



Appendix B-3

Term Sheet for Asset Acquisitions

for

2014

Request For Proposals

For

Long-Term, Supply-Side

Developmental Resources

In Amite South

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Entergy Services, Inc.
~~July 18~~September 17, 2014

~~DRAFT~~ Term Sheet for Proposals in response to the
2014 Request for Proposals for Long-Term, Supply-Side Developmental Resources in Amite South

~~DRAFT~~ **Term Sheet for Asset Acquisitions**

~~Term Sheet for Asset Acquisitions~~

The statements contained in this Term Sheet are made subject to the Reservation of Rights set forth in Appendix E of the RFP and the terms and acknowledgements set forth in the Proposal Submission Agreement.

2014 Amite South RFP--~~DRAFT~~

~~DRAFT~~ Term Sheet for Asset Acquisitions

The following ~~DRAFT~~ bid submission term sheet ~~template~~ (this “**Term Sheet**”) describes certain terms and conditions of a potential agreement between Entergy Services, Inc. (“**ESI**”), as agent for 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 RFP and related assets. ~~Red font sections of this Term Sheet either require Bidder to insert information corresponding to its proposal or provide instructions or guidance to Bidder regarding such inserted information. The information and material Bidder inserts in, or provides in response to, this Term Sheet will become a part of, and may be used in evaluations of, Bidder’s proposal. The terms set forth in this Term Sheet will be binding on Bidder and~~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 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 ~~this Term Sheet~~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.

~~{This Term Sheet is a preliminary draft of the detailed Term Sheet that ESI intends to provide as part of the RFP. This Term Sheet remains under internal review, and modifications to this draft of the Term Sheet may result from such review. The final Term Sheet, when issued, may differ materially from this draft. ESI welcomes suggestions, questions, or comments about this draft of the Term Sheet, including proposed changes intended to improve clarity or completeness, correct factual or drafting errors, or provide additional information, perspectives, or terms that ESI should consider when developing the final Term Sheet. Suggestions, questions, and comments should be provided to the RFP Administrator as contemplated by the Main Body of the RFP. ESI is under and assumes no obligation to change any of the terms of this draft of the Term Sheet in response to any suggestion, question, or comment submitted by any prospective Bidder or other person.}~~

	Proposal Term	Description of Proposal Term
1	Product Description:	The product described in this Term Sheet is designated as the “ Asset Acquisition Product .” This product provides for unit-specific schedulable flexible generation capacity of not less than 650 MW (ISO rating, at full load, with duct-firing) and not more than 1,000 MW (ISO rating, at full load, with duct-firing) of nameplate capacity from a designated CCGT resource

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		capable of meeting the requirements of this product (the “ Facility ”). <i>{If Bidder wishes to submit multiple Asset Acquisition Product proposals with respect to the same Facility, Bidder must submit a separate Term Sheet for each such proposal.}</i>
2	Buyer:	“ Buyer ” is expected to be one or more of the following: Entergy Gulf States Louisiana, L.L.C., (“ EGSL ”), Entergy Louisiana, LLC, (“ ELL ”), and Entergy New Orleans, Inc. (“ ENOI ”) (collectively, the “ Included Entergy Operating Companies ”). Buyer will be designated by ESI at an appropriate time prior to the execution of any Definitive Agreement. If Buyer consists of multiple Included Entergy Operating Companies, the liability of each Included Entergy Operating Company for the liabilities of Buyer will be several (but <u>not</u> joint). 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 ” is {insert name of} <u>will be the proposed Seller</u> party specified by <u>Bidder in the applicable proposal</u> .
4	Facility:	The “ Facility ” is {insert name and description of generating resource supplying transaction} located {describe location}. The Facility has a ,” including the nameplate capacity of {insert nameplate capacity} MW and consists of {insert description of and major equipment of Facility, including all generating units}. {The Facility must , will be a Facility or resource that, as of the date of Bidder’s proposal with respect to such Facility or resource and the execution of the Definitive Agreement, (i) (a) has never been placed into commercial service and has not been accepted specified by its owner as having achieved (or been deemed to have achieved) the requirements for commercial operation (or analogous term) under the Bidder in the applicable project construction contracts or (b) has been and remains removed from commercial service and (ii) will make available and generate the power to be provided to Buyer under the Definitive Agreement from new power generation equipment (“Developmental Resource”). The Facility must be located in the “Amite South” planning region of the Entergy transmission system (“Amite South”). The Facility must be a single, fully integrated resource. The power generation technology for the Facility (or portion thereof to be sold to Buyer) must be CCGT technology. The Facility must be capable of qualifying as a firm designated network resource under the MISO Open Access Transmission Tariff (or any other applicable tariff). The Facility must meet the minimum requirements set forth in Appendix D to

