

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Duke Energy Carolinas, LLC	)	
	)	
Carolina Power & Light Company	)	Docket No. ER13-83-000

**MOTION TO INTERVENE, PROTEST AND COMMENTS OF  
LS POWER TRANSMISSION, LLC AND LSP TRANSMISSION HOLDINGS, LLC**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),<sup>1</sup> LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively “LSP Transmission”) respectfully move to intervene in the above-captioned proceeding and submit this Protest and these Comments to the Duke Energy Carolinas, LLC (“Duke”) and Carolina Power & Light Company (“Progress”) Order No. 1000<sup>2</sup> compliance filing (“North Carolina Sponsors’ Compliance Filing” or “Compliance Filing”).<sup>3</sup>

**I. SUMMARY**

Through Order No. 1000, *et al.*, the Commission has made important strides in reducing the potential for discriminatory practices to impede the participation of non-incumbent transmission providers in advancing needed transmission infrastructure expansion. However, as presented more fully below, LSP Transmission does not believe that the North Carolina Sponsors’ Compliance Filing fulfills the promise of Order No. 1000, because many of the revised tariff provisions are not consistent with the Commission’s order. Specifically, the Commission should require the

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<sup>1</sup> 18 C.F.R. §§ 385.211, 212 and 214 (2012).

<sup>2</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011); *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012); *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>3</sup> *Duke Energy Carolinas, LLC, Carolina Power & Light Co.*, Compliance Filing (Oct. 11, 2012)(“Compliance Filing”).

Compliance Filing to be amended to: (1) appropriately define “Regional Project”; (2) address concerns regarding developer qualifications; (3) remove vague and non-Order No. 1000 compliant developer qualification criteria; (4) properly define the information to be submitted with Regional Project Proposals; (5) appropriately implement the selection process for Regional Projects; and (6) address concerns with the avoided cost methodology.

## **II. MOTION TO INTERVENE**

LSP Transmission, through certain affiliates, develops and owns transmission projects in various areas of the United States. LSP Transmission was an active participant in the Rulemaking proceedings leading up to the Commission’s decision to issue Order No. 1000. Likewise, LSP Transmission was an active participant in various stakeholder processes initiated to comply with Order No. 1000, including the North Carolina Transmission Planning Collaborative (“NCTPC”) stakeholder process.<sup>4</sup> LSP Transmission has a strong interest in assuring that the regional planning processes and cost allocation methodologies are just, reasonable, and not unduly discriminatory to non-incumbent developers. LSP Transmission will be significantly affected by the implementation of Order No. 1000, *et al.* LSP Transmission and its affiliates have a direct and material economic and legal interest in the outcome of this proceeding that cannot be adequately represented by any other party. Accordingly, LSP Transmission requests leave to intervene in the above-captioned proceeding.

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<sup>4</sup> Comments of LSP Transmission Holdings, LLC submitted into the Order 1000 stakeholder process are attached as Appendix I. LSP Transmission Holdings was an active participant in the Order 1000 stakeholder process.

### III. COMMUNICATIONS

All correspondence and communications in the above-captioned dockets should be directed to the following persons:<sup>5</sup>

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### IV. INTRODUCTION

#### A. LSP Transmission

LSP Transmission, its affiliates and its predecessors (the “LS Power Group”) have a long history of active development of new generation and transmission solutions to address their customer’s energy needs. The LS Power Group has managed over 20,000 MW of generation across the United States. LSP Transmission’s transmission development efforts have been focused on all variety of transmission development, including projects to resolve reliability issues, to allow the markets to operate more efficiently and/or to support bringing renewable energy to market. LSP Transmission’s affiliates have developed transmission projects under both a merchant and cost-of-service model and are thus uniquely situated to provide comments on the structure proposed by Duke and Progress.

When permitted to compete for the development of transmission infrastructure, as a non-incumbent transmission developer LSP Transmission has established that it brings consumer benefits. LSP Transmission has actively identified numerous opportunities for transmission

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<sup>5</sup> LSP Transmission requests waiver of Section 385.203(b)(3) of the Commission’s regulations to permit the designation of more than two persons upon whom service is to be made in this proceeding.

development related to economic efficiencies, identified reliability needs and to support the integration of renewable generation. In the limited fashion as currently permitted, LSP Transmission has submitted projects for planning purposes and/or evaluation to PJM Interconnection, L.L.C. (“PJM”), the Midwest Independent System Operator (“MISO”), the New York Independent System Operator, Inc. (“NYISO”), and the California Independent System Operator, Corp. (“CAISO”). LSP Transmission has the resources available and the desire to advance development of these and additional projects through planning and permitting in parallel and in an expeditious manner. As the Compliance Filing notes, although there is no right of first refusal related to the filing entities, the existing rules “do not provide for anyone other than the transmission providers . . . will receive any form of compensation or credit for their transmission facilities.”<sup>6</sup> Thus, LSP Transmission has been prohibited from participation in North Carolina and cannot prudently advance development of cost-of-service projects in North Carolina until the existing barriers to entry are eliminated.

## **B. Order 1000 and North Carolina**

LSP Transmission believes that Order No. 1000, *et al.*, will promote significant needed transmission infrastructure expansion. It makes important strides to reduce the potential for rights of first refusal, or similar restrictions, from impeding the participation of non-incumbent transmission providers in transmission expansion, thereby denying consumers the benefits associated with such participation. As presented more fully below, the Compliance Filing fails to fulfill the promise of Order No. 1000, *et al.* and should be rejected, because many of the revised tariff provisions are not consistent with the Commission’s order.

LSP Transmission interpreted the Commission’s intent in issuing Order No. 1000 as simple: if the Commission encouraged incumbent transmission owners and independent developers to

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<sup>6</sup> Compliance Filing at 26.

submit their best ideas into the transmission planning process, expects the transmission planning process to select from those ideas the most efficient or cost effective project for inclusion in the regional transmission plan for regional cost allocation, then the ratepayers will benefit. Order No. 1000's goal can only be achieved, however, if the regional transmission planning process sends the clear message to all viable prospective transmission developers, incumbent and non-incumbent alike, that their ideas are sought, that they should invest their time, effort and money to submit projects into the regional planning process, and that if they have the best, most efficient or cost effective idea, they will be selected to construct, own and operate the proposed transmission facilities.

Of course, in the business world a company risking its resources is only encouraged to invest those resources, whether people or money, if it believes that it has a fair opportunity at success and the deck is not stacked against it from the start. In this regard, unfortunately, perception is reality. If the planning process appears to favor incumbent transmission owners, the goal of Order No. 1000 to get the best ideas and the best projects will not be met in North Carolina because not everyone will participate even if it can be "argued" that the process meets the technical requirements of Order No. 1000. For this reason, LSP Transmission encourages the Commission to look closely at the proposal of the North Carolina Sponsors' Compliance Filing to determine whether it in fact will encourage the submission of additional ideas, or whether it will simply maintain the status quo.

Without a level playing field, a company will not risk its resources, whether those resources are people or money. Here, unfortunately, perception is reality. In advocating at the various stakeholder processes, including in the North Carolina Transmission Planning Collaborative stakeholder process, LSP Transmission took the Commission at its word when it stated in footnote 307 to Order No. 1000 that

[i]f a nonincumbent transmission developer is unable to demonstrate that its proposal is the most efficient or cost-effective, given all aspects of its proposal, then it is unlikely to be selected as the

preferred transmission solution within the regional transmission planning process for purposes of cost allocation.

Obviously, for Order No. 1000 to have meaning the converse must also be true; i.e., if the non-incumbent transmission developer demonstrates that its proposal is the most efficient or cost effective, given all aspects of the proposal, then it should be selected as the preferred transmission solution with the regional transmission planning process for purposes of cost allocation. Thus, in reviewing each of the Order No. 1000 compliance filings, the Commission must ask itself whether the proposal encourages the submission of alternative proposals and whether the region will actually select the more efficient or cost effective proposal. The answer to that question will only be “yes” if the proposed process establishes a completely non-discriminatory process which ensures that the best project will get chosen.

The Commission should be particularly concerned about the North Carolina Sponsors’ Compliance Filing because as, the Compliance Filing points out,

the size of the region in terms of square miles and peak load is similar in size to two other proposed regions – the New York ISO (“NYISO”) and ISO-New England (“ISO-NE”). New York state is about 54,000 square miles and the NYISO has a peak load of about 33,000 MW. The NCPTPC Region is about 58,000 square miles and has a peak load of about 37,000 MW – larger in both respects. The ISO-NE serves an area of about 68,000 square miles and has a peak load of about 28,000 MW, and is thus quite similar in size and scope to the NCTPC Region.<sup>7</sup>

Thus, the sheer size of the area included with the North Carolina Sponsors’ Compliance Filing reinforces the importance of the Commission enforcing every mandate of Order 1000 in North Carolina.

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<sup>7</sup> Compliance Filing at 7.

## **V. PROTEST**

### **A. The Definition of “Regional Project” Is Not In Compliance with Paragraph 63 of Order 1000**

In proposed Attachment N-1, Transmission Planning Process, Section 8, Regional Projects (“Attachment N”) are defined as projects that:

- 8.1.1 Typically encompass multiple Transmission Providers’ footprints; however, if it can be demonstrated that a transmission project within a single Transmission Provider’s footprint provides regional benefits, it can qualify;
- 8.1.2 Are of a voltage of 230 kV or above;
- 8.1.3 Have a project cost of at least \$10 million;
- 8.1.4 Will be subject to the Tariff of the Transmission Provider(s) for open access purposes
- 8.1.5 Must be materially different than a project or projects currently in the Collaborative Transmission Plan. As an example, a Developer may not simply “bundle” several transmission projects that are currently in the Collaborative Transmission Plan and claim that it is a Regional Project. Examples of how a Regional Project might materially different from a project already included in the plan include changes in equipment size or different terminal bus locations, among other things.

LSP Transmission objects to this definition of Regional Project as it is inconsistent with Order 1000 for numerous reasons.

#### **1. Section 8.1.1 Is Inconsistent With FERC Order No 1000 by Referencing “Footprint” Rather Than “Retail Service Territory”**

The question of whether the North Carolina Sponsors’ Compliance Filing reflects a region that is of sufficient scope under Order No. 1000 is open for debate. LSP Transmission will leave it to the Commission’s judgment as to whether Duke Energy and Progress, post-merger, should be considered more than one “public utility transmission provider.” Their economic interests are certainly singular. Nevertheless, LSP Transmission does agree, however, that Duke Energy

Carolinas and Carolina Power & Light have two separate and distinct retail distribution service territories.

Therefore, the determination for whether a project meets the Commission's exclusion for local projects must be whether a project will be located "solely within a public utility transmission provider's retail distribution service territory..."<sup>8</sup> Simply put, does the project lie solely within either the distinct Duke Energy Carolinas' retail distribution service territory or Carolina Power & Light's retail distribution service territory?<sup>9</sup>

Through proposed Section 8.1.1 Duke and Progress attempt to expand the Commission's exclusion of local projects by referring to "footprint" instead of "retail distribution service territory."<sup>10</sup>

8.1.1 Typically encompass multiple Transmission Providers' footprints; however, if it can be demonstrated that a transmission project within a single Transmission Provider's footprint provides regional benefits, it can qualify<sup>11</sup>

The Commission specifically addressed this in Order No. 1000A, stating in Paragraph 420 that

we also clarify that the phrase "retail distribution", as used in the definitions of incumbent transmission developer/provider, non-incumbent transmission developer, and local transmission facility, does not modify footprint. Instead, the term "footprint," as used in these definitions was intended to include, but not be limited to, the location of the transmission facilities of a transmission-only company that owns and/or controls the transmission facilities of formerly

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<sup>8</sup> Order No. 1000 at P 63.

<sup>9</sup> With the combination of Duke Energy Carolina and Carolina Power & Light, their retail distribution territory have notmerged. LSP Transmission urges the Commission to explicitly clarify this in its order on the Compliance Filing.

<sup>10</sup> The North Carolina Sponsors also make the same effort at expansion in the "Definitions" section in defining "Local Project." In fact, in the definition the North Carolina Sponsors go one step further defining "footprint (i.e., Control Area)." The Commission should require conforming changes to the Definition consistent with LSP Transmission's arguments in this Section.

<sup>11</sup> Attachment N, Section 8.1.1.



vertically-integrated utilities, as well as the location of the transmission facilities of any other transmission-only company.<sup>12</sup>

Paragraph 429 of Order 1000A further clarifies that

[i]n response to LS Power’s concerns regarding the definition of a local transmission facility, we clarify that a local transmission facility is one located within the geographical boundaries of a public utility transmission provider’s retail service territory, if it has one, **otherwise** the area is defined by the public utility transmission provider’s footprint.<sup>13</sup>

The use of “footprint” in Section 8.1.1 is inappropriate as both entities have retail distribution service territories. This is important because it appears that by using “footprint” the North Carolina sponsors are trying to establish a right of first refusal over the transmission needs of the more than 70 communities in North Carolina that serve more than 500,000 residential, commercial and industrial customers through NC Public Power and represented by ElectriCities of North Carolina or the more than 950,000 households and businesses in 93 of North Carolina’s 100 counties served by the North Carolina Electric Membership Corporation (“NCEMC”) members.<sup>14</sup>

LSP Transmission therefore urges the Commission to explicitly state in its Order on the Compliance Filing that a transmission project which extends outside the retail distribution service territory of either Duke Energy Carolinas or Carolina Power & Light is not a “local project,” and thus is a Regional Project, as it is not located “solely within a public utility transmission provider’s retail distribution service territory.”<sup>15</sup>

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<sup>12</sup> Order No. 1000A at P 420.

<sup>13</sup> Order No. 1000A at P 429 (emphasis added). Paragraph 429 also continues to state: “Thus, if the public utility transmission provider has a retail distribution service territory and/or footprint, then only a transmission facility that it decides to build within that retail distribution service territory or footprint, AND that is not selected in a regional transmission plan for purposes of cost allocation, may be considered a local facility.”

<sup>14</sup> For a map of areas served by ElectriCities *see* <http://www.electricities.com/Default/AboutUs/ElectriCitiesMembership/MapofMembershipinNC.aspx> and for a map of the areas served by NCEMC *see* <http://www.ncelectriccooperatives.com/about/default.htm>

<sup>15</sup> Order No 1000 at P 63.

In addition, the loose directive in Section 8.1.1 that “if it can be demonstrated that a transmission project within a single Transmission Provider’s footprint provides regional benefits, it can qualify,” is improperly vague. It is unclear who would make this demonstration and what the process for demonstration would encompass. Pursuant to the requirements of Order No. 890, the NCTPC should already have a system in place to determine what project provide “regional benefits” regardless of whether they are physically located in one service territory or not. This system or “test” should also apply to projects that are submitted into the Collaborative Transmission Plan by Duke and Progress as local projects. If the project in fact is a “regional” project but characterized as “local” by Duke or Progress, then this would be the point of re-characterization and re-submission on the same terms as other regional project. A new entrant should not have to “demonstrate” that a “local” project that is in the local transmission plan is actually a regional project in order for the project to appropriately designated as a Regional Project.

LSP Transmission would propose a revised Section 8.1.1 Regional Project definition, consistent with Paragraph 429 of Order 1000A:

8.1 Regional Projects are projects that

8.1.1 Either extend beyond the retail distribution service territory of a Transmission Provider or a project within a single Transmission Provider’s retail distribution service territory if the regional cost allocation methodology would allocate costs to parties outside that retail distribution service territory.

**2. Limiting Regional Project Eligibility to Projects That Are 230 kV or More and More than \$10 Million Is Improper**

LSP Transmission objects to Sections 8.1.2 and 8.1.3 of the Compliance Filings on the basis that it only establishes Regional Project eligibility for projects “[a]re of a Voltage Level of 230kV or above” And “have a project cost of at least \$10 million”<sup>16</sup> These

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<sup>16</sup> Attachment N, Section 8.1.2.

restrictions are inconsistent with Order No. 1000 which has no such restrictions.<sup>17</sup> North Carolina's transmission grid consists of a diverse array of voltages, including transmission lines rated at 115 kV, 138 kV, 161 kV, 230 kV, and 500 kV. There are approximately 8,554 miles of transmission in the North Carolina Transmission Planning Collaborative region above 115 kV, consisting of 641 miles of 500 kV lines, 3765 miles of 230 kV lines, 3447 miles of 138/161 kV lines, and 701 miles of 115 kV lines.<sup>18</sup> Thus, adopting the North Carolina proposal in the Compliance Filing would exclude at least 50 percent of North Carolina's electric grid from Order No. 1000. Order No. 1000 contains no such exclusion.

