

FERC Order 1000 Compliance – LS Power Recommendations and Positions

Requirements of any Compliance Filing

- I. ***Removal of the ROFR from Tariff and/or Transmission Owners Agreement to eliminate 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.***
 - a. LS Power Position:
 - i. This includes ANY project for which ANY of its costs are allocated regionally
 1. This includes reliability, public policy or economic projects
 - ii. Exceptions
 1. A Local Project Retains a ROFR (paragraph 318, FERC Order 1000)
 - a. “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”. (Paragraph 63, FERC Order 1000)
 - b. The local project must be: a) solely within the retail distribution service territory or footprint **and** b) not in the regional transmission plan for purposes of regional cost allocation. (Paragraph 63 of FERC Order 1000)
 2. An incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own facilities. (paragraph 319, FERC Order 1000).
 - a. Upgrades are defined as “such as tower change outs or reconductoring” (paragraph 319, FERC Order 1000)
 3. Must be consistent with state and local law
 4. LS Power believes that the exceptions to ROFR are best dealt with at the end of the process (see FERC Order 1000 Process in PJM Flowchart)
- II. **FERC “requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission provider. These criteria must not be unduly discriminatory or preferential. The qualification criteria must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities.” (Paragraph 323, FERC Order 1000)**
 - a. LS Power Position:

- i. Appropriate qualification criteria should be fair and not unreasonably stringent when applied to either the incumbent transmission provider or non-incumbent transmission provider. (Paragraph 324, FERC Order 1000)
- ii. The qualification criteria should allow for the possibility that the existing public utility transmission provider already satisfies the criteria (Paragraph 324, FERC Order 1000)
- iii. The qualification criteria should allow any transmission developer the opportunity to remedy any deficiency (Paragraph 324, FERC Order 1000)
- iv. LS Power Qualification Proposal
 - 1. Pre-Qualification Process
 - a. All interested transmission developers, including new entrants, existing transmission owners, and the affiliates of existing transmission owners, would be required to go through the pre-qualification process. This pre-qualification process would ensure that an entity interested in proposing projects has the necessary financial and technical expertise for developing, constructing, owning and maintaining facilities.
 - b. Beginning on the date of filing the FERC Order 1000 compliance filing (October 12, 2012), the region (for purposes of FERC Order 1000) shall immediately commence a pre-qualification process.
 - c. Region would provide notice of qualification or denial within 30 days of the submittal of the standardized qualification application.
 - d. Such qualification would be good for three years from the date of qualification, however sponsors would be subject to verification of continued status upon the assignment of any sponsored project.
 - e. If denied, the developer would be eligible to remedy any deficiencies in its application.
 - f. Once qualified for three years, information would have to be updated annually. If there are any material adverse changes in information, the qualification could be revoked by the PJM Board.
 - 2. Required Qualification Criteria to Propose a Project for Selection into the Regional Plan for Purposes of Regional Cost Allocation
 - a. Willingness to Become a PJM Member and PJM Transmission Owner, with all requirements, rights and responsibilities, when eligible under the PJM rules
 - b. Willingness to Register with NERC when required and eligible under the current NERC Regulations.
 - i. All entities, incumbents and non-incumbents alike, that are users, owners, or operators of the electric bulk

power system must register with NERC for performance of applicable reliability functions (Paragraph 342, FERC Order 1000)

- ii. “However, if there are still concerns regarding the lack of lack of clarity as to when compliance with NERC registration and reliability standards would be triggered, we would conclude that the appropriate forum to raise these questions and request clarification is in the NERC process.” (Paragraph 343, FERC Order 1000)
- c. 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 \$500 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. Examples of documents to be provided confidentially to the PJM to demonstrate compliance:
 - 1. A list of projects equal or greater than the lesser of \$500 million dollars or the capital cost of the proposed transmission project financed by the parent company, affiliate, or project company
- d. 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
 - ii. Must show that it has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate
 - 1. Please note that this criteria is identical to FERC’s current requirements in natural gas pipeline and hydroelectric permit applications¹
- e. Willingness of entity to apply for state public utility status
 - 1. Please note that in FERC’s current requirements for natural gas pipeline and hydroelectric permit applications, FERC does NOT require an

