



Appendix B-3

Term Sheet for Long-Term RFP Asset Acquisitions

For

2015

Request For Proposals

For

***Long-Term Combined-Cycle Gas Turbine
Capacity and Energy Resources and
Limited-Term Capacity and Energy
Resources***

For

Entergy Texas, Inc.

Entergy Services, Inc.

June 26, 2015

Term Sheet for Asset Acquisitions

The following bid submission term sheet (this “**Term Sheet**”) describes certain terms and conditions of a potential agreement between Buyer (as defined in item 2 below) and the seller proposed by the applicable bidder (“**Bidder**”) in Bidder’s proposal submitted in the RFP (“**Seller**” and, together with Buyer (defined below), the “**Parties**”) for the purchase by Buyer of a combined-cycle, gas-fired technology (CCGT) resource meeting the requirements of the Long-Term RFP and related assets. The terms set forth in this Term Sheet will establish the basis for the negotiation and execution of a definitive agreement between Buyer and each Seller whose proposal is selected by Entergy Services, Inc. (“**ESI**”) for contract negotiations (the “**Definitive Agreement**”), with necessary changes to accurately reflect any special exceptions set forth in Bidder’s proposal that are accepted by Buyer in its sole and absolute discretion. Buyer will provide the initial draft of the Definitive Agreement to the selected third-party Bidder (if any) at the beginning of contract negotiations.

If Bidder is unable or unwilling to accept one or more of the terms and conditions set forth in this Term Sheet or wishes to propose any alternate or additional terms or conditions (such as a buy-out option at some point during the term of the Definitive Agreement), Bidder should indicate in the “Special Considerations” section of its Proposal Package (i) the terms and conditions to which Bidder takes exception, describing with specificity any terms and conditions that Bidder proposes in substitution therefor, and/or (ii) the additional terms and conditions that Bidder proposes as a supplement to the terms and conditions in this Term Sheet. Bidder is advised to refer to Section 2.2 in the Main Body for additional information pertaining to Special Considerations.

| | Proposal Term | Description of Proposal Term |
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| 1 | Product Description: | The product described in this Term Sheet is designated as the “ Asset Acquisition Product .” This product provides for flexible generation capacity of not more than 1,000 MW (Summer Conditions, at full load, including duct-firing) of nameplate capacity from a designated CCGT resource capable of meeting the requirements of this product (the “ Facility ”). |
| 2 | Buyer: | “ Buyer ” will be Entergy Texas, Inc. (“ ETI ”) or its designee For purposes of the RFP and the Definitive Agreement, Buyer will be considered an entity entirely separate and distinct from any Entergy transmission organization, and, without limiting the foregoing, the acts and omissions of any Entergy transmission organization will not be deemed to be acts and omissions of Buyer for any purpose arising out of or relating to the RFP or the Definitive Agreement. |
| 3 | Seller: | “ Seller ” will be the party specified by Bidder in the applicable proposal. |
| 4 | Facility: | The “ Facility ,” including the nameplate capacity and major equipment, will be as specified by Bidder in the applicable proposal. |
| 5 | Electric Inter-connection: | The “ Electric Interconnection Point ” will be the point located in the Western Region as specified by Bidder in the applicable proposal where the Facility interconnects to the host utility (and represented by a CP Node). |

