



## ***Appendix B-3***

### ***Term Sheet for RFP Asset Acquisitions***

***for***

***2020 Request For Proposals***

***for***

***Combined-Cycle Gas Turbine  
Capacity and Energy Resources***

***for***

***Entergy Texas, Inc.***

Entergy Services, LLC

April 28, 2020

## 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 specified 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 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, LLC (“**ESL**”) 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 2.2.4 in the Main Body for additional information pertaining to Special Considerations. The term “including” in this Term Sheet will be construed to mean “including, without limitation.”

	Proposal Term	Description of Proposal Term
1	<b>Product Description:</b>	The product described in this Term Sheet is designated as the “ <b>Asset Acquisition – Existing Resource Product</b> .” This product provides for flexible generation capacity of from 1,000 to 1,200 MW (Summer Conditions, at full load, including duct-firing if included as part of the facility) from a designated CCGT resource capable of meeting the requirements of this product (the “ <b>Facility</b> ”), as set forth herein and in the RFP.
2	<b>Buyer:</b>	“ <b>Buyer</b> ” will be Entergy Texas, Inc. (“ <b>ETI</b> ”) 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	<b>Seller:</b>	“ <b>Seller</b> ” will be the party specified by Bidder in the applicable proposal.
4	<b>Facility:</b>	The “ <b>Facility</b> ,” including the nameplate capacity and major equipment, will be as specified by Bidder in the applicable proposal.
5	<b>Electric Inter-</b>	The “ <b>Electric Interconnection Point</b> ” will be the point located in the

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<p><b>connection/ Transmission Service:</b></p>	<p>Eastern Region as specified by Bidder in the applicable proposal where the Facility interconnects to the host utility's transmission system in MISO (and represented by a CP Node). The Electric Interconnection Point must be consistent with Bidder's existing GIA and/or generator interconnection application submitted to MISO for the Facility prior to submission of the applicable proposal under the RFP. Seller will be responsible for (and bear the full costs and risks of) the arrangement, procurement, receipt, and maintenance through the Closing of the interconnection, deliverability, and transmission facilities of Seller and service required for the Facility, including (i) for the electric interconnection of the Facility to the host utility transmission system and maintenance 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 have recognition by MISO and other applicable balancing authorities by the Closing of (i) the Facility as a separate generating resource at the Electrical Interconnection Point, including for settlement, scheduling, offering, and bidding purposes, and (ii) the Electrical Interconnection Point as a separate (and the exclusive) CP Node for the Facility (collectively, the <b>"Required Facility Recognition"</b>). In addition, the Facility will be required to have energy resource interconnection service (<b>"ERIS"</b>) that equals or exceeds the rating of the Facility at Winter Conditions (including duct-firing if included as part of the Facility), network resource interconnection service (<b>"NRIS"</b>) that equals or exceeds the rating of the Facility at Summer Conditions (including duct-firing if included as part of the Facility), and full deliverability from the Facility to Buyer's load at the NRIS level on a firm network resource basis for the life of the Facility and qualification and</p>
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		<p>recognition by MISO of the Facility as a firm network resource and, if sought, Capacity Resource (as defined in the MISO rules) with such level of deliverability (collectively, “<b>Full Deliverability</b>”).</p> <p>Seller will be responsible for causing Buyer to obtain all auction revenue right allocations, financial transmission or congestion rights, and other similar allocations and entitlements associated with the Facility, and, if requested by Buyer, will act (at Seller’s expense) at Buyer’s reasonable direction in connection therewith. Without limiting the foregoing, Seller will support fully, and not take any action or position to oppose or prevent, Buyer’s entitlement to or receipt of such allocations and entitlements.</p>
6	<b>Purchased Assets:</b>	<p>Buyer will acquire the Purchased Assets at the closing (if any) of the Transaction (the “<b>Closing</b>”). The “<b>Purchased Assets</b>” 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, except those expressly excluded under the Definitive Agreement (the “<b>Excluded Assets</b>”). Examples of Purchased Assets include: all equipment, systems, parts, fixtures, goods, 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, design drawings, blueprints, specifications and procedures and similar items, intellectual property rights, real property and related rights (including rights with respect to the Facility site, including leases, easements, licenses, and rights-of-way), water rights and contracts and fuel supply and transportation contracts and related entitlements, credits, or other rights, transmission, distribution, credits, or other rights, capacity credits and rights to any other capacity-related benefits, emissions allowances, environmental attributes, tax credits, abatements, and similar benefits, licenses, and contracts (including long-term service agreements) and unexpired warranties, indemnities, or guarantees relating to, generated by, used by or for, or held for use by or for, the Facility or the operation, maintenance, ownership, possession, use, replacement or repair thereof, <u>excluding</u> any of the foregoing that are Excluded Assets.</p>
7	<b>Purchase Price:</b>	<p>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) the results of plant performance tests generally 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</p>