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		<p>the RFP and be an Eligible Resource under the RFP.}</p> <p>ESI prefers proposals for the sale of the entire Facility to Buyer, but will consider proposals for the sale of fewer than all of the generating units at the Facility. Bidder may not propose to sell to Buyer a generating unit that is less than a whole generating unit or that constitutes, after the completion of any such sale, less than a whole CCGT power block.</p> <p>If Bidder proposes to sell to Buyer fewer than all of the generating units at the Facility, please describe in detail how Bidder intends to sub divide the Facility, including identification of the generating units to be dedicated to Buyer, the proposed fuel supply and transportation to the generating units to be dedicated to Buyer; gas, power, and utilities metering for such units and the Facility and related matters; allocation of common facilities and related costs (including, if applicable, fuel); settlement; prioritization, future Facility modifications; identification of the generating units to be sold to Buyer); treatment of future Facility modifications; registration, reporting, offering, scheduling, and, if applicable, tagging with the applicable Balancing Authority(ies) or similar action (including, without limitation of Seller's other obligations and Buyer's rights herein (e.g., those in item 16 below); the plan for ensuring that the applicable Balancing Authority(ies) will recognize, for all purposes, that the generation units contracted to provide power to Buyer are separate and distinct from the generation units retained by Seller or conveyed to a third party and that the commercial pricing node ("CP Node") for generation units contracted to provide power to Buyer is separate and distinct from the CP Node for the generation units to be retained for Seller's use and benefit or sold to a third party); proposal.</p>
5	<p>Electric Inter-connection:</p>	<p>The "Electric Interconnection Point" is (describe the point at which the Facility (or portion thereof to be sold to Buyer) will be interconnected to the Entergy Transmission System). (The Electric and "Interconnection Point must be located at a MISO CP Node within Amite South and must be on the Entergy transmission system.)</p> <p><u>" will be as specified by Bidder in the applicable proposal.</u> Seller will be responsible for (and bear the full costs and risks of) the interconnection of the Facility at the Electric Interconnection Point and qualifying the resource as a firm designated network resource in the applicable Balancing Authorities (or have a third party obtain such service or so qualify the resource), with full deliverability throughout such Balancing Authorities. Without limiting the foregoing, Seller will bear (i) all costs assigned to the interconnection customer under the <u>electric</u> interconnection agreement(s) for the Facility, (ii) all costs of any interconnection, deliverability, or transmission service and of any interconnection, deliverability, or transmission system additions or modifications (which could include</p>

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additions or modifications beyond the Electric Interconnection Point) required for the interconnection of the Facility or the transmission or transfer of power to the Electric Interconnection Point, and (iii) all costs associated with qualifying the Facility as a firm designated network resource in the applicable Balancing Authorities, including application fees and charges, the cost of interconnection, deliverability, and transmission studies, interconnection or transmission upgrades and improvements, and related interconnection or transmission service costs, including transformer, line, and other losses (collectively, the “**Interconnection/Transmission Costs**”). As part of its responsibilities under this item 5, Seller will be required to obtain network resource interconnection service (NRIS) from MISO under the MISO OATT (or the equivalent service in the event MISO discontinues or modifies the nature of NRIS).

Without limiting Seller’s responsibilities set forth in the initial paragraph of this item 5, including clause (iii) above, at a time deemed appropriate by Buyer after execution of the Definitive Agreement with Seller, Buyer will seek to qualify the Facility (or portion thereof to be sold to Buyer) as, or have the Facility (or portion thereof to be sold to Buyer) 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.

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 auction revenue right allocations and, if applicable, financial transmission rights or congestion rights, or other similar allocations and entitlements associated with the Facility (or portion thereof to be sold to Buyer), 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.

~~*Bidder must provide a copy of the complete interconnection application submitted to MISO for the Facility, a copy of the MISO acknowledgement letter or, if available, the study results related to such application, and the associated MISO queue number. In addition, Bidder must also provide and break out as separate line items the total Interconnection/Transmission Costs that are or are expected to be assigned to Bidder under the electric interconnection agreement for the Facility (or portion thereof to be sold to Buyer) or other applicable agreement(s) with or tariff(s) of MISO or other applicable Balancing Authority(ies) and that have been included in the pricing for the Acquisition Product (“Seller Network Deliverability Costs”). The Seller Network Deliverability Costs included in its pricing for the Asset*~~