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| | | <p>Seller will be responsible for (and bear the full costs and risks of) the arrangement, procurement, receipt and maintenance through Closing of the interconnection, deliverability, and transmission service required for the Facility, including (i) the electric interconnection of the Facility to the host utility and establishment of the Electric Interconnection Point and (ii) the transfer and delivery of capacity, energy, and other electric products to, and the injection of energy and other electric products at, the Electric Interconnection Point. Without limiting the foregoing, Seller will bear (a) all related interconnection, deliverability, or transmission request, application, study, registration, and comparable fees, charges, or costs, (b) all upgrade, improvement, and other fees, charges, and costs arising out of the requested interconnection, deliverability, or transmission service, except to the extent stated to be the exclusive responsibility and cost of the host utility or an applicable transmission provider, transmission owner, or Balancing Authority under the applicable tariffs, rules, regulations, or requirements of, or generator interconnection or other agreements with, the host utility or such transmission provider, transmission owner, or Balancing Authority), (c) the fees, charges, and costs to receive interconnection, deliverability, transmission, or, if applicable, financial settlement service, (d) all transformer, line, energy, capacity, and other losses or costs related to the interconnection, deliverability, transmission, or, if applicable, financial settlement service with respect to the Facility,, and (e) all costs assigned or allocated to Seller or, if applicable, to a financially settling party under the applicable tariffs, rules, regulations, or requirements of, or agreements with, the host utility, transmission provider, transmission owner, or any applicable Balancing Authority. As part of its responsibilities under this item 5, Seller will be required to obtain energy resource interconnection service (ERIS) and network resource interconnection service (NRIS) from MISO under the MISO OATT (or the equivalent service in the event MISO discontinues or modifies ERIS or NRIS or both, as applicable) in a quantity (a) with respect to ERIS, sufficient for the maximum generation capability of the Facility and (b) with respect to NRIS, sufficient to allow the Facility to receive the maximum capacity credits a resource of its capacity size can receive under the MISO rules.</p> <p>Without limiting Seller's responsibilities set forth in the initial paragraph of this item 5, at a time deemed appropriate by Buyer after execution of the Definitive Agreement with Seller, Buyer will seek to qualify the Facility as, or have the Facility recognized as, a firm designated network resource of Buyer in the applicable Balancing Authorities. Seller will be responsible and reimburse Buyer upon demand for all out-of-pocket costs incurred by Buyer in connection with Buyer obtaining, or attempting to obtain, such qualification or recognition.</p> <p>Seller will be responsible for causing Buyer to obtain directly (or, if not possible for Buyer to obtain directly, to obtain and transfer to Buyer) all</p> |
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| | | auction revenue right allocations and, if applicable, financial transmission rights or congestion rights, or other similar allocations and entitlements associated with the Facility, and, if requested by Buyer, will act at Buyer's direction in connection therewith. Without limiting the foregoing, Seller will support fully, and not take any action or position to oppose, Buyer's receipt of such allocations and entitlements. |
| 6 | Purchased Assets: | Buyer will acquire the Purchased Assets at the closing (if any) of the Transaction (the " Closing "). The " Purchased Assets " will include all right, title, and interest of Seller in the Facility and all related real and personal property assets, properties, and rights, of every kind and nature, relating to, used at, or held for use at the Facility. Examples of Purchased Assets include, without limitation: all equipment, systems, fixtures, inventory (including capital and non-capital spares and fuel inventory), permits, books, records, documents, drawings (including AutoCAD), reports, logs, operating data, operating safety and maintenance manuals, inspection reports, registrations, engineering design plans, blueprints, specifications and procedures and similar items, intellectual property rights, fuel supply and transportation contracts (to the extent Buyer desires and agrees to acquire or assume the same) and related entitlements, credits, or other rights, transmission, congestion, and related entitlements, credits, or other rights, capacity credits, emissions allowances, environmental attributes, licenses, and contracts (including any long-term service agreement for the generating units) and unexpired warranties, indemnities, or guarantees related to the Facility that Buyer chooses to have assigned to it. |
| 7 | Purchase Price: | The purchase price for the Purchased Assets is expected to be based on the purchase price specified by Bidder in the applicable proposal. The purchase price will be subject to adjustment after execution of the Definitive Agreement due to (i) changes in inventory value from an agreed baseline value (including, without limitation, balance of plant inventory and capital spares), (ii) the proration of specified proratable items (e.g., property taxes, specified prepayments under project contracts acquired by Buyer at the Closing), (iii) plant performance tests described in item 15 below, (iv) casualty events and material environmental conditions affecting the Facility or the Facility site, (v) amounts due but unpaid by Seller or Buyer as of the Closing, and (vi) other items specified in the Definitive Agreement (the " Purchase Price "). |
| 8 | Permitted Liens; Excluded Assets: | Assuming occurrence of the Closing, Buyer will acquire the Purchased Assets free and clear of all encumbrances other than Permitted Encumbrances. " Permitted Encumbrances " means (i) liens for property taxes and other governmental charges not yet due and payable or the validity of which is being contested in good faith by appropriate proceedings described in a schedule attached to the Definitive Agreement, (ii) mechanics', materialmens', and other similar liens arising in the ordinary |