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		Seller or Buyer as of the Closing, and (vi) other items specified in the Definitive Agreement (the “ <b>Purchase Price</b> ”).
<b>8</b>	<b>Permitted Encumbrances:</b>	Assuming occurrence of the Closing, Buyer will acquire the Purchased Assets free and clear of all encumbrances other than Permitted Encumbrances. “ <b>Permitted Encumbrances</b> ” 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 course of business by operation of law for sums not yet due and payable and that have not been filed of record (provided that, for any such lien from and after the Closing, Seller will be required to maintain (a) a bond covering such lien at a ten percent (10%) premium in accordance with law or otherwise in a manner reasonably satisfactory to Buyer or (b) full coverage under the title insurance policy provided by Seller to Buyer for the Facility), (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) liens expressly agreed to or waived in writing by Buyer.
<b>9</b>	<b>Assumed and Excluded Liabilities:</b>	Buyer will assume certain liabilities concerning the Purchased Assets upon the Closing (“ <b>Assumed Liabilities</b> ”). 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 “ <b>Excluded Liabilities</b> ”).
<b>10</b>	<b>Closing Date:</b>	The Closing will occur (i) on the first business day of the first month following the month in which notice has been delivered to the other Party (subject to clause (ii)) stating 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 exists, 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 “ <b>Closing Date</b> ”). The Closing will be deemed to occur at 11:59:59 p.m. (Eastern Standard Time) on the Closing Date.
<b>11</b>	<b>Seller Representations</b>	The representations and warranties (“ <b>Representations</b> ”) made by Seller in the Definitive Agreement will be customary for asset acquisitions of this

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	<b>and Warranties:</b>	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, accounting 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 (e.g., organization, existence, power, and authority; execution, delivery, and enforceability; no conflicts (as to organizational documents); real estate/real estate contracts, tangible personal property, contracts/warranties, and permits (all as to title); taxes; employment, labor, and employee benefit matters, title, financing encumbrances, brokers) 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	<b>Buyer Representations and Warranties:</b>	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	<b>Covenants:</b>	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, operation and maintenance obligations, 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.

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14	<b>Purchased Capacity:</b>	<p>The Capacity of the Facility at 93° Fahrenheit and 57% relative humidity (“<b>Summer Conditions</b>”) 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 is capable of being delivered reliably at the Electric Interconnection Point at Summer Conditions. Seller shall be required to have at the Closing ERIS in an amount at least equal to the Capacity of the Facility at 10° Fahrenheit and 60% relative humidity (“<b>Winter Conditions</b>”) and NRIS in an amount at least equal to the Capacity of the Facility at Summer Conditions (see item 5 above).</p>
15	<b>Plant Performance Testing:</b>	<p>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) Guaranteed Capacity (including, if duct-firing is included as part of the Facility, tests of “<b>Guaranteed Base Capacity</b>” (100% of the Capacity of the Facility in Summer Conditions, in MW, without duct-firing) and “<b>Guaranteed Duct-Firing Capacity</b>” (100% of the capacity of the Facility in Summer Conditions, in MW, with duct-firing, less the Guaranteed Base Capacity), (ii) Guaranteed Heat Rate (HHV), (iii) specified emissions, (iv) operating ranges, 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 (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 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 (e.g., major repairs to the Facility, material outages or mechanical issues, force majeure events), 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 “<b>Guaranteed Capacity</b>” will be 100% of the Capacity of the Facility in Summer Conditions, in MW, as specified by Bidder in the applicable proposal. There will also be a “<b>Minimum Capacity</b>” and, if duct-firing is included as part of the Facility, a “<b>Minimum Base Capacity</b>” and “<b>Minimum Duct-Firing Capacity</b>”, each of which will be as specified in the Definitive Agreement.</p>

