

LS Power – Comments to PJM: June 14, 2012

Key Additional FERC Order 1000 Compliance Requirements That Should Be Included in PJM Tariff Language

Order 1000 Paragraph	Paragraph Quote	LS Power Comment
314, Footnote 294	“If there is no ROFR in tariff or agreement, it should state so in its compliance filing.”	PJM should clearly state in its filing that there is no ROFR in its tariffs or agreements that establish a federal ROFR for an incumbent transmission provider with respect to transmission facilities that are selected in a regional plan for purposes of cost allocation.
319	FERC Order 1000 “does not remove or limit any right an incumbent may have to build, own and recover costs for upgrades to the facilities owned by the incumbent, nor” does this compliance filing “ <u>grant or deny transmission developers the ability to use rights-of-way held by other entities, even if the transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation. The retention, modification, or transfer of rights-of-way remains subject to relevant law or regulation granting the rights-of-way.</u> ”	<p>The current table omits the actual sentences from the commission determination in Paragraph 319. <u>These underlined sentences from Paragraph 319 should be added to PJM’s filing in its entirety.</u></p> <p>FERC Order 1000 (in the Commission determination in paragraph 319) does not state that a ROFR remains on incumbent right-of-way. PJM compliance spreadsheet should be modified to reflect accurately FERC Order 1000 Commission Determination.</p> <p>In addition, FERC also reaffirmed that the use of utility ROW is solely an issue of state law, and there is no ROFR on use of utility ROW in denying ITC’s rehearing request in Order 1000A. Utility ROW is not included in the definition of “existing upgrades”.</p>
330	“Commission 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.”	<p>PJM should add additional measures in its compliance filing to minimize disputes, such as transparency mechanisms or arbitration provisions.</p> <p style="text-align: center;">LS Power outlines proposal:</p> <ol style="list-style-type: none"> I. 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. II. The PJM shall post all study results for all projects submitted. III. If identical projects are submitted during a proposal window by

		<p>qualified developers and the project is selected by PJM, then the PJM should allow the qualified proposers of the identical projects ten business (10) days to meet to discuss ownership options.</p> <p>IV. 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.</p>
332	<p>“More specifically, each public utility transmission provider must participate in a regional transmission planning process that provides that the nonincumbent 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.”</p>	<p>PJM should clarify in their compliance spreadsheet that their tariff should be specifically modified that non-incumbents can have comparable opportunity to allocate the cost of such transmission facility through a regional cost allocation method or methods.</p> <p>PJM Tariff language must be expanded to clarify that non-incumbents can not only submit projects for evaluation and selection, but also have comparable opportunity for cost recovery.</p>
336	<p>“...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 to an incumbent</p>	<p><u>PJM’s current proposed current tariff language fails to address the fair and not unduly discriminatory mechanism to grant an incumbent or nonincumbent transmission developers unsponsored (or PJM-proposed) projects.</u></p>

	<p>transmission provider or nonincumbent 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.”</p>	
329	<p>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”.</p>	<p>LS Power Position on Reassignment***: *** ADDED 1.5.8(i) draft tariff language</p> <ol style="list-style-type: none"> 1) 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. 2) After project assignment, the assigned Project Developer should regularly provide quarterly status updates to the PJM on permitting and development progress. 3) 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. 4) <u>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.</u>

Overall comment: LS Power believes that the clear intention of FERC in Order 1000 was to advance “more cost-efficient and effective” transmission solutions. LS Power believes that PJM needs to add this focus of selection into PJM’s tariff language.