

LSP Transmission Holdings, LLC (“LS Power”) Comments to PJM – 8/15/2012

General Comment: Any ROFR language should also be removed from PJM Member Agreements and TOA. Order 1000 calls for any and all ROFR language to be removed from any and all FERC-jurisdictional documents, not just tariff language. Although FERC has ruled that the TOA does not contain a ROFR, because certain Incumbent Transmission Owners maintain that such a ROFR is provided for in the language of the TOA, and have appealed the FERC ruling, the TOA language relied upon by the incumbent transmission owners should be removed pursuant to Order 1000.

In addition, other sections of PJM tariff and Members Agreement should be clarified explicitly to reflect that Designated Entities will be eligible to use regional cost allocation methodology and recover costs. This should reflect that this will apply to both incumbents and non-incumbents that are selected as Designated Entities. (see Paragraph 332, Order 1000)

PJM’s PROPOSED SCHEDULE 6 CHANGES (ROFR Issues)

DEFINITION:

1.__. “Designated Entity” shall mean the entity designated by the Office of the Interconnection to construct, own, and finance ~~Necessary-Immediate-Need~~ Reliability Projects, Short-term Projects ~~and~~ ~~and/or~~ Long-lead Projects pursuant to section 1.5.8 of this Schedule 6. Such Designated Entity, whether a non-incumbent or incumbent transmission developer, shall be eligible to use and recover costs through the regional cost allocation methodology for PJM¹ if -selected and approved in the RTEP.

1.19a. “Long-lead Project” shall mean any public policy or market efficiency project needed within any time duration period, or ~~an~~-a reliability enhancement or expansion with an in-service date more than five years from the year in which, pursuant to section 1.5.8(c) of this Schedule 6, the Office of the Interconnection posts the violations, system conditions, and economic constraints, to be addressed by the enhancement or expansion.

1.__ “Immediate-Need Reliability Project” shall mean a reliability-based enhancement or expansion with an in-service date of 3 years or less from the year in which the Office of the Interconnection identified in the expansion study process described in section 1.5.3 of this Schedule 6 the existing and projected limitations on the transmission system giving rise to the need for such enhancement or expansion. In order to qualify as an Immediate-Need Reliability Project, the enhancement or expansion must be located solely within one retail distribution territory or footprint, and the costs for the Immediate-Need Reliability Project must be allocated solely to that single retail distribution territory or footprint.

1.__ “Short-term Project” shall mean ~~an~~-a reliability-based enhancement or expansion with an in-service date of more than 3 years but no more than 5 years from the year in which, pursuant to section 1.5.8(c) of Schedule 6, the Office of the Interconnection posts the violations, system conditions, and economic constraints to be addressed by the

enhancement or expansion. In addition, a Short-term Project may also be an Immediate-Need Reliability Project enhancement or expansion that is not located solely within one retail distribution territory or footprint, or is not paid for solely by a single retail distribution territory or footprint.

1.5.8 Development of Long-Lead Projects, Short-term Projects and Necessary Reliability Projects.

- (a)—On an annual basis in the three months prior to each ~~planning~~ Calendar year or who have been pre-qualified outside of the submittal period for good cause shown or as determined by the Office of the Interconnection, ~~[should this be tied to planning year? Calendar year? First quarter?]~~ ~~[Do we want to allow an entity to pre-qualify outside the submittal period for good cause shown or as determined by PJM?]~~ entities that desire to be the Designated Entity for Short-term Projects or Long-lead Projects to be included in the recommended plan shall submit to the Office of the Interconnection the following information: (i) name and address of the entity; (ii) the entity’s technical and engineering qualifications, including any affiliate, partner, or parent company expertise and including any contracting capabilities; (iii) the entity’s demonstrated experience to develop, construct, maintain, and operate transmission facilities and/or energy or linear projects, including a list of transmission facilities the entity previously constructed and maintained (such experience may include any affiliate, partner, or parent company expertise and include contracting capabilities and experience); (iv) the entity’s previous record regarding construction and maintenance of transmission facilities both inside and outside of the PJM Region (such record may include any affiliate, partner, or parent company expertise and include contracting capabilities and experience); and (v) the entity’s capability to adhere to standardized construction, maintenance and operating practices (such capability may include any affiliate, partner, or parent company expertise and include contracting capabilities and experience); (vi) the entity’s ~~the entity’s~~ financial statements for the most recent fiscal quarter, as well as the most recent three fiscal years, or the period of existence of the entity, if shorter (in the event of a special purpose entity, the special purpose entity may otherwise demonstrate that it is financially capable to develop, construct, and maintain the transmission enhancements or expansions, by outlining its current and expected financial capabilities, or otherwise establish the demonstrated ability of the entity, its parent, its affiliates, or its partners in financing energy and transmission projects); ~~and~~ (vii) the entity’s commitment to execute the Consolidated Transmission Owners Agreement when eligible and if the entity becomes a Designated Entity (vii) proposing entity’s ability to assume liability for major losses resulting from failure of facilities; and (viii) proposing entity’s experience in acquiring rights of way.
- ~~[Any other information needed for qualification determination?]~~ Based on this information, prior to the opening of the next proposal window ~~[need more specific timeframe for PJM determination],~~ the Office of the Interconnection shall determine whether an entity is qualified to be a Designated Entity for Short-term Projects and Long-lead Projects that may be included in the recommended

