

**LS Power Comments to North Carolina Transmission Planning Collaborative**  
**July 30, 2012**

LS Power appreciates the opportunity to provide feedback on the **thoughtful** and detailed NCTPC proposal. LS Power provides feedback on the June 19<sup>th</sup> NCTPC Strawman here, as well as the July 17<sup>th</sup> feedback to LS Power document.

**1. NCTPC Oversight Steering Committee Role:**

- a. The draft documents point to considerable authority and discretion that the NCTPC Oversight Steering Committee (“OSC”)<sup>1</sup> has in making significant governance decisions.
  - i. A few examples of role of OSC observed by LS Power in proposal:
    1. OSC determines if Developer is sufficiently qualified to finance, license, and construct the facility and operate and maintain it for the life of the project
    2. OSC reviews Planning Working Group (“PWG”) technical recommendations on a project’s future
    3. OSC determines if a Regional Project solves the same issues as alternative Local Projects
    4. OSC reviews Developer’s analysis to ensure a project meets a 1.25 Benefit/ Cost ratio
    5. OSC issues a report on screening analysis results
    6. OSC seeks written stakeholder comments on proposals, including the qualification of Developers and the proposed cost allocation
    7. OSC determines which regional projects should result in a more efficient and cost-effective transmission system.
    8. OSC issues a draft report indicating which regional projects are approved
    9. OSC identifies public policy needs, and issues a decision whether public policy is driving a particular solution
- b. The draft document also states that the NCTPC committee structures will not be changed in conjunction with Order 1000.
- c. Paragraph 328 of Order 1000 requires “each public utility transmission provider to amend its **OATT to describe a transparent and not unduly discriminatory process** for evaluating whether to select a proposed transmission facility in the regional plan for purposes of cost allocation.
  - i. LS Power observes various measures that NCTPC proposes on the transparency of the evaluation process.

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<sup>1</sup> [http://www.nctpc.org/nctpc/document/OSC/2010-02-23/Scope/OSC%20SCOPE%202\\_23\\_2010\\_final.pdf](http://www.nctpc.org/nctpc/document/OSC/2010-02-23/Scope/OSC%20SCOPE%202_23_2010_final.pdf)

[http://www.nctpc.org/nctpc/document/OSC/2012-02-15/Roster/OSC%20Roster%2002\\_15\\_2012.pdf](http://www.nctpc.org/nctpc/document/OSC/2012-02-15/Roster/OSC%20Roster%2002_15_2012.pdf)

- ii. LS Power, however, is concerned there are no specific measures outlined on how the OSC plans to administer a not unduly discriminatory and preferential selection process, only transparency
- iii. Order 1000, Paragraph 328 requires that the “not unduly discriminatory process” in evaluation **be specifically described.** Given the role of the OSC, it seems to LS Power that the NCTPC burden at FERC will be proving that the OSC, given its proposed decision-making role, will not make decisions in a discriminatory or preferential manner. LS Power sees no clear non-discriminatory process proposed at the OSC level outlined in the draft proposal.

## 2. Cost Recovery

- a. LS Power is concerned that the proposed NCTPC provider does not provide a clear methodology for a non-incumbent to receive cost recovery for a regional project.
- b. Paragraph 332, Order 1000
  - i. “The Commission also requires that a non-incumbent transmission developer must have the **same** eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission selected in the regional transmission plan for purposes of cost allocation”.
- c. NCTPC conditions the non-incumbent cost recovery contingent upon the following case-by-case negotiation:
  - i. Non-incumbent Development Interconnection Agreement<sup>2</sup> execution, which includes the following agreements<sup>3</sup>:
    1. A successfully negotiated interconnection provision with the Transmission Provider
    2. A successfully negotiated provision for responsibility for meeting NERC standards
    3. A successfully negotiated agreement with Duke and/or Progress on operational control of facilities
    4. A successfully negotiated agreement on allocation of costs between Transmission Providers
    5. A successfully negotiated agreement regarding O&M responsibility
    6. A successfully negotiated agreement regarding assignment to a new owner
    7. A successfully negotiated agreement related to liability and indemnification

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<sup>2</sup> LS Power believes that the nature of some of these Non-incumbent Development Interconnection agreement items would need to be standardized and litigated at FERC. *LS Power would appreciate further discussion with NCTPC on this issue.*

<sup>3</sup> Incumbents have no such Non-Incumbent Interconnection Agreement to execute prior to cost recovery in the draft NCPTC proposal.

