

83D Questions and Answers

- (20) Section 2.2.2.7 – Please provide further clarification on the methodology that will be used to calculate Winter Peak generation: cumulative averages over 8am-11pm peak hours? Hourly averages? Does the methodology and pricing information apply only to periods when the unit is generating?

Answer: The Winter Peak Period delivery requirement for Class I RPS eligible resources is cumulative over each Winter Peak Period (peak hours only, December through February) in its entirety, without regard to which hours during the Winter Peak Period in which the generation occurs.

- (23) Section 1.10 – Non-Refundable Bid Fees. States “For clarity, if there are changes to any physical aspect of a project, including but not limited to project size, technology type(s), production/delivery profile, in-service date, or delivery location then a new bid fee is required.” Please clarify whether a new bid fee would be required if land control for the project site changes (assuming other physical aspects of project like delivery point, project size, etc. remain the same).

Answer: The cited language requires a bid fee to be submitted for each project configuration. Also please note that site control is governed by Section 2.2.2.1 of the RFP.

- (27) Using the example below, please clarify, for a new Class I RPS eligible resource, how “Bidders will be required to guarantee that 70 percent (70%) of energy in their delivery profile of the Winter Peak Period is delivered over the course of every Winter Peak period” (Section 2.2.2.7). Example: Bidder’s delivery profile shows 10,000 MWh to be delivered over the course of the hours ending 0800 to 2300 during the full Winter Peak Period.

- a. Please confirm that the requirement of 70% is measured over the cumulative period and is 7,000 MWh and not an hourly calculation built from the 12x24 profile provided in the bid spreadsheet;

Answer: See response to Question 20.

- b. Please confirm that the calculation is measured on an annual basis, such that the measurement period of a given year would be January, February, and December of that same year (example: 2022);

Answer: The Winter Peak Period over which the delivery requirement is measured is defined in the Class I Model PPA and the Class I Firming Hydro PPA as “each consecutive three-month period comprised [of] December, January and February.” Each Winter Peak

Period therefore carries over from one calendar year (December) the next calendar year (January and February).

- c. If a solar facility fell short of the 70% and only delivered 6,000 MWh. Please provide further clarification around the calculation of liquidated damages for the 1,000 MWh shortfall. Does the weighted average LMP calculation take into consideration the 24 hour profile of the facility?
 - i. For example, a solar facility profile will be at 0.0% during HE 22. If there was a shortfall over the Winter Peak period, would any LMP pricing for HE 22 be included in the liquidated damages calculation despite the fact that the facility was never expected to be generating during that hour?

Answer: For purposes of calculating liquidated damages, the weighted average Real Time Market LMP would be based on the Delivery Schedule included in the PPA. Therefore, if the Delivery Schedule did not provide for the Facility to deliver any Energy during a particular hour, the LMP during that hour would not be included in the calculation of the liquidated damages.

- (33) Can you explain what the delivery of 70% in the winter months means? Does it mean, if a project produces 1000MWh, should it provide 700MWh in winter or does it mean that if I produce 100MWh in winter, I should be able to provide 70MWh in winter.

Answer: See responses to Questions 20 and 27.

- (37) Are grid reliability curtailments and negative pricing hours carved out of 70% minimum delivery requirement for RPS Class 1 Resources?

Answer: Consistent with Sections 4.2(a) and 4.4 of the PPA, hours in which (i) Seller elects not to deliver Energy because the LMP at the Delivery Point is negative or is likely to become negative or (ii) there is a Reliability Curtailment, will not be included in the calculation of the minimum delivery requirement for the Winter Peak Period.

- (40) Draft PPA for Class I Energy Firmed With Firm Service Hydroelectric Generation (the “Class I Firmed Up PPA”) Delivery Requirements and Liquidated Damages
 - a. The Class I Firmed Up PPA provides broad language with respect to Seller’s obligations for Delivering the Products (which include both Qualified Clean Energy and RECs) (section 4.1(a)) and the liquidated damages payable for failure to Deliver same (section 4.3). With respect to the delivery of Energy generated by RPS Class I Generation Facility and associated RECs, could you please confirm that the only liquidated damages payable by the Seller under

the Class I Firmed Up PPA are those covered by section 4.8 with respect to a Winter Delivery Deficiency and in section 4.9 with respect to a Biennial Delivery Deficiency?

Answer: That is not correct. Liquidated damages could also be due under Section 3.2 (Delay Damages), Section 4.3 (Cover Damages) and Section 9.3 (Termination Payment) of the PPA for Class I RPS eligible resources. Under Section 9.3(e) of that PPA, damages are also available for the breach of any provision for which liquidated damages are not specified.

- b. If the Seller decides not to deliver Energy generated by Class I Generation Facility and associated RECs because the LMP at the Delivery Point is negative, could you please confirm these periods of non-delivery will be excluded from the biennial and Winter Peak Period delivery requirements in respect of both the Energy and the associated RECs or do we remain liable to pay a penalty for not delivering RECs?

Answer: See response to Question 37.

