



Legal & Regulatory Conference

IN PARTNERSHIP WITH

GRIDLIANCE



Examine Together

Transmission Competition under FERC Order No. 1000 at a Crossroads: *Reinforce or Repeal?*

John C. McClure

Vice President Gov't Affairs
& General Counsel

*APPA Legal Conference
Charleston, SC
October 10, 2018*



Nebraska Public Power District

"Always there when you need us"

FERC Order No. 1000 in Nutshell

- **Issued in 2011.**
- **Promote Transmission Development.**
 - Regional / Interregional Planning.
 - Cost Allocation.
 - Eliminate Federal Right of First Refusal (ROFR).
 - Allows, but does not require competitive transmission process for regional cost sharing projects.
 - Excludes local projects.
 - Excludes most rebuilds.
 - Does not alter state or local laws regarding authority to permit and construct transmission facilities.

SPP Actions to Promote Competitive Transmission under FERC Order 1000

- Established robust competitive transmission selection process (Transmission Owner Selection Process or TOSP).
- Created “blind” competitive process masking identity of proposal owners.
- Pool of industry experts selected for evaluating competitive project proposals.
- Detailed criteria for evaluating proposals.

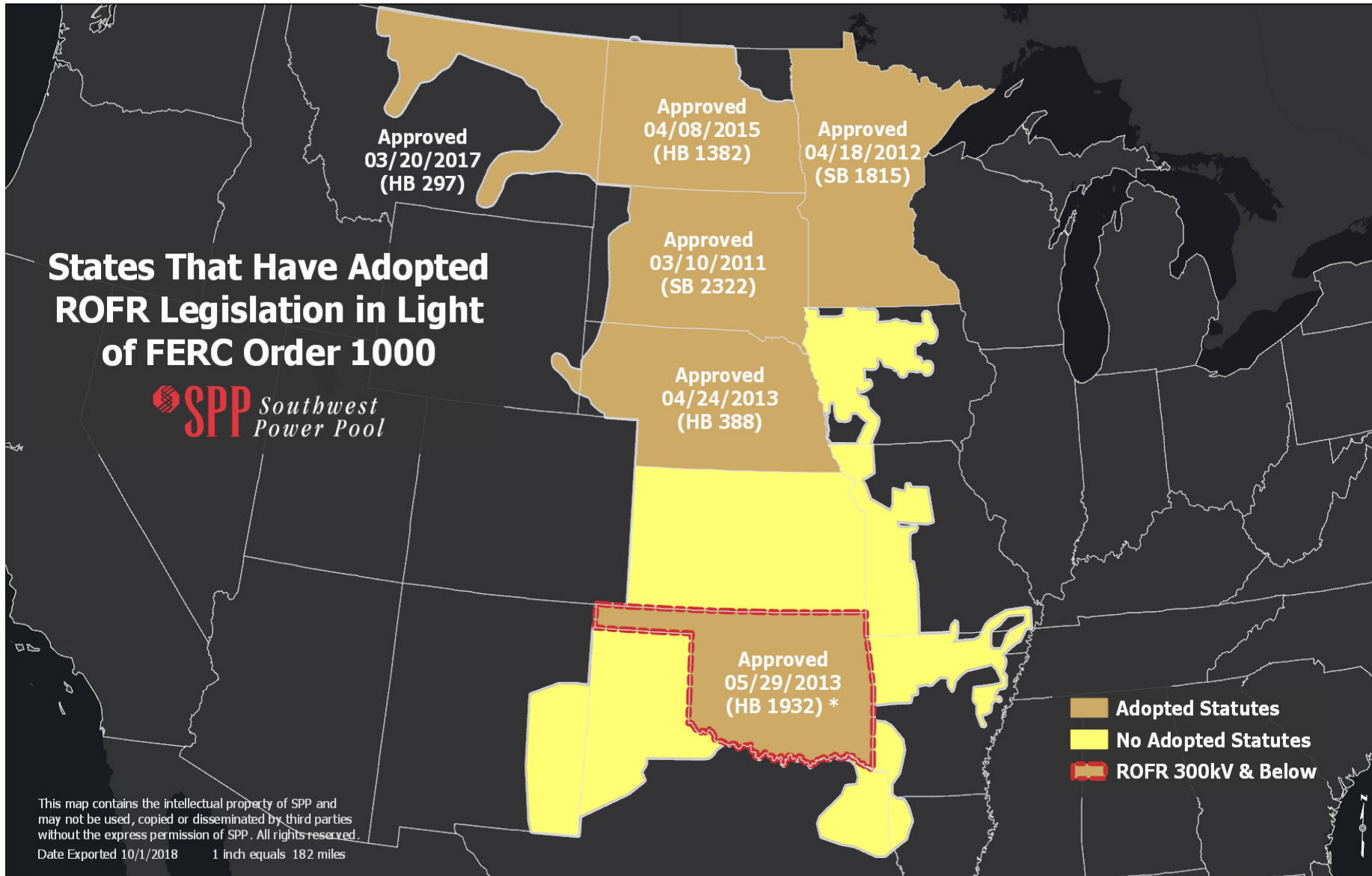
2014 RFP for Competitive SPP 115 kV Project