plan and shall notify the entity of such determination. In the event the Office of the Interconnection determines that an entity is not qualified to be a Designated Entity for Short-term Projects or Long-lead Projects that may be included in the recommended plan, the Office of the Interconnection shall include in the notification the basis for this determination. The entity shall have 30 days or such other period as may be agreed to by the Office of the Interconnection and the entity to submit additional information, which the Office of the Interconnection shall consider in re-evaluating whether the entity is qualified to be a Designated Entity. The Office of the Interconnection shall notify the entity of the results of this re-evaluation within ~~30~~ business days ~~[Do we want to say “within a reasonable time, rather than a specific time period?”]~~ of receiving the additional information.

- If an entity qualified to be a Designated Entity in a previous ~~planning~~ planning year cycle, such entity is not required to re-submit information to qualify to be a Designated Entity in the current or next ~~planning~~ year ~~[Is “planning year the appropriate description? Should it be “planning cycle?”]~~ provided, however, that such entity must submit to the Office of the Interconnection all updated information to the extent its information has changed, including if there have been any material adverse changes to the entity’s financial capabilities or development, construction or operational track record. In the event an entity submits updated information, the Office of the Interconnection shall notify the entity whether it continues to qualify to be a Designated Entity within a reasonable period of time. ~~[Do we want this to be more specific?] [Should this process be in the manuals instead?]~~ This section shall not apply to entities that desire to propose Short-term Projects or Long-lead Projects for inclusion in the recommended plan but do not intend to be a Designated Entity.

(b) Upon identification of existing and projected limitations on the transmission system’s physical, economic and/or operational capability or performance, in the enhancement and expansion analysis process described in this Schedule 6 and the PJM Manuals, the Office of the Interconnection shall post promptly and update routinely on the PJM website the violations (including the limiting element in the line, terminal equipment or conductor), system conditions, economic constraints, and Public Policy Requirements identified pursuant to the State Agreement Approach in Section 1.5. [] that may be addressed by potential Short-term Projects or Long-lead Projects. Such information made available on a nondiscriminatory basis shall also include, but not limited to, models (with contingency files), unmodified event files with constraint limits, power flow modifications to base case and to future cases, and generator list with Pmax for each simulation year.

(c) The Office of the Interconnection shall provide notice to stakeholders of a ~~30 day/60 day~~ 45 day proposal window for Short-term Projects and a 120-day proposal window for Long-lead Projects in which the Office of the Interconnection will accept proposals for potential enhancements or expansions to address the posted violations, system conditions, economic constraints, as well as Public Policy Requirements for consideration pursuant to the State Agreement Approach in section [##]. The Office of the Interconnection shall conduct the proposal window and proposal process in a non-

