

**SERTP - Draft Tariff Language Comments**  
**Submitted by LSP Transmission Holdings, LLC (“LS Power”)**  
**on January 9, 2013**

1. Section 10.1 implies that the Transmission Provider has a *de facto* ROFR for Transmission Needs Driven by Public Policy Requirements. LS Power objects to a *de facto* ROFR for Public Policy Projects.
2. Section 13.1.2 suggests a requirement for a credit rating in order to be qualified. LS Power objects to this requirement, as demonstrated capability to finance U.S. energy projects equal or greater than the cost of the proposed transmission project should be more than sufficient to prove financial capabilities. For instance, LS Power affiliates have demonstrated capabilities of financing over \$17 billion in U.S. energy projects, including transmission under construction today. A project finance construct will look to the quality and certainty of the underlying project cash flows, which will be justified in the ultimate rate case. It would be more constructive to require financial qualifications focused on the capabilities to finance a project, and later require milestones on a rate case being filed associated with a project. LS Power would not object to financial requirements that require: a) the transmission developer provide documentation of its capability to finance U.S. energy projects equal or greater than the cost of the proposed transmission project and b) the transmission developer to provide documentation on its rate case experience at FERC and /or a state level in lieu of credit rating. A more rigorous focus on rate case execution, rather than a credit rating, might be a better way to approach the financial capability assessment.
3. Section 13.1.2 suggests that NERC violations may be grounds for disqualification. This should apply to incumbent transmission owners as well.
4. Section 13.1.2 in its entirety should apply to both incumbent and non-incumbent transmission owners, in order to be consistent with Order No. 1000.
5. LS Power objects to the “regional in nature” definition in Section 14. Under Order No. 1000, a project that is not local is “regional”. A local project is defined in Paragraph 64 of Order 1000, and latter was further clarified in Order No. 1000-A and Order No. 1000-B. In order to be compliant with Order No. 1000, transmission facilities selected in a regional plan for purposes of cost allocation under Order No. 1000 should not be defined by the voltage level of a line, but rather by whether any of its costs are allocated regionally or whether the project extends beyond the retail distribution service territory or footprint of an existing transmission owner.<sup>1</sup> Order No. 1000-A states clearly in Paragraph 423:

[w]e clarify that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method

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<sup>1</sup> Paragraph 64, Order No. 1000.

results in 100% of the facility's cost being allocated to the public utility provider in whose distribution service territory or footprint the facility is to be located. Accordingly, we clarify that the term "selected in a regional transmission plan for purposes of cost allocation" excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission is to be located.<sup>2</sup>

Order 1000-A further clarifies in Paragraph 430 that if ANY of the costs of a new transmission facility are allocated regionally or outside of a public utility's retail distribution territory except as provided for in Order No. 1000, then there can be no right of first refusal for such a facility.<sup>3</sup>

In light of such mandates, LS Power objects to all of the following components of the proposed regional definition: a) a regional project having a 300 kV voltage threshold; b) a regional project having a minimum requirement of 100 miles or longer; and c) portions of a said transmission line must be located in two or more balancing authority areas within SERTP.

Relating to c) above, Paragraph 423 of Order No. 1000-A is clear that: a) a project that is solely within one retail distribution territory or footprint can indeed be regional if the costs are allocated to two or more retail distribution territories or footprints (see also the definition of local facilities in Paragraph 64 of Order No. 1000). In addition, the definitional focus should not be "balancing authority areas within SERTP", rather on "retail distribution territories or footprints."

6. LS Power objects to a *de facto* ROFR for projects in the property or ROW of transmission providers in Section 14.2. Order No. 1000 is clear that the use of ROW is an issue of state law and FERC neither granted or denied the right to use ROWs. Paragraph 319 of Order No. 1000 outlines these issues. The issue should be left to state law.