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		<p>The “<b>Guaranteed Heat Rate</b>” means the heat rate (expressed in Btu/kWh (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.<sup>1</sup></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<sub>x</sub>, CO, SO<sub>2</sub>, 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	<b>Buyer’s Closing Conditions:</b>	<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 conditions related to federal, state, and, if applicable, local regulatory and governmental approvals (“<b>Regulatory Approvals</b>”), expiration or termination of waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“<b>HSR Act</b>”), 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 the transfer of capacity credits to Buyer for the planning period in which the Closing occurs and, potentially, depending on the timing of the Closing relative to the MISO annual capacity auction, the following planning period (or a reduction in the Purchase Price based on the required capacity credits not provided by Seller to Buyer)), transmission service (including firm network resource and deliverability qualifications and transmission and congestion rights), gas transportation service, the long-term service agreement(s) (“<b>LTSA</b>”) 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, and credit support. There will be a defined period from the effective date of the Definitive Agreement for the Buyer closing conditions to be satisfied or waived.</p>
17	<b>Seller’s Closing Conditions:</b>	<p>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</p>

<sup>1</sup> **NTD:** This Term Sheet assumes that if the Facility includes duct-firing, the size of the duct-firing capacity relative to the base capacity will be small. If the duct-firing capacity constitutes a sizable portion of Facility capacity, the Definitive Agreement may include a guaranteed heat rate for the duct-fired capacity and associated liquidated damages.

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		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	<b>Durability of Regulatory Approvals:</b>	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 due to the lapse of time before the Closing and the risk of actions taken by the applicable governmental authority in connection with any new or supplemental filings to maintain any previously obtained approval for the transaction.
19	<b>Indemnification:</b>	The Definitive Agreement will contain indemnification provisions customary for asset acquisitions of this type by Buyer and will include (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) certain lien, intellectual property, hazardous materials, governmental fine and penalty indemnification by Seller, (iv) 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 (v) 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.
20	<b>Termination Rights:</b>	The Definitive Agreement will include termination rights customary for acquisitions of this type by Buyer.
21	<b>Long-Term Service Agreement:</b>	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 Assets that has an expiration date after the anticipated Closing date 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

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		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.
22	<b>Operation &amp; Maintenance Preparedness:</b>	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.
23	<b>Certain Transaction Expenses:</b>	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 (i) transfer, sales, use, and similar taxes (including with respect to the sale or purchase of any of the Purchased Assets), (ii) documentary, recording, contractual (including license), consent, and other conveyance or assignment charges, fees, and other costs related to the purchase and sale of the Facility and related assets (including permit transfer fees), (iii) survey, filing, and/or recording costs, fees, or similar charges with respect to the procurement of title insurance or the transfer of real property interests from Seller to Buyer, (iv) the cost of required endorsements to the title insurance, and (v) the amounts charged by the environmental consultant retained at Buyer's direction in connection with the environmental assessment required to be performed prior to execution of the Definitive Agreement or some defined date within three (3) months thereafter. 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 (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 final 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.
24	<b>Management Approval:</b>	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 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

