

**Appendix J**  
**Summary of Principal Terms**  
**For**  
**Asset Purchases**

Under an asset purchase transaction, Cleco Power would purchase a generating asset (or the seller's interest in that asset) having a minimum generation capability of 50MW. The terms and conditions set forth below, together with the pertinent terms and conditions set forth in the RFP (including specifically Subsections 3.1 and 3.3 of the RFP), will provide the basis for the negotiation and execution of an asset purchase agreement between Cleco Power and each seller whose proposal is selected by Cleco Power (the "Definitive Agreement").

**1) PRODUCT DESCRIPTION**

Acquisition of title to a generating unit with the ability to deliver energy to a designated delivery point inside the Cleco Power control area. Cleco Power prefers to purchase existing operating assets with proven operating histories.

**2) CAPACITY QUANTITY**

- a) **Basic Information:** The generating unit must have a minimum generation capability of 50 MW.
- b) **Additional Information:** The capacity quantity shall be subject to adjustment based on capacity tests conducted at seller's expense or capacity tests conducted at the request of Cleco Power at its expense, as will be further defined in the Definitive Agreement. Seller shall test the capacity of the generating unit in accordance with standard industry practices as defined in the South West Power Pool Criteria operating manual, Section 12. Cleco Power may request that any capacity test be re-performed up to three times annually.

**3) TRANSMISSION INTERCONNECTION**

- a) **For Units Inside the Cleco Power Control Area:**

If the generating unit interconnects with the Cleco Power control area, the seller will be responsible for complying with Cleco's Open-Access Transmission Tariff (OATT) administered pursuant to FERC Order No. 2003-A's Standard Large Generator Interconnection Agreement and Standard Large Generator Interconnection Procedures or any successor requirements in effect until the closing of the acquisition.

Seller assumes all risks with regard to transmission interconnection with the Cleco Power control area including, but not limited to, the cost of interconnection, the treatment of any associated transmission service credits, and any charges associated with reliability requirements. The generating unit must be interconnected at 69 kV level or higher.

**b) For Units Outside the Cleco Power Control Area:**

If the generating unit interconnects with a transmission system other than the Cleco Power control area, seller is responsible for all costs associated with transmission interconnection with such transmission system including, but not limited to, the cost of interconnection, the treatment of any associated transmission service credits, and any charges associated with reliability requirements. Seller should take this into account when developing the purchase price. Any available transmission credits associated with upgrades to deliver energy from the proposed generating unit to the Cleco Power control area shall remain the property of the party funding the upgrade.

**4) TRANSMISSION SERVICE**

**a) For Units Both Inside and Outside of the Cleco Power Control Area:**

Cleco Power ultimately expects all proposed generating units to qualify as a Long-Term Network Resource (as defined in Cleco Power's OATT). However, sellers are not expected to estimate and include in its proposal the cost necessary to become a Long-Term Network Resource, including any potential transmission additions or upgrades, if the proposed generating unit does not presently qualify as a Long-Term Network Resource.

Specifically, the generating unit must satisfy all requirements necessary to qualify as a Network Resource (as defined in Cleco Power's OATT). Any associated transmission service credits existing or forthcoming will be retained by the seller as an excluded asset and will be subject to the applicable contemporaneous rules in effect. The Definitive Agreement may be terminated if the generating unit fails to satisfy all requirements necessary to qualify and remain as a Network Resource.

Cleco Power will assess the cost necessary to become a Long-Term Network Resource and will reflect such costs in the evaluation of each proposal. Cleco Power assumes all risks with regard to transmission service including, but not limited to, any necessary additions to the Cleco Power control area, transmission upgrades or other mitigation alternatives needed to qualify a proposal as a "Long-Term Network Resource."

**b) For Units Outside the Cleco Power Control Area:**

If the generating unit is located outside the Cleco Power control area, Cleco Power is responsible for all costs associated with firm delivery of energy to the Cleco Power control area. Seller is required to provide cost estimates associated with obtaining firm delivery of energy to the Cleco Power control area, with the exception of transmission service credits arising from interconnection-related costs. Seller may propose to transfer existing transmission rights or other transmission arrangements to Cleco Power.

## 5) FUEL SUPPLY

Cleco Power seeks proposals with fuel supply flexibility. This may include multiple fuel supply sources and/or the use of dual fuels. If fixed fuel supply contracts exist, Cleco Power is interested in discussing the terms and potential for assignability of such contracts.

If the generating unit is part of a multi-unit facility, then Cleco Power will have the right to participate in the processes and decisions that address certain operational fuel supply issues, including without limitation, the following:

- fuel supply philosophy
- on-site inventory levels
- nomination process
- impairment of fuel deliveries
- self help provisions
- invoice and payment process

## 6) REGULATORY APPROVALS

- a) **Basic Information:** Cleco Power's obligations under the Definitive Agreement (including, specifically, any obligation to close the acquisition of the generating unit and to pay the purchase price therefor) will be conditioned upon the receipt of all required federal and state regulatory approvals, including without limitation certification by the LPSC and any FERC approvals.
- b) **Additional Information:** Cleco Power will have the right to terminate the Definitive Agreement if, prior to the closing of the acquisition of the generating unit, any regulatory approvals are issued subject to terms or conditions, including rate-making treatments, that are unacceptable to Cleco Power in its sole judgment and discretion.

