

April 10, 2012: LS Power Transmission Initial Comments on NCTPC Draft Concepts on FERC Order 1000 Compliance

NCTPC Response to LS Power Comments

LS Power April 10, 2012 Opening Statements:

LS Power Transmission appreciates the opportunity to provide the below comments. Please contact Sharon Segner, Assistant Vice President, LS Power at 636-484-0379 (cell) or ssegner@lspower.com with any further questions or concerns on these comments. We would be happy to meet with NCTPC members in-person or conference call at any time to further discuss ideas and comments.

NCTPC July 17, 2012 Opening Statements:

The NCTPC has continued to develop the Order 1000/1000-A compliance concepts beyond the concepts provided in the NCTPC March 27, 2012 proposal. The latest NCTPC compliance concepts were released on June 13, 2012 in an [NCTPC Order No. 1000 Strawman](#) document. The NCTPC then presented these concepts in a [presentation with the NCTPC TAG](#) (the NCTPC stakeholders) on June 19, 2012. Comments on these revised compliance concepts were requested by July 3, 2012, but none have been received.

The NCTPC is now responding formally on the comments that were submitted by LS Power on April 10, 2012 (see last column of the below table). Where changes to the NCTPC compliance concepts have been made since the March 27th NCTPC Proposal, this is also stated in the NCTPC Response.

Specific Page of March 27 NCTPC Proposal	Specific Topic and Quote from March 27 NCTPC Proposal	LS Power Transmission Stakeholder Comments and Feedback on Specific Section	NCTPC Response
9	<p><u>Regional Project Definition:</u></p> <p><i>“Regional Projects:</i></p> <ul style="list-style-type: none"> • <i>As a general rule, encompass multiple Transmission Providers’ service territories</i> • <i>Voltage level of 230 kV or above</i> 	<p>This regional definition is not consistent with FERC Order 1000. FERC Order 1000 retains a ROFR for “local” projects in paragraph 63 of FERC Order 1000. If the project is not local and not an upgrade to existing facilities (defined in FERC Order 1000 as a tower change out or reconductoring), then the project must be open</p>	<p>NCTPC believes the proposed regional project definition is consistent with Order 1000. The first bullet addresses the concept that regional cost allocation for a project would typically be appropriate only where the project encompasses multiple Transmission Providers’ service territories.</p>

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	<ul style="list-style-type: none"> <i>Project Cost must be at least \$10 million</i> 	<p>to both incumbents and non-incumbents.</p> <p><u>Paragraph 63 of FERC Order 1000 is clear that the definition of “local” is tied to cost allocation, not the length of a line, a type of line, or the voltage level of a line. LS Power Transmission believes that if ANY portion of ANY cost of ANY line is allocated between two or more utilities / footprints in a region, then the project is “regional” in nature, consistent with FERC Order 1000.</u></p> <p>In order for a project to be “local”, it must meet the requirement of “local” in paragraph 63 of FERC Order 1000. “A local transmission facility is a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.” (Exact language from Paragraph 63)</p> <p>LS Power Transmission recommends the language to be replaced with the following language, consistent with paragraph 63 of FERC Order 1000: “The proposed transmission project must be regional in nature: a project is regional if it has any portion of any cost of any line allocated between two or more utilities or footprints.”</p>	<p>But exceptions will be made if someone could identify a project that merited regional cost allocation despite being located within only one Transmission Provider's footprint. The 230 kV voltage level and project cost of at least \$10 million are the parameters the NCTPC currently uses in their identification of projects subject to the NCTPC planning process. The NCTPC believes that these parameters are consistent with what should be considered to be a regional project in the NCTPC region because it is the decision not to allocate the costs of any projects below 230 kV and \$10 million regionally which is driving the definition. Many RTOs have cost or voltage thresholds for projects whose costs will not be allocated regionally.</p> <p>The NCTPC acknowledges and supports the Order 1000 P 63 definition of a “local” project.</p>