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| | | course of business by operation of law for sums not yet due and payable, up to specified cap amounts, (iii) encumbrances described in a specific schedule attached to the Definitive Agreement and that will be and are discharged or released at or before the Closing, (iv) matters expressly identified on the title commitment to which Buyer does not object, and (v) encumbrances with respect to any of the Purchased Assets created by or resulting from the acts or omissions of Buyer or the Definitive Agreement. The assets that Buyer does not agree in the Definitive Agreement to purchase at the Closing are “ Excluded Assets ” and will be excluded from the Transaction. |
| 9 | Assumed and Excluded Liabilities: | Buyer will assume certain liabilities concerning the Purchased Assets upon the Closing (“ Assumed Liabilities ”). The Assumed Liabilities will include only specified liabilities in respect of the Purchased Assets that relate solely to the period after the Closing and are not the result of any act or omission of Seller, any predecessor or affiliate of Seller, or any third party occurring or accruing at or prior to the Closing. Seller will retain and have exclusive responsibility for all liabilities and obligations relating to the Purchased Assets or the conduct of business of Seller, any predecessor or affiliate of Seller, or any third party other than the Assumed Liabilities assumed by Buyer upon the Closing (such liabilities and obligations, the “ Excluded Liabilities ”). |
| 10 | Closing Date: | The Closing will occur (i) on the first business day of the first month following the later of the month in which notice that the last outstanding condition to the Closing, other than those conditions that by their nature are to be satisfied at the Closing, has been either satisfied or waived by the Party for whose benefit such condition exist has been delivered to the other Party (subject to clause (ii)) or (ii) if the notice described in clause (i) is delivered to the other Party after the first ten (10) days of the applicable month, on the first day of the second month after such later date if such later date occurs) (the “ Closing Date ”). The Closing will be deemed to occur at 11:59:59 p.m. (Eastern Standard Time) on the Closing Date. |
| 11 | Seller Representations and Warranties: | The representations and warranties (“ Representations ”) made by Seller in the Definitive Agreement will be customary for asset acquisitions of this type by Buyer, and will include, without limitation, Representations covering compliance with laws, litigation, real, leased, and personal property, contracts, permits, warranties, intellectual property, regulatory approvals and consents, condition and sufficiency of the Purchased Assets, load-following and performance capabilities of the Facility, environmental, tax, employee, and benefits matters, insurance, regulatory status, pipeline status, NERC compliance, absence of certain changes to the Purchased Assets and absence of unspecified liabilities, and diligence-related and other matters. Seller’s Representations in the Definitive Agreement, other than Seller’s “fundamental” and environmental Representations, will survive the Closing for a period of 24 months. Seller’s fundamental Representations |

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| | | will survive the Closing for the applicable statute of limitations plus 30 days thereafter. Seller's environmental Representations will survive the Closing for a period of 36 months. |
| 12 | Buyer Representations and Warranties: | The Representations made by Buyer in the Definitive Agreement will be customary for asset acquisitions of this type by Buyer and will be limited to the organization, existence, and good standing of Buyer, execution and delivery by Buyer and enforceability of the Definitive Agreement, no violation of law, Buyer's organizational documents, or other contracts, litigation, and Buyer's regulatory approvals and consents. Buyer's "fundamental" Representations will survive the Closing for the applicable statute of limitations plus 30 days thereafter. Buyer's other Representations will survive the Closing for a period of 24 months. |
| 13 | Covenants: | The covenants (including negative covenants) and agreements in the Definitive Agreement will be customary for asset acquisitions of this type by Buyer, and will include, without limitation, covenants and agreements covering Seller's conduct and actions taken by Seller with respect to the Purchased Assets pending the Closing, Seller's compliance with, or execution or modification of, contracts, regulatory approvals, transfers of permits, emission allowances and contracts, title to real and personal property, risk of loss, casualty events, and material environmental conditions, insurance, taxes, employees and benefits, Seller's non-solicitation obligations, notice and reporting obligations, maintenance of books/records, confidentiality and public announcements, removal of Excluded Assets and liens, developmental obligations, Buyer's access to Seller's books and records and periodic inspection rights, and technical or diligence-related matters. |
| 14 | Purchased Capacity: | The Capacity of the Facility at 97° Fahrenheit and 56% relative humidity (" Summer Conditions ") is expected to be as specified by Bidder in the applicable proposal. For purposes of this item 14 and this Term Sheet (including the purchase price for the Purchased Assets and adjustments thereto), the Capacity of the Facility at Summer Conditions is the net electrical output that the is capable of delivering reliably at the point of electric interconnection at Summer Conditions. |
| 15 | Plant Performance Testing: | The Definitive Agreement will provide for a test of the performance of the Facility, including the individual generating units, to be conducted, at Seller's expense, to determine, in connection with the Closing. The test will cover (i) Capacity, (ii) Guaranteed Heat Rate (HHV), (iii) specified emissions, (iv) operating range, and (v) other plant performance metrics and criteria set forth in the Definitive Agreement, including, without limitation, load-following capabilities, vibration levels and diligence-related items. The results of the test of items (i) through (iv) and, if applicable, (v) above will be compared against the corresponding values specified in the Definitive Agreement. The test will be conducted within a specified period prior to the |