Order No. 1000 defines a Regional Project as one in which *any* of its costs are allocated regionally because the project provides regional benefits, or the project extends beyond a single Transmission Provider's retail distribution service territory or footprint. The Commission in Paragraph 423 and 430 of Order 1000A was explicit that the defining issue for a Regional Project is not voltage level, rather

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.<sup>19</sup>

Thus, the reference in Section 8.1.2 to a minimum voltage floor and dollar value should be struck in its entirety.

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<sup>17</sup> Although LSP Transmission agrees with the North Carolina Sponsors' that unlikely that a regional project would be proposed that would be less than \$10 million in scope, allowing the North Carolina Sponsors' to place any arbitrary dollar amount on regional projects starts the Commission down a slippery slope of accepting exceptions to the very specific language of Order No. 1000.

<sup>18</sup> 2012 Ventyx, Inc data.

<sup>19</sup> Order No. 1000A at P 430.

### 3. Section 8.1.4 Is Inconsistent with Order 1000 and a Potential Barrier to Entry

Proposed Section 8.1.4 **requires** a Regional Project to “be subject to the Tariff of the Transmission Provider(s) for open access purposes.” LSP Transmission does not oppose the potential to be under the OATT of a Transmission Provider in North Carolina, and likely would welcome such practical discussions given our prior history with such arrangements in non-RTO regions.<sup>20</sup>

However, it is a very significant national policy decision and precedent for the Commission to rule that all non-incumbent transmission developers will be subject to the Transmission Provider’s OATT in a non-RTO/ISO in order to be eligible for to sponsor a Regional Project. LSP Transmission objects to the mandatory nature of this requirement in non-RTO/ISO regions and the national precedent that this requirement establishes, and believes that the mandatory nature of this requirement inconsistent with the definition of local and regional projects under Order 1000. If the North Carolina Transmission Providers believe that a single regional OATT is preferable, they should create an independent regional transmission provider with a regional OATT. Until then, non-incumbents transmission developers should have the same flexibility as incumbents transmission owners as to whether they have an individual OATT or agree to be subject to the OATT of the existing transmission providers. The Transmission Providers’ concerns regarding allocation of priority rights for transmission additions the costs of which are attributed to their load can be addressed in other ways.<sup>21</sup> LSP Transmission requests that the Commission strike Section 8.1.4 in its entirety.<sup>22</sup>

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<sup>20</sup> See FERC Docket ER10-3317.

<sup>21</sup> See *e.g.*, Progress Energy’s Compliance Filing for Florida Power Corp., filed in Docket ER13-86, at Section 9.4.5.

<sup>22</sup> In addition, LSP Transmission also noted that a MOU with “Provision indicating that transmission service WILL be provided pursuant to the Transmission OATT(s) and delineation of which facilities are subject to which OATT” MUST be included in the MOU **before** a Regional Project will be included in the Collaborative Transmission Plan.

**4. The Requirement That Regional Projects Be “Materially Different” Than Projects “Already In the Collaborative Transmission Plan” Is Vague and Inappropriate**

- a. The Local and Regional Planning Processes Must be Reconciled Appropriately

Proposed Attachment N-1, Transmission Planning Process, Section 8.1.5 requires that a Regional Project: “Must be materially different than a project or projects currently in the Collaborative Transmission Plan.”<sup>23</sup> As an initial matter, because the North Carolina Sponsors state that “the methodology, criteria process for developing their annual transmission plan . . . are largely unchanged” it is unclear how the NCTPC process will truly reconcile the “local” and “regional” planning processes. As the Compliance Filing establishes, the current NCTPC process is a roll-up of what the North Carolina Sponsors currently refer to as their local transmission plans. However, it appears that the process the North Carolina Sponsors refer to as their local process includes projects that go beyond the definition of local in Order No. 1000. LSP Transmission is concerned that by maintaining a blurred line between local and regional project, the North Carolina Sponsors will have the opportunity to establish projects as “in the Collaborative Transmission Plan” which are Regional in nature and which should have been submitted by the North Carolina Sponsors in the same manner as other regional projects.

The North Carolina Sponsors assert that

[u]nder the NCTPC’s bottom up, then top down regime, the primary purpose of the “top down” facet of the planning process is to search

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*See Proposed Section 8.7.1 and Proposed Section 8.7.2.3 of the Compliance Filing. LSP Transmission believes that Section 8.7.2.3 should be struck in its entirety from the Compliance Filing, as this Section effectively mandates that a new entrant go under the OATT of the incumbent.*

<sup>23</sup> As an example, a Developer may not simply “bundle” several transmission projects that are currently in the Collaborative Transmission Plan and claim that it is a Regional Project. Examples of how a Regional Project might materially different from a project already included in the plan include changes in equipment size or different terminal bus locations, among other things.”

for more cost effective solutions that meet the same need identified through the bottom up facet of planning.<sup>24</sup>

The North Carolina sponsors further explain that the “resource decisions of the LSEs . . . are the primary driver of new transmission investment.”<sup>25</sup> As noted though, the “LSEs” referenced are not just the North Carolina Sponsors but also ElectricCities and NCEMC who are “completely dependent on the [North Carolina Sponsors] Transmission Systems.” It appears therefore that the North Carolina Sponsors position is that the base for the Collaborative Plan is not just the needs of their “retail distribution service territory” but all needs within their control area, regardless of whether the costs are allocated to parties other than their retail distribution service territory. Confirming this reading, the North Carolina Sponsors note in Section 7.1.5 that in the first year “there will be no Regional Projects that have been selected for inclusion in the Collaborative Transmission Plan.”

LSP Transmission believes that The North Carolina Sponsors position is improper as projects to service needs outside the Transmission Providers’ retail distribution service territory should be considered regional projects and submitted into the regional plan simultaneously. To the extent that the North Carolina Sponsors assert that they have to fulfill those needs to support the integrated resource plans of non-transmission provider LSEs, the North Carolina Sponsors seem to be putting the cart before the horse.<sup>26</sup> As the North Carolina Sponsors note, the LSE’s resource decisions drive transmission investment. However, being “completely dependent” on the Transmission Providers, and with no existing ability for nonincumbents to construct additional transmission, those resource decisions have been dependent on the cost of new transmission

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<sup>24</sup> Compliance Filing at 13.

<sup>25</sup> *Id.* at 14.

<sup>26</sup> This is also true regarding putting transmission projects in their own integrated resource plan before the culmination of the regional transmission planning process. They cannot know that they have included the more efficient or cost effective project in their plan unless they complete the regional planning process.

assumptions provided to them by the Transmission Providers.<sup>27</sup> Order No. 1000 offers relief from that situation and an opportunity to make more informed resource decisions based on a wider array of transmission options.

LSP Transmission requests that the Commission require the North Carolina Sponsors to specifically state that the only projects that will be considered to be “currently in the Collaborative Transmission Plan” for purposes of Section 8.1.5 are local projects identified for purposes of addressing needs within their retail distribution service territory, and regional projects approved for in prior Collaborative plans. If the Commission permits the North Carolina Sponsor’s expansive assertion of as to what is “currently” in the plan, the goal of Order No. 1000 will be stunted.<sup>28</sup>

LSP Transmission is also concerned that there is also nothing in the proposal that will prevent two adjoining reliability transmission projects, proposed in two separate local plans, from being characterized as two “local” projects in each respective retail distribution service territory, when in fact they are a Regional Project. Given the corporate relationship between the Transmission Providers, their joint planning functions, the benefit of local status may weigh more heavily than appropriate regional cost allocation. In this regard, a project originating in the Carolina Power and Light territory, and terminating in the Duke Energy Carolinas territory would be a regional project and could not be in the initial Collaborative Plan. If the benefits of that project are 100% to the Duke territory, nothing in the proposed process prevents Duke Energy Carolinas and Carolina Power and Light from nevertheless declaring the respective projects as “local” projects, allocating their portion of the costs locally, and keeping the project from being sponsored by a non-incumbent as a regional project. This concern is highlighted by the suggestion in Section 8.1.5 that

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<sup>27</sup> Those assumptions most likely looked like participant funding of 100% of any upgrades or additions.

<sup>28</sup> To the extent that the North Carolina Sponsors assert that they have an obligation to serve their LSEs as they are network customers, that obligation can be fulfilled by submitting their proposed project into the regional planning process.

“a Developer may not simply “bundle” several transmission projects that are currently in the Collaborative Transmission Plan and claim that it is a Regional Project. It would seem the rare instance where a needed “local” reliability project would happen to intersect with a different “local” project from a different Transmission Provider rather than those elements really being intended to address a regional reliability issue.

The Commission should require a clear demarcation process between the local and regional planning process. The starting point for the NCPTC process can be no more than Duke and Progress’ Order No. 1000 defined “local” projects. The Commission’s order should specifically clarify this requirement. Any inclusion of projects in the Collaborative Plan that extend beyond Local Projects would be contrary to Order No. 1000-A, which requires that:

public utility transmission providers in a transmission planning region must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does a transmission provider proposed by an incumbent transmission developer.<sup>29</sup>

LSP Transmission’s position is that the regional transmission planning process must be a fully open process that allows all parties, incumbent and non-incumbent alike, to propose regional projects in the first instance, rather than have incumbent entities determine a “regional” plan and only then allow non-incumbents to propose alternative projects that may be more efficient or cost-effective. Although incumbent entities should retain their ability to propose “local” projects, as defined by Order No. 1000, all other incumbent transmission proposals, including upgrades to their existing system if the costs would be regionally allocated, should be submitted into a non-discriminatory regional planning process that has the same rules for all transmission developers. The proposed North Carolina projects should have a proposal window for both incumbent and non-incumbent projects.

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<sup>29</sup> Order No. 1000-A at P 454.



b. The Phrase “Materially Different” Is Vague

LSP Transmission objects to the requirement that Regional Project proposals must be “materially different” than a project that is already in the regional plan. The North Carolina Sponsors’ Compliance Filing states “[e]xamples of how a Regional Project might materially differ from a project already included in the plan include changes in equipment size or different terminal bus locations, among other things.”<sup>30</sup> The provision appears unnecessary because, as noted above, the only projects in the “regional plan” should be local projects or projects affirmatively approved in each future Order No. 1000-compliant regional plan. As to the former, Order No. 1000 preserves the incumbent transmission owner’s right to construct and own local projects. As to the latter, it is obvious that once the Order No. 1000 planning process is effective, a party cannot propose a project in one year that is already in the regional plan and assigned to another developer in a prior year. Thus, the language is unnecessary; unless, as suggested above, the North Carolina Sponsors are attempting to preserve an advantage to plan regional projects before non-incumbents have an opportunity, which would be improper.

**B. Developer Qualifications**

**1. LSP Transmission Is Concerned That the Proposed Tariff Allows Written Comments on Developer Qualifications**

Section 8.2.4 outlines the submissions required to establish Developer Qualifications. Section 8.3 outlines a “developer screen” process and allows for Transmission Advisory Group (“TAG”) participants to provide written comments, including for the Section 8.3.1.1 Developer qualification screen. This comment acceptance from TAG participants is reiterated in Section 8.4.2 which provides that the “OSC will seek written comments from the TAG participants on Regional

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<sup>30</sup> Attachment N, Section 8.1.5.

Project Proposals, including the qualifications of Developers....”<sup>31</sup> Although LSP Transmission supports an open process for OSC decision-making, LSP Transmission does have some lingering concerns that a stakeholder “written comment period” on whether a new entrant is qualified or not could turn into an adjudicatory proceeding before the OCS with participants of differing views when Developer Qualification should be more of an objective determination based on clear factors.

## **2. Determining Developer Capabilities “For the Life of the Project” Is Inappropriately Vague and Incapable of Measure**

In the Developer Screen set forth in Proposed Section 8.3.1, the North Carolina Sponsors suggest that the “OSC will determine if a Developer appears sufficiently qualified to finance, license, and construct the Regional Project and operate and maintain it for the life of the project.” LSP Transmission objects to the inclusion of the phrase “for the life of the project” in the qualification screen, as it is inappropriately vague and it could be applied in a manner to create a barrier to entry. Because independent transmission is a relatively new area, a new entrant will be unlikely to have entity or affiliate history from which a “for the life of the project” projection can be made, assuming it could be made regarding any company. It is a vague phrase and LSP Transmission does not understand how the OSC can practically determine whether an entity is qualified for the next 30 or 40 years. Such a determination cannot be made for the North Carolina Sponsors either. LSP Transmission believes that the earlier criterion in Section 8.2.4.2 appropriately addresses any construction, operating and/or maintenance qualifications. LSP Transmission would recommend a revised Proposed Section 8.3.1, where the “OSC will determine if a Developer appears sufficiently qualified to finance, develop, and construct the Regional Project and operate and maintain it.” The reference to “for the life of the project” should be eliminated.

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<sup>31</sup> Attachment N, Section 8.4.2.

In addition, LSP Transmission requests that the word “license” be replaced with “develop.” Order 1000A was clear that “whether an entity has, or can obtain, state approvals” cannot be qualification criteria.<sup>32</sup> Judging the ability of an entity to “license” a facility is best left for the state regulators to decide and judge, not the OCS.

### **3. Discriminatory Financial Qualifications Are Proposed**

Section 8.3.1.2 requires that

If a developer lacks an Investment Grade Bond Rating from two of the following three credit rating agencies: Moody’s, Standard and Poors, and Fitch, it may be required to provide additional evidence of its financial abilities including indicating a willingness to post security if its Regional Project is selected in the Collaborative Transmission Plan.

LSP Transmission objects that this language constitutes discriminatory qualification criteria as it establishes a barrier to new entrants. A developer using a special purpose entity to develop, construct, and maintain the proposed project, will not have an investment grade credit rating at the proposal stage. Obtaining two credit ratings at the proposal and selection stage will cost hundreds of thousands of dollars with little benefit in demonstrating the ability to financially execute on a project. LSP Transmission strongly objects to Section 8.3.1.2 and it should be removed in its entirety. There is no reason that a new entrant should be posting credit, while the incumbent utility is not. It should be sufficient that the Developer has demonstrated through the Qualification process that it has the ability to finance similar projects, regardless of whether they have a credit rating from a ratings agency. In addition, the language highlights a fundamental problem in North Carolina as to what entity a new entrant would “post security.”

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<sup>32</sup> Order No. 1000A at P 441.

**4. Qualification Criteria on Ability to Assume Liability for Major Losses Resulting From Failure of Facilities**

LSP Transmission objects to the qualification requirement in Section 8.2.4.1(b) regarding the “[a]bility to assume liability for major losses resulting from failure of facilities,” as being inappropriately vague when included as qualification criteria. It is unclear regarding what the required showing will be or how the evaluation will be conducted. Before this criterion is accepted by the Commission, the North Carolina Sponsors must provide additional detail as to the intent of the criterion as a qualifier and how they currently demonstrate their own “ability to assume liability for major losses.” If the intent is simply to require a certain level of insurance or other assurance, the North Carolina Sponsors should identify that requirement as a milestone requirement after selection, and include identification of the provisions that establish the requirement on the Sponsors.

**5. Qualification Criteria on Developer Meeting Additional Engineering Standards of the Transmission Provider Who Will Be Performing O&M**

LSP Transmission objects to a proposed qualification standard in Section 8.2.4.2 (c)(i) that

If the developer intends to build the transmission project and then turn it over to another Transmission Provider for operations and maintenance, the Developer must demonstrate that it will meet any additional engineering standards of the Transmission Provider who will be performing the operations and maintenance (O&M).

LSP Transmission objects to inclusion as a “qualification” screen this vague “any additional engineering standards” that the Transmission Provider who will be performing the operations & maintenance (O&M) might impose. Order 1000 requires that qualification criteria to be clearly outlined in the OATT. Requiring a new entrant to meet “any additional engineering standards” that a Transmission Provider might devise or dream up could be a significant barrier to entry or add significantly to the cost estimate. To the extent that a new entrant intends to turn a project over to a Transmission Provider for operations and maintenance, the negotiations of the terms of that

arrangement should be between the two entities and not an issue for the NCTPC determination whether an entity is qualified.