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9	<p>"Owner of regional project (ie. New entrant) will turn over operational control for open access purposes to the Transmission Provider(s), integrating facility into their Transmission System".</p>	<p>On a high-level basis, LS Power Transmission would support concept of the project being turned over for operational control to Transmission Provider (in their OATT), as long as LS Power would own the asset (and can use it for collateral for our debt) and get paid for the capacity. A good example of this structure is the ON-LINE transmission line structure between LS Power and NV Energy (FERC Docket ER10-3317). The ON-LINE in Nevada was turned over to NV Energy for operational control, and under their OATT. PATH 15 is another clear example (FERC Docket ER02-3337).</p> <p>The lease agreement structure is key, and LS Power would be happy to discuss (or bring in our folks from the ON LINE project to discuss) lease agreement structures from other markets to consider, and the most recent lessons learned from the 235-mile 500-KV ON-LINE transaction between LS Power and NV Energy on this very topic. Our ON-LINE experience could be relevant as North Carolina looks at various options on this important issue.</p> <p>The details of this aspect of the proposal are very important, and LS Power would be very interested in opportunities for additional stakeholder feedback on this important topic. We would be happy to discuss specific structuring details on this issue.</p>	<p>The NCTPC provided further detail on the compliance concepts related to non-incumbent transmission providers in the NCTPC Order No. 1000 Strawman posted on the NCTPC website. The NCTPC would be interested in any further feedback from LS Power related to these compliance concepts.</p> <p>Note that the NCTPC is not currently considering a lease arrangement, but rather is envisioning an agreement under which operational control for open access purposes would be turned over.</p>

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9	“May be developed and owned by incumbents or non-incumbents (subject to state commission approval)”	<p>LS Power Transmission supports qualification criteria that the entity must be willing to apply for state public utility status and eminent domain authority as part of the transmission line siting or Certificate of Public Convenience and Necessity application (or similar state process) at the appropriate point in the regulatory proceeding, if once an incumbent or non-incumbent developer is awarded the project.</p> <p>Having state public utility status or eminent domain authority prior to a project being selected in the planning process is a barrier to entry and unduly discriminatory.</p>	The NCTPC provided further detail on the qualification criteria compliance concepts in the NCTPC Order No. 1000 Strawman posted on the NCTPC website. It does not include a requirement that an entity have public utility status or eminent domain authority to be selected to build a regional project. The NCTPC would be interested in any further feedback from LS Power related to these compliance concepts.
10	“Steps that follow will be integrated into framework of the existing planning process, in which NCTPC identifies potential transmission solutions and seeks input to alternatives”	<p>Paragraph 336 of FERC Order 1000 is clear that if a region adopts a sponsorship framework, then there must be a not unduly discriminatory process to allow both incumbent and non-incumbent developers to be assigned and to have cost recovery of unsponsored NCTPC projects.</p> <p>In addition, the NCTPC planning process can not be designed as if there are two sets of rules, those for “incumbents / Sponsors” and those for “non-incumbents.” LS Power Transmission believes that for compliance with Order 1000, there needs to be one set of rules that are applicable to all parties on a fair and not unduly discriminatory basis. Thus, qualification criteria, submission information and evaluation criteria need to be the same, whether the project is proposed by a “Sponsor” or a non-</p>	<p>The NCTPC believes that the NCTPC Order No. 1000 Strawman meets the P 336 requirements. Both incumbents and non-incumbent developers (“developer” is the NCTPC equivalent of “sponsor”) will be able to submit regional project proposals for consideration and cost recovery. There will not be any “unsponsored” regional projects developed in the NCTPC process. Local projects and non-transmission alternatives do not require sponsors and thus those types of solutions may be submitted by any stakeholder.</p> <p>Each planning year, the NCTPC will identify the potential reliability issues that will be evaluated. Both incumbent and non-</p>

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		incumbent. Indeed, most tariff language need not distinguish between the party submitting the proposal at all.	<p>incumbent developers can propose regional projects as solutions to these potential reliability issues. Likewise, both incumbent and non-incumbent developers can propose regional economic and public policy projects.</p> <p>The NCTPC Order No. 1000 Strawman outlines one set of rules that would be used for both incumbent and non-incumbent developers.</p>
11	<p><u>Information Required in A Proposal:</u></p> <p>“Project Sponsors submit proposed regional projects with the following information:</p> <ul style="list-style-type: none"> • Transmission project technical and cost information • Identify any potential impacts to other transmission projects in the plan • Reliability impact assessment 	<ul style="list-style-type: none"> • LS Power would have concerns over the requirement to “identify any potential impacts to other transmission projects in the plan”. As noted above, this section of the submission and evaluation process appears to assume that NCTPC has arrived at a pre- determined plan before non-incumbents or other stakeholders are permitted to propose projects and that the non-incumbents bear a burden of demonstrating that their alternative is better than the pre-determined plan. LS Power Transmission believes that the supporting documentation should reflect the project proposer’s rationale and technical analysis to justify why the project is a solid proposal. However, it should not be the project proposer’s burden to prove why the solution is better than other alternatives. The independent NCTPC review process should highlight this finding, and there should be no 	<p>The NCTPC first addresses the comment related to the NCTPC arriving at a pre-determined plan before non-incumbents are permitted to propose regional projects. This is not the case.</p> <p>The NCTPC is proposing to use a project sponsorship model for Order 1000/1000-A compliance as to regional projects. The NCTPC believes that this model is most appropriate for the NCTPC region, where the Transmission Providers engage in bottoms-up planning in the first instance. In order for a developer (i.e., sponsor)) to identify that a project would be a more efficient or cost effective solution for the region, the project sponsor may have to determine the impacts to other transmission projects already in prior plans. As part of the NCTPC process, the</p>