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		<p>Acquisition Product is (insert Seller Network Deliverability Costs, in dollars). Following proposal submission, Bidders may update the Seller Network Deliverability Costs provided above and, exclusively for the purpose of reflecting any net change (positive or negative) in the Seller Network Deliverability Costs, the purchase price offered by Bidder in its proposal until 90 days after the required proposal submission date for the RFP. Any such update must be submitted in writing to the RFP Administrator. If, based on the information available prior to entering into any Definitive Agreement, the actual Seller Network Deliverability Costs are or are reasonably expected to be below the Seller Network Deliverability Costs reflected in Bidder's proposal, the purchase price proposed by Bidder will be reduced to reflect the effects of such difference.)</p>
6	Purchased Assets:	<p>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 (or portion thereof to be sold to Buyer) 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 (or portion thereof to be sold to Buyer). 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 (or portion thereof to be sold to Buyer) that Buyer chooses to have assigned to it.</p>
7	Purchase Price:	<p>The purchase price for the Purchased Assets is insert expected to be based on the proposed purchase price, expressed specified by Bidder in total U.S. dollars) 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 prorable items (e.g., property taxes, <u>specified</u> 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</p>

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		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’, materialmen’s, and other similar liens arising in the ordinary 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 (a) 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. EST (<u>Eastern Standard Time</u>) on the Closing Date.
11	Seller Representations	The representations and warranties (“ Representations ”) made by Seller in the Definitive Agreement will be customary for asset acquisitions of this

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	and Warranties:	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 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 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 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 is <i>insert quantity in whole MW</i> at 97° Fahrenheit and 56% relative humidity (“ Summer Conditions ”) and <i>insert quantity in whole MW</i> at ISO conditions. <i>It is expected to be as specified by Bidder should complete in the insert in the following single bracketed sentence if Bidder’s applicable proposal is for a sale of a portion of the Facility to Buyer</i> <i>[The, If applicable, the Capacity of the portion of the</i>

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	<p>Facility to be sold to Buyer is <i>insert quantity in whole MW</i> at Summer Conditions and <i>insert quantity in whole MW</i> at ISO 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 (or portion thereof to be sold to Buyer) at Summer Conditions is the net electrical output that the Facility (or portion thereof to be sold to Buyer) is capable of delivering reliably at the point of electric interconnection at Summer Conditions.</p>
<p>15 Plant Performance Testing:</p>	<p>The Definitive Agreement will provide for a test of the performance of the Facility (or portion thereof to be sold to Buyer), 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. The results of the test of items (i) through (iv) and, if appropriate<u>applicable</u>, (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, 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)), set forth in Schedule 15 hereto corresponding to Buyer’s dispatch level. <i>[Complete Schedule 15 hereto.]</i> performance characteristics of the Facility that are <u>guaranteed by Seller and are expected to be based on the Guaranteed Heat Rate curve or points specified by Bidder in the applicable proposal.</u></p> <p>The operating range<u>ranges</u> of the Facility (or portion thereof to be sold to Buyer) is as follows:</p> <p>The minimum dispatch levels (expressed in MW delivered at the Electric Interconnection Point) for the operating configurations of the Facility (or portion thereof) are expected to be sold to Buyer) at Summer Conditions are:</p> <p><i>insert a table with the minimum MW capable of being reliably delivered</i></p>

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		<p>from the Facility (or portion thereof to be sold to Buyer) at the Electric Interconnection Point for each operating configuration at Summer Conditions}</p> <p>The maximum MW capable of being delivered at the Electric Interconnection Point (i.e., upper end of the operating range) for the operating configurations of the Facility (or portion thereof to be sold to Buyer) at Summer Conditions are:</p> <p>{insert a table with the maximum MW capable of being delivered from the Facility (or portion thereof to be sold to Buyer) at the Electric Interconnection Point for each operating configuration at Summer Conditions}</p> <p>{The operating range created as specified by the tables above may not include any "deadbands" other than to reflect gaps, if any, between the maximum MW in one operating configuration and the minimum MW in the next operating configuration} Seller in the applicable proposal.</p> <p>{Please describe the automatic generation control (AGC) capabilities of the Facility (or portion thereof to be sold to Buyer) and any operating limitations or other terms and conditions that apply to operation under AGC}</p> <p>The emission rates (lbs./MMBtu) for NO_x, CO, and SO₂ and any other emission or pollutant specified in the Definitive Agreement for the Facility (or portion thereof to be sold to Buyer) will be required to be within the limits specified in the applicable permits for the Facility (or portion thereof to be sold to Buyer) and not to restrict ordinary operation of the Facility (or portion thereof to be sold to Buyer).</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, 2020) and transmission service (including, without</p>

