

Attachment 2

Research on Contract Provisions in Power Supply RFPs

Utility	Eligible Bids	Description of Credit and Security Requirements
Southwestern Electric Power Company	<p>Request for Proposals for Baseload Capacity and Energy Resources, December 2005</p> <p>SWEPCO issued an RFP for Peaking, Intermediate and Baseload Resources</p> <p>Eligible bids included PPA, Asset Acquisition of an existing unit, System sale.</p> <p>RFP looking for long term resources 20-35 years</p>	<p>RFP document contained a model PPA and a Power Sales Agreement.</p> <p>The Company described its process for determining credit requirements in the RFP. First, the Unsecured Credit Limits are identified in a Table in the RFP, with a maximum limit of \$75 million for AA- to AAA rated entities down to \$25 million for entities with a credit rating of BBB-. Non-investment grade entities have an Unsecured Credit Limit of \$0. Second, in determining the financial and performance obligations component of a PPA, SWEPCO will estimate the cost to replace the PPA. These costs will relate to capacity and energy and will cover an 18 month period which is the minimum period that SWEPCO estimates it will take to obtain government and regulatory approval of an equivalent replacement contract. Credit Support related to capacity charges will be based on 50% of the value of the estimated future capacity costs covering the aforementioned period of 18 months. Credit Support related to energy charges will be based on the expected incremental replacement costs of such energy given a 50% market move over the 18 month period. Third, the Company also calculates a probability of contract default based on the credit rating of the bidder or its credit support provider. The estimated credit support requirements are based on subtracting the estimated amount from the Unsecured Credit Limits based on the credit rating of the bidder. A Credit Support table is provided in the RFP with estimated credit requirements based on the credit rating of the bidder and based on the type of resource bid (i.e. baseload, intermediate and peaking). According to the estimates, only bidders with non-investment grade ratings will be required to post credit, with the range increasing based on the lower non-investment grade rating. For example, firms with a CCC rating will be required to post the highest amount of credit support.</p>

		<p>As noted above, credit issues in the RFP and Contract are somewhat unique. The RFP contains a table with the required credit support amounts based on the credit rating of the respondent. For example, credit support amounts for baseload resources varies from \$0 for investment grade counterparties to \$53.65/kW for a company with a BB+ rating to \$106.55/kW for a company with a BB- credit rating and to \$214.65/kW for a counterparty with a CCC rating.</p> <p>Bidders with less than an investment grade rating are eligible to submit a bid but must abide by the credit levels established.</p> <p>Threshold requirements include a provision that a bidder or its Credit Support Provider must have Tangible Net Worth equivalent to at least \$500 million.</p> <p>SWEPCO will accept credit in the form of a letter of credit, cash or a corporate guarantee.</p> <p>Bidders submitting an Asset Purchase option will be subject to the same creditworthiness scrutiny as PPAs.</p> <p>Contract requires payment of capacity and FOM based on specified monthly multipliers. This is designed so that the payment reflects the value of the capacity during the peak season.</p>
<p>Progress Energy Florida</p> <p>Request for Proposals for Power Supply Resources, October 2003</p>	<p>Eligible proposals include any project that can substitute for the identified next planned generating unit proposed by the Utility. Utility option generally has been an</p>	<p>Model PPA included.</p> <p>The Key Terms and Conditions contain security provisions which require the Bidder to provide financial security to ensure the project is completed on schedule (development security) and is operated effectively and reliably (operational security). Bidder will be required to post security consistent with the schedule provided in the Key Terms and Conditions.</p> <p>Security in the form of cash or US government bonds held in escrow is preferred. However, Progress Energy will accept other forms of security that may be less costly to the Bidder, including a letter of credit with a bank or financial institution. Security must be guaranteed by entities that are considered investment grade.</p>

	<p>expansion of an existing facility located on a utility brownfield site.</p>	<p>Development Security increases from \$20/kW 30 days after contract signing to \$40/kW 18 months before scheduled commercial operation date and is set at \$50/kW 12 months before commercial operation. Operational security was set at \$10/kW within 30 days after commercial operations, \$20/kW 5 years after commercial operations and up to a maximum of \$30/kW 10 years after commercial operations..</p>
<p>Georgia Power Company 2010 Request for Proposals, March 22, 2006.</p>	<p>Eligible bids include self-build options and PPAs.</p> <p>The Georgia Commission hired the Independent Evaluator for the RFP process.</p>	<p>Model PPA included.</p> <p>Any PPA that the Company enters into must provide reasonable assurance that the Company will be able to readily recover its actual damages in the event of any default by the seller under a PPA. The RFP states credit conditions for 7, 15 and 30 year arrangements.</p> <p>For 30 year PPA terms, the Company will require that the seller either:</p> <ol style="list-style-type: none"> 1. Have a credit rating at least one notch above the rating specified in the PPA definition of Creditworthy (investment grade rating such that senior unsecured debt is rated at least BBB- by S&P) and have a Net Worth (defined as the dollar value calculated by subtracting liabilities from total assets excluding goodwill and other intangible assets as such terms are determined in accordance with generally accepted accounting principles) of at least \$750,000,000 or 2. Supply an uncapped guaranty from an entity with a credit rating of at least one notch above the rating specified in the PPA definition of Creditworthy and with a net worth of at least \$750,000,000, in a form acceptable to the Company. <p>In the event that the seller or its guarantor experiences a Material Adverse Change following the execution of the PPA (i.e. seller or guarantor is no longer creditworthy), seller will be required to provide replacement Eligible Collateral as defined in the PPA. With respect to any default by a seller during the development of the selected project, the PPA will provide for a liquidated damages remedy for the Company. The PPA provides details concerning these security requirements and remedy provisions based on the assumption that the</p>