## **6. Qualification Criteria on NERC Certification Plan**

Section 8.2.4.3 (c) of the proposed Tariff, titled “O&M Qualification” addresses the plans of the project developer to comply with all applicable reliability standards and plans of the project developer to obtain the appropriate NERC certifications.<sup>33</sup> LSP Transmission objects to these requirements as inappropriate qualification criteria and inconsistent with Order No. 1000-A.<sup>34</sup> in Order No. 1000-A the Commission noted that it is not appropriate for the Commission to amend or interpret NERC registration requirement as part of a generic rulemaking. That role is exclusively NERC’s. Section 8.2.4.3 (c) should be struck in its entirety in order to be consistent with Paragraph 444 of Order 1000-A.

## **C. Project Information to Be Submitted With Regional Project Proposals**

In Section 8.2.3 of the proposed process the North Carolina sponsors address the information required to be submitted with Regional Project Proposals. LSP Transmission provides a few comments on the required information.

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<sup>33</sup> Attachment N, Section 8.2.4.3 (c) states “Plan on how it intends to comply with all applicable reliability standards and obtaining the appropriate NERC certifications”.

<sup>34</sup> Order No. 1000-A at P 444 (“We also deny New York Transmission Owners’ request that the public utility transmission providers in a transmission planning region be permitted to require a transmission developer to demonstrate that it has registered with NERC as a precondition of being assigned a project. As the Commission explained in Order 1000, all entities that are users, owners, or operators of the electric bulk power system must register with NERC for performance of applicable functions. The procedures for registering as a Functional Entity are set by NERC and approved by the Commission under Section 215, and it is not appropriate for the Commission to amend or interpret those procedures...”).

## **1. Estimated Cost of Project**

The proposal requires an estimated cost of the project proposal, including the total estimated capital cost of the project, “fully loaded” including contingencies and overhead, expressed in current year dollars.<sup>35</sup> LSP Transmission does not object to providing an estimated cost for the project. However, the proposed Section 8.2.3 should make it clear that, consistent with Paragraph 455 of Order 1000A, that “when cost estimates are part of selection, a region must scrutinize costs in the same manner by both the incumbent and non-incumbent.”<sup>36</sup> The proposed tariff language calls for “fully loaded costs such as contingencies” to be part of the comparison. The proposed process should affirmatively state in the tariff language that the Transmission Providers “local” plan requires comparable treatment of contingency assumptions. Proposed Section 7.9.5 requires that “Transmission Providers estimate the costs for each of the proposed solutions” and to do so “in accordance with NCPTC cost estimate guidelines ....” In close “calls” between competing projects, contingency and overhead assumptions, and consistency in assumptions, matter. The tariff language as drafted does not affirmatively mandate comparable submission and analysis of cost estimates.

Alternatively, LSP Transmission would not oppose establishing a standard contingency assumption applied to all project proposals, local and regional. For example, a revised Section 8.2.3.3 could require: “Estimated cost of the project(s). This should include a total estimated capital cost, including projected internal costs billed to the project and a 20 percent contingency, expressed in current year dollars.” Such a standard contingency would be acceptable so long as also applied to the Transmission Provider cost estimates addressed in Section 7.9.5.

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<sup>35</sup> Attachment N, Section 8.2.3.3.

<sup>36</sup> Order No. 1000A at P 455.

**2. Explanation of How Project Will Abide By Any Transmission Standards of Transmission Provider(s) With Which Project Will Interconnect**

Proposed Tariff provision 8.2.3.5 requires “explanation of how the project will abide by any transmission standards of Transmission Provider(s) with which the project will interconnect. LSP Transmission’s position is that this requirement is premature and inconsistent with Order 1000. LSP Transmission is also concerned that this requirement could create a barrier to entry for new entrants in North Carolina.

Paragraph 101 of Order 1000 states:

Transmission planning is a process that occurs prior to the interconnection and coordination of transmission facilities. The transmission planning process itself does not create any obligations to interconnection or operate in a certain way. Thus, when establishing transmission planning process requirements, the Commission is in no way mandating or otherwise impinging upon matters that Section 202(a) leaves to the voluntary action of public utility transmission providers. As we discuss herein, section 202(a) refers to the coordinated operation of facilities.<sup>37</sup>

LSP Transmission urges the Commission to reject this requirement as premature in the transmission planning process.

In addition, the question in North Carolina is whether the incumbent transmission providers agree to abide by each other’s standards when their facilities interconnect. We suspect the answer is no, that they agree that they will meet NERC and any other applicable regional standards, but nothing further. LSP Transmission would agree that new entrants should abide by the same standards that Transmission Providers currently place on each other, but we are aware of no standards in place today in North Carolina that the incumbent transmission providers agree to abide by each other’s standards when they interconnect. To the extent that there are such obligations between the existing Transmission Providers they should be specifically identified. Absent such

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<sup>37</sup> Order No. 1000 at P 101.

existing obligations for incumbent Transmission Providers, there should not be separate standard for non-incumbent participation.

### **3. Information Required as To Potential Impacts to Other Projects in The Prior Year's Plan**

Section 8.2.3.6 of the proposed process requires that

Potential impacts to other transmission projects in the prior year's plan: (a) Identification of the proposed transmission project(s) that would be avoided if the Regional Project selected; (b) Schedule or project modification impacts; (c) Cost impacts (both positive and negative); and (d) This impact analysis should take into account the status of the proposed transmission projects that would be avoided.

Although determination of impacts is appropriate, LSP Transmission objects to this requirement on two grounds. First, the reference to “the prior year’s plan” is unclear. The proposed process in other places refers to the current Collaborative Transmission Plan. If the North Carolina Sponsor’s intent is that regional project proposals can supplant not only local projects put forward in the then active planning year, but also projects previously approved by NCTPC, their process should be more explicit.

LSP Transmission’s second concern is that much of the requested information appears to be more appropriate for the transmission planning entity to determine. Section 7.9.1 states that the “PWC identifies potential solutions and will test the effectiveness of the potential solutions through additional analysis. It would be inappropriate to shift the burden to the new entrant to undertake these analyses for all projects in the plan that may be affected by their proposed project, particularly since the Section 8.3.2 requires the same analysis from the PWC as part of the “Technical Analysis Screen.” The regional project proposals should be required to establish that the project is



technically viable and will solve the identified need. Anything more should be handled by the NCTPC in a non-discriminatory manner.<sup>38</sup>

#### **4. Information Required on Legal Authority to Develop**

Section 8.2.3.9 of the proposed process requires that the project sponsor “describe the legal authority, if any, that will need to be obtained by the Developer to site/own transmission under relevant state law.” LSP Transmission is concerned that the North Carolina Sponsors’ process which requires qualification and project proposal submissions at the same time allows legal authority to be inappropriately used as a qualification screen Paragraph 441 of Order 1000A that “it 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 or the right of eminent domain, to be eligible to propose a transmission facility.” By Section 8.2.3.9 requiring the description of “legal authority that will need to be obtained” is largely identical to the “impermissible barrier to entry that the transmission developer should demonstrate that it either has, or can obtain state approvals...” and Section 8.2.4 identifying “Developer Qualification Information” LSP Transmission is concerned that the information will be used inappropriately. In addition, LSP Transmission believes that the information is irrelevant as a project evaluation criterion and should be more appropriately reflected as project milestones.

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<sup>38</sup> LSP Transmission’s position is that the intent of Order No. 1000 is for the regional planning process to evaluate transmission alternatives. It is not for the new entrant to “justify” the proposal or to demonstrate why the proposal is better than the project in the existing plan. *See* Order No. 1000 at P 78 (“Specifically, we conclude that the existing requirements of Order No. 890 are inadequate to ensure that the public utility transmission providers in each transmission planning region, in consultation with stakeholders, identify and evaluate transmission alternatives at the regional level that may resolve the region’s needs more efficiently or cost-effectively than solutions identified in the local transmission plans of individual public utility transmission providers. Moreover, the existing requirements of Order 890 do not necessarily result in the development of a regional transmission plan that reflects the identification by the transmission planning region of the set of transmission facilities that are more efficient or cost-effective solutions for the transmission planning region.”)

LSP Transmission does not object to the remaining information required in Section 8.2.3.9 “Whether the project would require state transmission siting proceedings, NEPA review or federal permits. Identify the authorized governmental body that will review the Developer’s applications for siting approval for projects within the NCTPC region.”

**5. Information Required on Projected Costs of the Transmission Projects Being Avoided, Which Cost Estimates Would Be Available in the Prior Year’s Collaborative Transmission Plan**

Order No. 1000-A is explicit that when cost estimates are part of the selection process, “a region must scrutinize costs in the same manner by both the incumbent and non-incumbent.”<sup>39</sup> The Commission must require that the Compliance Filing be amended so their process to require that all projects submit cost data in a similar fashion and that the estimates be evaluated comparably. This is especially important in an avoided cost process that is proposed in this Compliance Filing.

LSP Transmission objects to “prior year’s cost estimates” being used to compare with a new project cost. In proposed Section 8.2.3.3, “total estimated capital costs expressed in current year dollars” is required, but then in Section 8.2.3.10, the regional project in the plan would use the “cost estimates in the prior year’s Collaborative Transmission Plan.” There is no process proposed to scrutinize the cost estimates between the proposed project and the project in the prior year’s Collaborative Transmission Plan in the same manner, in direct conflict with Paragraph 459 of Order 1000A. The Commission must require that the process be amended to require all projects, including those in the regional plan, submit cost data in a similar fashion and the estimates must be evaluated comparably. Without this comparability, there is no ability to determine the more efficient or cost-effective project. LSP Transmission would note that proposed Section 7.5.11 provides for Status Reports for approved Local and Regional Projects, and “cost estimates should be

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<sup>39</sup> Order No. 1000-A at P 456.

updated at this time”<sup>40</sup> in the 2<sup>nd</sup> Quarter. In addition, proposed Section 7.9.5 provides that “cost estimates for transmission solutions will be prepared in accordance with NCPTC cost estimate guidelines, which will be posted on the NCPTC website.”<sup>41</sup> This section on cost estimates appears to be relating to Local Projects, as it applies to projects “other than Regional Projects.”<sup>42</sup> For Regional Projects in Section 8.2.3, “fully loaded cost estimates including contingencies and overhead costs” are required. There is no such requirement for “fully loaded” Local Project cost estimates; therefore, the proposed cost comparison (and the proposed Benefit / Cost Ratio analysis) will be faulty.

A constructive solution to this comparability of cost estimates issue to a 1) modify Section 7.5.11.1 to require that cost estimates of Local and Regional Projects in the Collaborative Transmission Plan be updated in Quarter 1 (“Q1”), not Q2. That way, when competing Regional Projects are being formulated in Quarter 2, there could be clear transparency as to the costs of the local projects in the Collaborative Transmission Plan (as the updated Local Project costs would be public by beginning of Q2, and adequate time in Q2 would be provided to propose Regional Projects in Q3), 2) make the cost estimates of Regional Projects also subject to Section 7.9.5, so both the formulation of cost estimates for Regional and Local Projects are “prepared in accordance with NCTPC cost estimate guidelines, which will be posted on NCTPC website”; 3) remove the reference in Section 8.2.3.10 to using the prior year cost estimates and instead, use the updated cost estimate in Section 7.5.11.1 for comparison purpose and 4) require that the Local Project estimate and update prepared under Section 7.9.5 also include the costs of “any additional projects required

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<sup>40</sup> Attachment N, Section 7.5.11.

<sup>41</sup> Attachment N, Section 7.9.5.

<sup>42</sup> Attachment N, Section 7.9.5.

to implement the [local] proposal” to be consistent with the Cost of the Regional Project<sup>43</sup> methodology, as well as a “fully loaded” cost estimate including contingency costs and overhead, similar to the requirement for Regional Project cost estimates in Section 8.2.3. The Cost of the Regional Project in Section 9.3 mandates that costs of “any additional projects required to implement the proposal” be included in the cost estimate. Thus, when the avoided cost comparison is made under Section 9.3 between Local and Regional Projects there is more of a comparable comparison.

#### **D. The Selection Process for Regional Projects**

##### **1. North Carolina’s Three-Prong Screening Process**

Section 8.3 of the proposed process describes a proposed three-prong screening process for Regional Projects: a) a Developer Screen; b) a Technical Analysis Screen; and c) a Benefit Analysis Screen. Section 8.3.5 provides that “if a Regional Project fails any of the three screening analyses, any other analysis will be stopped.” LSP Transmission has several concerns on this.

Under the North Carolina Sponsor’s proposal, it appears that Project Developer qualification occurs after submission and selection of projects. This is inappropriate. Project Developer qualification should occur before the Regional Project submission window.<sup>44</sup> Making qualification determinations (with a written comment stakeholder process before the OCS) in tandem with the technical analysis screen and benefit analysis screen is a recipe for mischief.

In addition, as drafted the “Benefit Analysis Screen” in proposed Section 8.3.3.1 is inappropriate. Section 8.3.3.1 requires that a “1.25 Benefit/Cost Ratio” must be achieved in order for a Regional Project to advance to the Regional Project Selection phase however the Benefit/ Cost

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<sup>43</sup> Attachment N, Section 9.3.

<sup>44</sup> LSP Transmission would suggest that the Qualification Period occur in Q1, at the same time that LSP Transmission is suggesting that the cost estimates for Local and Regional Projects already in the Collaborative Plan are updated under proposed Section 7.5.11.1. Updating the cost estimates in Q1, along with a qualification process in Q1, would be a minor modification to the proposed process, but would address LSP Transmission concerns.

Ratio does not measure ‘benefits’ but is simply a disguised “avoided cost approach.” Section 9.3 as “Total Cost of Transmission Avoided ÷ Cost of the Regional Project (including the cost of any additional projects required to implement the proposal)  $\geq 1.25$ .”<sup>45</sup> In other words, a Regional Project has to be 25% less than a combination of Local Projects or Regional Project that is already in the Collaborative Transmission Plan. There is no comparison or discussion of actual benefits, only costs.

LSP Transmission’s position is that the “avoided cost” approach is inappropriate. Under a true “avoided cost” comparison, the test should not be if a competing project is 25% less expensive than a project in the Collaborative Transmission Plan. Rather, the test should be if a competing reliability or public policy Regional Project is any percentage less expensive than a project(s) in the Collaborative Transmission Plan.

LSP appreciates that Order 1000 created a 1.25 Benefit to Cost Ratio floor, but that ratio was in the context of economic projects. In addition, a 1.25 Ratio is inappropriate here as the proposed formula has no focus on “benefits” and therefore is not a true Benefit/ Cost ratio. Avoided costs are not the entirety of project benefits for non-reliability projects. The North Carolina Sponsors defend the 1.25% ratio by arguing that it use of the ratio is “quite objective”<sup>46</sup> and that it accounts for the fact that actual costs to ratepayers are “difficult to predict.” Although LSP Transmission agrees that actual costs can be difficult to determine, LSP Transmission disagrees with the assumption that such costs are any more difficult to predict with respect to nonincumbents than incumbents.

Interestingly, the North Carolina Sponsors’ assert that a criticism of the 1.25 ratio approach is the potential that “it encourages low-balling of capital estimates by Developers of Regional

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<sup>45</sup> Attachment N, Section 9.3

<sup>46</sup> Compliance Filing at 23.

Projects.” LSP Transmission’s position is just the opposite as the ratio approach encourages the incumbent Transmission Providers to “low ball” their cost estimates because if a non-incumbent project cannot meet the ratio it is not considered further. The North Carolina Sponsors suggest a mechanism to question non-incumbent costs if they are “too low” but there is no evidence of a process to ensure that the identified incumbent costs are accurate.