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		<p>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 date of the Definitive Agreement to satisfy its closing conditions.</p>
17	<p>Seller’s Closing Conditions:</p>	<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 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, specified Buyer certifications and documents and items, the absence of a material adverse effect with respect to Seller, title insurance, eminent domain, capacity accreditation and transmission service (including without limitation, firm network resource and deliverability qualifications and transmission and congestion rights), the 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 achievement of commercial operation and payment of amounts due in connection therewith.</p>
18	<p>Durability of Regulatory Approvals/ Alternate Acquisition Structures:</p>	<p> 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). Accordingly, Bidder may propose in its proposal alternative Transaction structures that have the same economic effect as set forth in this Term Sheet, but mitigate (without shifting to Buyer) the above described regulatory risk. Without limiting the foregoing, Bidder may propose a development and construction agreement structure whereby Seller is obligated, on a fixed-price, turnkey basis, to develop, construct, and transfer the Facility to Buyer, with “project transfer” (i.e., transfer of the land and other development assets) to occur separately (and prior to) the construction arrangement for completion of the Facility. If Bidder elects to propose a development and construction agreement structure, Bidder should specify clearly and with particularity the payment and title transfer schedule and should not shift any of the development or construction cost, schedule, or other risk to Buyer. In the event Seller proposes an alternative acquisition structure that is accepted</p>

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		<p><u>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.</u></p>
19	<p>Commercial Operation Date:</p>	<p>The date by which the Commercial Operation Date<u>COD</u> must occur is insert month 1, 20insert year (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, by force majeure, 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 Guaranteed COD must be no later than a date that will allow the Closing to occur, on the terms provided for in Definitive Agreement, [before] June 1, 2020).”). 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 Commercial Operation Date<u>COD</u>, and the consequences of a failure to meet the Guaranteed COD, please see item 36 in Appendix B-1. The, the terms set forth in item 36 in Appendix B-1 of which should be substantially similar to the terms that will apply to a Definitive 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.</p>
20	<p>Indemnification:</p>	<p>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 Rep<u>Representation</u> of Seller or Buyer (other than a “fundamental” Rep<u>Representation</u>), (ii) full indemnity</p>

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		<p>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.</p>
21	Termination Rights:	<p>The Definitive Agreement will include termination rights customary for acquisitions of this type by Buyer. 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 (or portion thereof to be sold to Buyer) 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:	<p>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 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.</p>
23	Operation & Maintenance	<p>Seller will fully cooperate, and cause its Affiliates and third-party operators, contractors, and representatives to fully cooperate, with Buyer in order to</p>

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	Preparedness:	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 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	The Definitive Agreement will also include, among other things, the following covenants, terms, and/or conditions:

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	Conditions:	<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, 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.
29	Special Considerations:	<i>If Bidder is unable to accept any of the terms and conditions set forth in this Term Sheet or wishes to propose any alternate or additional terms or conditions, Bidder should so indicate here and describe with specificity any terms and conditions that Bidder is able to offer in place of the terms and conditions to which Bidder takes exception or any alternate or additional terms or conditions that apply to Bidder’s proposal.</i>

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Schedule 15

Heat Rate Curves

~~{Complete the heat rate curves in the following table in one (1) MW increments from minimum dispatch level to maximum dispatch level in each configuration. Repeat for additional configurations, if any. Other than deadbands between configurations, each heat rate curve should reflect the entire operating range specified by Bidder in item 15 above. The Guaranteed Heat Rate should be a blended heat rate for all MW included in the corresponding dispatch level. For example, if, for a dispatch level of 800 MW, the first 750 MW have a marginal heat rate of 7.000 MMBtu (HHV)/MWh and the other 50 MW have a Marginal Heat Rate of 10.000 MMBtu (HHV)/MWh, the "Guaranteed Heat Rate" for the dispatch level of 800 MW is 7.1875 MMBtu (HHV)/MWh = [(750 x 7.000) + (50 x 10.000)] / (750 + 50).}~~

Summer Conditions

Dispatch Level (MW)	Guaranteed Heat Rate Without Duet Firing (MMBtu (HHV)/MWh)	Guaranteed Heat Rate With Duet Firing (MMBtu (HHV)/MWh)
{insert min dispatch level in smallest configuration}	{insert heat rate}	
{...}	{insert heat rate}	
{insert max dispatch level without duet firing in smallest configuration}	{insert heat rate}	
{...}	{insert heat rate}	{insert heat rate}
{insert max dispatch level with duet firing in smallest configuration}	{insert heat rate}	{insert heat rate}
{insert min dispatch level in next configuration, if any}	{insert heat rate}	
{...}	{insert heat rate}	
{insert max dispatch level without duet firing in next configuration, if any}	{insert heat rate}	
{...}	{insert heat rate}	{insert heat rate}
{insert max dispatch level with duet firing in next configuration, if any}	{insert heat rate}	{insert heat rate}

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