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		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.
25	<b>Select Contract Terms and Conditions:</b>	<p>The Definitive Agreement will also include, among other things, the following covenants, terms, and/or conditions:</p> <ul style="list-style-type: none"> <li>• Seller will 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</li> <li>• 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.</li> </ul>
26	<b>Seller Parent Guarantor:</b>	<p>"<b>Seller Parent Guarantor</b>" will be a parent entity acceptable to Buyer in its sole and absolute discretion. Seller Parent Guarantor will be a party to and will execute the Definitive Agreement in the functional capacity as a guarantor of Seller's obligations thereunder and under the Ancillary Agreements, unless Buyer elects to require Seller to provide a separate guaranty from Seller Parent Guarantor in lieu of having Seller Parent Guarantor sign the Definitive Agreement.</p>
27	<b>Credit Support:</b>	<p>In addition to the Seller parent guaranty contemplated in item 26 above, Seller will deliver to Buyer and maintain in favor of Buyer a letter of credit issued by a U.S. commercial bank or U.S. branch office of a foreign bank with (i) a local long-term issuer credit rating of "A-" or better by S&amp;P and a senior unsecured long-term debt rating of "A3" or better by Moody's (or, if the issuer has a local long-term issuer credit rating by S&amp;P or a senior unsecured long-term debt rating by Moody's, but not both, a local long-term issuer credit rating of "A-" or better by S&amp;P or a senior unsecured long-term debt rating of "A3" or better by Moody's) and (ii) total assets of at least \$10,000,000,000. Such letter of credit will secure Seller's obligations under the Definitive Agreement and must be adjusted to equal the following</p>

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## Term Sheet for Asset Acquisitions

		amounts at each of the following adjustment dates, subject to the immediately following paragraph: <sup>2</sup>												
		<table><tr><th>Adjustment Date</th><th>Amount</th></tr><tr><td>Execution of Definitive Agreement</td><td>\$2,500,000 plus \$15,000 per MW of Guaranteed Capacity</td></tr><tr><td>Closing</td><td>15% of the unadjusted Purchase Price</td></tr><tr><td>12 months after the Closing</td><td>10% of the unadjusted Purchase Price <u>plus</u> the amount of any pending claim of Buyer or its group, <u>provided</u> that such pending claims will not increase the required amount of the letter of credit above the required amount of the letter credit on the Closing date less any amounts drawn on such letter of credit after the Closing date</td></tr><tr><td>24 months after the Closing</td><td>5% of the unadjusted Purchase Price <u>plus</u> the amount of any pending claim of Buyer or its group, <u>provided</u> that such pending claims will not increase the required amount of the letter of credit above the required amount of the letter credit on the 12-month anniversary of the Closing date less any amounts drawn on such letter of credit after the 12-month anniversary of the Closing date</td></tr><tr><td>36 months after the Closing</td><td><ul style="list-style-type: none"><li>• If there are no pending claims of Buyer or its group at such time, then the letter of credit will be returned to Seller</li><li>• If there are pending claims of Buyer or its group at such time, the letter of credit will be adjusted to the amount of such pending claims, provided that the required</li></ul></td></tr></table>	Adjustment Date	Amount	Execution of Definitive Agreement	\$2,500,000 plus \$15,000 per MW of Guaranteed Capacity	Closing	15% of the unadjusted Purchase Price	12 months after the Closing	10% of the unadjusted Purchase Price <u>plus</u> the amount of any pending claim of Buyer or its group, <u>provided</u> that such pending claims will not increase the required amount of the letter of credit above the required amount of the letter credit on the Closing date less any amounts drawn on such letter of credit after the Closing date	24 months after the Closing	5% of the unadjusted Purchase Price <u>plus</u> the amount of any pending claim of Buyer or its group, <u>provided</u> that such pending claims will not increase the required amount of the letter of credit above the required amount of the letter credit on the 12-month anniversary of the Closing date less any amounts drawn on such letter of credit after the 12-month anniversary of the Closing date	36 months after the Closing	<ul style="list-style-type: none"><li>• If there are no pending claims of Buyer or its group at such time, then the letter of credit will be returned to Seller</li><li>• If there are pending claims of Buyer or its group at such time, the letter of credit will be adjusted to the amount of such pending claims, provided that the required</li></ul>
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<sup>2</sup> **NTD:** As detailed in Appendix F to the RFP, the credit support amounts to be supplied by Seller at the Closing and thereafter may also be provided in the form of a cash holdback of the Purchase Price or a combination of letter(s) of credit and a cash holdback. For simplicity, this Term Sheet assumes the liquid credit support will be provided in the form of a letter of credit.