- 8. A successfully negotiated provision over facilities will be provided to Duke and/or Progress OATT and delineation of which facilities are subject to which OATT.
- ii. Duke/ Progress enter into agreement with Developer to pay FERC-determined TRR of Developer
- d. Eligibility for Non-incumbent cost recovery proposed is not the **SAME** as incumbent in the NCTPC proposal, as its eligibility is contingent on the above case-by-case negotiation agreements being executed **PRIOR** to cost recovery approval.

**3. Cost-Effective Solution Selection**

- a. NCTPC proposal fails to outline what COST EFFECTIVE SELECTION really means in the selection process. This is a key deficiency of the NCTPC proposal.
  - i. LS Power agrees that cost-effective selection is key to regional cost allocation under Order 1000.
- b. OSC determines which Regional Projects should result in a more efficient and cost-effective transmission system. Attachment 3 identifies factors that **may** be considered in such determination.
  - i. These factors outlined are similar to factors being discussed in SPP. In addition, these factors originally came from California’s competitive bid process.
    - 1. Prior FERC Orders provide no explicit or implicit grandfathering of its competing bidding process in CAISO Order 1000 Filing. FERC did not rule that the CA ISO process resulted in most efficient or cost-effective selection for purposes of Order 1000.
    - 2. It could be a foundation to build on it, but LS Power believes the current CAISO competitive bidding framework is not compliant with Order 1000. More detail on the competitive bidding selection process and additional requirements are required under Order 1000.
  - ii. Proposal by NCTPC says that NCPTC **“may”** use the selection factors, but provides no certainty on the evaluation process. Order 1000 requires that the process that the region **“WILL”** use, not **“may”** use, be clearly articulated.
  - iii. LS Power objects to the highly subjective selection process being suggested currently, as inconsistent with Paragraph 315 of Order 1000.
- b. **KEY LS POWER FEEDBACK ITEM:**
  - i. **NCPTC proposal establishes no nexus between the factors in selection and how those factors will translate into picking the most efficient or cost-effective solution.**
- c. **ORDER 1000 REQUIRES CLARITY AND TRANSPARENCY IN HOW WINNERS WILL BE SELECTED. A LIST OF FACTORS IS NOT A CONCLUSIVE FILING.**

- i. Paragraph 315, FERC Order 1000: "...To ensure comparable treatment of all resources, the Commission has required public utility transmission providers to include in their OATT, language that identifies **how they will evaluate among competing solutions and resources**. This includes identification of the criteria by which the public utility provider will evaluate the relative economics and effectiveness of performance for each alternative offered for consideration... The Commission concludes that (additional) requirements are necessary."
- ii. **NCPTC MUST OUTLINE IN THEIR FILING:**
  - 1. **HOW THEY WILL EVALUATE AMONG COMPETING SOLUTIONS AND RESOURCES.** It is not enough to just list factors. There must be clarity in the NCTPC filing on HOW OSC will compare the individual factors and **THEN, importantly, HOW OSC will "pull the various comparative factor analysis all together" and make a selection of the more cost-effective and efficient solution.**
- d. **FERC HAS RULED THAT COST CAN BE THE DECIDING FACTOR**
  - i. RECENT PRIMARY POWER ORDER FROM FERC SENDS A POWERFUL NATIONAL MESSAGE ON THE IMPORTANCE OF COST IN THE SELECTION PROCESS
    - 1. FERC RULED THAT INCUMBENT UTILITIES WON ON THE BASIS THAT PRIMARY POWER WAS **NOT** THE LOW-COST ALTERNATIVE
  - ii. LOW-COST WAS THE KEY DECIDING FACTOR IN FERC DECISION
  - iii. FERC set a powerful precedent in *Primary Power* on the determining importance of low-cost in the final selection process
- e. OSC's decision making process should outline the role of cost in selection
- f. LS Power does not believe that the proposed NCPTC selection process is compliant with Order 1000
- g. NCTPC proposal also needs more detail on how it will insure that the selection process is fair and non-discriminatory