For Economic Projects arising out of the Economic Study Process, a Benefit to Cost Ratio of 1.25 would be appropriate. However, in this case, the Economic Study Process described in Section 6 does not have a well-defined mechanism or Commission-approved formula for determining the Benefit / Cost Ratio. There remains significant uncertainty regarding what specific cost and benefit inputs are eligible for inclusion for Economic Study Process projects. There is absolutely no guidance provided in the tariff on how this threshold calculation would occur in Proposed Section 6. In summary, even generic statements do not specify how NCTPC will evaluate and include these types of benefits.<sup>47</sup>

In conclusion, LSP Transmission urges the Commission to eliminate the benefit/cost ratio. For reliability and public policy projects, the avoided cost measure should be if a competing reliability or public policy Regional Project is any percentage less than a project(s) in the Collaborative Transmission Plan, using consistent cost estimates. For economic projects in Section 6, the Commission should require North Carolina to adopt specific *tariff* provisions and, in some cases, formulas embodied in the tariff, to ensure

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<sup>47</sup> The Commission has expressly required other RTO/ISOs to adopt specific *tariff* provisions and, in some cases, formulas embodied in the tariff, to ensure transparency in the selection of economic projects for cost allocation. *See, e.g., PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218 (2006) (conditionally accepting proposed revisions to PJM’s regional transmission expansion planning protocols (“RTEPP”) to include economic-based planning); *see also, PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,265 (2007) (finding that PJM had not adequately set forth how it would weigh the metrics to determine the benefits of an economic project and directing PJM to file a formulaic approach to choose an economic project); *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051 (2008) (accepting PJM’s formulaic approach subject to further compliance); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,152 (2009) (accepting PJM’s compliance filing and rejecting the requests for rehearing).

transparency in the selection of economic projects for cost allocation. LSP Transmission urges the Commission to direct Duke and Progress to file a formulaic approach in their tariff to determine the benefits of a Regional Project. In doing so, the Commission should clarify that stranded costs and other costs that are attributable to distribution facilities may not be included, and that specific economic cost savings as an element of expected project benefits must be calculated.

## **2. NCTPC Evaluation of the More “Cost-Effective or Efficient” Project**

A key legal deficiency of the Compliance Filing is that it misses the mark on what the selection of the “more cost effective” project really means under Order No. 1000. LSP Transmission takes the Commission at its word when it stated in footnote 307 to Order No. 1000 that

[A]s noted above, for one solution to be chosen over another in the regional transmission planning process, there should be an evaluation of the relative efficiency and cost-effectiveness of each solution. If a non-incumbent transmission developer is unable to demonstrate that its proposal is the most efficient or cost-effective, given all aspects of its proposal, then it is unlikely to be selected as the preferred transmission solution within the regional transmission planning process for purposes of cost allocation.<sup>48</sup>

Proposed Section 8.4.3 of the Compliance Filing outlines the NCPTC selection process. Proposed Section 8.4.3 offers the right “catchy” phrases of “efficient” and “cost-effective” but the actual selection process has no reference to cost and appears focused on ensuring that a new entrant will never be selected. In this regard, the selection process in Section 8.4.3.1, Section 8.4.3.2, and Section 8.4.3.3 is focused on comparing Engineering Design skills, Construction Project Management, and Operations History when comparing “multiple Developers proposing mutually exclusive Regional Projects.” Although each project has passed the benefit/cost screen, there is

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<sup>48</sup> Order No. 1000 at P. 331, footnote 307. Of course, for order No. 1000 to work, the converse must be true; if a project is demonstrated to be most efficient or cost-effective, it must be the project selected in the regional planning process.

nothing in the remaining selection determination factors that references the relative projects costs at all. The Process identified by the North Carolina Sponsors does not establish how the vague category of “capability” will be used in the selection determination, rather than the “relative efficiency and cost-effectiveness” of each solution. LSP Transmission’s position is that Order No. 1000 requires that least-cost projects should be selected (once qualified bidders are in the pool), unless the rationale for not selecting the least cost Regional Project is adequately justified in a non-discriminatory manner.<sup>49</sup>

The Commission should see the selection process proposed in North Carolina for what it is- a selection process to ensure that there will never be a new entrant successful in North Carolina and a selection process with absolutely no ability to determine real consumer benefits in determining Regional Projects. LSP Transmission strongly objects to the North Carolina Sponsor’s failure to focus on cost in the selection determination as the proposed selection process will produce unjust and unreasonable rates. In addition to adding provisions to focus on costs in the selection process, LSP Transmission asks that the Commission require the addition of language to Section 8.4.3 of the Compliance Filing that states:

Notwithstanding the previous paragraph, the OCS should treat an applicant for a project by a non-incumbent transmission owner no differently than any other application. The OCS must adequately justify its action if it denied the qualified Developer of the project the right to construct that project and receive the economic benefit of that project.

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<sup>49</sup> LSP Transmission believes that the purposes of strong qualification criteria to ensure that non-cost factors and criteria can also be a consideration in the process. The selection process should be focused on what produces just and reasonable rates, once qualified Developers are in the process. The Commission has also established powerful precedents in *Primary Power* of the importance of low-cost in the final selection process.



### **3. No Assurances Provided In Compliance Filing How The OCS Decision-Making Process Will Operate in a Non-Discriminatory Manner**

In Paragraph 328 of Order 1000, FERC “requires that each public utility transmission provider 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.” LSP Transmission notes that there are many seemingly transparent provisions suggested in the Compliance Filing to comply with Paragraph 328 transparency requirements; however, LSP Transmission notes a glaring omission of a “not unduly discriminatory process” description also required by Paragraph 328 in Order 1000.

The role of the Oversight Steering Committee (“OCS”) <sup>50</sup> in the NCTPC cannot be overstated. The Compliance Filing points to considerable authority and discretion that the NCTPC Oversight Steering Committee (“OSC”) has in making significant governance decisions in Order 1000 matters.<sup>51</sup> A few examples of role of the OSC:

- 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
- OSC reviews Planning Working Group (“PWG”) technical recommendations on a project’s future
- OSC determines if a Regional Project solves the same issues as alternative Local Projects
- OSC reviews Developer’s analysis to ensure a project meets a 1.25 Benefit/ Cost ratio
- OSC issues a report on screening analysis results
- OSC seeks written stakeholder comments on proposals, including the qualification of Developers and the proposed cost allocation
- OSC determines which regional projects should result in a more efficient and cost-effective transmission system.
- OSC issues a draft report indicating which regional projects are approved

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<sup>50</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)

<sup>51</sup> NCTPC committee structures will not be changed in conjunction with Order 1000.

- OSC identifies public policy needs, and issues a decision whether public policy is driving a particular solution

Given the magnitude of the power of the OSC, the Compliance Filing bears the burden of proving to the Commission 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. In fact, there is no description of any safeguards at the OSC that will put into place to ensure a non-discriminatory selection process. Thus, the Compliance Filing is inconsistent with the clear mandate of Paragraph 328 to “describe a not unduly discriminatory” selection process. LSP Transmission’s concern is further heightened by the fact that the Tariff defers to the NCTCP Participation Agreement rather than include the governance process in the tariff. That agreement, has the following provision

However, notwithstanding any other provisions herein, the investor-owned utilities shall not be bound by decisions of the OSC to the extent each of the investor-owned utilities reasonably determine such decisions, as related to reliability planning, are inconsistent with good utility practice or SERC and NERC established criteria or least-cost integrated resource planning principles. The investor-owned utilities shall each retain decision making authority for such decisions related to reliability planning consistent with their statutory responsibilities for reliability, subject to normal regulatory oversight.

Thus, in addition to giving the Transmission Providers half the votes in the OSC process, the Participation Agreement gives the Transmission Provider the opportunity to ignore the decision entirely. The burden to describe (and establish) a “not unduly discriminatory” selection process has not been met. The Commission should eliminate the potential for discriminatory behavior in the OSC process by both requiring that all decisions are made in a non-discriminatory manner and by requiring elimination of the Transmission Provider opt-out provision.

**4. The Commission Should Require The OSC To Affirmative State That All Decisions Were Made In A Non-Discriminatory Manner**

Section 8.5.3 of the proposed Tariff requires the OSC to issue “a Final Report on Regional Project Selection which includes a list of approved Regional Projects.” The report requirement does not contain a provision obligating the OSC to affirmatively attest that it undertook its duties in a non-discriminatory manner. LSP Transmission asks that the Commission require the North Carolina Sponsors to revise Section 8.5.3., adding as the second sentence: “In the OSC Final Report, the OSC shall affirmatively attest that the review and analysis performed by the OSC were done in a non-discriminatory manner and consistent with the analysis done on incumbent transmission owner projects.”

**5. Proposed Compliance Filing Suggests That a Regional Project Will Not Be Included In Regional Collaborative Plan Unless MOU Is Executed**

Section 8.7.1 of the proposed process states: “A Regional Project will not be included in the Collaborative Transmission Plan unless an MOU is executed.” Key required components of this MOU, as outlined in proposed Section 8.7.2 of the Compliance Filing, are: interconnection provisions, provisions indicating allocation of responsibility for meeting NERC standards, provisions indicating transmission service over facilities will be provided pursuant to Transmission Provider’s OATT(s) and delineation of which facilities are subject to the OATT, provisions relating to operational control of the facilities, provisions related to allocation of costs,<sup>52</sup> a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the facilities, provisions related to the responsibility for physical operation of

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<sup>52</sup> Particularly troubling is this particular requirement, as it suggests that the cost recovery treatment be in place, suggesting that the regional cost allocation methodology mandated by Order No. 1000 is not binding and new entrants are subject to “negotiated rate recovery”. In addition, pursuant to Paragraph 332 of Order 1000, “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”.

the Regional Project and maintenance of the Regional Project, provisions related to the assignment of the Non-Incumbent Developer Interconnection Agreement in the event the Developer seeks to assign such Agreement in the future, and provisions related to liability and indemnification. The purported basis for this MOU is to provide the Developer sufficient contractual certainty to seek siting approval.<sup>53</sup>

LSP Transmission's position is that it is entirely inappropriate for these items to be required in an MOU (executed by the non-incumbent and incumbent) prior to a Regional Project being included in the Collaborative Transmission Plan. Many of the above items in the MOU are multi-month or multi-year endeavors, depending on the Regional Project being proposed.<sup>54</sup> There is no obvious requirement that Duke and Progress have these items in place before placing their projects in the Collaborative Transmission Plan, and in fact, Section 8.7.2 is clear that this MOU is related to the Non-Incumbent Developer.

Duke and Progress have not supported that it is an appropriate requirement that the items listed above to be in place prior to "final" approval of a more efficient or cost effective project in the regional plan. The Commission should require that Duke and Progress amend that the Compliance Filing to place the items identified in the milestones section and require their achievement at appropriate times in the development process. The Commission should not allow any incumbent transmission the ability to "veto" any non-incumbent's project in the Collaborative Transmission Plan. By allowing a MOU to be executed by both the incumbent and non-incumbent prior to inclusion in the Collaborative Transmission Plan, providing the incumbent with veto rights over a project's inclusion in the Collaborative Transmission Plan is exactly what is occurring. The

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<sup>53</sup> Attachment N, Section 8.7.3.

<sup>54</sup> LS Power believes that the nature of some of these MOU and Non-incumbent Development Interconnection agreement items may need to be standardized and litigated at FERC ultimately.

incumbent transmission provider has no incentive to ever sign such a MOU, and rather just continue their Local Project in the Collaborative Transmission Plan.

#### **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

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<sup>55</sup> Compliance Filing at 16.

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.

## **VI. CONCLUSION**

WHEREFORE, for the reasons described in this filing, LSP Transmission requests that the Commission:

- (a) grant its motion to intervene in this proceeding;
- (b) reject the Compliance Filing;
- (c) if and to the extent that it does not reject the Compliance Filing, order revisions consistent with LSP Transmission’s comments.

Respectfully submitted,

By:                     /s/                      
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Jennifer M. Rohleder  
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Counsel for LS Power Transmission, LLC  
and LSP Transmission Holdings, LLC

Dated: November 26, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon each person listed on the official service lists maintained by the Secretary of the Commission in the above-captioned proceedings.

Dated at Washington, DC this 26th day of November, 2012.

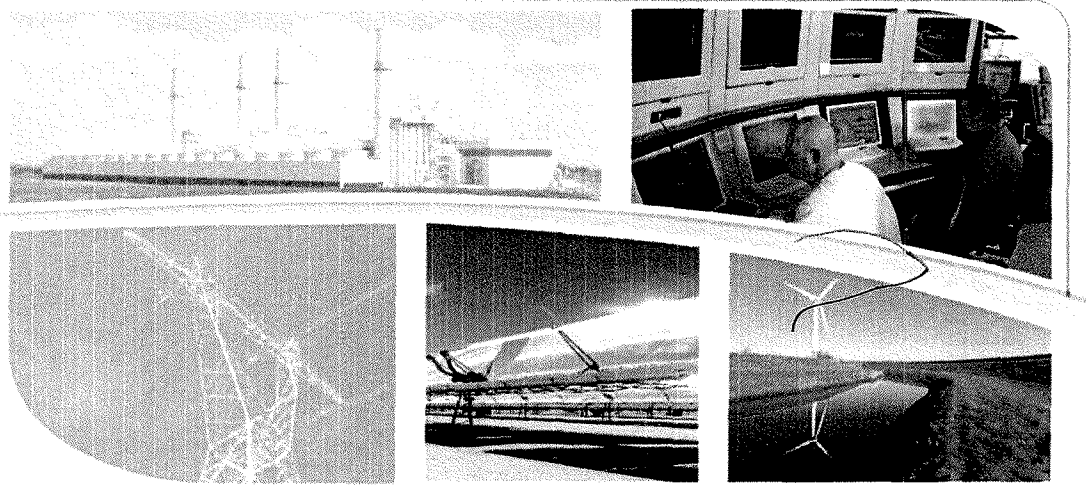
\_\_\_\_\_  
/s/  
Jennifer M. Rohleder  
Patton Boggs LLP  
2550 M Street NW  
Washington, DC 20037



## APPENDIX 1

**LSP TRANSMISSION HOLDINGS, LLC**

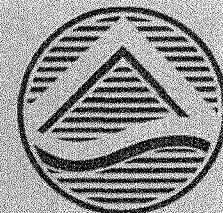
**COMMENTS TO NORTH CAROLINA TRANSMISSION  
PLANNING COLLABORATIVE:  
FERC ORDER 1000 COMPLIANCE**



# **LS Power Transmission Presentation to North Carolina Transmission Planning Collaborative: FERC Order 1000 and New Entrants**

**March 27, 2012**

***Bringing Energy Forward***



# LS Power

- LS Power is a power generation and transmission group

## Power Generation

- Over 25,000 MW of development, construction, or operations experience
- Active development of renewable and fossil generation resources

## Transmission

- 235-mile, 500 kV ON Line Transmission Project under construction
- 235-mile, 2-345 kV Cross Texas Transmission facilities under construction
- Advanced development of 275-mile, 500 kV Southwest Intertie Project

## Acquisition

- Over \$4 billion in private equity capital dedicated to energy sector
- Acquired ~ 17,000 MW of power generation