¹ 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.

entity to have public utility or natural gas company status

- f. Willingness of entity to apply for eminent domain authority at appropriate time under state law for the project
 1. In PJM's January 28, 2012 presentation to RPPWG, PJM proposes that a proposer must have legal ability to exercise eminent domain for required property in order to propose a project.
 - a. In almost all PJM states, eminent domain authority cannot be exercised without a CPCN. **Therefore, even EXISTING incumbent utilities do not meet the above requirement today, as they do not have legal ability to exercise eminent domain for required property without a CPCN.** *(See LS Power presentation to RPPWG in December 2010 outlining specific state laws across PJM requiring CPCNs prior to the public utility having legal authority to use eminent domain).*
 - b. LS Power believes that the above requirement is not reasonable. Paragraph 324 of FERC Order 1000 requires that the qualification criteria "should be fair and not unreasonably stringent when applied to either the incumbent transmission provider or non-incumbent transmission developer."
 - c. PJM does not currently have such a requirement for merchant transmission today.
 2. In PJM's January 28, 2012 presentation to RPPWG, PJM proposes that a proposer must have site control for required property (or legal ability to exercise eminent domain) in order to propose a project.
 - a. LS Power believes that the above requirement makes no sense at the project submittal stage and is not

reasonable. FERC Paragraph 324 of FERC Order 1000 requires that the qualification criteria “should be fair and not unreasonably stringent when applied to either the incumbent transmission provider or non-incumbent transmission developer.”

- b. Please note that in FERC’s current requirements for natural gas pipeline and hydroelectric permit applications, FERC does NOT require an entity to secure the lands needed for the project at the time of application.
- c. PJM does not currently have such a requirement for merchant transmission today. While it is clear that that entity must secure the land necessary to construct the project, it is not required at the outset or at the project proposal stage.

III. FERC “requires that each public utility transmission provider revise its OATT to identify: (a) the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and (b) the date by which such information must be submitted in a given transmission planning cycle.” (Paragraph 325, FERC Order 1000). “These information requirements must identify in sufficient detail the information necessary to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in the regional transmission planning process. They may require, for example, relevant engineering studies and cost analyses and may be request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.” (Paragraph 326, FERC Order 1000).

a. LS Power Position

- i. Information required to be submitted with any Project Submittal by any Qualified Developer include:
 - 1. Contact Information
 - 2. Date of Completion of Pre-Qualification Process
 - 3. Name of Project Entity to Be Assigned Project
 - 4. Project Description
 - a. Scope of Project

- i. Points of Interconnection to Existing System. From and To Buses.
 - ii. Voltage Level
 - iii. AC / DC
 - iv. Circuit configuration (single circuit, double circuit)
 - v. Impedance Information
 - vi. Approximate Circuit Mileage
 - vii. Location and conceptual project routing corridors, including general permitting considerations and challenges
 - viii. A clear description of project and a description of the problem addressing
 1. Modeling studies, as needed
 2. Single contingency performance with respect to relevant criteria violations, congestion events, or energy transfers
 3. Depth of supporting analysis could be used as a determining factor in assignment to build when comparing similar proposals
- b. Capital Cost Estimate
- i. All projects passing initial screens should be subject to independent cost estimate review for capital costs, if cost greater than \$50 million and if the project passes preliminary technical review
- c. Proposed Schedule for Development, Construction, and Operation Date
- i. Identification of Internal Organizational Expertise
- d. Plan for post construction, maintenance, and operation of the proposed line.
- i. Intention of Becoming a Transmission Owner must be clearly stated
- e. Identification of applicable CPCN requirements and applicable state jurisdiction requirements
- i. Developer proposal should contain a legal opinion from an attorney licensed in the Project state(s) on how the non-incumbent transmission developer would obtain state public utility status
 - ii. Developer proposal would be further enhanced by documentation from Project state(s) on the entities' legal ability to apply for state public utility status or eminent domain authority, *if there is no precedent in a Project state for a non-incumbent transmission*

developer applying for public utility status or eminent domain authority. If a Project state(s) is unable or unwilling to provide such documentation prior to a CPCN proceeding, the transmission developer should not be biased against in the final assignment process².

