

**Appendix K**  
**Summary of Principal Terms**  
**For**  
**Tolling Arrangements**

Under a tolling arrangement, Cleco Power would have the exclusive right to flow fuel through a generating unit, and to schedule and dispatch the capacity, energy and all other ancillary services from a specific generating unit with no minimum annual energy dispatch limitations. The terms and conditions set forth herein, together with the pertinent terms and conditions set forth in the RFP (including specifically Subsections 3.1 and 3.4 of the RFP), will provide the basis for the negotiation and execution of an agreement between Cleco Power and each seller whose proposal is selected by Cleco Power (the “Definitive Agreement”).

**1) PRODUCT DESCRIPTION**

- a) **Basic Information:** A tolling agreement product in which Cleco Power has the exclusive right to schedule and dispatch energy and ancillary services from a specific generating unit on a day-ahead and/or intra-day basis with no minimum annual energy purchase requirements and the ability to start-up and shutdown the generating unit at Cleco Power’s discretion based on the capabilities of the generating unit specified consistent with prudent utility practice principles of economic dispatch. The product must qualify as a Network Resource, as defined in Cleco Power’s OATT. Cleco Power shall have full dispatch rights up to the contract capacity. In the event that a derating or curtailment of the generating unit results in generation capability below the capacity quantity, Cleco Power shall be entitled to receive all MWs available, with the exception of any prior contractual obligations in effect as of the effective date of the PPA (including any on-site load obligations of qualifying facilities).
- b) **Pricing:** Pricing for this product will be based on prices proposed in seller’s bid for (i) a capacity payment, expressed in \$/kW-year, and (ii) a variable O&M payment, expressed in \$/MWh.

**2) DELIVERY TERM**

- a) **Basic Information:** Cleco Power prefers a start date of January 1, 2010 for the delivery term (the “Delivery Term”). Cleco Power prefers proposals which include but are not limited to the following options to the extent the seller operates the generating unit beyond the end of the Delivery Term:
- Extension options on mutually agreeable terms, or unilateral with an indexed price increase.
  - Buy-out options.

- b) **Additional Information:** Cleco Power requires a minimum Delivery Term of two (2) years. Any proposed delivery term less than such minimum two (2) year Delivery Term will not be considered for evaluation.

**3) 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.

**4) CAPACITY PAYMENT**

- a) **Basic Information:** The Capacity Payment, expressed in \$/kW-year, will be payable for each year of the Delivery Term. Seller may specify (i) a capacity payment that is fixed for all years of the Delivery Term, or (ii) a pre-determined fixed escalation amount (not an index) that escalates the capacity payment each year after year 1 of the Delivery Term, or (iii) a capacity payment for each contract year of the Delivery Term. The capacity payment must include all fixed cost charges, any cost associated with third party transmission service and any other costs as listed below in this Appendix K that are to be included in the capacity payment, and will be subject to adjustment based on actual capacity availability, as described under Availability Requirement Section below.
- b) **Allocated Monthly:** The capacity payment shall be allocated in accordance with the following schedule for the entire Delivery Term of the Definitive Agreement and the capacity payment shall be payable on a monthly basis in arrears:

<u>Month</u>	<u>% of Annual Payment</u>
January	7%
February	7%
March	4%
April	4%
May	7%
June	15%
July	15%
August	15%
September	11%
October	4%
November	4%
December	7%

## 5) AVAILABILITY REQUIREMENT

- a) **Basic Information:** Availability requirement levels shall be guaranteed at 97% with adjustments to capacity payments for actual availability below such level.

Except to the extent that the generating unit shall be unavailable or limited due to a forced outage, planned maintenance or force majeure, seller shall, regardless of whether the availability shall be, for any period, at, above or below the availability requirement levels described above, operate the generating unit to provide the capacity quantity and associated energy in all hours in which scheduled and dispatched on line by Cleco Power.

- b) **Capacity Payment Adjustments for poor availability:** Actual capacity availability will be calculated monthly. Capacity payment discount(s) will be 2% for each 1% of shortfall to the required minimum availability level (excluding agreed-upon planned maintenance hours in approved periods (i.e., during March, April, May, October, or November) and force majeure hours); provided, however, in no event shall such capacity payment be reduced below zero (0). If, during the Delivery Term, the rolling 12 month availability for the actual capacity availability shall be less than 85%, Cleco Power shall have the right to terminate the Definitive Agreement and calculate damages.