- Received 11 proposals.
- Detailed TOSP criteria included.
 - Engineering design
 - Project management
 - Operations
 - Rate analysis
 - Finance

2015 TOSP Results

- Assumed over \$8 million spent on the process.
- \$4-5 million on solicitation costs and review.
- \$3.3-\$4.4 million on bidding costs.
- 119 page detailed, small print SPP report summarizing the review process.
- Costs to propose, evaluate and select equated to 46-59% of the selected project cost.
- Incumbent transmission owner won the RFP.
- Project was eventually withdrawn.

State ROFRs Dominate the SPP Footprint



Nebraska ROFR Provision

70-1028. Electric transmission line approved for construction in regional transmission organization transmission plan; notice to board; failure to provide notice; effect.

(1) If an electric transmission line has been approved for construction in a regional transmission organization transmission plan, the incumbent electric transmission owner of the existing electric transmission facilities to which the electric transmission line will connect shall give notice to the board, in writing, within ninety days after such approval, if it intends to construct, own, and maintain the electric transmission line. If no notice is provided, the incumbent electric transmission owner shall surrender its first right to construct, own, and maintain the electric transmission line and any other incumbent electric transmission owner may file an application for the electric transmission line under section 70-1012. Within twenty-four months after such notice, the incumbent electric transmission owner shall file an application with the board pursuant to section 70-1012.

Source: Laws 2013, LB388, § 1; Laws 2016, LB824, § 12.

Nebraska ROFR Provision (Cont'd)

70-1028. Electric transmission line approved for construction in regional transmission organization transmission plan; notice to board; failure to provide notice; effect.

(2) For purposes of this section:

(a) Electric transmission line means any line and related facilities connecting to existing electric transmission facilities for transmitting electric energy at a voltage of one hundred kilovolts or greater, other than a line solely for connecting an electric generation facility to facilities owned by an electric supplier; and

(b) Incumbent electric transmission owner means an entity that: (i) Is an electric supplier; (ii) is a member of a regional transmission organization; and (iii) owns and operates electric transmission lines at a voltage of one hundred kilovolts or greater.

Source: Laws 2013, LB388, § 1; Laws 2016, LB824, § 12.

Minnesota Federal Court ROFR Litigation

- LSP Transmission Holdings, LLC v. (Minnesota PUC Commissioners) – Civil No. 17-4490 (DWF/HB)
 - Memorandum & Order June 21, 2017.
 - LSP Transmission challenged MN ROFR under dormant Commerce Clause.
 - Incumbent transmission owners/defendants filed motion to dismiss.
 - Sustained Minnesota ROFR
 - No violation of dormant Commerce Clause. See *Gen. Motors Corp v. Tracy*, 519 U.S. 278(1997).
 - “Regulation of utilities is one of the most important functions... of the states.” *S. Union Co. v. Mo. Pub. Serv. Comm’n*, 289 F.3d 503 (8th Cir 2002)

Conclusions

- Competitive transmission process has been expensive and ineffective in building new transmission despite SPP's good faith efforts to implement.
- Many SPP states reject "competitive" transmission in favor of state ROFR.
- SPP has successfully expanded transmission network to integrate the Nation's largest growth of RTO wind generation.
 - Approximately **\$7 Billion** invested in transmission during past decade.
 - Over 10 GW of wind added since the beginning of 2012.
 - 22% of 2017 energy supply and 60% of energy mix in certain hours and growing.