## Functional Expertise

Project Development

Licensing & Environmental

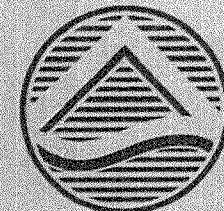
Regulatory & Transmission

Power Marketing

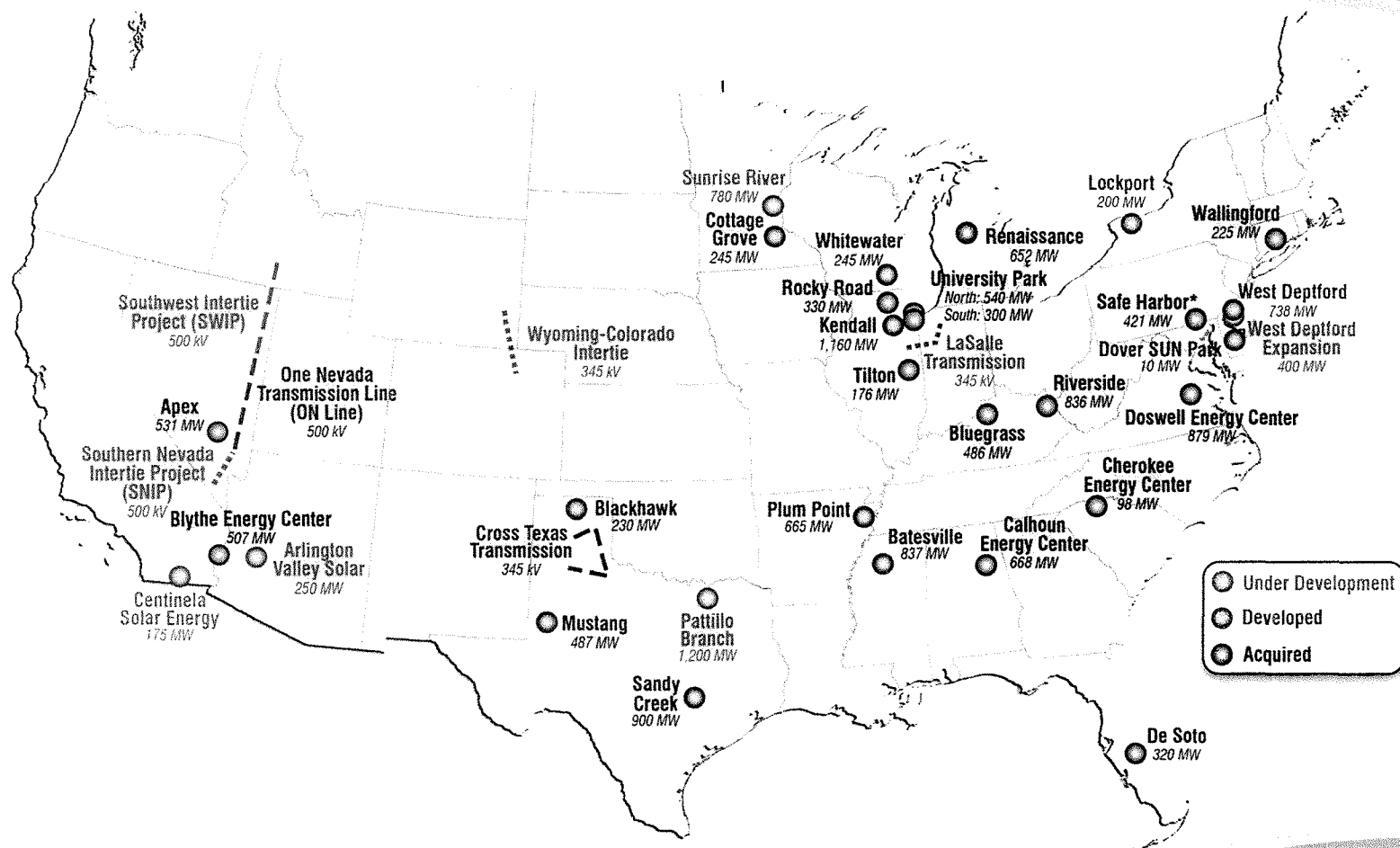
Project Finance

Construction & Operations

***Bringing Energy Forward***

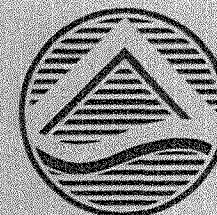


# Project Portfolio



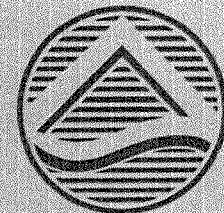
**Bringing Energy Forward**

\* One-third ownership interest in Safe Harbor



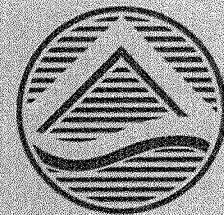
## FERC Order 1000 Requires Significant Compliance Related to New Entrants

- **Elimination of any provisions** that establish a federal right of first refusal for incumbent transmission provider with respect to projects selected in a regional transmission plan for purposes of cost allocation (Order No. 1000 ¶ 313);
  - LS Power's position is that this elimination of ROFR includes ANY project for which ANY of its costs are allocated regionally, including reliability, public policy, economic projects
- **Tariff revisions required** to establish appropriate qualification criteria for new entrants. Such qualification criteria must not be unduly discriminatory or preferential (Order No. 1000 ¶¶ 323-324);
- **Tariff revisions required** to outline information required in order to submit a project proposal (Order No. 1000 ¶ 325).

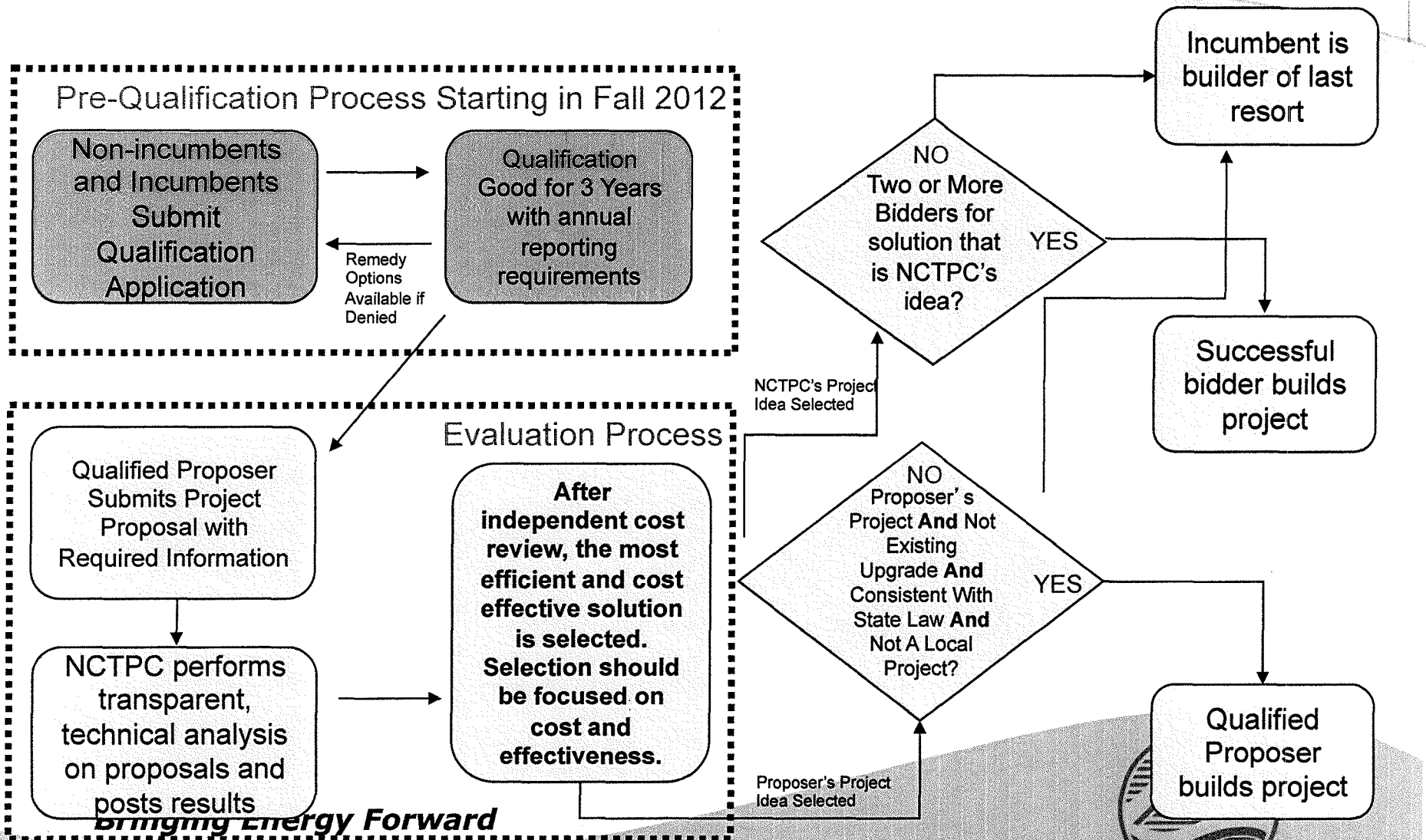


## FERC Order 1000 Requires Significant Compliance Related to New Entrants

- **Tariff revisions required** to outline a transparent and not unduly discriminatory or preferential process in evaluating whether to include a proposed transmission facility in the regional plan (Order No. 1000 ¶ 328);
- **Tariff revisions required** to outline the Timing, Process, and Circumstances when a Transmission Project should be Reevaluated (Order No. 1000 ¶ 329).
- **Tariff revisions required** to provide for comparable opportunity for incumbent and non-incumbent to recover the cost of a transmission facility through regional cost allocation (Order No. 1000 ¶ 332).



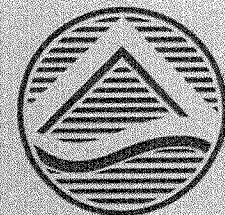
# FERC Order 1000 Process





# **Proposed Qualifications to be a Transmission Developer in North Carolina Transmission Planning Collaborative Region**

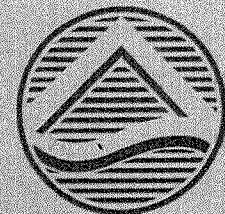
- FERC Order 1000 is clear on Qualification Ground Rules
  - Financial and Technical Criteria Must be established
  - FERC Order 1000 was clear that the criteria must not be unduly discriminatory or preferential.
  - The qualification criteria should be fair and not unreasonably stringent, applying to existing utilities, their affiliates, and new entrants.
  - Qualification criteria should allow for the possibility that an existing public utility transmission owner already satisfies the financial and technical criteria, and should allow any transmission developer the opportunity to remedy any deficiency.
- LS Power's Proposed Pre-Qualification Process



# Transmission Developer Qualification Criteria

## **Proposed qualification criteria should be:**

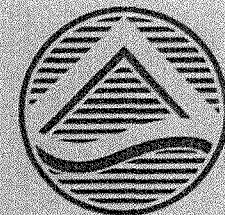
- Demonstration of entity's ability to meet financial criteria
  - Demonstrated capability of a parent company, affiliate, or project company financing U.S. energy projects equal or greater than the lesser of \$500 million dollars or the capital cost of the proposed transmission project
  - Material degradation of the financial condition of the entity once qualified can be grounds for termination of qualification status and project re-assignment.



# Transmission Developer Qualification Criteria

## **Proposed qualification criteria should be:**

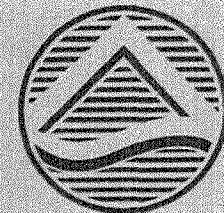
- Demonstration of entity's technical ability
  1. Demonstrated capability of a parent company, affiliate, or project company developing, constructing, operating and maintaining U.S. energy projects of similar or larger complexity, size, and scope of the proposed project
  2. Must show that applicant has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate
- FERC Qualification Criteria on Hydroelectric Facilities and Natural Gas Pipeline is helpful in this regard:
  - »Exact FERC standard: "Must show that applicant has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate"
  - »FERC's regulations on qualifications related to natural gas pipelines are found at 18 C.F.R. Part 157, Subpart A and FERC's regulations on qualifications related to hydroelectric facilities are found at 18 C.F.R. Part 4, Subparts D and E.



## Transmission Developer Qualification Criteria (cont.)

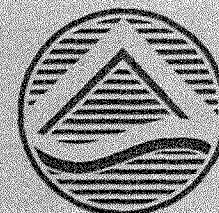
### **Proposed qualification criteria should be:**

- Willingness of entity to join North Carolina Transmission Planning Collaborative when eligible;
- Willingness of entity to register with NERC when required and eligible under the applicable NERC regulations;
- Willingness of entity to apply for state public utility status if assigned a project. Generally part of the CPCN application.
- Willingness of entity to apply for eminent domain authority at appropriate time under state law for the project



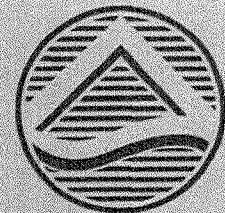
# Information Required to Be Submitted with Project Proposal

- **Information required to be submitted with any Project Submittal by any Qualified Developer include:**
  - Contact Information
  - Date of Completion of Pre-Qualification Process
  - Name of Project Entity to Be Assigned Project
  - Project Description
    - » Scope of Project
    - » Capital Cost Estimate
      - » All projects, including incumbent proposals, passing initial screens should be subject to independent cost estimate review for capital costs
      - » Estimated revenue requirement, including the proposed ROE
    - » Proposed Schedule for Development, Construction, and Operation Date
      - » Identification of Internal Organizational Expertise
    - » Plan for post construction, maintenance, and operation of the proposed line.
      - » Intention of Joining RTO and Becoming a Transmission Owner must be clearly stated
    - » Identification of applicable CPCN requirements and applicable state jurisdiction requirements
  - **Deposit Required with Each Project submittal (Incumbents and New Entrants) - \$25,000**

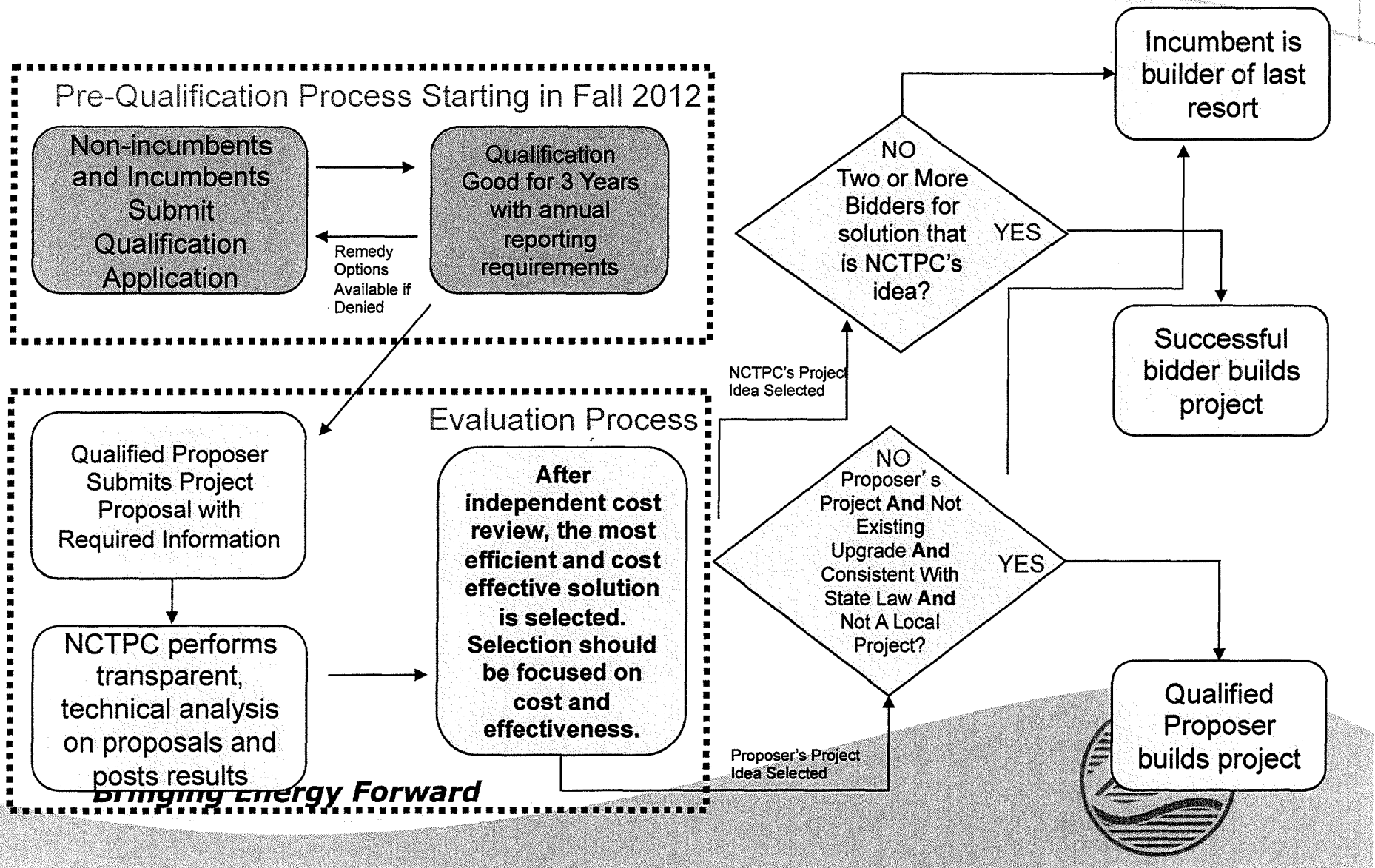


# Requirements necessary for Project Evaluation

- Two basic options exist to award transmission projects:
  1. Project Sponsorship ; and
  2. Competitive Solicitation
- Sponsorship/Competitive Solicitation Combinations also exist;
- LS Power recommends a hybrid approach to awarding transmission projects proposed in NCTPC process.
  - Project Sponsorship for transmission projects submitted into NCTPC for approval; and
  - Competitive Solicitation for projects approved for regional cost allocation but no project sponsor
  - Competitive Solicitation for projects proposed by NCTPC.