Use of property is fundamentally a state law issue, not a FERC issue. (*please see MA DPU's Protest of ISO-NE Order No. 1000 Compliance filing, as they protest that ISO-NE attempts to write state law in the context of federal filing relating to property rights.*)

7. LS Power objects to a *de facto* ROFR for projects that have been previously considered in the expansion planning process, as inconsistent with Order No. 1000. In Order No. 1000, FERC declined to provide a 5 Year ROFR for projects submitted but not

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<sup>2</sup> Order No. 1000-A at P 423.

<sup>3</sup> Order No. 1000-A at P 430. "Finally, in response to petitioners' concerns over which facilities are selected in a regional transmission plan for purposes of cost allocation, and for which a federal right of first refusal must therefore be eliminated, we clarify that if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility, except as provided in this order."

approved in the transmission planning process. FERC declined to keep this concept in the final Order. A 5 Year ROFR was initially proposed in the Notice of Proposed Rulemaking, but it was not retained in the final Order. For the same reasons, any *de facto* ROFR for previously submitted projects should be eliminated from Section 14.3.

8. As LS Power has suggested in previous comments to the SERTP stakeholder process and other Southeastern Order No. 1000 protests, there should one window for projects to be submitted into SERTP. The same window should apply to both incumbent and non-incumbent proposals. There should be a clear **non-discriminatory** process established for such evaluation. LS Power does not believe that Order No. 1000 mandated RTOs. However, the burden is on the non-RTO regions to establish in their filing and tariff language that a truly transparent and non-discriminatory evaluation and selection process exists. Order No. 1000 require a clear description of how the process will be non-discriminatory. Such burden has not been met here. LS Power wants to see tariff language provides us certainty that: a) our proposals will be evaluated fairly; b) our proposals, if they are the more cost-effective will be selected if we are indeed qualified; and c) there is commercial model for the project. We desire a fair chance if indeed we propose projects that are in the best interest of ratepayers.

9. LS Power objects to the use of an avoided cost framework because of the lack of DETAILS on the mechanics. The avoided cost proposal lacks specificity in the tariff on how the comparison mechanic would actually work. This is the aspect that provides LS Power the greatest concern.

Below is an excerpt from LS Power’s recent Protest of the North Carolina Transmission Planning Collaborative on their proposal. The same comments apply to the SERTP framework.

#### **“E. General Concerns with the Avoided Cost Methodology**

While LSP Transmission has tried very hard to work within the regional framework proposed, LSP Transmission has significant concern with the use of the “avoided cost framework”. The Commission in their review of the compliance filing may very well wish to consider strongly the alternative proposals being submitted by the municipalities and cooperatives in the State of North Carolina. There could be some strong merit in these alternative proposals.

LSP Transmission objects to the “avoided cost” selection framework proposed by the Duke and Progress, as it is unworkable in the **details** of the proposal, places a new entrant at a decided disadvantage to the incumbent and makes the selection process discriminatory. Using an avoided cost methodology for regional transmission development is inappropriate as it ensures that the projects that are built are only the reliability projects that the utility was required to build in the first instance and does not adequately account for economic or public policy benefits that a regional project may bring. In this regard, an avoided cost methodology is incompatible with Order No. 1000.

Some may claim that the “avoided transmission cost allocation is simple.” They often

position that avoided transmission costs are the costs of projects in the regional plan that would otherwise have been constructed in the absence of a regional planning process. However, this is precisely the problem; the suitability of a Regional Project is not determined by what is good for the region, but is limited by the local reliability projects that the Duke and Progress include in their local plans.

In Florida, where this is also being proposed, the Florida Sponsors try to mask this fact by asserting:

[t]he IRP processes that are employed in the FRCC Region include reliability, economics and public policy considerations that result in a regional transmission plan that meets the needs of the region. Therefore, any proposed CEERTS project would be displacing or avoiding projects that are in the regional transmission plan.<sup>55</sup>

What the plan contains are the individual utility local plans which appear to address solely reliability needs.