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		<p>partiality toward projects proposed by incumbents in the process. Thus, all proposed projects should be submitted in the same submission window and evaluated following the same evaluation process. In fact, Paragraph 315 of FERC Order 1000 requires that the public utility transmission provider (NCTPC) evaluate the relative economics and effectiveness of performance for each alternative offered for consideration.</p> <ul style="list-style-type: none"> Careful thought should also be given to the “baseline NCTPC plan”. In Paragraph 95 of the Proposed Notice of Rulemaking (see footnote 308 of FERC Order 1000), FERC originally proposed that a transmission developer could maintain for a defined period of time its right to build and own a transmission project that it proposed but was not selected in the planning process. In Paragraph 338 of FERC Order 1000, FERC declines to adopt that a sponsor of a project could “maintain for a defined period of time its right to build and own a transmission project that it proposed and was not selected” in the regional planning process. 	<p>developer proposals would be evaluated, but the developer must bring in an analysis of why the project is more cost-effective and efficient for the NCTPC region in the first instance.</p> <p>The NCTPC is proposing that all regional projects should be proposed by incumbent and non-incumbent developers in Q3 using a single set of requirements for such proposals. The NCTPC will then perform the analysis of all new regional projects (see NCTPC Order No. 1000 Strawman for these details).</p> <p>The NCTPC Order No. 1000 Strawman does not include any preservation of rights for a defined period of time if a regional project had been previously proposed but not selected in the NCTPC plan.</p>

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		<ul style="list-style-type: none"> • LS Power Transmission would have concerns on any “right” to projects that have been previously considered in the NCTPC expansion planning process but not included in the NCPTC plan. This type of right is inconsistent with paragraph 338 of FERC Order 1000 and FERC’s directive to not provide ongoing sponsorship rights to projects that were proposed, but not selected in the regional planning process. • LS Power believes it is reasonable for independent cost estimates to be prepared for both incumbent and non-incumbent proposals. Once “finalist” projects are selected, an independent cost estimate should be prepared for incumbent and non-incumbent proposals. The comparisons should be an apple-to- apple comparisons on cost estimates. <p>For example, PJM hires Burns and McDonnell (and other qualified firms) to prepare independent cost estimates on competing proposals.</p> <p>Attached is a sample of an independent PJM cost analysis – http://www.pjm.com/~media/committees-groups/committees/teac/20111103/20111103-mep-a-1-byron-cherry-valley-pleasant-valley.ashx</p>	<p>See above NCTPC Response.</p> <p>Order No. 1000 indicates that no independent evaluators must be hired to perform evaluations of projects. Within the NCTPC process, the developer's cost estimates for regional projects will be evaluated for reasonableness of the estimates.</p>