Monthly capacity payments will be adjusted based on actual capacity availability of the generating unit measured on an hourly basis and regardless of whether or not on line. Maximum actual capacity availability in any hour will be the capacity quantity. Equivalent force majeure hours and equivalent planned maintenance hours will be excluded from the calculation of actual capacity availability and minimum availability requirement level (and thus for which no capacity payment discount will be incurred). To the extent of a derating or outage caused by force majeure, the capacity payment shall be reduced on a one for one basis.

## 6) MAXIMUM ANNUAL PLANNED MAINTENANCE

- a) **Basic Information:** A maximum number of equivalent planned maintenance hours may be excluded from the calculation of actual capacity availability, not to exceed 600 hours per each year of the Delivery Term. Seller should take this into account when developing the capacity payment.
- b) **Coordination with Buyer:** Seller is required to coordinate maintenance scheduling for planned maintenance, subject to Cleco Power's approval of such schedules. During the Delivery Term, seller and Cleco Power shall develop a mutually acceptable schedule for planned maintenance outage. Other than for the first fall planned maintenance outage in the first contract year, planned maintenance schedules shall be sent to Cleco Power on or prior to (a) September 1, for the March - May planned maintenance outage, and (b) February 1, for the October/November planned maintenance outage. Changes to such schedules shall require the parties' mutual agreement. No planned maintenance may be scheduled on the generating unit during the summer season or winter season.

## 7) MAXIMUM EQUIVALENT FORCE MAJEURE HOURS

- a) **Basic Information:** To the extent an affected party, using reasonable efforts, is unable to overcome a force majeure event and resume performance of its obligations within 7.5% of contract term after such performance is interrupted, either party may terminate the Definitive Agreement to the extent of the capacity, energy or ancillary services affected by such force majeure event without any further obligation (other than the obligation to make payment in respect of performance rendered prior to such termination).
- b) **Notice and Repair Time:** Notwithstanding the foregoing, if an affected party shall, upon the occurrence of a force majeure event, reasonably expect that the time required to resume performance exceeds 7.5% of contract term, the affected party shall notify the other party of the expected time required to resume its performance (repair time). The non-affected party shall either (i) accept such repair time, in which case the 7.5% of contract term referred to above shall be automatically extended to include such repair time, or (ii) reject such repair time, in which case either party shall upon such rejection be entitled to exercise its right to terminate the Definitive Agreement as set forth in the preceding paragraph.

## 8) GUARANTEED HEAT RATE

- a) **Basic Information:** The guaranteed heat rate provided by seller in Appendix H shall be guaranteed by seller within a band width of plus or minus 3%.
- b) **Heat Rate Damages and Bonus:** Cleco Power expects the heat rates to be backed by damages for failure to operate within 3% above or below the guaranteed heat rate. Seller shall pay Cleco Power damages set forth in the Definitive Agreement if the generating unit operates above the 3% band width. Likewise, Cleco Power shall pay Seller a bonus set forth in the Definitive Agreement if the generating unit operates below the 3% band width.

## 9) VARIABLE O&M PAYMENT

- a) **Basic Information:** The variable O&M payment payable by Cleco Power shall be proposed by seller and may, at seller's election as specified in Appendix H, escalate at the end of each annual period.
- b) **Indexing:** The annual escalation rate will be determined by using CPI or PPI, as specified by seller in the event that seller has elected the escalation option in Appendix H.

## 10) FIXED START-UP PAYMENT (NON-FUEL)

- a) **Basic Information:** Cleco Power expects a minimum run time of 8 hours and a maximum of 1 start per CT per day with a maximum of 250 starts per CT per year.

- b) **Indexing:** The fixed start-up payment (non-fuel) payable by Cleco Power for each start shall be proposed by seller and may, at seller's election as specified in Appendix H, escalate at the end of each annual period. The fixed start-up payment is based on the maximum capacity quantity as specified in Appendix H. This fixed start-up payment will not change based on hot start or cold start. Seller should take this into account when developing the capacity payment. The annual escalation rate will be determined by using CPI or PPI, as specified by seller in the event that seller has elected the escalation option in Appendix H.
- c) **Additional Information:** If Seller is able to offer increased number of starts, provide details of that in Appendix H.

## 11) MAINTENANCE COSTS

Cleco Power will not be responsible for any costs associated with maintenance, including but not limited to, cyclical or major maintenance, such as hot gas path inspections.