**An example of the avoided cost methodology demonstrates the deficiency of the avoided cost as a transmission cost allocation mechanism. If Sponsor A has a reliability project in its plan that costs \$75 million, and Sponsor B has a reliability project in its plan costing \$75 million, to be eligible a Regional Project must cost less than \$150 million. Under the avoided cost methodology proposed, a Regional Project that solves the two identified reliability needs and can bring economic benefits to a Transmission Dependent Utility or a wholesale customer of \$50 million over the next 10 years, but costs \$160 million, would be never considered under the avoided transmission cost allocation model because it costs more than the only projects Duke and Progress chose to put in their local plan.**

Duke and Progress have provided the Commission with no evidence that the avoided transmission cost methodology is an appropriate regional transmission cost allocation methodology. Acceptance of the avoided cost methodology will ensure that limited new transmission is built in the North Carolina and that if it is built, it will only be built by Duke and Progress.

**Furthermore, there is no specificity in the tariff regarding what Local Project costs are to be included, 1) the transparency of those costs; 2) the just and reasonableness of the costs; 3) the ROEs, if any, of the costs; and 4) at what point the costs “stop.” The concept of stranded costs on projects that are already in the “regional plan,” which have been vetted by no one other than the project sponsor, is exactly why the entire “avoided cost” framework is unworkable.** Rather, the process should be that both the incumbent and non-incumbent developer submit proposals into a defined proposal window and selection between the competing projects is based on which one is the more cost-effective and efficient.”

10. LS Power does not object to the use of cost estimates in the evaluation process. However, Order No. 1000-A was explicit that when cost estimates are used in the evaluation process, that there should be comparable methodologies used on cost estimates for comparison purposes. In order to be consistent with Order No. 1000-A, the cost

estimate methodology used in Section 15.1.2 should be the same cost estimate methodology used for projects that are already in the regional plan. In addition, the cost estimates for projects in the existing regional plan should be required to be updated annually, so the cost comparisons are up-to-date and include all true costs.

11. LS Power does not agree that a 1.25 benefit-cost ratio is the same as 1.25 avoided cost ratio, as suggested in Section 16.2.1.

In a true “avoided cost” comparison, the “winning project” should be the project that is ANY percentage cheaper than the project already in the existing plan.

12. LS Power objects to Section 16.2.2 and Section 16.4 in its entirety.

13. In Section 16.3, LS Power notes that there is no requirement for the project that is currently in the existing regional plan to be compared comparably as the proposed project. **There is no mechanism provided in the tariff to also insure that the project already in the regional plan has included the following in its updated cost estimate: a) engineering, procurement, and construction consistent with Good Utility Practice and Standards; b) Financing costs, required rates of return, and any and all incentive based (including performance based) rate treatments; c) ongoing operations and maintenance of the proposed transmission project; d) provisions for restoration, spare equipment and materials, and emergency repairs; and e) any applicable local, state or federal taxes. All of these factors are required in Section 16.3 for the proposed project, but no requirements are present for the project that is currently in the regional plan.**<sup>4</sup>

Absent a similar rigorous comparison with similar assumptions for the project currently in the regional plan, the avoided cost comparison is not meaningful and not consistent with the comparable cost estimate requirements in Order No. 1000-A (paragraph 456 of Order No. 1000-A).

14. There is no assurance in Section 18 that the Transmission Provider will not be discriminatory or arbitrary in its removal of the project from the regional transmission plan.

15. LS Power objects to the following sentence in Section 19: “If removed from being selected in the regional plan for RCAP due to delay or abandonment by the transmission developer, then the transmission developer shall be responsible for any increased costs to the Impacted Utilities due to any such delay or abandonment.” Such language is vague, unreasonable and inconsistent with Order No. 1000, especially related to delays.

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<sup>4</sup> LS Power does not deny that most of the listed factors can be important considerations in reviewing cost estimates. LS Power’s intention would be submit industry-standard and credible cost estimates. The issue we raise here is strictly related to the comparability of cost estimates and there should be similarly high and comparable cost estimate standards for the projects being “avoided” in the regional plan already.

16. The security and collateral requirements to the Transmission Provider and Impacted Utilities in Section 20 are discriminatory, unless projects that already in the regional plan are required to post such security and collateral as well.