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			<p>amount of the letter of credit will not exceed the required amount of the letter credit on the 24-month anniversary of the Closing date less any amounts drawn on such letter of credit after the 24-month anniversary of the Closing date</p>
		<p>Notwithstanding the foregoing, the amounts set forth above will be reduced as follows based on (i) (A) the local long-term issuer credit rating from S&amp;P, (B) the long-term issuer credit rating from Moody's, or (C) the senior unsecured long-term debt rating from Moody's (each, an "<b>Eligible Public Rating</b>") of Seller Parent Guarantor<sup>3</sup> or (ii) a determination by Buyer (in its sole and absolute discretion) at the time of execution of the Definitive Agreement that the credit quality of Seller Parent Guarantor is otherwise acceptable to Buyer for this purpose:</p>	
		<p>The only Eligible Public Rating of Seller Parent Guarantor or, if Seller Parent Guarantor has more than one Eligible Public Rating, the lowest Eligible Public Rating of Seller Parent Guarantor (in either case, the "<b>Applicable Rating</b>") is: BBB+ or higher from S&amp;P or Baa1 or higher from Moody's</p>	<p>Reduction of 50% of the otherwise applicable amount, up to a maximum reduction of (i) \$75,000,000 less (ii) the Other Portfolio Exposure (defined below)</p>
		<p>The Applicable Rating is: BBB from S&amp;P or Baa2 from Moody's</p>	<p>Reduction of 50% of the otherwise applicable amount, up to a maximum reduction of (i) \$62,500,000 less (ii) the Other Portfolio Exposure</p>
		<p>The Applicable Rating is: BBB- from S&amp;P or Baa3 from Moody's</p>	<p>Reduction of 50% of the otherwise applicable amount, up to a maximum reduction of (i) \$50,000,000 less (ii) the Other Portfolio Exposure</p>
		<p>The Applicable Rating is below BBB- from S&amp;P or below Baa3 from Moody's or Seller Parent</p>	<p>Reduction of 50% of the otherwise applicable amount, up to a maximum reduction of</p>

<sup>3</sup> **NTD:** This Term Sheet assumes that Seller is a special purpose project entity with less creditworthiness than Seller Parent Guarantor and, as a result, that Seller Parent Guarantor will be the entity evaluated for purposes of determining whether a reduction will apply to Seller's liquid credit support requirements.

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		<p>Guarantor does not have an Eligible Public Rating <u>but</u> Seller Parent Guarantor is otherwise deemed acceptable for this purpose by Buyer (in its sole and absolute discretion) at the time of execution of the Definitive Agreement</p>	<p>(i) \$50,000,000 less (ii) the Other Portfolio Exposure</p>
		<p>The Applicable Rating is below BBB- from S&amp;P or below Baa3 from Moody's or Seller Parent Guarantor does not have an Eligible Public Rating <u>and</u> neither Seller nor Seller Parent Guarantor is otherwise deemed acceptable for this purpose by Buyer (in its sole and absolute discretion) at the time of execution of the Definitive Agreement</p>	<p>\$0</p>

; provided that, from and after the occurrence of a Credit Event (as defined below) until if and when no Credit Event is continuing and the Applicable Rating is BBB- or higher from S&P or Baa3 or higher from Moody's, no such reduction will apply (and any such reduction shall cease to apply). In addition, the amount of any applicable reduction will be adjusted (x) if the Applicable Rating falls from a higher rung within the first three rungs in the table above to a lower such rung or rises from a lower rung within the table above to a higher rung within the first three rungs in the table above and (y) upon written request from Seller, to reflect a reduction in the Other Portfolio Exposure by the amount thereof attributable to any transaction included in Other Portfolio Exposure as of the execution of the Definitive Agreement that has expired or terminated (and the obligations and liabilities of Seller and its affiliates arising out of or relating thereto have been fully and indefeasibly discharged and satisfied) after the execution of the Definitive Agreement.