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11	<p><u>Information Required in A Proposal:</u></p> <p>“Project Sponsors submit proposed regional projects with the following information:</p> <ul style="list-style-type: none"> • Project benefits, beneficiaries, and proposed allocation of costs to the beneficiaries based on benefits” 	<p>LS Power does not believe it is appropriate for a proposer of a project to propose cost allocation. Once a project has been selected into the plan, NCTPC should run independent studies to conclude a proposed allocation of costs to beneficiaries based on benefits. LS Power does not believe that this is an appropriate role for a proposer.</p>	<p>The NCTPC believes that the developer should identify the project benefits as well as the project beneficiaries and proposed cost allocation to the beneficiaries. In the latest NCTPC Order No. 1000 Strawman, the cost allocation principles were identified for reliability, economic and public policy projects. The project beneficiaries were identified to be the enrolled Transmission Providers which for the NCTPC region will be Duke and Progress. The NCTPC regional project evaluation process would provide an opportunity to vet the proposed project benefits/beneficiaries and cost allocation and based on this vetting process would determine the ultimate cost allocation for a regional project.</p>
11	<p><u>Information Required in A Proposal:</u></p> <p>“Project Sponsors submit proposed regional projects with the following information:</p> <ul style="list-style-type: none"> • Transmission project technical and cost information 	<p>NCTPC’s Compliance filing should be clear that regional projects can be proposed and assigned with cost recovery to non-incumbents and incumbents for all types of projects: reliability, economic, and public policy.</p>	<p>This is the NCTPC’s intent. Hopefully this was clarified in the latest NCTPC Order No. 1000 Strawman.</p>
13	<p><u>NCTPC Performs Evaluation of Proposed Regional Projects</u></p>	<ul style="list-style-type: none"> • LS Power Transmission is unclear as to the proposal’s intent with regard to individual entity approval process. The purpose of 	<p>For clarity, the NCTPC adopts a transmission plan that meets the obligations of both Order Nos. 890 and</p>

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	<p>“Project beneficiaries must agree that the project benefits are sufficient and that the allocation of the costs/benefits is acceptable to them and report such decision to the NCTPC”</p>	<p>transmission planning in compliance with Order 1000 is to determine the regional transmission plan. To the extent that the referenced “transmission expansion plans” are local, with their costs borne solely by the respective load zone, LS Power Transmission does not object to individual approval process before a regional project would displace those projects, which under Order 1000 could retain a right of first refusal.</p> <ul style="list-style-type: none"> • However, to the extent that the reference is to “transmission expansion plans” which include projects whose costs are to be allocated regionally, those plans must be developed on a non-discriminatory basis and no party which has signed on to be part of the “region” for purposes of compliance with Order 1000 should then be permitted to carve out an individual veto right to the regional plan. • Any NCTPC approval process for a non-incumbent project for a non-incumbent project versus an incumbent project should look identical and be non-discriminatory. 	<p>1000 and thus includes local and regional projects in one plan. The NCTPC appreciates LS Power not objecting to the individual Transmission Provider having approval rights before a regional project would displace a local project, a right confirmed in Order No. 1000-A.</p> <p>The NCTPC Order No. 1000 Strawman further developed the concepts of regional project approvals and the objected to language does not remain. In its current proposal, the NCTPC Oversight Steering Committee (OSC) would make the decision related to the regional projects that were included in the NCTPC transmission plan. The NCTPC OSC represents the vast majority of the load in the NCTPC region. The NCTPC OSC decision would be made based on the full vetting of the proposed regional projects.</p> <p>The NCTPC approval process would be comparable for both incumbent- and non-incumbent-proposed regional projects.</p>

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		<ul style="list-style-type: none"> • LS Power Transmission has significant concerns about the “sufficiency of benefits” determination suggested in deciding whether or not to advance a project. There should be clear measures for advancing and approving economic, public policy and reliability projects. LS Power Transmission would have strong concerns over any “black box” evaluation process for the merits of a line. • NCPTC should propose a process that would provide transparent access to regional modeling and needs, including information for economic project proposals. This information should be made available to both SERTP Sponsors and stakeholders in a non-discriminatory manner. • The evaluation arm of NCPTC should be separate and independent from the proposal submission process of NCPTC Members. The proposal submission and project evaluation process for NCPTC Members and incumbents should be non- discriminatory and identical to the process for a qualified non-incumbent. 	<p>The NCTPC Order No. 1000 Strawman provides the cost allocation principles for reliability, economic and public policy regional projects. Cost allocation for the reliability and public policy projects is straight forward. For economic projects, the developer will need to identify the project benefits. The economic project benefits would be fully vetted in an open and transparent manner.</p> <p>The NCTPC transmission planning process currently identifies the processes to be used to obtain transmission modeling information. As identified in the above NCTPC Response, the economic project benefits would be fully vetted in an open and transparent manner.</p> <p>FERC specifically rejected the requirement to hire independent evaluators. The composition of the NCTPC OSC, along with the Independent Third Party Consultant that is part of the NCTPC process, provides an appropriate forum for evaluating proposed new regional projects for the NCTPC region. This group is best positioned to make regional transmission decisions that are determined to be cost</p>

