



# LS Power Transmission Comments: NYISO's FERC Order 1000 Compliance and New Entrants

April 2012

*Bringing Energy Forward*



# FERC Order 1000 Requires Tariff Revisions Related to New Entrants, and a Robust Stakeholder Process related to these changes

- Removal of right of first refusal (ROFR) for projects included in the Comprehensive System Plan (CSP) for regional cost allocation
- A transparent and not unduly discriminatory or preferential process for evaluating and selecting proposed transmission solutions for inclusion in the CSP for purposes of cost allocation
- Qualification criteria for transmission developers
- Standard proposal submittal information



# Elimination of ROFR for Cost Allocated Projects

**Requirement:** Eliminate provisions that establish a federal right of first refusal (ROFR) for incumbent transmission providers with respect to projects selected in a regional transmission plan for purposes of cost allocation (Order No. 1000 ¶ 313);

**Proposed Action:** NY-ISO should clearly state in its compliance filing that no ROFR exists 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.



# Regional Planning Process and Project Evaluation

**Requirement:** 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);

**Requirement:** A process must be established to evaluate potential solutions to regional transmission needs, with the input of interested parties and stakeholders (FERC Order 1000 ¶ 33)

**Proposed Action:** NYISO should adopt tariff changes to allow all Qualified Transmission Developers to propose and to be selected to build reliability projects. NYISO should also develop a criteria for selecting reliability projects.



# Regional Planning Process and Project Evaluation(cont.)

**Proposal:** NYISO with input from stakeholders, should develop a process and criteria for evaluating transmission solutions submitted in response to a transmission need

The process should include an evaluation matrix, which contains weighted project attributes

- Efficient and Cost-Effective Solutions Should be the Most Important Component of the ultimate Evaluation Matrix for a Project;
  - “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).
  - Rigorous technical analysis shall be performed to determine the best technical solution;



# Regional Planning Process and Project Evaluation(cont.)

## **Proposed evaluation attributes:**

- Ability of project to address identified transmission need
- Project cost
  - Use of Independent Cost Estimates / Independent Consultant Review;
    - Use one consultant for all “finalist” projects in a given area;
    - Final consultant review will be conducted, if required, of a limited number of most effective projects;
- Benefits (i.e. reliability, market efficiency and public policy)
- Feasibility/Fatal Flaw Analysis



# Regional Planning Process and the “80% Rule”

**Requirement:** 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);

LS Power contends that the current “80% Rule” for approval of proposed CARIS projects, does not meet the Order 1000 criteria of “not unduly discriminatory or preferential”. NYISO is an independent entity, the results of its analysis along with input from stakeholders is sufficient to establish the need of a project.

**Proposed Action:** NY-ISO should remove the 80% approval rule from its tariff



# Standard Project Submittal Information

**Requirement:** Outline information required in order to submit a project proposal (Order No. 1000 ¶ 325);

**Proposed Action:** NYISO with input from stakeholders, should ensure that the information currently required with project proposals complies with the criteria set for in Order 1000





# Proposed Qualifications to be a Transmission Developer

- 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 \$300 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 include:**

- Willingness of entity to join NYISO and become a transmission owner
- 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
- Willingness of entity to apply for eminent domain authority at appropriate time under state law for the project if necessary



# Local Projects, Existing System Upgrades and Project Proposed on Existing ROW

A Local Project Retains a ROFR for the incumbent utility (paragraph 318, 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”.
- » 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, FERC Order 1000)

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);

- » Upgrades are defined as “such as tower change outs or reconductoring” (paragraph 319, FERC Order 1000)



# Local Projects, Existing System Upgrades and Project Proposed on Existing ROW(cont.)

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)

- » Order 1000 does not state that there remains a ROFR for all right of way owned by an incumbent.
- » 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.

Project assignments related to Local Project, System Upgrades and projects proposed on existing ROW, must be consistent with state laws.



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