**“Credit Event”** means the occurrence of any of the following:

- the Applicable Rating was, at any time at or after the execution of the Definitive Agreement, BBB- or higher from S&P or Baa3 and higher from Moody's and, thereafter, either (1) the Applicable Rating falls below BBB- from S&P or below Baa3 from Moody's or (2) Seller Parent Guarantor no longer has any Eligible Public Rating;
- Seller or Seller Parent Guarantor becomes Bankrupt (as will be defined in the Definitive Agreement);
- at the time of execution of the Definitive Agreement, the Applicable Rating was below BBB- from S&P or below Baa3 from Moody's

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		<p>(i.e., Seller was granted a reduction in the required amount of its letter of credit pursuant to the fourth rung in the table above) and, thereafter, (i) the Applicable Rating falls below the level of the Applicable Rating at the time of execution of the Definitive Agreement, (ii) Seller Parent Guarantor does not have at least two of the Required Ratios (as defined below), or (iii) Seller Parent Guarantor no longer has any Eligible Public Rating; or</p> <ul style="list-style-type: none"> <li>at the time of execution of the Definitive Agreement, Seller Parent Guarantor did not have any Eligible Public Rating (i.e., Seller was granted a reduction in the required amount of its letter of credit pursuant to the fourth rung in the table above) and, thereafter, (i) Seller Parent Guarantor is issued at least one Eligible Public Rating and the Applicable Rating is below BBB- from S&amp;P or below Baa3 from Moody's or (ii) Seller Parent Guarantor does not have at least two of the Required Ratios.</li> </ul> <p><b>“Required Ratios”</b> means: (i) a cash generated from operating activities to total debt ratio of at least 0.30, (ii) a total debt to capital ratio of less than 0.45, and (iii) a total debt to EBITDA ratio of less than 3.0, each as determined annually based on Seller Parent Guarantor's audited financial statements for the prior fiscal year.</p> <p><b>“Other Portfolio Exposure”</b> means the total exposure (including parent guarantees) of Buyer and its affiliates to Seller and its affiliates (including Seller Parent Guarantor), excluding the transactions contemplated by the Definitive Agreement, as calculated by Buyer and notified to Seller (broken down by transaction) as of the execution of the Agreement and as may be adjusted according to clause (y) of the last sentence of the paragraph above immediately preceding the definition of Credit Event.</p> <p>Buyer will have no obligation to post any independent credit support to or in support of Seller or the Facility.</p>
28	<b>Effect of Knowledge:</b>	<p>The right to indemnification, reimbursement, or other remedy based upon the representations, warranties, covenants, obligations, and agreements in the Definitive Agreement will not be affected by any information made available or furnished to, or any investigation or audit conducted (or that could have been conducted) by, any Party or any knowledge of any Party acquired at any time, whether before, on, or after the signing of the Definitive Agreement or the Closing, with respect to the transaction or the accuracy or inaccuracy of, or compliance or non-compliance with, any such representation, warranty, covenant, obligation, or agreement. Each Party will be entitled to rely upon the representations, warranties, covenants, obligations, and agreements of the other Party notwithstanding (i) any investigation or audit conducted (or that could have been conducted) by such Party or any information received by such Party before, on, or after the signing of the Definitive Agreement or Closing or (ii) the decision of such</p>

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		Party to complete the Closing.
29	<b>Confidentiality:</b>	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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