		<p>seller itself is not Creditworthy under the PPA definition.</p> <p>The credit terms for 7 year and 15 year contracts have alternative provisions, including a lower net worth threshold of \$500,000,000.</p> <p>For a 30 year contract term, the bidder is required to post \$75/kW at signing. Development security reaches \$120/kW until commercial operations.</p>
<p>Duke Power</p>	<p>Request for Proposals, March 2005</p> <p>Eligible bids include existing resources, new construction , renewable resources, and sale of a facility.</p> <p>Duke is looking for proposals that provide the greatest value to Duke and its customers. Value is defined as the combination of price, reliability, and flexibility. The proposal</p>	<p>Terms and Conditions which serve as the basis for a Model PPA included in the RFP.</p> <p>RFP guidelines include the following financial resources requirements:</p> <ul style="list-style-type: none"> • An equivalent corporate bond rating of BBB- or above from at least two rating agencies, one of which should be S&P or Moody's • A commercial paper rating of 1 or 2 from at least two rating agencies. • A Dun & Bradstreet credit appraisal rating of 1 or 2. <p>Model PPA has Credit Section. The section states that if either party has reasonable grounds to believe that the other party's creditworthiness or performance under this Agreement has become unsatisfactory, the requesting party may provide the other party with written notice requesting Performance Assurance in an amount determined by the requesting party in a commercially reasonable manner.</p> <p>No specific amounts were included.</p> <p>Contract requires payment of capacity and FOM based on specified monthly multipliers. This is designed so that the payment reflects the value of the capacity during the peak season.</p>

	<p>that has the greatest value may not necessarily be the lowest price proposal.</p>	
<p>Public Service Company of Colorado (PSCO)</p>	<p>XCEL Energy 2005 All-Source RFP</p> <p>Eligible resources include CT, CC, solid fuel coal projects, and firm power from other utilities.</p> <p>Ownership options also considered.</p>	<p>Model PPA attached.</p> <p>Security for performance was quoted in the contract as \$125/kW of net capability. The Security fund shall be available to pay any amounts due PSCO pursuant to the PPA and to provide PSCO security that seller will construct the facility to meet the Construction Milestones. The security fund shall also provide security to PSCO to cover damages, including but not limited to Replacement Power Costs, should the facility fail to achieve the commercial operation date or otherwise not operate in accordance with the PPA.</p> <p>The type of security required may be comprised of a combination of the following:</p> <ul style="list-style-type: none"> • Standby letter of credit or a performance bond from an issuer with an unsecured bond rating equivalent to A- or better. • US currency • A guaranty from an issuer with an unsecured bond rating equivalent to BBB+ or better. <p>Prior to the commercial operation date, seller and PSCO shall execute and record separate agreements under which seller will provide PSCO in a form acceptable to PSCO and the facility lender, with fully perfected subordinated security interests, and/or mortgage lien in the facility and in any and all real and personal property rights, contractual rights, and other rights that seller acquires in order to construct and/or operate the facility.</p> <p>A minimum bid eligibility requirement is that the bidder must demonstrate to Public Service of Colorado's satisfaction that they can meet the security requirements of Article 11 of the PPA.</p>