5. Deposit Required with Each Project submittal - \$25,000
6. Adjustments to Proposed Projects
 - a. If a proposer seeks to adjust or modify a proposed project, the adjustments can be allowed if:
 - i. The technical and cost data is updated to reflect better information obtained from the independent cost estimate (ie. Impedance data updates due to more accurate data from independent cost estimate) or from the overall transmission planning process (i.e., better information on reliability and planning violations, or better information on generation project on-line dates or retirements); or,
 - ii. The scope of the revised project is materially similar to the originally proposed project or if the scope adjustment could materially lower the capital cost of the proposal with similar benefits; or
 - iii. If PJM changes key assumptions underlying the projects during the process, such as economic project modeling inputs, new reliability projects, or interface limits.

IV. FERC “requires that 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 transmission plan for purposes of cost allocation. This process must comply with the Order No. 890 transmission planning principles, ensuring transparency, and the opportunity for stakeholder coordination. The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.” (Paragraph 328, FERC Order 1000).

- a. LS Power position:
 - i. The Evaluation Process

² PJM should reserve the right, particularly related to the assignment of reliability projects, to obtain further clarification on particular state law issues from the PJM State Advisory Committee at the time of project assignment. Nothing shall preclude PJM from having discussions with the Attorney General Office of a particular state prior to the assignment of a reliability project.

1. A process must be established to evaluate potential solutions to regional transmission needs, with the input of interested parties and stakeholders. (Paragraph 331, Page 261)
- ii. Efficient and Cost-Effective Solutions Should be the Most Important Component of the ultimate Evaluation Matrix
 1. “Whether or not public utility transmission providers within a region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is an efficient or cost-effective solution to their needs” (Paragraph 331, FERC Order 1000).
 2. Rigorous PJM technical analysis shall be performed to determine the best technical solution
 - a. Analysis and optimization of alternatives will continue in parallel with independent consultant review
 3. Projects Proposed by PJM.
 - a. An incumbent and non-incumbent transmission shall both have the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional plan for purposes of cost allocation. (Paragraph 336, FERC Order 1000.)
 - b. PJM designed projects cannot automatically go to the incumbent utility.**
 - i. “The regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to 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.” (Paragraph 336, FERC Order 1000)***
 - ii. Competitive bidding should be used if there are two or more interested bidders on a PJM-generated solution
 1. PJM should provide adequate notice to respond with interest
 - iii. If there are no interested parties to the PJM-generated solution, the solution should go to the incumbent entity
 4. Use of Independent Cost Estimates / Independent Consultant Review
 - a. Use one consultant for all “finalist” projects in a given area
 - i. Final consultant review will be conducted, if required, of a limited number of most effective projects
 - b. The consultant shall review the cost estimates of new entrant and non-incumbent utilities for accuracy and consistency, as

well as permitting feasibility, if the capital cost of the project is over \$50 million

iii. Ultimate Project Evaluation Matrix:

1. Whether the proposed transmission facility is the most efficient or cost-effective solution to the transmission needs - 75 percent weight
2. Independent "Fatal Flaw" Analysis on siting – 25 percent weight
3. Whether the transmission facility provides multiple system benefits – reliability, economic, and public policy – Tie-Breaker Question