preferential and non-discriminatory manner, and only public discussion will be permitted between the Office of the Interconnection and stakeholders, including PJM Transmission Owners, during the proposal window related to project Proposals. Proposals for Short-term Projects and Long-lead Projects must contain: (i) the name and address of the proposing entity; (ii) a statement whether the entity intends to be the Designated Entity for the proposed Short-term Project or Long-lead Project; (iii) location of proposed Short-term Project or Long-lead Project, including source and sink; (iv) relevant engineering studies, as described in the PJM Manuals pertaining to the proposed Short-term Project or Long-lead Project, and any other information helpful to the Office of the Interconnection to allow it to determine the effectiveness of the project; and (v) cost estimates and analyses as described in the PJM Manuals for the proposed Short-term Project or Long-lead Project. If the proposing entity states that it intends to be a Designated Entity, the proposal also shall contain information demonstrating: (vi) the entity's technical and engineering qualifications and demonstrated experience to develop, construct, maintain, and operate transmission facilities, including a list of transmission facilities the sponsor previously constructed and maintained. The Office of the Interconnection may consider any affiliate, partner, or parent company expertise and include any contracting capabilities in its evaluation.; (vii) entity's ability to obtain adequate financing relative to the proposed Short-term Project or Long-lead Project, which may include a letter of intent from a financial institution approved by the Office of the Interconnection. PJM may consider any affiliate, partner, or parent company financing capabilities in its evaluation ~~for other instrument?~~; (viii) entity's capability for cost containment, schedule-keeping and other advantages the entity may have to build the proposed Short-term Project or Long-lead Project, including any binding agreement by the entity to accept a cost cap or any other information that may be helpful to the Office of the Interconnection PJM in assessing cost and cost-effectiveness of project. The Office of the Interconnection may request additional reports or information that it determines are reasonably necessary to evaluate the Short-term Project or Long-lead Project proposal pursuant to the criteria set forth in subsection 1.5.8(e). If the Office of the Interconnection determines any of the information provided in a proposal is deficient or the Office of Information requires additional reports or information, it shall notify the proposing entity of such deficiency or request and the proposing entity shall provide the necessary information within [10] business days of receipt of the notification of deficiency and/or request for additional reports or information or other reasonable time period as determined by the Office of the Interconnection. In the event that the proposing entity fails to timely cure the deficiency or provide the requested reports or information, the entity's proposed project shall not be considered for inclusion in the recommended plan.

(d) Following the close of the ~~[30-day/60-day]~~ 45-day or 120-day proposal window, the Office of the Interconnection shall post all proposals submitted pursuant to section 1.5.8(c) of Schedule 6 and determine which, if any, of the proposed Short-term Projects or Long-lead Projects received during the applicable proposal window should be included in the recommended plan. A transmission facility selected in the RTEP for regional cost allocation shall be the one that has been selected as the more efficient and cost-effective solution to regional transmission planning needs^[A2]. In making this determination, the Office of the Interconnection shall consider the criteria set forth in Subsection 1.5.8(e).

[Should there be a specific time frame for PJM to make this determination?] PJM shall post the proposed completed recommended plan. The Office of the Interconnection shall present to the Transmission Expansion Advisory Committee for review and comment descriptions of the proposed Short-term Projects and Long-lead Projects recommended for inclusion in the plan. Based on that review, PJM shall, if necessary conduct further study and evaluation and post a a revised recommended plan for review and comment by the Transmission Expansion Advisory Committee.

(e) The Office of the Interconnection shall consider the following criteria, to the extent applicable, in determining -in a transparent and non-discriminatory manner whether a proposed Short-term Project or Long-lead Project should be included in the recommended plan: (i) the extent to which the proposed Short-term Project or Long-lead Project would address and solve the posted violation, system condition, economic constraint or Public Policy Requirement in accordance with the State Agreement Approach; (ii) with regard to proposed economic-based Short-term Project or Long-lead Project, whether the relative benefits of the proposed project meets a Benefit/Cost Ratio Threshold of at least 1.25:1 as calculated pursuant to Section 1.5.7(d) of this Schedule 6; (iii) the extent to which the proposed Short-term Project or Long-lead Project would have secondary benefits, such as addressing additional other system reliability, operational performance, or economic efficiency issues or Public Policy Requirements in accordance with the State Agreement Approach ~~(iv) proposing entity's technical and engineering experience, including previous record regarding construction and maintenance of transmission facilities both inside and outside of the PJM Region, relative to the project proposed; (iv) proposing entity's previous record regarding construction and maintenance of transmission facilities both inside and outside of the PJM Region; (v) proposing entity's capability to adhere to standardized construction, maintenance and operating practices; (vi) proposing entity's ability to assume liability for major losses resulting from failure of facilities; (vii) proposing entity's experience in acquiring rights of way; and (viii) any other project cost and project feasibility factors, including independent cost and feasibility assessments of both incumbent and non-incumbent proposals, that may are be relevant to the size and scope of the project proposed to the Office of the Interconnection's determination of the most efficient and cost-effective project.~~ The entity proposing a Short-term Project or a Long-lead Project recommended for inclusion in the recommended plan shall be the Designated Entity, provided the entity indicated in its proposal its intent to be the Designated Entity and the Office of the Interconnection determines that the entity is qualified pursuant to section 1.5.8(a) to submit proposals and be a Designated Entity.