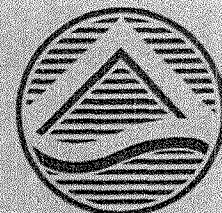


# FERC Order 1000 Process



# Requirements necessary for Project Evaluation

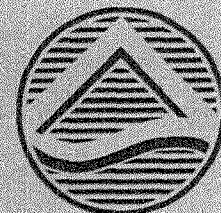
- NCTPC filing should reflect a not unduly discriminatory or preferential process for evaluation and inclusion in NCTPC process;
  - Additionally, solution shall include sufficient details for stakeholders to understand why a particular solution was selected.
  - Information on system needs should be transparent.
- Efficient and Cost-Effective Solutions should be the most important component and the FOCUS of the ultimate evaluation mix
- LS Power notes that it is imperative that the cost estimates included as a part of the selection criteria be uniformly applied to all utility (incumbent and non-incumbent) proposals.
- LS Power recommends the use of an external transmission project selection administrator
- Additional Assignment Criteria  
***Bringing Energy Forward***





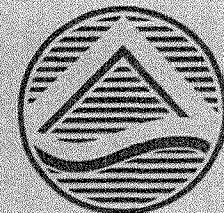
# Key Market Structure Comments

- If NCTPC adopts competitive bidding, the efficiency and cost-effectiveness of the competing solutions should make up the VAST majority of the decision points.
  - **NOTE: Paragraph 331 of FERC Order 1000. “Whether or not public utility transmission providers within a region select a transmission facility in the regional plan for purposes of cost allocation will depend in part of their combined view of whether the transmission facility is an efficient or cost-effective solution to their needs. Footnote 307: As noted above, for one solution to be chosen over another in the regional transmission planning process, there should be an evaluation of the relative efficiency and cost-effectiveness of each solution...”**
- **COST and EFFECTIVENESS of solutions must be majority-weighted in selection**



# Key Market Structure Comments

- NCTPC must develop a process to handle unsponsored projects, or projects that NCTPC comes up with, if NCTPC pursues a sponsorship model.
  - Paragraph 336, FERC Order 1000: “..The mechanism a regional planning process implements could also allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project. In that case, however, the regional transmission planning process would need to have a fair and not unduly discriminatory mechanism to grant an incumbent transmission provider or non-incumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional plan for purposes of cost allocation.”
- *LS Power view in light of Paragraph 336, FERC Order 1000: Unsponsored projects (i.e. Projects that NCPTC comes up with) should not automatically be assigned to the incumbent utility. There must be a fair and not unduly discriminatory mechanism for these projects.*



# Contact Information

***LS Power Development, LLC***

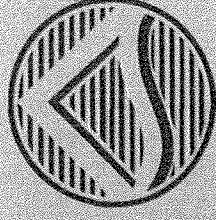
***Sharon K. Segner***

***Associate Vice President***

***636.484.0379 (cell)***

***[ssegner@lspower.com](mailto:ssegner@lspower.com)***

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**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](mailto: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 27<sup>th</sup> 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	<b><u>Regional Project Definition:</u></b>  "Regional Projects: <ul style="list-style-type: none"><li>As a general rule, encompass multiple Transmission Providers' service territories</li><li>Voltage level of 230 kV or above</li></ul>	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	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.

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

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
	<ul style="list-style-type: none"> <li>• <i>Project Cost must be at least \$10 million</i></li> </ul>	<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>

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	"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>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>

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	"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>



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
		incumbent. Indeed, most tariff language need not distinguish between the party submitting the proposal at all.	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.  The NCTPC Order No. 1000 Strawman outlines one set of rules that would be used for both incumbent and non-incumbent developers.
11	<p><b><u>Information Required in A Proposal:</u></b></p> <p>“Project Sponsors submit proposed regional projects with the following information:</p> <ul style="list-style-type: none"> <li>• Transmission project technical and cost information</li> <li>• Identify any potential impacts to other transmission projects in the plan</li> <li>• Reliability impact assessment</li> </ul>	<ul style="list-style-type: none"> <li>• 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</li> </ul>	<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>

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
		<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"> <li>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.</li> </ul>	<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>

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
		<ul style="list-style-type: none"> <li>• 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 NCTPC 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.</li> <li>• 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.</li> </ul> <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  — <a href="http://www.pjm.com/~media/committees-groups/committees/teac/20111103/20111103-mep-a-1-byron-cherry-valley-pleasant-valley.ashx">http://www.pjm.com/~media/committees-groups/committees/teac/20111103/20111103-mep-a-1-byron-cherry-valley-pleasant-valley.ashx</a></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><b><u>Information Required in A Proposal:</u></b></p> <p>“Project Sponsors submit proposed regional projects with the following information:</p> <ul style="list-style-type: none"> <li>Project benefits, beneficiaries, and proposed allocation of costs to the beneficiaries based on benefits”</li> </ul>	<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><b><u>Information Required in A Proposal:</u></b></p> <p>“Project Sponsors submit proposed regional projects with the following information:</p> <ul style="list-style-type: none"> <li>Transmission project technical and cost information</li> </ul>	<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><b><u>NCTPC Performs Evaluation of Proposed Regional Projects</u></b></p>	<ul style="list-style-type: none"> <li>LS Power Transmission is unclear as to the proposal’s intent with regard to individual entity approval process. The purpose of</li> </ul>	<p>For clarity, the NCTPC adopts a transmission plan that meets the obligations of both Order Nos. 890 and</p>

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
	<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"> <li>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.</li> <li>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.</li> </ul>	<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"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<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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13	<p><b><u>NCTPC Performs Evaluation of Proposed Regional Projects</u></b></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"> <li>Any Dispute Resolution Process should be clearly defined.</li> <li>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.</li> </ul>	<p>effective for the NCTPC region.</p> <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"> <li>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</li> </ul>	<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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		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.	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.
17	<b><u>Conclusion of the Process:</u></b> <ul style="list-style-type: none"> <li>If the proposed Regional Project passes each of the above Steps 1-6, then the project will be included in the NCTPC transmission plan.</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>	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.



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

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**FILED**  
JUL 27 2012  
Clerk's Office  
N.C. Utilities Commission

July 27, 2012

Ms. Gail Mount  
Chief Clerk  
North Carolina Utilities Commission  
Fifth Floor, Room 5063  
430 N. Salisbury Street  
Raleigh, NC 27603

**VIA HAND DELIVERY**

***Re: In the Matter of  
Investigation of Federal Requirement to Consider Transmission  
Ownership by Non-Incumbent Developers  
North Carolina Utilities Commission Docket E-100, Sub 132***

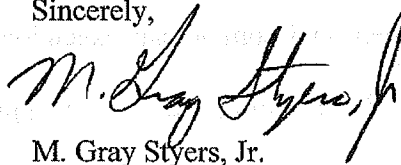
Dear Ms. Mount:

Enclosed for filing are an original and 31 copies of LSP  
Transmission Holdings, LLC's Comments in Response to  
Commission Order dated 5/21/2012 in the above referenced  
docket.

Please stamp the extra copy as "Filed" and return to me via our  
courier.

Thank you for your assistance with regard to this matter. If you  
have any questions concerning this submission, please do not  
hesitate to contact me.

Sincerely,

  
M. Gray Styers, Jr.

pbb

Enclosures

M. Gray Styers, Jr.

Karen M. Kemerait

Charlotte A. Mitchell

Deborah K. Ross

cc: All parties of record (w/enclosures)

{SK009215.DOCX }

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-100, SUB 132

FILED

JUL 27 2012

Clerk's Office  
N.C. Utilities Commission

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION:

In the Matter of:

Investigation of Federal Requirement to  
Consider Transmission Ownership by Non-  
Incumbent Developers

) **COMMENTS**  
) **BY LSP TRANSMISSION**  
) **HOLDINGS, LLC**  
) **IN RESPONSE TO**  
) **COMMISSION ORDER**  
) **ISSUED MAY 21, 2012**

NOW COMES LSP Transmission Holdings, LLC ("Respondent" or "LS Power"), by and through its undersigned attorneys, and respectfully submits to the North Carolina Utilities Commission (the "Commission") its Comments in Response to Commission Order issued May 21, 2012 in the above-captioned docket. LS Power hereby responds to the Commission's Order seeking input into legal and policy issues relating to non-incumbent transmission development and ownership in North Carolina.

**BACKGROUND AND INTRODUCTION**

LS Power, together with its affiliates (the "LS Power Group"), is engaged in the development, acquisition, and management of power generation and transmission infrastructure. The LS Power Group has a proven track record of successful development activities, operations management and commercial execution. Highly regarded in the financial community, the LS Power Group has raised approximately \$17 billion to support investment in energy infrastructure since inception. On the power generation side, the LS Power Group has been involved in the development, construction or operations of over 25,000 MW of power generation throughout the United States and

currently own over 7,000 MW of generation, including 98 MW Cherokee Energy Center in Gaffney, South Carolina, 879 MW Doswell Energy Center in Ashland, Virginia, 320 MW Desoto Energy Center in Arcadia, Florida, and 668 MW Calhoun Energy Center in Eastaboga, Alabama.

LS Power transmission affiliates currently have under construction today approximately 235 miles of 500-kV transmission lines in Nevada and approximately 240 miles of double-circuit 345-kV transmission lines in Texas. For its Nevada transmission project, the transmission project will be operated and maintained under the OATT of NV Energy. A transmission affiliate of LS Power is a regulated public utility in the State of Texas.

LS Power was an advocate before the Federal Energy Regulatory Commission ("FERC") for elimination of barriers to entry that would prevent entities like LS Power from competing to build cost of service transmission<sup>1</sup>. LS Power's position before FERC was simple: allow qualified parties to submit proposals and compete on a level playing field and then let the best regional project, defined as the most efficient and cost-effective to consumers, prevail. Order 1000 provides that opportunity. In Order 1000, FERC is clear that the regional transmission planning process must result in regional projects where the more efficient or cost-effective solutions are selected. FERC Order 1000 does

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<sup>1</sup> LS Power was not alone in this advocacy. The Federal Trade Commission, the Pennsylvania Public Utilities Commission, New Jersey Board of Public Utilities, Public Utilities Commission of Ohio, Ohio Consumers' Counsel, West Virginia Consumer Advocate Counsel, California Public Utilities Commission, Massachusetts Department of Public Utilities, Connecticut Department of Public Utility Control and other key state commissions weighed in supporting FERC on the basis of consumer benefits. In addition, large industrial consumers including American Forest and Paper Association, Electricity Consumers Resource Council, American Chemistry Council, Association of Businesses Advocating Tariff Equity, Carolina Utility Customers Association, Coalition of Midwest Transmission Customers, Florida Industrial Power Users Group, Georgia Industrial Group-Electric, Industrial Energy Users-Ohio, Oklahoma Industrial Energy Consumers, PJM Industrial Customer Coalition, West Virginia Energy Users Group and Wisconsin Industrial Energy Group also weighed in supporting FERC in their policy. Appendix A to these comments is an excerpt of comments filed by LS Power Transmission, LLC in the FERC Order 1000 docket which provides a full summary of such support.

not allow "local" projects or upgrades to existing transmission to be open to competitive pressures, only projects that are cost-allocated on a regional basis.

LS Power recognizes that, if the non-incumbent transmission developer under FERC Order 1000 is to compete successfully for regional projects in any region, they must demonstrate that: a) they are qualified, and b) their proposal is the most efficient or cost-effective proposal. Indeed, FERC stated in Order 1000:

"As noted above, for one solution to be chosen over another in the regional transmission planning process, there should be an evaluation of the relative efficiency and cost-effectiveness of each solution. If a non-incumbent transmission developer is unable to demonstrate that its proposal is the most efficient or cost-effective, given all aspects of its proposal, then it is unlikely to be selected as the preferred transmission solution within the regional transmission planning process for purposes of cost allocation.<sup>2</sup>"

FERC Order 1000 opens the door that if the non-incumbent proposes the most cost-effective and efficient regional solution, then a qualified non-incumbent could be awarded a regional transmission project. LS Power simply wants the ability to be able to propose projects and have them considered on a level playing field, with the overall result of reduced costs to consumers.

## **RESPONSES TO APPENDIX A QUESTIONS**

**1. Are there any such laws or rules in North Carolina that would restrict or prevent the construction/ownership of transmission facilities by non-incumbent transmission providers?**

<sup>2</sup> FERC Order 1000, Footnote 307.

**Response:** No, there appear to be no laws or rules in North Carolina that would restrict or prevent the construction/ownership of transmission facilities by non-incumbent transmission providers.

LS Power acknowledges and supports the public interest in avoiding uneconomic duplication of transmission lines and does not contest the Commission's jurisdiction to determine when and under what conditions transmission lines can be built, pursuant to the provisions of Article 5A of Chapter 62 of the General Statutes – by either incumbent or non-incumbent transmission providers. A non-incumbent transmission provider, such as LS Power, would be considered a “public utility,” under the definition in N.C.G.S. § 62-100(6) in that it would be a “private corporation” “organized under the laws of . . . [an]other State . . . engaged in . . . transmitting electricity for private or public use.”

Pursuant to N.C.G.S. 62-101(a), LS Power – as a “public utility or any other person” -- must first obtain from the Commission “a certificate of environmental compatibility and public convenience and necessity” (“CPCN”) before beginning to construct any new transmission line. Any non-incumbent transmission owner would need to comply with the provisions of NCUC Rule R8-62, applicable to a “public utility [as defined in N.C.G.S. 62-100(6)] or other person.” This rule sets forth in detail the filing requirements of “the applicant” for the certificate of environmental compatibility and public convenience and necessity. This rule does not limit the definition or scope of “the applicant” (the term used throughout this rule) to only incumbent electric suppliers.

Once a non-incumbent transmission provider such as LS Power has its certificate and the legal authority to construct the lines, it will also be a private condemnor pursuant to N.C.G.S. § 40A-3(a)(1). Under that statute, persons having the power of eminent domain include corporations constructing "electric power transmission lines." LS Power acknowledges that any exercise of this eminent domain authority must follow the procedures of Article 2 of Chapter 40A of the General Statutes.

So long as a non-incumbent transmission owner, such as LS Power, would not be furnishing electric service directly to any retail customers (or "premises" as defined by N.C.G.S. 62-110.2(a)(1)), it would not be an "electric supplier" as defined by N.C.G.S. 62-110.2(a)(3).<sup>3</sup> Therefore, exclusive service rights and obligations pursuant to N.C.G.S. § 62-110.2(b), and exclusive territorial assignments, pursuant to N.C.G.S. § 62-110.2(c)(1), would not apply to a non-incumbent transmission providers, such as LS Power.

**2. If non-incumbent transmission ownership were allowed by North Carolina laws and regulations, would such transmission owner be subject to state-level price regulation and recovery? If not, how would their costs be recovered and from whom, and how would their return on equity be established?**

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<sup>3</sup> The term "electric supplier" under N.C.G.S. § 62-110.2 is much narrower than the definition of "public utility" elsewhere in the statutes, in that it pertains only to those "furnishing" electric service, rather than the broader scope of "producing, generating, transmitting, delivering, or furnishing electricity for private or public use."

**Response:** FERC Order 1000 identified two types of transmission projects: (1) “local” projects and (2) “transmission facilities that are selected in a regional transmission plan for purposes of cost allocation” or referred to in these comments as “regional” projects.

Under Order 1000, local projects (defined as exclusively within the retail footprint of the incumbent transmission owner and paid for exclusively by the transmission owner’s ratepayers), remain exclusively the domain of incumbent transmission owners. The cost for such projects will continue to be determined as they are today -- as part of bundled retail rates for those companies under bundled retail rates or by FERC for those companies not under bundled retail rates.

Regional projects -- whether built by an incumbent or non-incumbent -- will continue to have their costs approved by the Federal Energy Regulatory Commission. The premise of Order 1000 is that the projects selected in the regional process for regional cost allocation will be the most efficient and cost effective project, thus less expensive to ratepayers than local projects or other alternative projects. The regional planning process has latitude under Order 1000 to determine what type of process will be implemented within the region to ensure that the most efficient and cost effective project is chosen. In this regard, nothing in Order 1000 prevents the regional process from soliciting fixed price projects or other mechanisms to keep costs within a predictable range for projects which, if selected, will already have been determined to be the most efficient and cost effective. LS Power has supported these and other innovative cost containment approaches as one of the significant benefits of competition. So long as the rules are fair and non-discriminatory, the outcome of



Order 1000's required regional planning should be that the best project, at the lowest cost, is the project that is ultimately built.