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| | | <p>target Closing Date pursuant to an agreed protocol. Subsequent tests may be required depending on the results of the previous performance test, intervening events or circumstances, and/or modifications to the target Closing Date. Unless Buyer otherwise directs, each subsequent test will be performed by the contractor that performed the initial test. Final test results may give rise to a reduction in the Purchase Price or termination of the Definitive Agreement. Seller will not be entitled to any increase in the Purchase Price or any other compensation from Buyer if the test results indicate that performance for a particular metric or criteria is better than that required by the Definitive Agreement.</p> <p>The “Guaranteed Heat Rate” means the heat rate (expressed in \$/MMBtu (HHV)) performance characteristics of the Facility that are guaranteed by Seller and are expected to be based on the Guaranteed Heat Rate curve or points specified by Bidder in the applicable proposal.</p> <p>The operating ranges of the Facility are expected to be as specified by Seller in the applicable proposal.</p> <p>The emission rates for NO_x, CO, SO₂, PM, PM10, ammonia, greenhouse gases and any other emission or pollutant specified in the Definitive Agreement for the Facility will be required to be within the limits specified in the applicable permits for the Facility and not to restrict ordinary operation of the Facility.</p> |
| 16 | Buyer’s Closing Conditions: | <p>Buyer’s obligation to Close the Transaction will be subject to the satisfaction or express waiver by Buyer of certain conditions to be specified in the Definitive Agreement and customary for asset acquisitions of this type by Buyer, including, without limitation, conditions related to federal, state, and, if applicable, local regulatory and governmental approvals (“Regulatory Approvals”), expiration or termination of waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”), Buyer consents, the correctness of Seller’s Representations, performance of and compliance with Seller covenants, obligations, and agreements in the Definitive Agreement or Ancillary Agreements on or before the Closing, specified Seller certifications and documents and items, the absence of a material adverse effect with respect to Seller, title insurance, eminent domain, capacity accreditation (including, without limitation, the transfer of capacity credits to Buyer for the planning period beginning no later than June 1, 2021) and transmission service (including, without limitation, firm network resource and deliverability qualifications and transmission and congestion rights), the long-term service agreement(s) (“LTSA”) or similar maintenance agreement(s) for any of the Purchased Assets, the operation and maintenance agreement(s) for any of the Purchased Assets, plant performance test results, credit support, and, if applicable, achievement of commercial operation and payment of amounts due in connection therewith. Buyer will have a defined period from the effective</p> |