## 7) PURCHASED ASSETS, DUE DILIGENCE AND ASSUMED LIABILITIES

It is anticipated that the Definitive Agreement will include the following provisions:

- The purchased assets will include all right, title and interest of seller in the generating unit and all related real and personal property assets, including fuel inventory, emissions allowances and allowables, and all related contracts and warranties that Cleco Power chooses to have assigned to it, and will be delivered by seller at the closing free and clear of liens and other encumbrances, subject only to specifically negotiated, permitted encumbrances;
- Cleco Power will conduct all appropriate due diligence as more fully provided in the Definitive Agreement, and may terminate the Definitive Agreement if, in its sole discretion, the results of such due diligence are unsatisfactory to Cleco Power;
- Cleco Power will assume only specified liabilities that relate to the period after the closing and that are not the result of any act or omission of seller on or prior to the closing;

- Seller shall retain all other liabilities and obligations, including any liabilities relating to the period prior to the closing; and
- Taxes relating to ownership of the purchased assets will be prorated between seller and Cleco Power. Transfer taxes and similar charges will be borne by seller.

## **8) REPRESENTATIONS AND WARRANTIES**

Each party shall make representations and warranties typical and customary for transactions of this type. Such representations and warranties shall survive the closing for a period customary for transactions of this type, to be negotiated between the parties.

## **9) PARTIES' COVENANTS**

The parties' covenants will be those covenants that are usual and customary for transactions of this type. Such covenants shall survive the closing as provided in the Definitive Agreement.

## **10) INDEMNIFICATION PROVISIONS**

The Definitive Agreement shall contain indemnification provisions that are usual and customary for agreements of this type, pursuant to which each party indemnifies the other, respectively, for among other things, its breaches of representations and warranties, and any failure to perform any obligation in the Definitive Agreement, and its ownership, use, possession, condition, etc. of the assets before or after the closing date, as applicable. The type and amount of damages to which each party will be entitled to recover under these provisions as well as the duration of a party's indemnification obligation, shall be negotiated in the Definitive Agreement.

## **11) CLOSING CONDITIONS**

- a) Cleco Power: Cleco Power's obligation to purchase the purchased assets shall be subject to the satisfaction or waiver of the conditions to be specified in the Definitive Agreement, which may include, among other things, customary conditions regarding accuracy of seller's representations and warranties, material compliance by seller with covenants and obligations, no litigation, no material adverse change, receipt of title insurance, no condemnation or casualty and receipt of customary closing documents. Other conditions to closing may include:
- Obtaining all required consents and approvals, including without limitation, the approvals set forth in the Regulatory Approvals section above, for both Cleco Power's and seller's consummation of the transaction;
  - Obtaining a satisfactory environmental assessment and inspection of the purchased assets prior to the closing;
  - No condemnation or unrepaired casualty;
  - No material adverse effect since the inception of the Definitive Agreement;

- An executed LTSA or similar maintenance agreement deemed acceptable by Cleco Power;
  - The commercial operation date must have occurred;
  - The generating unit must satisfy all requirements necessary to qualify as a Network Resource; and
  - Such other conditions that Cleco Power may require.
- b)** Seller: Seller's obligations to sell the purchased assets shall be subject to the satisfaction or waiver of the conditions to be specified in the Definitive Agreement, which may include, among other things, customary conditions regarding accuracy of Cleco Power's representations and warranties, material compliance by Cleco Power with covenants and obligations set forth in the Definitive Agreement, including the payment of the purchase price, no litigation and receipt of customary closing documents and obtaining all required consents and approvals (including regulatory approvals) for both Cleco Power's and Seller's consummation of the Definitive Agreement.

## **12) OTHER CONTRACT TERMS AND CONDITIONS**

The Definitive Agreement shall contain such other terms and conditions as are customarily set forth in such agreements in the electric utility industry, and may include, without limitation, terms and conditions addressing: (i) assignment rights and restrictions; (ii) credit support requirements; and (iii) liquidated damages. The Definitive Agreement shall contain the usual and customary default and remedy provisions applicable to breaches thereof.

## **13) MANAGEMENT APPROVAL**

Cleco Power's obligations under the Definitive Agreement will be conditioned upon the prior approval of the Definitive Agreement by Cleco Power's Board of Managers.

## **14) LTSA**

Cleco Power reserves the right to reject or renegotiate any existing long-term service agreements (LTSA) associated with the proposed generating unit. Although Cleco Power will evaluate the existing LTSA, Seller should not expect Cleco Power to assume any existing agreements.