansion Plan (“STEP”) process, the RFP document, and the Notification to Construct (“NTC”) for the transmission facility.

#### Background

In Order No. 1000-A,<sup>14</sup> the Federal Energy Regulatory Commission (“FERC”) provides certain clarifications of the Order No. 1000<sup>15</sup> requirement to develop “qualification criteria” for potential transmission developers. Order No. 1000-A states that:

[I]t would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>16</sup>

Order No. 1000-A clarifies, however, that:

[T]he transmission developer of that transmission facility must submit a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility such that it meets the transmission needs of the region. As part of the ongoing monitoring of the progress of the transmission project once it is selected, the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct

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<sup>14</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000-A, 139 FERC ¶ 61,132 (“Order No. 1000-A”).

<sup>15</sup> *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”).

<sup>16</sup> Order No. 1000-A at P 441.

must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address. If such critical steps have not been achieved by that date, then the public utility transmission providers in a transmission planning region may remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution.<sup>17</sup>

#### **4.2 Recommendation of the SPCTF on Timelines for State Approval**

To ensure that transmission facilities are constructed in time to address identified needs, SPCTF recommends that (as part of the ITP process) SPP staff identify, for each transmission facility that will be part of the Transmission Owner Selection Process, a date by which all state approvals to construct must be achieved. SPP staff currently identifies an SPP Determined Need Date as part of the ITP process, which is published as part of the STEP and included in NTCs issued after projects have been approved by the Board of Directors. SPP staff also should identify a date by which all necessary state approvals are required, that is tied to when construction must begin so that facility construction begins in a timely manner to achieve the need date. The state approval need date should be developed separately for each transmission facility that will be assigned according to the Transmission Owner Selection Process, and should be documented in the STEP, in the RFP for the transmission facility, and in the NTC that is issued at the conclusion of the Transmission Owner Selection Process.

Therefore, the SPCTF recommends that SPP should adopt Tariff revisions to indicate that:

1. SPP staff will identify a state approval need date as part of the ITP process;
2. Entities that respond to an RFP must include a development schedule that does not conflict with the state approval need date; and
3. If a DTO fails to or is unable to achieve all necessary state approvals by the state approval need date, SPP will reevaluate the transmission facility to seek an alternative solution.

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<sup>17</sup> *Id.* at P 442.



## **SPC Task Force on Order 1000**

### **DRAFT 2<sup>nd</sup> REPORT**

|  
Draft ~~6/24~~5/2012

**INTRODUCTION:**

On July 21, 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order 1000. Per the Order, Public utility transmission providers<sup>1</sup> must either amend their open access transmission tariffs (“OATT”) to comply with the requirements of Order No. 1000 or demonstrate how their existing OATT provisions already comply.<sup>2</sup>

In response to Order 1000, the SPP Board of Directors tasked SPP’s Strategic Planning Committee (“SPC”) to lead SPP’s response to the regional policy requirements contained in Order 1000 for a compliance filing. After initial meetings of the SPC to discuss the requirements of Order 1000, the SPC formed the SPC Task Force (“SPCTF”) on Order 1000. As a result, SPCTF was established to examine SPP’s existing OATT to determine whether SPP’s current transmission planning and cost allocation provisions comply with the requirements and whether additional revisions will be necessary. Further the SPCTF on Order 1000 was tasked to propose how SPP should make its compliance filing with FERC.

The members of the SPCTF on Order 1000 were:

<b><u>SPCTF Order 1000 Member</u></b>	<b><u>Organization</u></b>
<b>Mel Perkins, Chairman</b>	<b>Oklahoma Gas &amp; Electric, Co.</b>
<b>Noman Williams, Member</b>	<b>Sunflower Electric Power Corporation</b>
<b>Brian Thumm, Member</b>	<b>ITC Holdings</b>
<b>Dennis Reed, Member</b>	<b>Westar Energy, Inc</b>
<b>Ricky Bittle, Member</b>	<b>Arkansas Electric Cooperatives</b>
<b>Todd Fridley, Member</b>	<b>Kansas City Power &amp; Light Company</b>
<b>Paul Malone, Member</b>	<b>Nebraska Public Power District</b>
<b>Terri Gallup, Member</b>	<b>America Electric Power</b>
<b>Mitch Elmore, Member</b>	<b>Xcel Energy</b>
<b>Michael Desselle, Staff Secretary</b>	<b>SPP Staff</b>

<sup>1</sup> SPP is a Public utility transmission provider.