## 12) SCHEDULING/DISPATCH

Cleco Power will have the right to dispatch energy by providing a schedule consistent with the following notice provisions:

- Cleco Power shall have the right to provide a daily energy dispatch notice for the following business day with such notice to be provided by 9:30 a.m. CPT on the preceding day or such other time as mutually agreed to between Cleco Power and seller.
- Cleco Power shall have the right to change the daily energy dispatch notice on a real time basis based on the ramping capabilities of the generating unit and other limitations as specified in the Definitive Agreement.
- Cleco Power shall have the right to dispatch the unit in automatic generation control (AGC) mode if so agreed to in the Definitive Agreement.

## 13) FUEL IMBALANCE CHARGES

Cleco Power will be responsible for any and all fuel imbalance charges resulting directly from (i) Cleco Power's unexcused failure to receive energy associated with the generating unit that is scheduled and dispatched by Cleco Power in an effective daily energy dispatch notice or (ii) Cleco Power's unexcused failure to deliver the scheduled quantities of gas to seller.

## 14) GENERATOR IMBALANCE CHARGES

Seller shall be responsible for all penalties, fees, charges, costs and expenses assessed by a transmission provider or a control area operator for failure to satisfy requirements for balancing of electric energy receipts and deliveries, or loads and generation, including,

without limitation, any amounts payable by seller pursuant to the generator imbalance agreement relating to the generating unit.

## **15) TRANSMISSION INTERCONNECTION**

### **a) For Units Inside the Cleco Power control area:**

If the generating unit interconnects with the Cleco Power control area, the seller is 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 during the Delivery Term.

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. Seller should take this into account when developing the capacity payment.

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 capacity payment. 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.

## **16) TRANSMISSION SERVICE**

### **a) For Units both Inside and Outside the Cleco 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, seller is 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. Any associated transmission service credits existing or forthcoming will be retained by the seller 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. Except as set forth below, 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 Control Area:**

If the generating unit is located outside of the Cleco Control Area, Cleco Power shall obtain for the entire Delivery Term firm point-to-point transmission service required for delivery of energy to the Cleco Control Area, and such requirement shall be a condition precedent to the commencement of the Delivery Term.

**17) FUEL SUPPLY**

Cleco Power shall at all times arrange, procure, supply, nominate, balance, transport and deliver fuel to the fuel metering points, including all fuel to start up and shut down the generating unit.

If the proposal is not for the entire facility, seller must provide sufficient revenue quality fuel metering to allow for the segregation of fuel and sufficient revenue quality metering for all electrical output associated with the Cleco Power's generating unit or portion of the facility.

**18) REGULATORY APPROVALS**

- a) **Basic Information:** Cleco Power's obligations under the Definitive Agreement will be conditioned upon the receipt of all required federal and state regulatory approvals, including without limitation certification by the LPSC.
- b) **Additional Information:** Cleco Power will have the right to terminate the Definitive Agreement if subsequently-issued regulatory approvals are subject to terms or conditions, including rate-making treatments, that are unacceptable to Cleco Power in its sole judgment and discretion.

**19) OTHER CONTRACT TERMS AND CONDITIONS**

- a) **Basic Information:** 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.

**b) Specific Provisions:** Without limiting the generality of the foregoing, the Definitive Agreement shall address the following considerations:

- Seller shall operate and maintain the generating unit in accordance with good utility practices;
- Cleco Power shall have operational control over, and rights with respect to, the operations of the generating unit substantially equivalent to the control and rights of the owner of the generating unit;
- Cleco Power shall have active participation in certain decisions related to the generating unit, including, but not limited to, future use of common facilities, future capital additions, future expansion of the site, and the operation and maintenance of the generating unit, all of which will be negotiated and agreed to in the Definitive Agreement;
- To the extent that the generating unit has not commenced commercial operations prior to the date of seller's proposal, seller shall (i) cause the generating unit to be duly engineered, constructed, installed, tested and completed in accordance with generally accepted engineering and construction practices for independent power projects, and in compliance with applicable environmental laws, and (ii) deliver to Cleco Power copies of all material periodic reports, reports of the independent engineer and other material reports and notices relating to the engineering, construction, installation, testing and establishment of commercial operations of the generating unit; and
- Seller shall not be permitted to sell all or any portion of its interests in the generating unit to a third party purchaser without the prior written consent of Cleco Power, such consent not to be unreasonably withheld or delayed.

## **19) 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.

## **20) AUDIT RIGHTS**

Each party has the right and upon reasonable notice, at its sole expense and during normal working hours, to examine the books and records of the other party, with respect to any records or documents in any way related to the Definitive Agreement and the parties' obligations thereunder. The Definitive Agreement shall include an express reservation of audit rights in favor of any regulatory authority having jurisdiction over the Definitive Agreement.