(f) If the Office of the Interconnection determines that: (i) none of the proposed Long-lead Projects received during the 120-day proposal window would resolve a posted violation, system condition, or economic constraint without significant modification; (ii) no one proposed Long-lead Project is superior to any other, or (iii) the proposing entity did not qualify pursuant to section 1.5.8(a), none of the proposed Long-lead Projects will be included in the recommended plan and the Office of the Interconnection shall re-evaluate and post on the PJM website all violations, system conditions, or economic constraints in the next planning cycle pursuant to section 1.5.8(b). **[Should we have an**

exception if there is an immediacy to resolve a violation (i.e., the project will take 5 plus years to build and we cannot wait until next proposal window?)

(g) If the Office of the Interconnection determines that: (i) none of the proposed Short-term Projects received during a ~~[30/60 day]~~45-day proposal window would resolve a posted violation, system condition, or economic constraint without significant modification; ~~(ii) no one proposed Short-term Project is superior to any other,~~ ^[A3] or (iii) the proposing entity did not qualify pursuant to section 1.5.8(a), none of the proposed Short-term Projects will be included in the recommended plan. Instead, the Office of the Interconnection shall propose an alternative Short-term Project for inclusion in the recommended plan and will present such alternative Short-term Project to the Transmission Expansion Advisory Committee for review and comment. ~~The Transmission Owner(s) in whose Zone(s) the alternative Short Project is to be located shall be the Designated Entity for the alternative Short-term Project. The Office of Interconnection shall conduct a nondiscriminatory and non-preferential process for the selection of the Designated Entity from previously Qualified Entities if the Office of Interconnection proposes the Short-term Project or Long-lead Project.~~ ^[A4]

(h) The PJM Board shall approve the inclusion of Short-term Projects and Long-lead Projects and associated Designated Entities in the final Regional Transmission Expansion Plan, pursuant to Section 1.6 of this Schedule 6. Within ~~7~~7 business days of the PJM Board's approval, PJM shall notify the proposing entity that its project is included in the Regional Transmission Expansion Plan and that it shall be the Designated Entity. In such legal notification, the Office of Interconnection should specifically state that the Designated Entity, whether an incumbent or non-incumbent, shall be eligible for regional cost allocation of its project included in the RTEP. ^[A5] In such notice, the Office of the Interconnection shall provide the dates by which (i) construction must commence; (ii) all necessary state approvals must be obtained to facilitate the start of construction; and (iii) the project must be in-service.

(i) Within ~~[10]~~ **[Is 10 business days sufficient time?]** ~~21~~ Business Days of receiving notification of its designation as a Designated Entity, the Designated Entity shall submit to the Office of the Interconnection a development schedule which shall include, but not be limited to: (1) construction milestones necessary to develop and construct the Short-term Project or Long-lead Project to achieve the required in-service date, including the deadline for obtaining all necessary state approvals to facilitate the start of construction as specified by the Office of the Interconnection in the notice pursuant to section 1.5.8(h), and (2) **[a performance bond/letter of credit/etc need language from Suzanne.]** In the event the Designated Entity, including PJM Transmission Owners, (i) fails to provide a development schedule or performance bond pursuant to this section 1.5.8(i); or (ii) fails to meet a significant milestone in its development schedule that causes a delay of the project's in-service date, the Office of the Interconnection shall re-evaluate the need for the Short-term Project or Long-lead Project, and based on that re-evaluation may (i) retain the Short-term Project or Long-lead Project in the Regional Transmission Expansion Plan, (ii) remove the Short-term Project or Long-lead Project from the Regional Transmission Expansion Plan, or (iii) include an alternative solution in the Regional Transmission Expansion Plan. If the