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| | | date of the Definitive Agreement to satisfy its closing conditions. |
| 17 | Seller's Closing Conditions: | Seller's obligation to Close the Transaction will be subject to the satisfaction or express waiver, by Seller, of certain conditions to be specified in the Definitive Agreement, including, without limitation, conditions related to certain Regulatory Approvals, expiration or termination of waiting periods under the HSR Act, required Seller consents, the correctness of Buyer's Representations, performance of and compliance with Buyer covenants, obligations, and agreements in the Definitive Agreement or Ancillary Agreements on or before the Closing, and specified Buyer certifications and documents and items. |
| 18 | Durability of Regulatory Approvals/ Alternate Acquisition Structures: | Seller will take the risk that a Regulatory Approval or expiration or termination of a waiting period under the HSR Act ceases to be valid and effective as of the time the Closing would otherwise occur (e.g., because the Facility construction schedule exceeds the term of validity and effectiveness of such Regulatory Approval or such expiration or termination). In the event Seller proposes an alternative acquisition structure that is accepted by Buyer as the basis for the Transaction, the Definitive Agreement will reflect terms agreed upon by the parties as appropriate for the alternative acquisition structure. |
| 19 | Commercial Operation Date { <i>For Developmental Resources Only</i> }:} | The date by which the COD must occur is expected to be the date specified as such by Bidder in the proposal (as such date may be extended on a day-for-day basis, up to a maximum of 180 days in the aggregate, to the extent that the COD is delayed as a result of Force Majeure, the " Guaranteed COD "). The definition of " Commercial Operation Date " or " COD " will be specified in the Definitive Agreement, but, in general, will require, among other things, that the Facility has achieved substantial completion, satisfied certain performance tests, and be available for normal continuous operation; that the interconnection, metering, telemetry, and certain other equipment and systems be installed, tested, and properly working; and that Seller be in compliance with the Definitive Agreement and ancillary/project agreements, have in full force and effect all required permits, authorizations, waivers, and agreements, have in place certain accounts and registrations, have provided to Buyer all required credit support and evidence of insurance coverage, made all arrangements for the supply of required electric services and other utilities to the Facility, and completed staffing and required training of Seller's personnel and representatives. In the event the Commercial Operation Date does not occur by the Guaranteed COD, Seller will be subject to, among other things, delay damages, potential capacity re-sizing and "buy-downs" required by Buyer, and, for extended delays, potential termination of the Definitive Agreement. (For more detailed descriptions and treatments of the COD and the consequences of a failure to meet the Guaranteed COD, please see item 36 in Appendix B-1, the terms of which should be substantially similar to the terms that will apply to a Definitive |

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| | | Agreement for an Asset Acquisition Product.) The Definitive Agreement will include a project schedule with numerous project milestones. Seller will be required to provide to Buyer periodic progress reports and inspection and other rights related to the pre-commercial operation phase of development and immediate notice when the Commercial Operation Date has occurred. |
| 20 | Indemnification: | The Definitive Agreement will contain indemnification provisions customary for asset acquisitions of this type by Buyer and will include, without limitation, (i) an aggregate cap on the liabilities of Seller or Buyer for the inaccuracy or breach of any Representation of Seller or Buyer (other than a “fundamental” Representation), (ii) full indemnity protection (<i>i.e.</i> , the threshold and cap do not apply) for any and all liabilities and obligations retained by Seller or with respect to the breach of any covenant, agreement, or obligation by either Party or a “fundamental” Representation being incorrect or inaccurate, (iii) a provision entitling each Party to rely on the Representations, covenants, obligations, and agreements of the other Party notwithstanding any investigation or audit conducted (or that could have been conducted) or any information received or knowledge obtained (or that could have been received or obtained) or the decision of a Party to complete the Closing, and (iv) any qualification or limitation set forth in a Representation, covenant, or agreement as to materiality or material adverse effect (or words of similar effect) contained therein will be disregarded for purposes of the indemnity. |
| 21 | Termination Rights: | <p>The Definitive Agreement will include termination rights customary for acquisitions of this type by Buyer.</p> <p><i>{For Developmental Resources}</i> The Definitive Agreement may include rights in favor of Buyer to terminate the Definitive Agreement for convenience after the satisfaction or waiver of Buyer’s conditions. If Buyer terminates the Definitive Agreement pursuant to such rights, as Seller’s sole remedy arising out of such termination, Buyer will be required to pay to Seller a pre-agreed amount to be set forth in a schedule to the Definitive Agreement to be negotiated between Buyer and Seller. The amounts set forth in such schedule will vary according to when such termination occurs and will not exceed the actual, direct out-of-pocket costs reasonably incurred by Seller to terminate construction (or, if less, to complete construction and make alternate use) of the Facility at such time and the financing thereof. Seller will be required to use commercially reasonable efforts to minimize any such actual, direct out-of-pocket costs.</p> |
| 22 | Long-Term Service Agreement: | From and after execution of a Definitive Agreement, Seller will not be permitted to enter into an LTSA or other applicable long-term maintenance agreement for equipment or systems under warranty with the original equipment or systems manufacturer and associated with the Purchased |