iv. Additional Assignment Criteria

1. Assignment must go to the project sponsor unless the PJM has a reason that is not unduly discriminatory or preferential.
2. Assignment must be consistent with FERC Order 1000.
3. Assignment of a project can only be assigned to a qualified transmission provider.
4. A Local Project Retains a ROFR for the incumbent utility (paragraph 318, FERC Order 1000)
 - a. "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".
 - b. The local project must be a) solely within the retail distribution service territory or footprint **and** b) not in the regional transmission plan for purposes of cost allocation. (Paragraph 63, FERC Order 1000)
 - c. Any such projects must still be evaluated under the criteria for project evaluation and determined to be the most efficient or cost effective for the region.
5. An incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own facilities. (paragraph 319, FERC Order 1000).
 - a. Upgrades are defined as "such as tower change outs or reconductoring" (paragraph 319, FERC Order 1000)
 - b. Any such projects must still be evaluated under the criteria for project evaluation and determined to be the most efficient or cost effective for the region.
6. The "Final Rule does not . . . **grant or deny** transmission developers the ability to use rights-of-way held by other entities The retention, modification, or transfer of rights-of-way remains subject to relevant law or regulation granting the rights-of-way." (Paragraph 319, FERC Order 1000)
 - a. Order 1000 does not state that there remains a ROFR for all right of way owned by an incumbent.

- b. Unless a project is route specific, the ownership of ROW should not be evaluation criteria for assignment but final route and ability to use existing ROW will be determined in the CPCN state process if one is required.
 - 7. Assignment must be consistent with state and local laws.
 - a. PJM should reserve the right to obtain further clarification on particular state law issues from the PJM State Advisory Committee, particularly related to the assignment of reliability projects. Nothing shall preclude PJM from having discussions with the Attorney General Office of a particular state prior to the assignment of a reliability project.
 - b. The Evaluator:
 - i. FERC “declines to mandate the use independent third-party observers, as suggested by the Western Independent Transmission Group. To the extent public utility transmission providers in consultation with other stakeholders in a region wish, they may propose an independent third-party observer and we will review such proposal on compliance.” (Paragraph 330, FERC Order 1000)
 - ii. LS Power Position:
 - 1. For certain PJM, this may be a reasonable solution when competitive bidding is required for PJM-generated transmission solutions and there are two or more interested bidders.
 - c. Minimizing Disputes:
 - i. FERC “encourages public utility transmission providers to consider ways to minimize disputes, such as through additional transparency mechanisms, as they identify enhancements to regional transmission planning processes necessary to comply with the Final Rule”. (Paragraph 330, FERC Order 1000).
 - ii. LS Power Proposal
 - 1. The PJM shall post all proposals immediately after the window for submittals is closed. If there is no window for submittals, the proposals should be posted immediately on website.
 - 2. The PJM shall post all study results for all projects submitted.
 - 3. If identical projects are submitted during a proposal window by qualified developers and the project meets the technical criteria established by the PJM, then the PJM should allow the qualified proposers of the identical projects ten (10) days to meet to discuss ownership options.
 - 4. The utility transmission provider shall establish arbitration procedures to address any dispute regarding application of the qualification criteria or the evaluation process. 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 [**PJM stakeholder 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.

V. 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)

a. LS Power Position:

- i. Immediately prior to PJM Board assignment of a project, the Qualified Project Developer and PJM should meet to revisit the proposed Development Schedule and to establish Critical Path Milestones. The independent cost estimate and feasibility study commissioned by the PJM can also recommend Critical Path Milestones for consideration. The Project Developer should update any proposed Development Schedule at that time. Board materials should reflect realistic and current development projections.
- ii. After project assignment, the assigned Project Developer should regularly provide quarterly status updates to the PJM on permitting and development progress.
- iii. For reliability projects, for any delay of more than six months of any Critical Path Milestone, notice should be provided at the PJM stakeholder meeting and to the incumbent utility in whose transmission zone the project resides.
- iv. For reliability projects, if there is a delay of more than six months of any Critical Path Milestone **and** there is material evidence of abandonment or material evidence of lack of commercially reasonable competence by the Project Developer (either incumbent or non-incumbent) to advance the reliability project, then the project could be taken to the PJM Board for possible reassignment.

VI. FERC 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 facility selected in the regional transmission plan for purposes of cost allocation. More specifically, each public utility transmission developer must participate in a regional transmission planning process that provides that the non-incumbent developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility

through a regional cost allocation method or methods.” (Paragraph 332, FERC Order 1000)

FERC Order 1000 Process in PJM