#### **4. REASSIGNMENT OF PROJECTS**

- a. FERC requires "each public utility transmission provider to amend its OATT to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission provider can meet its reliability needs or service obligations". (Paragraph 329, FERC Order 1000)

- b. LS Power believes that reassignment of reliability projects applies to both incumbents and non-incumbent projects under Order 1000. Any project reassignment language should make it clear that the milestone requirements and reassignment provisions apply to both incumbents and non-incumbents under Order 1000. Reassignment provisions apply to regional projects, as Paragraph 329 refers to “delays in the development of a transmission facility selected in a regional plan for purposes of cost allocation...including those proposed by the incumbent transmission provider”
- c. LS Power would oppose a ROFR for the incumbent utility for projects that need to be re-assigned. Such notion is inconsistent with the Order, especially given that Order 1000 was explicit that re-assignment language applies to both incumbents and non-incumbents.
- d. **Specific LS Power Proposal on Reassignment:**
  - i. NCPTC process should outline the reassignment process for regional reliability projects of both incumbents and non-incumbents
  - ii. Immediately prior to NCPTC assignment of a project, the Qualified Project Developer and OSC should meet to revisit the proposed Development Schedule and to establish Critical Path Milestones. Any independent cost estimate and feasibility study commissioned by OSC can also recommend Critical Path Milestones for consideration. The Project Developer should update any proposed Development Schedule at time of assignment. NCTPC Board materials should reflect realistic and current development projections.
  - iii. After project assignment, the assigned Project Developer should regularly provide quarterly status updates to OSC on permitting and development progress.
  - iv. For reliability projects with a delay of more than six months of a Critical Path Milestone, notice should be given of the delay to OSC and the incumbent utility.
  - v. **For reliability projects with a delay of more than six months of a Critical Path Milestone and there is material evidence of abandonment or lack of commercially reasonable competence by the Project Developer to advance the project**, then the project could be taken to the OSC for possible reassignment.

## **5. Regional Projects**

- a. NCPTC states in its response to LS Power, page 2 (7/17/2012 Strawman): “The NCPTC believes that these parameters are consistent with what should be considered to be a regional project in the NCPTC 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.”
- b. LS Power requests clarity on whether this explanation will be clearly defined in its OATT (and FERC Order 1000 filing) that projects below

230 kV or \$10 million will never be regionally allocated for incumbent or non-incumbent projects.

- c. Order 1000 is clear that a LOCAL project must be **SOLELY within** a retail distribution territory or footprint, regardless of cost allocation. If it is in two retail distribution territories, it is a regional project regardless of cost allocation. Regional definition proposed by NCTPC should also clarify this.

**6. The Developer Proposing Cost Allocation**

- a. LS Power does not believe it is the burden of the new entrant to propose cost allocation for regional projects, rather it is the burden of the Order 1000 compliance process. LS Power objects to this requirement.

**7. Proposed Financial and Technical Qualification Criteria:**

- a. There should be an adequate cure period for any entity not originally qualified. Adequate explanation and discussion should be provided to applicant.
- b. Financial Criteria must be met.
  - i. Demonstrated capability of a parent company, affiliate, or project company financing U.S. energy projects equal or greater than the lesser of \$300 million dollars or the capital cost of the proposed transmission project
  - ii. Material degradation of the financial condition of the entity once qualified can be grounds for termination of qualification status and project re-assignment
  - iii. LS Power does not believe that a credit rating evaluation is the best way to evaluate financial ability, and it arbitrarily discriminates against special purpose project financing companies. LS Power would suggest the removal of Credit rating from Moody's and Standard and Poors.
  - iv. It is LS Power's understanding that SERTP is proposing language similar to the following:
    1. Demonstrated capability of a parent company, affiliate, or project company financing U.S. energy projects equal or greater than the capital cost of the proposed transmission project
    2. While this is not LS Power's preferred language, this language is more acceptable than financial criteria based solely on a credit rating from S&P and Moody's
- c. Technical Criteria must be met.
  - i. Demonstrated capability of a parent company, affiliate, or project company developing, constructing, operating and maintaining U.S. energy projects of similar or larger complexity, size and scope of the proposed project