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| | | Assets without Buyer's prior written consent, which may be granted or withheld in Buyer's sole and absolute discretion. Buyer reserves the right to reject or renegotiate any existing LTSA or other applicable long-term maintenance agreement for equipment or systems under warranty with the original equipment or systems manufacturer and associated with the Purchased Assets. Although Buyer may evaluate any such existing LTSA, Buyer will be under no obligation to assume any then-existing LTSA (in whole or in part) at the Closing, except if, as, and to the extent provided in the Definitive Agreement. |
| 23 | Operation & Maintenance Preparedness: | Seller will fully cooperate, and cause its Affiliates and third-party operators, contractors, and representatives to fully cooperate, with Buyer in order to enable Buyer (or any Affiliate, contractor, or representative of Buyer) to become reasonably familiar with the Purchased Assets as of the Closing and be in a reasonable position to operate and maintain the Purchased Assets immediately upon the Closing as a reasonable prudent operator of the Purchased Assets. |
| 24 | Certain Transaction Expenses: | Except as otherwise provided in the Definitive Agreement or a related agreement between the Parties, the Party incurring costs in connection with the Transaction will be responsible for paying them. The Definitive Agreement will allocate certain costs to a Party or the Parties. Transaction costs expressly allocated to Seller are expected to include, without limitation, (i) transfer or similar taxes, (ii) contract (including license) or document transfer, consent, or conveyance or assignment fees or similar charges or costs, if any, including taxes, and (iii) filing and/or recording costs, fees, or similar charges with respect to the transfer of real property from Seller to Buyer. Transaction costs expressly allocated to Buyer are expected to include, without limitation, (a) costs of preliminary title reports and/or commitments concerning the Purchased Assets, the title policy and specified endorsements (except that if a supplemental survey of the Facility site (or a portion or portions thereof) is performed on behalf of Buyer in order to update any prior survey performed on behalf of Buyer after the effective date of the Definitive Agreement, the costs of such supplemental survey will be split equally between Buyer and Seller) and (b) permit or emission allowance transfer or assignment fees or similar permit conveyance charges or costs, if any, including taxes. Seller and Buyer will each bear one-half of the amounts charged by the environmental consultant retained at Buyer's direction in connection with the environmental assessment of the real property interests to be conveyed to Buyer at the Closing and the filing fee payable in connection with any notifications filed under the HSR Act with respect to the Transactions. |
| 25 | Management Approval: | The Definitive Agreement is subject to review and concurrence or approval, as applicable, by the corporate risk office of Entergy Corporation, the board of directors of Buyer, the executive and senior management of Entergy |

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| | | Corporation and Buyer, and such other approvals of Entergy Corporation and its affiliates as Buyer deems necessary or prudent in its sole and absolute discretion to enter into the Definitive Agreement and perform its obligations thereunder (on the terms set forth therein). Buyer will not execute or deliver the Definitive Agreement without such review and concurrence or approval, as applicable, and such approval or concurrence may be granted or denied in each such body's sole and absolute discretion. |
| 26 | Select Contract Terms and Conditions: | <p>The Definitive Agreement will also include, among other things, the following covenants, terms, and/or conditions:</p> <ul style="list-style-type: none"> • Seller will insure, develop, engineer, procure equipment for, design, construct, install, operate, maintain, manage, replace, repair, study, test, and otherwise use the Facility in accordance with (i) Seller's obligations in the Definitive Agreement, the Facility's interconnection agreements, and the other project documents, (ii) accepted electrical practices, and (iii) all applicable laws (including environmental laws), consents, and governmental approvals, including all applicable standards and guidelines adopted from time to time by governmental authorities (including NERC, SERC Reliability Corporation, any RTO and any comparable third party with the right to impose on the Facility or Seller conditions or obligations having the effect of an applicable law or other binding legal requirement); and • Seller will insure against all insurable risks with coverage in an amount not less than full replacement cost and on terms specified in the Definitive Agreement. |
| 27 | Credit Support: | Seller will be expected to meet the credit support requirements detailed in the RFP, including Appendix F, and other credit-related terms, all of which will be more fully developed in the Definitive Agreement. |
| 28 | Confidentiality: | Each Party will be required to keep the terms and provisions of the Definitive Agreement confidential and prohibited from disclosing such terms to any third party, subject to certain limited exceptions specified in the Definitive Agreement. |

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