Under the Order 1000 framework, FERC would set the return on equity for regional projects selected in the Order 1000 regional planning process. LS Power understands why some states, and more importantly ratepayers, have concern regarding cost containment for regional projects given the incentive returns on equity awarded by FERC in certain past proceeding. Indeed, it was some of those returns on equity that led LS Power to assert that non-incumbent developers should be permitted to compete with incumbent developers for cost-of-service projects -- not to get the returns incumbent transmission developers insisted were necessary for them to build transmission, but to provide ratepayers with lower cost options. Order 1000 allows for that type of competition, including the possibility of bidding specific returns on equity for project proposals. In this regard, LS Power affiliates have been active in proposing projects into PJM; for these PJM projects, the incentive rate filings at FERC have proposed the waiver of all incentives other than the FERC standard 50-basis-point adder for RTO membership, a thirty-year depreciation life for the asset, and abandonment recovery if the project is later canceled by the planning entity.

LS Power believes -- and has experience to demonstrate -- that allowing the participation of non-incumbents in the development of regional transmission projects will provide competitive cost containment pressure on incumbent transmission owners that has previously not been there. For example, in 2009 in PJM, the PATH project was included in the Regional Transmission Expansion Plan ("RTEP") as a carryover from the 2008 plan. At that time, the PATH project had just raised its

projected cost from \$1.8 billion to \$2.1 billion and had applied for and received approval for a 14.38% return on equity, inclusive of incentives. An LS Power affiliate proposed an alternative to PATH for \$1.3 billion – a savings of \$800 million. After PJM confirmed that the LS Power project would address the same reliability needs that had lead to the PATH project, PJM also received and reviewed other alternatives, including one developed by PJM itself. Ultimately, the reduction in load projections related to the downturn in the US economy eliminated the reliability needs that PATH was to address and the project was removed from the RTEP. However, if it were not for the ability of non-incumbent developers to construct and own transmission projects in PJM, there would have been no reviewed alternatives to the PATH project and ratepayers in PJM would have paid for a \$2.1 billion line and 14.38% return on equity with a limited alternative review process – and not fully knowing if a lower-cost alternative existed.

If a non-incumbent transmission provider proposes the most efficient and cost effective project, it should be permitted to construct and own that project. If the incumbent transmission owner proposes the most efficient and cost effective project, it should retain the right to build that project. At the end of the day, ratepayers are the winners. Furthermore, the North Carolina Commission retains full authority over siting any project (as discussed above in response to Issue 1) and, if it is unhappy with the regional process, can insist that purely “local” projects be built. If the

Commission believes the selected developer of the project is not qualified, it retains full authority to deny the request for state public utility status or CPCN.<sup>4</sup>

**3. If non-incumbent transmission ownership were allowed by North Carolina laws and regulations, would such transmission owner be subject to the North Carolina Utilities Commission's authority over service quality?**

**Response:** Yes. As a "public utility" with a CPCN, the non-incumbent would be subject to the same service quality review that incumbent transmission owners currently are. To the extent that current service quality rules could be interpreted to apply only to entities supplying service at the retail level (which non-incumbent transmission developers would not be doing), LS Power would have no objection to either revising the rules or to a requirement in the regional transmission planning process that requires a selected non-incumbent to voluntarily submit to such oversight.

It is also important to note that the exact structure under which non-incumbent transmission developers would provide service in states such as North Carolina remains open to discussion in the Order 1000 compliance stakeholder process.

Because the costs of regional projects will ultimately be borne by the retail ratepayers, there will need to be a mechanism developed to collect the cost of the regionally allocated project from the transmission owners who have those retail customers.

Issues related to open access to the new line also must be addressed. To date these discussions have centered around putting the non-incumbent owned project under the

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<sup>4</sup> It is the intention of LS Power to apply for state public utility status in states where it is awarded a regional transmission project that is regionally cost-allocated.

control of the incumbent transmission owner's Open Access Transmission Tariff. When or how such agreement would cover operation and maintenance costs remains the subject of discussion.

For purposes of this inquiry, LS Power believes that it is sufficient to note that service quality will be the subject of Commission oversight, whether that be through the non-incumbent developer or through the incumbent transmission owner as the operator of the new facilities.

**4. Would the citizens of North Carolina be better served by the construction and ownership of regional transmission facilities by non-incumbent transmission developers or by the continued exclusive ownership by Duke, Progress and Dominion?**

**Response:** LS Power believes that the citizens of North Carolina will be best served by allowing the option for non-incumbents to compete for regional projects. North Carolina -- through no small measure the result of regulation by the Commission -- has the benefit of having quality retail public utilities in Duke, Progress and Dominion. Each of those companies has served the state's retail ratepayers well and will no doubt continue to do so in the future. Allowing non-incumbent transmission development is neither an indictment nor criticism of the existing utilities nor a suggestion that they have performed poorly. It is simply a determination that ratepayers in North Carolina will benefit from competition in the development of new regional transmission projects, just as phone customers have reaped the benefits of competitive pressures.

The benefit of competition could be realized in several areas. It could be that competitive pressure results in a more efficient, lower-cost transmission solution, such as in the PATH example described above. It could be that a non-incumbent transmission company identifies a transmission project that provides cost savings to rate-payers through more efficient generation dispatch that has not been identified by the incumbent utility. It could be that an alternative transmission provider could construct a given facility at a lower cost. Or it could simply be that the possibility of a competitive supplier motivates the incumbent utilities to develop more efficient, lower-cost transmission solutions. In all cases, the result is savings to North Carolina ratepayers through improved transmission planning.

Evidence of the ability of new entrants to perform at a lower cost can be found in the State of Texas. The Texas Public Utilities Commission conducted a transmission planning process (commonly referred to as "CREZ") that resulted in several new entrants becoming public utilities. A LS Power affiliate, Cross Texas Transmission LLC, is currently constructing approximately 240 miles of double-circuit 345 kV transmission lines as a regulated public utility. There is a significant range for construction costs among the incumbent and non-incumbent project developers in Texas. To date, the new entrant, Cross Texas Transmission's capital cost per mile for double circuit transmission lines is the lowest in the Texas CREZ process.

The table below illustrates this, showing the latest estimates reported to the Public Utilities Commission of Texas for the installed cost per mile of the CREZ transmission lines currently under construction. While some of the difference may be

attributed to differences in real estate costs, specific siting issues, and other factors beyond the control of the developer, it can be seen that there is a very significant range for construction costs even for the same technology (double circuit 345 kV overhead transmission) in the same area (all within Texas) at the same time (all to be placed in service during 2012 and 2013). The highest cost per mile rate is approximately 55% more than the lowest.

Transmission Service Provider	Latest Construction Costs Reported to PUCT, Capital Cost Per Mile, Double Circuit 345 kV (\$/Mile)
<i>Cross Texas Transmission*</i>	\$1,570,000
<i>Oncor</i>	\$1,660,000
<i>Sharyland*</i>	\$1,820,000
<i>Wind Energy Transmission Texas*</i>	\$1,900,000
<i>Electric Transmission Texas</i>	\$1,990,000
<i>Lone Star*</i>	\$2,040,000
<i>Lower Colorado River Authority</i>	\$2,440,000

Based on values reported in CREZ Progress Report No. 5 (January 2012 Update)

Prepared by RS&H for the Public Utility Commission of Texas

\*Cross Texas Transmission, Wind Energy Transmission Texas and Lone Star are each new entrant transmission service providers in Texas. Sharyland is an existing transmission service provider, but without any long-distance high voltage transmission lines prior to selection by the PUC in the CREZ proceeding.

Ten years from now, it may be that incumbent transmission owners have built every regional project constructed in North Carolina because they indeed proposed the most efficient and cost effective solution to identified needs. It may be that one or more regional projects were built by a non-incumbent because, in that instance, it was the most efficient and cost effective transmission provider. It may be that no regional

projects have been built at all. What we do know is that unless non-incumbent developers are allowed to participate, the ratepayers of North Carolina will never know whether the regional project they are paying for was the most efficient and cost effective.

**5. Could an affiliate of Duke, Progress or Dominion be considered a non-incumbent transmission owner? Would Duke, Progress, or Dominion be advantaged by building transmission via an affiliate rather than via their respective state-regulated public utility operating companies?**

**Response:** LS Power views this question as really being directed to the incumbent transmission owners. The short answer, it believes, is "yes," an affiliate of the incumbent could be considered a non-incumbent, just as TrAILCo (an affiliate of Allegheny Energy) is for a project in Pennsylvania, West Virginia and Virginia.

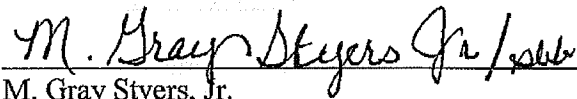
Many incumbent transmission owners have formed transmission affiliates to develop transmission, both within their existing footprint and in the service territory of others.

LS Power will leave it to others to opine on the advantages and disadvantage of that approach.

WHEREFORE, LS Power respectfully requests that the Commission consider these Comments herewith provided in this docket.

This the 27th day of July, 2012.

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**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing Comments by LSP Transmission Holdings, LLC in Response to Commission Order Issued May 21, 2012 in North Carolina Utilities Commission Docket E-100, Sub 132 have been served on all parties of record this day by hand delivery, electronic mail or by depositing copies of same in a depository under the exclusive care and custody of the United States Postal Service in postage prepaid envelopes.

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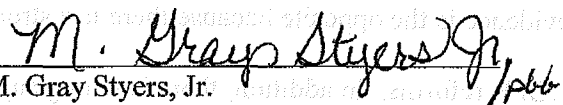
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This 27th day of July, 2012.

  
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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Allocation  
By Transmission Owning and Operating Public Utilities Docket No. RM10-23-000

REPLY COMMENTS OF LS POWER TRANSMISSION, LLC IN SUPPORT OF THE  
COMMISSION'S NOTICE OF PROPOSED RULEMAKING

I. THERE IS WIDESPREAD, NATIONAL SUPPORT AMONG STATE  
COMMISSIONS, PUBLIC INTEREST GROUPS, RESIDENTIAL AND  
INDUSTRIAL CONSUMERS OF ELECTRICITY, MAJOR TRADE  
ASSOCIATIONS, AND MANY OTHERS FOR ELIMINATING RIGHTS OF  
FIRST REFUSAL FOR INCUMBENT TRANSMISSION OWNERS

The comments filed in the NOPR represent widespread, national support for both the removal of the ROFR and the design of the proposed reforms. This support is national in scope, representing the diverse interests of state commissions from coast to coast, both in regional transmission organizations ("RTOs") and regions that do not have RTOs. These supportive comments directly contradict the false contention by MidAmerican Energy that "there has not been an outcry among state authorities to remove the existing ROFRs; and state support is vital for the Commission's proposal to be effectively implemented."<sup>1</sup> As described below, the evidence is the opposite because there is a strong support among state commissions for the ROFR reforms. In addition, there is strong support from the Federal Trade Commission, public interest groups, residential and industrial customers of electricity and major trade associations.

<sup>1</sup> Comments of MidAmerican Energy Holdings Company, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 12 ("Mid American Comments").

**A. Federal and State Commissions Support FERC'S Proposal to Remove the Right of First Refusal**

Following is a selection of comments which support the removal of any federal ROFR made by state regulatory commissions, as well as the Federal Trade Commission.

**Federal Trade Commission**<sup>2</sup>

The FTC concurs with FERC's proposed elimination of the ROFR. Consumers benefit from market competition that often takes the form of new entry. . . . Objections to elimination of the ROFR, as described in the NOPR, do not appear to be well-founded.

**Arizona Corporation Commission**<sup>3</sup>

The ACC supports removal of any right of first refusal ("ROFR") that provides an incumbent public utility transmission provider with an undue advantage from FERC-approved tariffs or agreements, while preserving state authority.

<sup>2</sup> Comments of the Federal Trade Commission, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 7, 9 ("FTC Comments").

<sup>3</sup> Arizona Corporation Commission's Comments, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 4 ("ACC Comments").

California Public Utilities Commission and California Energy Commission<sup>4</sup>

The CPUC and [CEC] support this proposal, with qualifications. Throughout the CAISO stakeholder process for a revised transmission planning process emphasizing policy-related transmission needs, the CPUC advocated eliminating the [ROFR] except in limited cases where such discrimination can be shown to be just and reasonable, as determined through the application of objective standards. This might include circumstances where there are valid constraints regarding a proposed project's use of an incumbent's existing facilities, or regarding maintaining timely and reliable service to load and generation customers.

California Department of Water Resources<sup>5</sup>

Competition among transmission providers that promotes efficiencies and innovation should be supported in regulatory policy and in transmission planning.

Connecticut Department of Public Utility Control and the Rhode Island Public Utilities Commission<sup>6</sup>

The CT DPUC and RI PUC support the Commission's proposal to eliminate incumbent transmission utilities right of first refusal to provide more robust opportunities for alternative and lower cost solutions to regions' transmission needs.

Massachusetts Department of Public Utilities and the Massachusetts Department of Energy Resources<sup>7</sup>

Massachusetts supports the Commission's proposed rule intended to eliminate any preferential treatment enjoyed by incumbent

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<sup>4</sup> Notice of Intervention of the Public Utilities Commission of the State of California and Joint Comments of the Public Utilities Commission and the Energy Resources Conservation and Development Commission of the State of California, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 14-15 ("CPUC and CEC Comments").

<sup>5</sup> Motion to Intervene and Comments of the California Department of Water Resources State Water Project, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 5.

<sup>6</sup> Notice of Intervention and Comments of the Connecticut Department of Public Utility Control and the Rhode Island Public Utilities Commission Regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 3.

<sup>7</sup> Comments of the Massachusetts Department of Public Utilities and the Massachusetts Department of Energy Resources, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 17-18.

transmission providers at the expense of nonincumbent transmission developers. . . . By leveling the playing field for all prospective project sponsors, the proposed rule should encourage greater participation in the planning process by independent and merchant developers. This should mean increased competition among project sponsors, resulting in the lowest cost approaches to meeting system needs, whether in the form of new transmission or non-transmission alternatives.

Public Utilities Commission of Nevada<sup>8</sup>

It is the PUCN's position that rules that discriminate between incumbent transmission owners and non-incumbents not only violate the principles of openness and transparency, they inhibit Nevada's policy to foster partnerships that create renewable energy investments in Nevada like the One Nevada Line ("ON Line") project that was recently approved by the PUCN.

New England States Committee on Electricity<sup>9, 10</sup>

In general terms, NESCOE supports the NOPR's policy preference to eliminate undue discrimination that may exist against non-incumbent providers. NESCOE encourages the Commission to allow New England the opportunity and adequate time to sort through what issues require discussion, to identify changes that may be needed and to implement them in a way that conforms to, or at least does not adversely interfere with, the regional planning process.

New Jersey Board of Public Utilities<sup>11</sup>

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<sup>8</sup> Comments of the Public Utilities Commission of Nevada, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 3.

<sup>9</sup> The New England States Committee on Electricity ("NESCOE") is a not-for-profit organization representing the collective interests of the six New England States on regional electricity matters. It is directed by Managers appointed by the six New England Governors. See <http://www.nescoe.com>. According to the Comments of NESCOE on Notice of Proposed Rulemaking, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 1, n.1 ("NESCOE Comments"), the New England Conference of Public Utilities Commissioners ("NECPUC") has authorized NESCOE to represent that NECPUC generally concurs with its comments as well.

<sup>10</sup> NESCOE Comments at 24.

<sup>11</sup> Comments of the New Jersey Board of Public Utilities, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 5, 6.



The NJBPU supports potential benefits, including cost savings, that may result from allowing alternative non-incumbent developers to propose alternative transmission solutions. The NJBPU further supports the Commission's goal to prevent discriminatory treatment in transmission planning processes, but understands that equal rights must be followed by equal responsibilities and obligations at the federal, regional, state and local level.

#### Public Utilities Commission of Ohio<sup>12</sup>

The Ohio Commission believes that FERC's proposal to eliminate the right of first refusal of incumbent transmission providers has merit to the extent that parameters are established to ensure that ratepayers see cost savings and enhanced reliability.

#### Ohio Consumers' Counsel and the West Virginia Consumer Advocate Counsel<sup>13</sup>

To encourage competition in transmission development, the Commission should eliminate the right of first refusal that currently allows incumbent transmission owners to construct any transmission facilities in their service territory. By eliminating barriers to the participation of merchant and independent transmission developments in the planning process, the Commission can encourage additional transmission development that could be constructed at a lower cost to consumers. Thus, Joint Consumer Advocates support the Commission's proposal that would "require removal from a transmission provider's OATT or agreements subject to the Commission's jurisdiction provisions that establish a federal right of first refusal for an incumbent transmission provider."