- (59) Is the Winter Peak period cumulative? I.e., does one Winter Peak period include every non-holiday Monday to Friday hour between 0800 to 2300 in January, February and December? Because there are some differences between the definition of “Winter Peak Period” in the RFP and the PPA, please confirm that the period is based on the aggregate hours over the 3 month period (and not a daily or hourly basis over the course of the 3 month period).

Answer: See response to Questions 20 & 27.

- (69) Please provide clarification on the definition of “affiliates of the bidder” as it relates to the requirement of audited financial statements.

Answer: The term “affiliate” shall mean: (i) Any entity that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company; (ii) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company; (iii) Any entity or class of entities that stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate that the entity be treated as an affiliate; and (iv) Any entity that is under common control with the specified company. See 18 CFR 35.36(a)(9).

- (70) Can compiled financial statements be produced internally?

Answer: Externally produced financial statements are preferred, but the EDCs will accept internally produced statements, as long as an audit opinion is included and that you confirm that externally produced financial statements were never prepared.

- (71) Please address the following questions pertaining to the “Winter Delivery Deficiency Damages” section of the form PPA:

a. How do you define “Weighted Average” real time LMP? What’s the weight?

Answer: See response to Question 27.

b. Can you clarify what “Transmission Charges” might occur when the winter capacity is not met?

Answer: That language is intended to cover any transmission charges incurred by the Buyer to acquire energy and/or RECs to replace those that are not delivered.

c. Can you clarify what “Related Transmission Facilities cost/charges” might occur when the winter capacity is not met?

Answer: That language is intended to cover any costs for which the Buyer is responsible related to the Related Transmission Facilities associated with the quantity of Energy not Delivered as a result of the Winter Delivery Deficiency.

d. Can you clarify what “other costs incurred by Buyer in purchasing Replacement Energy/RECs” might be?

Answer: Solely by way of example, the Buyer may incur broker’s costs or similar charges in obtaining replacement products.

e. Can you clarify what “applicable penalties and other costs assessed by ISO-NE or any other Person against Buyer as a result of that Winter Delivery Deficiency” might be?

Answer: Solely by way of example, the need for the Buyer to obtain additional energy in the ISO-NE market could trigger an additional financial assurance requirement for the Buyer.

f. Can you clarify what “any other costs and losses incurred by Buyer as a result of that Winter Delivery Deficiency” might be?

Answer: That language is meant to cover any costs that the Buyer incurs as a result of the failure of the Seller to deliver the Energy and/or RECs that is not covered by the other categories in the definition of “Winter Delivery Deficiency Damages.”

- (81) Section 2.2.1.3(iv):

- a. Please clarify what is meant by the statement in the last paragraph of this subsection that “if the Clean Energy Generation is not delivered as stated in that proposal, then in addition to the liquidated damages described above, the seller and/or the transmission developer will be responsible for liquidated damages for associated transmission support costs incurred in connection with the Clean Energy Generation that is not provided.”

Answer: See the response to Question 71.

- b. Please state whether the liquidated damages contemplated by this subsection are the same as the proportionate reduction in transmission payments called for in Section 2.2.2.6.3(2) and, if not, please explain how such liquidated damages will be calculated.

Answer: See response to Question 71. The language in Section 2.2.2.6.3(2) refers only to reductions in payment to the transmission project owner (not necessarily the Seller under the PPA) and only with respect to a situation in which the transmission project achieves commercial operation prior to when the associated generators begin delivering energy.

- (86) Section 2.2.2.7: Please explain:

- a. How the liquidated damages contemplated in this subsection, including those for “associated transmission infrastructure support costs,” will be calculated; and

Answer: See response to Question 71.

- b. Whether the liquidated damages contemplated in this subsection are expected to apply to the transmission developer as well as the Clean Energy Generation.

Answer: The liquidated damages associated with a failure to deliver the requisite amount of Products in any Winter Peak Period would be due from the Seller under the PPA. There are additional significant cost containment obligations that must be included in any transmission service agreement or tariff.

- (107) Please clarify what is meant by 70% of energy in their delivery profile of the Winter Peak Period is delivered over the course of every Winter Peak Period. Does that mean that if a facility was expected to produce, say, 500 GWH over a 12 month period and 100GWH in the Winter Peak Period, then the generator would be required to guarantee a minimum of 70 GWH over the Winter Peak Period?

Answer: During each Winter Peak Period, a Seller selling Energy and/or RECs from a Class I RPS eligible facility must deliver at least 70 percent of the cumulative Energy and/or RECs (as applicable) set forth in 12x24 Delivery Schedule included in its PPA over that entire Winter Peak Period. The analysis will look at the actual deliveries over the Winter Peak Period compared to the proposed deliveries in the Delivery Schedule over that same Winter Peak Period.

- (108) Is the 70% guaranteed delivery during the Winter Peak Period based on the cumulative production during the term, e.g., January, February and December during the defined "peak" days and times) or is the 70% threshold dictated on a daily basis, so each and every Monday from 0800 to 2300 during the Peak Period?

Answer: See response to Question 20.