<sup>2</sup> Order No. 1000 at P 795.



## **COMPLIANCE DEADLINES OF ORDER 1000**

FERC Order 1000 has different filing deadline for Order 1000's Regional and Interregional Requirements as stated below:

Regional Compliance Filing: Compliance filings addressing the Order No. 1000 regional transmission planning and cost allocation requirements must be submitted to FERC by October 11, 2012.

Interregional Compliance Filing: Compliance filings addressing the interregional coordination and cost allocation requirements of Order No. 1000 are due by April 11, 2013.

## **APPROVAL OF FIRST REPORT**

On April 24, 2012, the SPP Board of Directors approved the First Report of the SPCTF. The Report was also approved by the SPC on April 9, 2012. A part of the Report further tasked the SPCTF with the following:

### **2.4 Recommendation on Development of Detailed Transmission Owner Selection Criteria**

The SPCTF recommends the SPCTF develop in detail the evaluation criteria and associated scoring needed to evaluate/compare Qualified Transmission Owners ("QTOs") that are competing to build transmission projects within SPP's footprint. The general process, criteria and scoring is found in Attachment A and B which the SPCTF recommends be further vetted and developed by the SPCTF by June 2012.

\* \* \* \* \*

### **3.1 Recommended Transmission Owner Qualification Criteria**

The SPCTF recommends that SPP's compliance filing for Order 1000 contain Transmission Owner qualification criteria that must be met before a potential transmission owner can participate in SPP's Competitive Solicitation Process described in Sections 2.2 and 2.3 above. The Transmission Owner qualification criteria would apply only to those entities seeking to construct, own, and operate transmission projects that are subject to the SPP Competitive Solicitation Process.

The general basis upon which the SPCTF make its recommendation for Transmission Owner qualification criteria is the existing process outlined in Attachment O § VI.6 of the SPP OATT. These are:

**(1) Threshold eligibility criteria:** The recommended threshold eligibility criteria would include, at a minimum, some level of proof by an Applicant Transmission Owner (“ATO”) that the ATO has the legal authority under state law to construct facilities within a state in which a project will be built and some level of assurance that the ATO is or will be a member of SPP.

The SPCTF recommends that the SPCTF develop the threshold criteria by June 30, 2012.

[(2) is Omitted as it was assigned to SPP’s Finance Committee]

**(3) Managerial criteria:** The recommended managerial eligibility criteria would require an ATO to demonstrate certain managerial expertise.

The SPCTF recommends that the SPCTF develop the managerial expertise criteria by June 30, 2012.

\* \* \* \* \*

#### **4.1 Recommended Change to SPP’s Membership Agreement**

The SPCTF recommends that the following sections of SPP’s Membership Agreement be amended to remove the Federal ROFR, as stated below.

Section 3.3 of the SPP Membership Agreement, which governs construction of transmission facilities in SPP, contains Federal ROFR language that will need to be modified to comply with Order 1000. Specifically, Section 3.3(b) of the SPP Membership Agreement indicates:

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. 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 each entity. If agreement cannot be reached, SPP will facilitate the ownership determination process.

Thus, under the language of Section 3.3(b), SPP is obligated to designate an incumbent Transmission Owner to construct new transmission facilities (i.e., the owner of existing facilities to which the new facility will connect).

Furthermore, Section 3.3(c) of the SPP 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.

This language provides an option for the designated Transmission Owner to assign the project to another entity or to decline to “implement the project” (i.e., “refuse” to build the project).

When read together, Sections 3.3(b) and 3.3(c) provide incumbent Transmission Owners a Federal ROFR over transmission projects approved for construction by SPP. SPP is required to assign the construction obligations for new transmission facilities to incumbent Transmission Owners that own the existing facilities to which a new transmission facility will interconnect. Once a new transmission facility is assigned, the designated Transmission Owner(s) have the option either to construct

the project, assign the project to another entity, or decline to construct the project. As a result, the SPCTF recommends that SPP modify these sections to comply with Order 1000 in a manner that is consistent with this Report.

The SPCTF will provide language to the Corporate Governance Committee (“CGC”) by April 30, 2012.<sup>3</sup>

As tasked above, Section I of this report contains the SPCTF’s recommendations as to what Transmission Owner Selection Criteria should be used for SPP’s proposed Competitive Solicitation Process and Section II contains the SPCTF’s recommendation as to what Transmission Owner Qualification Criteria and Transmission Owner Managerial experience criteria should be used by SPP.

