

LSP Transmission Holdings, LLC (“LS Power”) Comments on May 17th Strawman-Specific Feedback Based on FERC Order 1000 and FERC Order 1000A

LS Power appreciates the opportunity to provide the below preliminary comments.

<i>May 17th Strawman Proposal</i>	<i>LS Power Specific Comments and Feedback on May 17th Strawman Concept</i>
<p>II. Procedures by which the Transmission Providers within the SERTP Identify and Evaluate Potential Regional Transmission Projects that may Meet the Region’s Needs More Efficiently and Cost-Effectively</p> <ol style="list-style-type: none"> 1. Sponsors identify and evaluate potential transmission projects that may meet the region’s needs more efficiently and cost efficiently 2. Potential regional transmission proposed by SERTP stakeholders, in accordance with existing Order 890 requirements, will be considered for evaluation 3. Potential regional transmission projects proposed by transmission developers will be considered for evaluation for inclusion in a regional transmission plan for Cost Allocation Purposes (“CAP”) 	<ul style="list-style-type: none"> ❖ In Paragraph 456 of FERC Order 1000A, FERC clarifies that: (a) region must use the same process to evaluate a new transmission facility by both a non-incumbent and incumbent, and (b) the process must adopt a transparent and not unduly discriminatory process. ❖ Based on Paragraph 456 of Order 1000A and other Order 1000 provisions (see prior LS Power comments), LS Power would be concerned if the Sponsors and new entrants had two separate processes for the evaluation of a new transmission facility. The May 17th Strawman appears to propose two processes for evaluation – one for the Sponsors and one for new entrants. ❖ The same evaluation process for all <u>regional proposals from new entrants and the Sponsors must exist</u>, and the process must be transparent and not unduly discriminatory, based on FERC Order 1000A rehearing order.
<p>III. A. i. The Sponsors address transmission needs driven by Public Policy Requirements in the routine planning, design, construction, operation, and maintenance of the transmission system.</p> <p>The Sponsors address transmission needs driven by the Public Policy Requirements of Load Serving Entities and wholesale transmission customers through the planning for and provision of firm transmission services to meet native load and wholesale transmission customer obligations.</p>	<ul style="list-style-type: none"> ❖ In Paragraph 423 of FERC Order 1000A, FERC clarifies the definition of “Local” Projects that retain a ROFR. “No ROFR elimination if the regional cost allocation method results in 100 percent of the facilities costs allocated” to transmission owner and 100 percent of the project in the retail distribution service territory. FERC further clarifies in Paragraph 430 that if any costs of a new transmission facility are allocated regionally or outside of a public utility’s retail distribution footprint or territory, then there can be no ROFR for such a facility. ❖ The May 17th Strawman appears to reserve Public Policy Projects driven by

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	<p>Public Policy projects in the “routine planning, design, operation and maintenance of transmission system” or Public Policy projects driven by “Load Serving Entities and wholesale customers” to the Sponsors.</p> <ul style="list-style-type: none"> ❖ <u>LS Power believes that whether a project is reserved exclusively for the Sponsors is contingent on whether the project is a “LOCAL” project for purposes of FERC Order 1000/ 1000A. FERC further clarifies in Order 1000A Paragraph 430 that if any costs (greater than 0%) of a new transmission facility are allocated regionally or outside of a public utility’s retail distribution footprint or territory, then they are regional projects. Therefore, a regional project cannot be reserved exclusively for just the Sponsors, and planning process and assignment process must be open to both Sponsors and new entrants.</u> If the Public Policy Projects are regional, simply addressing the input of Stakeholders is not enough as proposed in the May 17th Strawman. ❖ FERC Order 1000A in paragraph 428 also clarified that there can be no ROFR for reliability projects. ❖ FERC Order 1000A is also clear that regions must make models and data available for new entrants in order for them to propose projects.
<p>C. Sponsor evaluation of SERTP Stakeholder input regarding potential transmission needs driven by Public Policy Requirements.</p> <p>ii. If a transmission need is identified that is not already addressed in the expansion planning process, the SERTP Sponsors will identify a transmission solution to address the aforementioned need in the planning process.</p>	<ul style="list-style-type: none"> ❖ If the transmission solution is “regional” (as defined by FERC Order 1000/ FERC Order 1000A), then the process must be opened up for both Sponsors and new entrants to propose and to be assigned Public Policy Projects.
<p>IV. Qualification Criteria to Submit a Regional Transmission Project for Selection in a Regional Transmission for CAP - Financial Criteria of “...Demonstrated</p>	<ul style="list-style-type: none"> ❖ LS Power appreciates the inclusion of part of its proposed financial criteria of “demonstrated capability to finance U.S. energy projects equal or greater than the