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			effective for the NCTPC region.
13	<p><u>NCTPC Performs Evaluation of Proposed Regional Projects</u></p> <p>“If there is disagreement as to whether project should be moved to next step, then Dispute Resolution can be triggered, as long as there is a developer who is willing to proceed with the project”</p>	<ul style="list-style-type: none"> Any Dispute Resolution Process should be clearly defined. NCPTC shall establish arbitration procedures to address any dispute regarding application of the qualification criteria or the evaluation process. For example, any proposed project sponsor who was denied qualified sponsor status or whose project was not selected because another project was determined to be the most cost efficient or effective may initiate arbitration within 30 days of the decision before [NCTPC stakeholder process to identify arbitration forum]. The matter will be decided by a single arbitrator whose sole review will be to determine whether the qualification criteria or evaluation criteria were applied in an appropriate and non-discriminatory manner. The arbitrator shall render its opinion with 30 days of submission and not more than 120 days from initiation of the arbitration. 	<p>The latest NCTPC Order No. 1000 Strawman states that the existing Dispute Resolution process currently in the Duke and Progress Attachment Ks would be used for all disputes. The NCTPC believes that these Dispute Resolution processes continue to be appropriate for the NCTPC transmission planning process. For NCTPC Process Disputes, parties have the right to seek assistance from the North Carolina Utilities Commission (NCUC) Public Staff to mediate an issue and render a non-binding opinion on any disputed decision. If the parties cannot resolve the dispute with the NCUC Public Staff facilitation, they can seek review from a judicial or regulatory body that has jurisdiction.</p>
16	<p>Interconnection, Operating, and Cost Recovery Agreement for Non-Incumbent Transmission Owners Receiving Regional Cost Allocation - “MOU must be entered into by the non-incumbent and NCTPC Transmission Providers (Duke/ Progress) committing to principle terms of a final agreement”</p>	<ul style="list-style-type: none"> LS Power Transmission does not oppose the requirement for a MOU regarding Interconnection, Operations and Cost Recovery. LS Power Transmission believes that the Interconnection agreement can be fairly standard (potentially based on the generator interconnection agreement). Likewise a fairly standard agreement covering operations can be developed. Cost allocation would need to be 	<p>The latest NCTPC Order No. 1000 Strawman has provided some additional detail on the types of information that would be included in the MOU. The NCTPC does not plan on filing a standard agreement as part of the NCTPC compliance filing, as LS Power is correct that there is insufficient time to do so. The NCTPC believes that it will be best to</p>

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		<p>address more on a case by case, because each non-incumbent needs to make sure the agreement works for their situation, which might be a project finance, or might be some other arrangement. To the extent that standard agreements are used for any of these items, which has some benefits, the proposed standard agreement would need to be litigated at FERC (like the pro forma OATT and standard interconnection agreement). It is not clear that there is sufficient time for that process and to have a timely implementation of Order 1000. LS Power Transmission is happy to work with the Sponsors toward such agreements, as well as discuss specific implementation issues with this approach.</p>	<p>develop this agreement once a non-incumbent developer is awarded a NCTPC regional project. Such an agreement is considerably outside the scope of Order No. 1000.</p>
17	<p><u>Conclusion of the Process:</u></p> <ul style="list-style-type: none"> • If the proposed Regional Project passes each of the above Steps 1-6, then the project will be included in the NCTPC transmission plan. • If as a result of Steps 4,5,and 6, there are multiple project developers requesting to build a particular Regional Project, then the Regional Project would be included within the NCTPC transmission plan with appropriate notations that 	<ul style="list-style-type: none"> • LS Power Transmission has no general objection to the Conclusion of the Process as outlined on page 17, subject to seeing the details of that proposal, specifically the mechanism for developers to step forward as described in Step 4, page 14. The process for non-sponsored projects should require detailed submission of the developer’s proposal for the project, including ROE and other cost determinants, so that the state commission process can determine the superior sponsor. 	<p>The latest NCTPC Order No. 1000 Strawman has modified this process (see Section III.E. of the document). In the modified process the NCTPC OSC will make the decision concerning which regional projects will be included in the NCTPC transmission plan. Attachment 3 of that document identified the factors that may be considered in this determination. The NCTPC OSC is best suited to do make these decisions based on the reasons articulated in the first response to Item 13 above.</p>

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	the project developer would be selected through the relevant state commission approval process”		