Additionally, since the SPP Board of Director’s approval of the SPCTF’s First Report, FERC Issued Order 1000-A on May 17, 2012. In Order 1000-A, FERC denied all rehearing request to Order 1000 but did provide clarification to Order 1000. As a result, Section III of this report provides additional recommendations from the SPCTF in part based upon clarifications provided by FERC in Order 1000-A.

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<sup>3</sup> The SPCTF previously provided the reference language to the CGC, therefore, it is not included within in this report.

## RECOMMENDATIONS OF THE SPCTF ON ORDER 1000

- I. Recommendation as to What Transmission Owner Selection Criteria SPP Should Use.
- II. Recommendation as to What Owner Qualification Criteria SPP Should Establish for Applicant Transmission Owners.
- III. Additional ~~Recommendations including~~ Recommendations on the Mobile-Sierra Doctrine ~~and Changes to the Membership Agreement to Acknowledge the Competitive Solicitation Process.~~
- IV. Recommendation on Establishment of a Need by Date, Notice of Such Date, and Requirement meet Deadlines.

## **SECTION I:**

### **Recommendation as to the Transmission Owner Selection Criteria to be used in SPP's Competitive Solicitation Process.**

#### **1.1. Recommended Transmission Owner Selection Criteria**

The SPCTF recommends that SPP use the Transmission Owner Selection Criteria in an SPP Competitive Solicitation Process as detailed in Attachment A to this Report.

## SECTION II:

### Recommendation as to Transmission Owner Qualification Criteria

**ORDER 1000 REQUIREMENT:** Transmission Owner Qualification Criteria: *Order 1000 requires each public utility transmission provider to revise its OATT 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<sup>4</sup> or a non-incumbent transmission developer. These criteria must not be unduly discriminatory or preferential.<sup>5</sup> [P. 323] 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.<sup>6</sup> [P. 323] Within these general parameters, FERC leaves 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. [P. 324]*

### SPCTF on Order 1000 Recommendation on Transmission Owner Qualifications

#### 2.1 Recommended Transmission Owner Qualification Criteria

The SPCTF recommends that SPP establish the following Transmission Owner Qualification Criteria that will apply to any entity – incumbent or non-incumbent -- that seeks to participate in SPP's Transmission Owner Selection Process for transmission facilities for which a Transmission Owner does not possess a right of first refusal. The entity must satisfy all Transmission Owner Qualification Criteria prior to being eligible to participate in the Transmission Owner Selection Process.

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<sup>4</sup> 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. [P. 324]

<sup>5</sup> 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. [n.304]

<sup>6</sup> Nothing in the qualifications criteria requirement of Order 1000 is intended to change any existing RTO procedure or practice regarding the operation of existing transmission facilities. [n.303]

Any Application received by SPP from an ATO must contain information necessary to allow SPP to determine whether or not the ATO meets the requirements to be a QTO in SPP.

**(1) Threshold Membership Criteria:**

**SPP Membership:** An Application from an ATO must provide a showing that the ATO is a SPP Member or is willing to sign the SPP Membership Agreement if the ATO is selected as part of SPP's Transmission Owner Selection Process.

**(2) Financial Qualification Criteria:** [Financial Qualification Criteria is being developed by the Finance Committee. As a result, the Financial Criteria are not addressed in this report].

**(3) Managerial Qualification Criteria:**

**Managerial Expertise:** An Application from an ATO must include a showing that the ATO has expertise to construct, own, and operate electric transmission facilities. Expertise to construct, own, and operate electric transmission facilities includes:

- Transmission Project Construction Expertise: engineering, permitting, environmental, procurement, project management, construction, commissioning, technology content,; 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 and Expertise: 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 and restoration plan, past reliability performance, statement of which entity will be operating and maintaining completed transmission facilities, staffing, equipment, and crew training.
- Maintenance Qualifications and Expertise: staffing, maintenance plans, equipment, crew training, record of maintenance performance, maintenance expertise, NERC compliance process and history.
- Ability to comply with Good Utility Practice, SPP Criteria, industry standards, and applicable local, state, and federal requirements.



In order for an ATO to become a QTO, the ATO must provide documentation regarding the ATO's satisfaction of the Managerial Qualification Criteria to SPP in advance of the initiation of the next Transmission Owner Selection Process.<sup>7</sup> 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 become a QTO to participate in SPP's next Transmission Owner Selection Process.