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capability to finance US energy projects equal or greater than the cost of the proposed regional transmission project”	cost of the proposed regional transmission project”. LS Power suggests that the other aspect of its financial criteria be considered: “demonstrated capability to finance THE LESSER OF U.S. energy projects equal or greater than the cost of the proposed regional transmission project or \$300 million ” also has merits.
IV. Qualification Criteria to Submit a Regional Transmission Project for Selection in a Regional Transmission for CAP - Technical Criteria	<ul style="list-style-type: none"> ❖ LS Power believes that <u>the ability to contract</u> for construct, operation and maintenance of project should be added to technical qualification criteria. ❖ The ability to contract has been approved by FERC in qualification criteria for FERC applications in both the hydroelectric and natural gas pipeline industry. LS Power believes that this is reasonable precedent to how FERC will review qualification criteria for new entrants on transmission. These FERC regulations are precedents on this issue of contracting.¹ ❖ LS Power believes that development, construction, operation and maintenance experience with US Energy Projects is relevant in the evaluation process for new entrants. While clearly US electric transmission projects experience is very relevant and LS Power has that experience, LS Power has also found in its transmission experience that its initial background in the power generation industry has been very relevant experience to bring to the transmission industry. LS Power has developed significant merchant coal and gas generation projects, all of which require significant experience with regulatory, engineering, development, community affairs, ROW acquisition, and construction cost management. Similar

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.

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	<p>arguments may also be made by the natural gas pipeline industry. Evaluation of transmission experience is relevant and important, but experience in other sectors of the US Energy industry (regulated by FERC) is also relevant for evaluation.</p> <ul style="list-style-type: none"> ❖ The LESSER OF \$300 million criteria comment described above is also relevant for technical qualifications. ❖ FERC Order 1000A denied NY Transmission Owners rehearing request that NERC registration can be a pre-condition to assignment of a reliability project.
<p>IV. Qualification Criteria to Submit a Regional Transmission Project for Selection in a Regional Transmission for CAP - Qualification criteria will also require the transmission developer to provide an explanation of its planned approach to satisfy applicable regulatory requirements and obtain requisite authorizations necessary to acquire ROW and to construct operate, and maintain the proposed facility in the relevant jurisdictions.</p>	<ul style="list-style-type: none"> ❖ In Paragraph 441 of FERC Rehearing Order 1000A, FERC clarifies that “we clarify in response to LS Power 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 to eminent domain, to be eligible to propose a transmission facility” ❖ LS Power believes that the second phrase of the Qualification Criteria in the May 17th Strawman is inconsistent with the Order 1000A rehearing order. <ul style="list-style-type: none"> ➤ Phrase of Strawman that is NOT consistent with Order 1000A and <u>should be struck in its entirety</u>: “...and obtain requisite authorizations necessary to acquire ROW and to construct operate, and maintain the proposed facility in the relevant jurisdictions.”
<p>B. In order for a transmission project proposed by a transmission developer to be considered for evaluation and potential selection in a regional transmission plan for CAP, the project must meet the following criteria: i. The proposed transmission project must be</p>	<ul style="list-style-type: none"> ❖ LS Power’s previously-submitted comments reflect our strong concerns on a ROFR for projects not “materially different than projects that have been previously considered in the expansion planning process”.

