

83C APPENDIX C-3 KEY OFFSHORE DELIVERY FACILITIES AGREEMENT REQUIREMENTS

The following are key provisions that must be included and addressed in the Bidder's summary of its proposed Offshore Delivery Facilities Agreements:

- Identification of which transmission (including generator tie-lines with cost recovery under a FERC tariff) proposal(s) the Transmission Agreement applies to
- Good Utility Practice requirement – applicable to design, engineering, construction, operation and maintenance of the transmission project.
- Requirement to make application for, prosecute, obtain and hold all permits, licenses, authorizations, consents, decrees, waivers, privileges and approvals from, and filings with any governmental department, agency, or authority, as required by law to commence, prosecute and complete construction of the transmission project in accordance with terms of the Agreement. This requirement should be expanded to include any authorizations required by ISO and NERC to operate the transmission project.
- Remedies for failure to perform, including options for the EDCs or a third party to step in to complete the construction of the project or operate the line.
- Milestones that show key dates - ISO studies; land rights; permit/siting approvals; design completion; engineering completion; construction milestones; ISD; etc.
- Commitment to milestone schedule
- Commitment to level of interconnection service that is bid
- Disclosure of terms and conditions in agreements between OSW Generation Bidder and an associated Transmission Developer
- Payment - transparent cost-of-service, formula rate, replicable by the Evaluation Team or fixed rate or fixed rate with specified adjustments; treatment of network upgrade costs; rate may be negotiated provided there is demonstration that in relevant circumstances negotiated rate consistent with FERC precedent, commitment to file cost of service rate subject to a ceiling if FERC rejects negotiated rate; and EDCs know their cost exposure
- Cost Containment provisions: cost overruns, etc.
- Addressing risk that associated bid generation is late in achieving commercial operation or does not achieve commercial operation
- Addressing risk that transmission is late achieving commercial operation or does not achieve commercial operation, denying generator the ability to deliver its products
- Address risk of unavailability of transmission service and compensation to generator
- Standard of performance or availability that would apply after service begins.
- Addressing limits, if any, on seeking abandoned plant cost recovery at FERC
- Protecting customers against risks/risk sharing during term of Transmission Service Agreement - unanticipated environmental hazards during construction, damage/repair to facilities after ISD, etc.
- Annual audit rights on cost-of-service rates; requirement to maintain records and accounts
- Quantity and characteristics of deliverable - xx MW, during which hours, certain frequency (Hz), identify the type of transmission facility (MW, UG or OH, cable size, length, etc.)
- Clearly identify the transmission facilities EDCs are paying for (can define by points of interconnection, or points of receipt/delivery)
- Break out separately costs of transmission facilities from other delivery facilities, and ensure that both of these costs are stated separately from generation costs
- Establish rights of use (MW and term), including rights of third parties to interconnect with the facilities in the future
- Ensuring equitable allocation of costs to future generators interconnecting to transmission or interconnection facilities constructed by the bidder
- Roll-over Rights
- Metering - location, EDC inspection/audit rights, compliance with ISO metering requirements
- Force Majeure (specify what is included and what is excluded from Force Majeure, and what are the contractual consequences)

- Term of Agreement
- Termination Rights; Default
- Bankruptcy
- Requirement to follow ISO Operating Documents (Tariff and Operating Procedures)
- Governing Law
- Limitation of Liability
- Indemnification
- Jones Act compliance
- Dispute Resolution Procedures
- Miscellaneous terms (successors and assign; waiver; headings; entire agreement; amendments; notices)