An ATO can demonstrate that it meets SPP's managerial criteria by demonstrating that the ATO:

- As an entity has the necessary managerial expertise to meet SPP's managerial criteria;
- Is affiliated or has a legal relationship with entities that collectively meet SPP's managerial criteria and has made arrangements with such entities to perform the functions for which the entity deemed to satisfy the qualification criteria if the ATO is ultimately selected to construct a transmission project; or
- Has contracts with entities that enable the ATO to meet SPP's managerial criteria and that the entities will be contractually obligated to perform the functions for which it was deemed to satisfy the qualification criteria if the ATO is ultimately selected to construct a transmission project.

#### **(4) Posting of Applications**

**Posting an Application from an ATO and Notice:** Applications from an ATO will be posted on the SPP website upon receipt by SPP, subject to any applicable confidentiality protections.

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<sup>7</sup> **Evaluation of Managerial Expertise:** SPP can evaluate an ATO's managerial criteria internally or by hiring a firm with expertise to evaluate the managerial experience.

## SECTION III:

### Additional Recommendations

#### 3.1. Recommendation related to the *Mobile-Sierra* Doctrine

In general, the *Mobile-Sierra* doctrine indicates that rates set by a freely negotiated wholesale energy contract are presumed to be just and reasonable. This presumption can only be overcome if FERC concludes that the contract “seriously harms the public interest.” Recent U.S. Supreme Court cases have indicated that the *Mobile-Sierra* doctrine applies both to FERC and third-parties, not just to the contracting parties.

In Order 1000, FERC found that the record in the generic rulemaking proceeding was not sufficient to address arguments that specific contracts are protected by the *Mobile-Sierra* doctrine and that FERC did not make the requisite showing to require modification of such contracts. As a result FERC determined to address such arguments on a case-by-case basis in the compliance filing proceedings.<sup>8</sup> Additionally, in Order 1000-A FERC clarifies, that parties seeking to assert *Mobile-Sierra* must also submit tariff/agreement revisions in their compliance filings to comply with Orders 1000 and 1000-A, which FERC will review only after addressing the *Mobile-Sierra* arguments.<sup>9</sup>

As a result, if *Mobile-Sierra* is asserted as a part of an Order 1000 compliance filing, FERC will first determine, based on a more complete record, whether the agreement is protected by *Mobile-Sierra*.<sup>10</sup> If the agreement is protected by *Mobile-Sierra*, FERC will then determine whether it has met the applicable standard of review to enable it to require revisions to the agreement to comply with Order 1000.<sup>11</sup>

Further, if the agreement is protected by *Mobile-Sierra* and FERC cannot meet the applicable standard of review, it will not consider the revisions submitted in the compliance filing.<sup>12</sup> However, if FERC determines that the agreement is not protected, or if FERC determines that the agreement is protected but that FERC has met the standard, then FERC will consider whether the compliance filing revisions satisfy the requirements of Order 1000.<sup>13</sup>

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<sup>8</sup> Order 1000 at P 292.

<sup>9</sup> Order 1000-A at P 389.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

As a result of the language in Order 1000-A, the SPCTF recommends that SPP include as a part of its compliance filing for Order 1000 arguments that the federal Right of First Refusal contained in SPP's Membership Agreement is protected under the *Mobile-Sierra* Doctrine.

### ~~3.2.—Recommendation of Changes to SPP's Bylaws to Acknowledge the Competitive Solicitation Process.~~

#### ~~Members Committee Involvement in Transmission Owner Selection Process.~~

~~Under the proposed SPP Transmission Owner Selection Process, the SPP Board of Directors will review the recommendations of the Industry Expert Panels ("IEPs") and select the Transmission Owner to construct each new transmission facility that is part of the Transmission Owner Selection Process. To ensure that potential competitors are not involved in selecting Transmission Owners as part of the Transmission Owner Selection Process, the SPCTF recommends that the Members Committee not be involved in the Board of Directors' consideration of IEP recommendations. Excluding the Members Committee from this process, however, may require revisions to the SPP Bylaws to clarify that the Members Committee will not be involved in the Transmission Owner Selection Process.~~

#### ~~Background~~

~~Section 5.1 of the SPP Bylaws requires:~~

~~The Members Committee shall work with the Board of Directors to manage and direct the general business of SPP. Its duties shall include, but are not limited to the following:~~