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<p>regional in nature: operating voltage of 300 kV or greater, and span 100 miles or more</p> <p>ii. The proposed transmission project must both a green-field facility and materially different than projects that have been previously considered in the expansion planning process</p>	<ul style="list-style-type: none"> ❖ LS Power strongly believes that the 300 kV and 100 mile span criteria is wholly inconsistent with FERC Order 1000 and FERC Order 1000A. The issue is whether a project is REGIONAL vs. LOCAL. If a project is regional (as defined by the Orders), then these projects should be open to new entrants under the FERC Orders. ❖ LS Power recognizes that upgrades to existing facilities (reconductoring or tower change outs) and local projects are not open to new entrants, and that state and local law is not altered by the Orders.
<p>V. iii. Capital Cost Estimates</p>	<ul style="list-style-type: none"> ❖ LS Power is happy to support its capital cost estimates with independent cost estimates, but also believes that if it is competing directly against the cost estimate of a Sponsor or other entity that they should be required to have cost estimates prepared by the same independent parties so that cost estimates and estimate assumptions can be compared comparably. FERC Order 1000A addresses this issue as well.
<p>V. vi. Documentation of the technical analysis performed supporting the position that the proposed transmission project is more cost-effective...</p>	<ul style="list-style-type: none"> ❖ LS Power believes that if a new entrant is required to perform this type of justification, that sufficient data and files should be made available to perform this comparative analysis. LS Power believes it is the region's role to perform independent comparative analysis, but if required, full transparency of SERTP files and data will be required. ❖ LS Power does not object to the information requirement that proposals should be justified.
<p>VI. B. i. Planning Level Cost Estimates</p>	<ul style="list-style-type: none"> ❖ LS Power believes it is the new entrant's burden to develop the cost estimates and the region's role to <u>independently review</u> the cost estimates of both the Sponsor and new entrant. It is inappropriate for competing Sponsors to develop the cost estimates for the new entrant projects (and

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	then used in the benefit-cost ratio). The conflict of interest on the cost estimates should be addressed.
VI. C. iii. The proposed regional transmission project would be included in a regional transmission plan and be eligible, but not yet selected, for CAP, if the proposal:(iii) Is approved by the Sponsors whose transmission expansion plans would be altered with the inclusion of the proposal.	❖ LS Power strongly believes that this is inconsistent with the “regional” nature of transmission planning prescribed by Order 1000A and Order 1000. This requirement greatly increases the likelihood of discriminatory treatment, and greatly undermines very nature of regional transmission planning. If the Sponsor’s project was not selected and a new entrant project was selected, how would a new entrant’s project ever be awarded if the “losing” Sponsor had a veto right over the competing new entrant project? LS Power opposes this criterion strongly on the basis of discriminatory treatment.
VI. C. Contractual Agreements	❖ Operational Control. Please note that LS Power is providing a presentation to FRCC on June 11 on “Lessons Learned from its ON-LINE project in Nevada”. The ON-LINE project in NV (a 235 mile, 500 kV line under construction today in Nevada) is going under the NV Energy OATT. We will be happy to provide SERTP a copy of this presentation after the June 11 FRCC meeting, if interested.
VI. D. Development of MOU	❖ Will this standard MOU agreement be litigated at FERC?
VII. Financial Terms of Proposal	<ul style="list-style-type: none"> ❖ Is SERTP suggesting that new entrants must propose fixed cost proposals and Sponsors do not have follow this same cost certainty methodology? ❖ Do regional projects assigned to Sponsors have this same process related to cost certainty of projects? ❖ In general, LS Power believes it is the region’s role to determine cost allocation formulas, not the new entrant.
VII. B. Reevaluation of Project	❖ At what point in development, does the SERTP re-evaluation process stop for a new entrant proposal? The re-evaluation

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	process should be no different for a Sponsor's regional project.
VII. C. Approval of New Entrant Proposal	❖ Is SERTP suggesting the same approval process for a Sponsor's Regional project? For example, for Sponsor's projects, would state public commission approval be required for selection and regional cost allocation prior to the state's CPCN process?
General Question	❖ At what point is SERTP suggesting that a new entrant apply for abandonment recovery for a project proposal? At what point does a regional Sponsor's proposal apply for abandonment recovery in the Sponsor process? It should be comparable in the same process.