#### Pennsylvania Public Utility Commission<sup>14</sup>

From a general perspective, the PAPUC contends that all proposed independent transmission projects should be treated in the same manner as part of the regional transmission planning process.

<sup>12</sup> Comments Submitted on Behalf of the Public Utilities Commission of Ohio, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 14.

<sup>13</sup> Comments of the Office of Ohio Consumers' Counsel and the West Virginia Consumer Advocate Division, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 7, 8 (citing NOPR at P 64, quoting NOPR at P 41).

<sup>14</sup> Comments of the Pennsylvania Public Utility Commission, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 22.

In crafting rules designed to address these issues, FERC must ensure that, with respect to RTO transmission planning, there is no undue preference, explicit or implicit, for either incumbent or non-incumbent transmission providers or their affiliates. . . . In conclusion, the PAPUC supports the Commission's proposal to attempt to eliminate some of the barriers to full participation by non-incumbent developers but cautions that any changes not undercut state commission statutory obligations to ensure the obligation to serve and the need to review siting obligations.

Public Service Commission of Wisconsin<sup>15</sup>

The PSCW supports FERC's efforts to maintain RTOs in a nondiscriminatory posture with respect to merchant transmission line seeking developers to enter electric transmission markets.

Organization of MISO States ("OMS")<sup>16</sup>

OMS generally views that "transmission service" should be the focus, rather than "incumbent or non-incumbent transmission ownership." . . . "The Commission must ensure that, with respect to RTO transmission planning, there is no undue preference for incumbent or non-incumbent transmission providers or their affiliates."

**B. Trade Associations, Public Interest Groups, and Residential and Industrial Consumers of Electricity Support Elimination of the ROFR**

The broad and diverse support for the elimination of ROFRs is not limited to federal agencies and state commissions. The following major trade associations and major industry participants also provided strong support for elimination of ROFRs:

- American Antitrust Institute<sup>17</sup>
- American Forest and Paper Association<sup>18</sup>

<sup>15</sup> Comments of the Public Service Commission of Wisconsin, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 6.

<sup>16</sup> Comments of the Organization of MISO States, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 12 (citing OMS Comments filed on Nov. 23, 2009 in Docket No. AD09-8-000, at 13).

<sup>17</sup> Comments of American Antitrust Institute, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 4, 5 ("AAI supports the Commission's proposal to eliminate the [right of first refusal] from the OATT. Anything short of removing the RFF provision- such as exercising the right within a limited time frame, as has been suggested by some commenters-does little to dismantle the entry barrier.") (citations omitted).

- American Wind Energy Association<sup>19</sup>
- Electricity Consumers Resource Council, American Chemistry Council, Association of Businesses Advocating Tariff Equity, Carolina Utility Customers Association, Coalition of Midwest Transmission Customers, Florida Industrial Power Users Group, Georgia Industrial Group-Electric, Industrial Energy Users-Ohio, Oklahoma Industrial Energy Consumers, PJM Industrial Customer Coalition, West Virginia Energy Users Group and Wisconsin Industrial Energy Group<sup>20</sup>
- Project for Sustainable FERC Policy, on behalf of Alliance for Clean Energy New York, Citizens Utility Board of Wisconsin, Climate and Energy Project, Conservation Law Foundation, Earthjustice, Environment Northeast, Environmental Defense Fund, Environmental Law & Policy Center, Fresh Energy, Great Plains Institute, Institute for Market Transformation, Iowa Environmental Council, Land Trust Alliance, National Audubon Society, Natural Resources Defense Council, Pennsylvania Land Trust Alliance, Nevada Wilderness Project, NW Energy Coalition, Pace Energy and Climate Center, Piedmont Environmental Council, Sierra Club, Southern Alliance for Clean Energy, The Wilderness Society, Union of Concerned Scientists, and Western Grid Group<sup>21</sup>
- Sonoran Institute<sup>22</sup>
- Wind Coalition<sup>23</sup>

<sup>18</sup> Comments of American Forest & Paper Association, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 2, 4 (“AFP&A’s members are among the nation’s largest consumers of electric power, purchasing over 82 billion kilowatt-hours of electricity annually nationwide. . . . AFP&A supports the elimination of the right of first refusal from the Open Access Transmission Tariff as proposed by the Rule.”).

<sup>19</sup> Comments of American Wind Energy Association, *et al.*, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 29-30 (“AWEA [ ] fully supports the Commission’s call for the elimination of rules, like the ROFR, that have the potential to unduly discriminate between incumbent and non-incumbent transmission developers. . . . The sponsorship framework outlined in paragraphs 87 through 101 of the NOPR are a reasonable first step toward eliminating the potential for discrimination.”).

<sup>20</sup> Comments of ELCON and the Associated Industrial Groups, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 7, 25, 26 (“ELCON and the Associated Industrial Groups largely support the NOPR’s proposed elimination of the [ROFR] for incumbent transmission development projects.”).

<sup>21</sup> Joint Comments of Public Interest Organizations, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 12-13.

<sup>22</sup> Comments of Sonoran Institute, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 1.

<sup>23</sup> Comments of the Wind Coalition, RM10-23-000 (filed Sep. 29, 2010), at 14 (“The Wind Coalition asserts that the Federal Power Act should prohibit discrimination against those entities wishing to compete to build transmission resources. Discrimination against or in favor of transmission companies based on their status as an incumbent alone, should not be allowed.”).

**C. Several Generators, Power Marketers and Pipeline Company Filed Comments Supportive of Elimination of a Federal ROFR for Transmission**

The following generators, generator trade associations, power marketers and pipeline company filed comments which were supportive of the Commissions proposal to eliminate ROFRs from Commission approved tariffs.

- Colorado Independent Energy Association<sup>24</sup>
- DC Energy, LLC
- Direct Energy Services, LLC, Direct Energy Business, LLC, and Energy America LLC
- Enbridge Inc.
- First Wind Energy, L.L.C.<sup>25</sup>
- Horizon Wind Energy<sup>26</sup>
- Invenergy Wind Development LLC<sup>27</sup>
- Northwest & Intermountain Power Producers Coalition<sup>28</sup>
- NRG Companies
- Powerex Corporation

**D. Non-Incumbent Transmission Developers Support the Elimination of Rights of First Refusal**

It should not be a surprise that many non-incumbent transmission developers, who are disadvantaged from ROFRs, filed comments supportive of their elimination:

- Anbaric Holdings, LLC and Powerbridge, LLC
- Clean Line Energy Partners, LLC
- EIF Management, LLC
- Green Energy Express and 21<sup>st</sup> Century Transmission Holdings
- LSP Transmission
- Nevada Hydro Company, LLC

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<sup>24</sup> Comments of the Colorado Independent Energy Association, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 3, 7-8.

<sup>25</sup> Comments of First Wind Energy, L.L.C., Docket No. RM10-23-000 (filed Sep. 29, 2010), at 8-10.

<sup>26</sup> Motion to Intervene and Comments of Horizon Wind Energy, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 2.

<sup>27</sup> Comments of Invenergy Wind Development LLC, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 2.

<sup>28</sup> Comments of Northwest & Intermountain Power Producers Coalition, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 2-9 ("NIPPC Comments").

- Pattern Transmission, LP
- Western Independent Transmission Group

#### **E. Even Some Incumbent Transmission Owners Support FERC's Proposal to Eliminate Rights of First Refusal**

Lastly, while it is not surprising that opponents to the Commission's ROFR reforms are comprised almost entirely of the incumbent transmission owners that benefit from retention of ROFRs and other prohibitions on competitive transmission suppliers, it is important to note that incumbent utilities do not speak with one voice. Even within the diverse utility industry, support for the removal of the right of first refusal came from key national leaders in the utility industry:

- NextEra Energy, Inc.<sup>29</sup>
- Transmission Access Policy Study Group<sup>30</sup>
- New York Independent System Operator<sup>31</sup>
- Duke Energy Corporation<sup>32</sup>
- Exelon Corporation<sup>33</sup>

<sup>29</sup> Comments of NextEra Energy, Inc., Docket No. RM10-23-000 (filed Sep. 29, 2010), at 5, 16 ("NextEra agrees that the federal ROFR provisions that may cause discrimination among transmission developers should be eliminated. . . . It is not reasonable to allow an incumbent transmission owner to exercise a ROFR to snatch away projects that new entrants conceived of and developed through the transmission planning process. Whether that ROFR is exercised as within 90 days (as suggested by some parties as some sort of compromise) or later makes no difference as to the fundamental unfairness of allowing this practice.") ("NextEra Comments").

<sup>30</sup> Comments of Transmission Access Policy Study Group, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 60 ("TAPS supports limiting the TO's ROFR in Commission-jurisdictional tariffs.") ("TAPS Comments").

<sup>31</sup> Comments of the New York Independent System Operator, Inc., Docket No. RM10-23-000 (filed Sep. 29, 2010), at 16-19.

<sup>32</sup> Comments of Duke Energy Corporation, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 15 ("Duke supports a policy that allows any party proposing a regional or inter-regional transmission project that ultimately is approved as part of a regional transmission expansion plan to construct and own the transmission project, and to receive a regulated return on the investment subject to the applicable regional cost allocation.") ("Duke Comments").

<sup>33</sup> Comments of Exelon Corporation, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 31 ("Exelon Comments") ("Exelon supports the Commission's proposal of permitting qualified non-incumbent developers to construct, own, and receive cost recovery of facilities selected in a regional transmission planning process. However, Exelon believes the Commission should not apply that new

(footnote continued)

- Transmission Dependent Utility Systems (Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, and Seminole Electric Cooperative, Inc.)<sup>34</sup>
- Old Dominion Electric Cooperative<sup>35</sup>
- Northern California Power Agency<sup>36</sup>
- California Municipal Utilities Association<sup>37</sup>
- Transmission Agency of Northern California<sup>38</sup>
- Eastern Massachusetts Consumer-Owned Systems<sup>39</sup>
- Large Public Power Council<sup>40</sup>
- Modesto Irrigation District<sup>41</sup>

policy to transmission upgrades required to meet NERC and local reliability standards in a single transmission zone.”).

<sup>34</sup> Comments of the Transmission Dependent Utility Systems on Notice of Proposed Rulemaking, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 34 (“TDU Systems therefore support the Commission’s proposed reforms to promote the participation of non-incumbent transmission providers within the parameters of existing regional transmission planning processes.”).

<sup>35</sup> Comments of Old Dominion Electric Cooperative, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 5 (“ODEC generally agrees with the Commission’s proposal to ensure that non-incumbent and incumbent transmission owners have similar rights and responsibilities in transmission planning.”).

<sup>36</sup> Comments of the Northern California Power Agency, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 8 (“NCPA supports the principle that any entity – whether it is an investor owned utility, municipal entity, or independent developer – should have the right to propose, construct and own transmission projects.”).

<sup>37</sup> Initial Comments of the California Municipal Utilities Association, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 3, 16-17.

<sup>38</sup> Comments of the Transmission Agency of Northern California, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 12-16.

<sup>39</sup> Initial Rulemaking Comments of Eastern Massachusetts Consumer-Owned Systems, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 7-9 (“EMCOS support the Commission’s proposals to (1) eliminate rights of first refusal provided to incumbent transmission owners in Commission-jurisdictional agreements; and (2) require that a regional revenue requirement to support transmission projects that originate in a regional planning process but that are developed by nonincumbents.”).

<sup>40</sup> Comments of the Large Public Power Council at 22-23 (“LPPC does not generally object to FERC’s proposed tariff revisions specifying the terms under which non-incumbent transmission developers will participate in the planning process. The effort to specify procedures for ensuring that non-incumbent transmission developer proposals may be evaluated, and the developers’ fitness to complete projects determined, is generally sensible.”) (citation omitted).

<sup>41</sup> Comments of the Modesto Irrigation District, Docket No. RM10-23-000 (filed Sep. 29, 2010), at 4-5.

Accordingly, on balance, the Commission's proposed ROFR reforms have received an overwhelmingly strong response from state agencies and industry participants, with the exception of certain incumbent transmission owners who object largely on the basis of non policy-driven, commercial self-interests.

## Sharon Segner

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**From:** Sharon Segner  
**Sent:** Monday, July 30, 2012 5:14 PM  
**To:** Rich Wodyka (rawodyka@aol.com)  
**Cc:** Joshua York; MEngleman@PattonBoggs.com  
**Subject:** LS Power Comments to NCTPC  
**Attachments:** LS Power Comments to North Carolina Transmission Planning Collaborative.docx

Hi Rich,

LS Power thanks the North Carolina Transmission Planning Collaborative for the opportunity to comments on its recent Order 1000 strawman.

We provide our comprehensive feedback here. If there is an area that you would like further information, we are happy to talk further on any further information needs you may have.

Thanks again. We look forward the continued dialogue.

Sharon



**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%2023\\_2010\\_final.pdf](http://www.nctpc.org/nctpc/document/OSC/2010-02-23/Scope/OSC%20SCOPE%2023_2010_final.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. NCPTC 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



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October 16, 12

Rich Wodklya

North Carolina Transmission Planning Collaborative

RE: FERC Order 1000 Stakeholder Feedback

Dear Rich,

Thank you for your response to LSP Transmission Holdings' ("LS Power") previously submitted comments. We have reviewed those responses and the recently circulated tariff language in great detail. Despite your responses, LS Power remains highly concerned that the scope of the region envisioned, and the largely black box process identified for selecting regional projects will not achieve the fundamental goal of Order 1000, which is to determine for ratepayers the more efficient and cost effective solution to transmission needs. As such, we continue to view the proposal as not compliant with Order 1000.

LS Power's position, since before Order 1000 was issued, was that so long as there was a level-playing field and a fair chance to compete, let the best project win. What the current NCTPC proposal ensures, is not that the best project will be selected, but that only existing transmission owners will participate because the proposal does not offer a nonincumbent developer any concrete process or assurance that its proposal will be fairly evaluated, any concrete assurance that its project "sponsored" will actually be assigned to the sponsor in a non-discriminatory manner, or any real assurance that the most cost-effective project is selected. All lack of assurances are in clear violation of Order 1000.

LS Power has the following specific concerns. First, the proposal is essentially for a single company region. Although there are other participants to the NCTPC, the tariff revisions make clear that only Duke and Progress are likely to be Transmission Providers under the Transmission Planning Process. As a single company, LS Power questions whether Duke and Progress are an appropriate region under Order 1000, especially in light of the black box process proposed.<sup>1</sup>

As to the Process itself, given that the decision-making authority has been delegated to the OSC,

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<sup>1</sup> LS Power was originally open to creative thinking on this issue of the North Carolina region, but now after reviewing the black box process proposed and lack of nondiscriminatory process proposed in North Carolina, it has no alternative but to question the North Carolina region composition.

made up largely by a now-merged Duke and Progress, the process has insufficient clarity as to the nondiscriminatory evaluation of proposals. In essence the Process creates a black box where the incumbent transmission owners with whom entities like LS Power would be competing, decide whether they deem LS Power qualified to even propose a project, and then whether any proposed project should replace a project proposed by those very entities. Order 1000 requires a clear outline and description of a non-discriminatory process, not mere usage of phrases. Even if a process were transparent, it is not the same thing as non-discriminatory. The proposed process identifies factors to be considered but fails to offer prospective participants any understanding as to how its project proposals will actually be evaluated or whether competing proposals will be evaluated on identical terms. **The OCS decision-making process fails to establish any serious measures to ensure a non-discriminatory process.** In addition, the profound reliance on a non-FERC jurisdictional Participation Agreement is also equally as problematic, in addition to non-binding arbitration provisions. This NCTPC proposed process simply does not meet the requirements of Order 1000 that public utility transmission providers develop a transparent and not unduly discriminatory process for evaluating project proposal. A process that does not identify how the proposals will be evaluated, whether each aspect of the proposal will be evaluated on the same terms as incumbent proposals against which it is competing, and a process that does not describe how the decision will be made in a non-discriminatory manner is insufficient. The NCPTPC proposal has woefully failed to establish any safeguards against discriminatory treatment. After-the-fact explanations of the decision do not meet the full requirement for a fair and non-discriminatory process.

LS Power would welcome further conversation, and we look forward to next week's stakeholder meeting in Raleigh. One of our largest legal concerns continues that the proposal fails to establish any safeguards against discriminatory treatment.