~~(a) — Provide individual and collective input to the Board of Directors, including but not limited to a straw vote from the Members Committee representatives as an indication of the level of consensus of among Members, on all actions pending before the Board of Directors. (*emphasis added*)~~

~~Therefore, under the existing Bylaws, the Members Committee would be involved in the Board of Directors' decision-making in the Transmission Owner Selection Process. While the Bylaws provide for the Board of Directors to meet in executive session, such sessions are held "to safeguard confidentiality of sensitive information regarding employee, financial, or legal matters" and not specifically to address the Transmission Owner Selection Process.<sup>14</sup> Additionally, an executive session of the Board of Directors may not allow for sufficient transparency in the Transmission Owner Selection Process, and SPCTF's intent is not to have the decision made in private, but instead to ensure~~

<sup>14</sup> ~~See SPP Bylaws § 4.6.5.~~

~~that potential competitors are not involved in the Transmission Owner Selection Process.~~

### ~~SPCTF Recommendation~~

~~Therefore, to clarify that the Members Committee will not be involved in the Transmission Owner Selection Process, the SPCTF recommends that Section 5.1 of the SPP Bylaws be amended to specify that the Members Committee will not provide input or conduct a straw vote related to the Board of Directors' decisions regarding the Transmission Owner Selection Process.~~

~~The CGC has jurisdiction over changes to the Bylaws. Additionally, Section 10 of the Bylaws requires that changes to Section 5, including Section 5.1, be subject to a vote by the SPP Membership. Therefore, approval by the CGC and a vote of the Membership will be required to adopt this change.~~

## **SECTION IV:**

### **Recommendation on Establishment of a Need by Date, Notice of Such Date, and Requirement meet Deadlines.**

#### **4.1. FERC Order 1000-A and Timeline for Selected Transmission Owner to Obtain State Approvals**

As part of the Transmission Owner Selection Process and related Request for Proposal (“RPF”) process, SPP must establish a date by which a Designated Transmission Owner (“DTO”) must obtain all state approvals necessary for the transmission facility. The SPCTF recommends that, as part of the SPP Integrated Transmission Plan (“ITP”) process, SPP staff will identify a date by which all state approvals must be obtained, and include such dates in the SPP Transmission Expansion Plan (“STEP”) process, the RFP document, and the Notification to Construct (“NTC”) for the transmission facility.

#### **Background**

In Order No. 1000-A,<sup>15</sup> the Federal Energy Regulatory Commission (“FERC”) provides certain clarifications of the Order No. 1000<sup>16</sup> requirement to develop “qualification criteria” for potential transmission developers. Order No. 1000-A states that:

[I]t would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>17</sup>

Order No. 1000-A clarifies, however, that:

[T]he transmission developer of that transmission facility must submit a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility such that it meets the transmission needs of the region. As part of the ongoing monitoring of the progress of the transmission project once it is selected, the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct

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<sup>17</sup> Order No. 1000-A at P 441.

must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address. If such critical steps have not been achieved by that date, then the public utility transmission providers in a transmission planning region may remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution.<sup>18</sup>

#### **4.2 Recommendation of the SPCTF on Timelines for State Approval**

To ensure that transmission facilities are constructed in time to address identified needs, SPCTF recommends that (as part of the ITP process) SPP staff identify, for each transmission facility that will be part of the Transmission Owner Selection Process, a date by which all state approvals to construct must be achieved. SPP staff currently identifies an SPP Determined Need Date as part of the ITP process, which is published as part of the STEP and included in NTCs issued after projects have been approved by the Board of Directors. SPP staff also should identify a date by which all necessary state approvals are required, that is tied to when construction must begin so that facility construction begins in a timely manner to achieve the need date. The state approval need date should be developed separately for each transmission facility that will be assigned according to the Transmission Owner Selection Process, and should be documented in the STEP, in the RFP for the transmission facility, and in the NTC that is issued at the conclusion of the Transmission Owner Selection Process.

Therefore, the SPCTF recommends that SPP should adopt Tariff revisions to indicate that:

1. SPP staff will identify a state approval need date as part of the ITP process;
2. Entities that respond to an RFP must include a development schedule that does not conflict with the state approval need date; and
3. If a DTO fails to or is unable to achieve all necessary state approvals by the state approval need date, SPP will reevaluate the transmission facility to seek an alternative solution.

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<sup>18</sup> *Id.* at P 442.