Office of the Interconnection retains the Short-term or Long-term Project in the Regional Transmission Expansion Plan, it shall determine whether to retain the Designated Entity ~~or to designate the Transmission Owner(s) in whose Zone(s) the project is located as Designated Entity for the Short term Project or Long lead Project~~if there is material evidence of abandonment, material evidence of lack of commercially reasonable competence, or final state orders confirming the lack of legal ability by the Designated Entity to advance the reliability project. Any modifications to the Regional Transmission Expansion Plan pursuant to this section shall be presented to the Transmission Expansion Advisory Committee for review and comment and approved by the PJM Board. Within 30 days of PJM Board approval to remove a Short-term Project or Long-lead Project from the Regional Transmission Expansion Plan, the Office of the Interconnection shall submit an informational filing to the FERC notifying FERC of the removal.

(j) Notwithstanding anything to the contrary in this Section 1.5.8, in all events, the Transmission Owner(s) in whose Zone(s) a proposed Short-term Project or Long-lead Project is to be located will be the Designated Entity for that project, when the Short-term Project or Long-lead Project is: (i) an upgrade to a Transmission Owner's own transmission facilities, such as reconductoring or a tower change-out; ~~(ii) located on a Transmission Owner's existing right-of-way^[A6]; or~~ (iii) located solely within a Transmission Owner's Zone and the costs of the project are allocated solely to the Transmission Owner's Zone; or ~~(iviii)~~ located solely within a Transmission Owner's Zone and is not selected in the Regional Transmission Expansion Plan for purposes of cost allocation^[A7].

(k) The Office of the Interconnection shall develop and recommend Immediate-Need Reliability Projects for inclusion in the Regional Transmission Expansion Plan pursuant to the expansion planning process set forth in sections 1.5.1 through 1.5.6 of Schedule 6. The Office of the Interconnection shall present the recommended Immediate-Need Reliability Projects to the Transmission Expansion Advisory Committee for review and comment. The PJM Board shall review the recommended Immediate-Need Reliability Projects and include such projects that it finds are required for reliability within the following three years in the Regional Transmission Expansion Plan. Transmission Owners that owns the transmission facilities located in the Zone where the Immediate-Need Reliability Project is to be located shall be the Designated Entity for the Immediate-Need Reliability Project included in the Regional Transmission Expansion Plan.

1.6 Approval of the Final Regional Transmission Expansion Plan.

(a) The PJM Board shall approve the final Regional Transmission Expansion Plan, including any alternatives therein, any additions of economic transmission enhancements or expansions pursuant to Sections 1.5.6(d) and 1.5.7 above, Immediate-Need Reliability Projects, Short-term Projects and Long-lead Project pursuant to Section 1.5.8 in accordance with the requirements of this Section 1.6. The PJM Board shall not approve the Supplemental Projects listed in the Regional Transmission Expansion Plan. PJM

Board approval of the Regional Transmission Expansion Plan shall not represent PJM Board review or approval of the Supplemental Projects, and Supplemental Projects are not eligible for cost allocation pursuant to Schedule 12 of the PJM Tariff.

The Office of the Interconnection shall publish the current, approved Regional Transmission Expansion Plan on the PJM Internet site. Within 30 days after each occasion when the PJM Board approves a Regional Transmission Expansion Plan, or an addition to such a plan, that designates one or more ~~entities~~Transmission Owners to construct an economic expansion or enhancement developed pursuant to Sections 1.5.6(d) and 1.5.7 above, the Office of the Interconnection shall file with FERC a report identifying the economic expansion or enhancement, its estimated cost, the entity or entities that will be responsible for constructing and owning or financing the project, and the market participants designated under Section 1.5.6(k) above to bear responsibility for the costs of the project.

(b) If a Regional Transmission Expansion Plan is not approved, or if the transmission service requested by any entity is not included in an approved Regional Transmission Expansion Plan, nothing herein shall limit in any way the right of any entity to seek relief pursuant to the provisions of ~~Section 211 of~~ the Federal Power Act.

(c) Following PJM Board approval, the final Regional Transmission Expansion Plan shall be documented, posted publicly and provided to the Applicable Regional Entities.