<p>Idaho Power Request for Proposals for Peaking Resources, June, 2005</p>	<p>Idaho Power is seeking to acquire peaking electric generating resources on a turnkey basis at an existing site.</p>	<p>Minimum Credit Requirements:</p> <p>Respondent or Guarantor of Respondent must be able to financially secure the project and contract. It is the responsibility of the Respondent or Guarantor of Respondent to demonstrate financial security to the satisfaction of Idaho Power Company. Idaho Power suggests that Respondent possess a senior unsecured debt rating equivalent to no less than BBB- from S&P or Baa3 from Moody's at the time of the proposal. The Respondent must be able to provide satisfactory performance assurances in the event Idaho Power believes Respondent's ability to perform or creditworthiness has become unacceptable. The Respondent must be willing to grant a present and continuing security interest in any performance assurances or cash equivalent collateral.</p> <p>The RFP also states that Idaho Power will rely on this RFP to meet the near-term incremental electric needs for its customers with low cost, dependable and reliable electric service. As a result, the resource must be in commercial operation with a demonstrated high degree of operating availability on April 1, 2007. Substantial delay liquidated damages will be included in the negotiated agreement for failure to meet this commercial operations date. Following April 1, 2007, the purchased resource must be guaranteed to operate at an availability of 97% during non-planned outages and stringent availability liquidated damages provisions will be required in any negotiated agreement. The resource will be required to meet the appropriate proposed performance guarantees or to pay performance liquidated damages.</p> <p>A model PPA was not included with the RFP.</p>
<p>Public Service of New Mexico PNM Request for Proposals for Capacity Supply, August 2004.</p>	<p>Eligible proposals include: (1) power from dedicated generating facilities; (2) system sales or (3) sales by</p>	<p>PNM requires both an investment grade rating (S&P BBB- or above) as well as sufficient equity to cover respondent's anticipated delivery obligations under any contract entered into as a result of this RFP process.</p> <p>If respondent is unable to satisfy the foregoing credit standards, Respondent may designate a Credit Support Provider/Guarantor, and if the Credit Support Provider/Guarantor is satisfactory to PNM, the Respondent shall be deemed to have satisfied PNM's</p>

	<p>certified power marketers</p> <p>PNM is seeking Capacity Supply of 74-165 MW net summer dependable capability of dispatchable peaking or intermediate resources in the 2006-09 timeframe.</p>	<p>credit standards. The quality of credit of the proposed Credit Support Provider/Guarantor will be evaluated under the same standards as the bidder.</p> <p>In lieu of designating a Credit Support Provider/Guarantor, a Respondent that is otherwise unable to satisfy the foregoing credit standards may elect to satisfy PNM’s credit standards by providing adequate collateral to PNM, in the form of either: (1) a letter of credit from a financial institution satisfactory to PNM; or (2) a security deposit in the form of cash. In either event, the collateral must be sufficient to cover respondent’s anticipated delivery obligations under any contract entered into as a result of this RFP process.</p> <p>A model contract is not provided but PNM identifies key contract provisions in the RFP.</p> <p>RFP includes required information and pricing schedules for bidders to complete.</p>
<p>Portland General Electric</p> <p>Request for Proposals for Power Supply Resources, June 18, 2003</p>	<p>Eligible bids included PPA, tolling options, self-build options, asset acquisitions of existing and proposed resources and short-term options.</p>	<p>Model PPAs and Asset Purchase Agreements included in the RFP.</p> <p>Credit and Bidder Qualifications:</p> <p>All transactions are contingent upon the Bidder meeting and maintaining the credit requirements established by PGE’s Wholesale Credit Department:</p> <ul style="list-style-type: none"> • Bidder’s long-term senior unsecured debt that is not supported by third-party credit enhancement must be rated BBB- or higher by S&P, and Baa3 or higher by Moody’s, if the bidder is rated by both agencies. • Bidders that are not publicly rated, and bids offering full project ownership, will be subject to review by PGE’s Wholesale Credit Department for qualification. <p>Bidders may obtain credit approval by providing security in a form and amount acceptable to PGE. Bids for an outright purchase of a 100 percent interest in a plant will be considered regardless of the creditworthiness of the Bidder. If the plant is not yet complete, PGE’s Wholesale Credit Department requirements apply until construction is satisfactorily completed.</p>

	<p>Contract Security: If at any time during the course of the Agreement, the Termination Payment that would be owed to PGE exceeds the counterparty’s Collateral Threshold, then PGE, on any Business Day, may request that the Counterparty provide Performance Assurance in an amount equal to the lesser of (1) the remaining period of the contract term or (2) for a period of 24 months commencing from the date PGE provides notice to Counterparty of such required Performance Assurance less any Performance Assurance already posted with PGE.</p>
<p>Cleco Power LLC, 2004 RFP for Capacity and Enrgy Resources</p>	<p>Cleco will evaluate the ability of bidders to perform under the PPAs by reviewing ratings and credit information published about bidders or their parent organizations by third parties.</p> <p>In addition, Cleco Power may perform its own internal credit evaluation of bidders or their parent organizations through a review, at a minimum, of the following factors:</p> <ul style="list-style-type: none"> • Historical and projected tangible net worth • Historical and projected measures of cash flow adequacy • Measures of historical and projected leverage • Other credit risk issues, including but not limited to, the status of ongoing court, regulatory, or other governmental processes or proceedings or significant contract negotiations or renegotiations. <p>Cleco Power will expect any successful bidder (or its parent organization) to post a form of credit support to ensure the seller’s performance under any PPA. The amount of such credit support will be determined by Cleco’s evaluation of the bidder’s credit condition and a determination of the financial obligations of the bidder under the terms of the PPA. In determining the financial obligations component, Cleco Power will estimate the costs to replace the PPA. Such costs will relate to capacity or energy and will cover, at a minimum, 18 months of replacement costs as this period is the minimum period that the company believes it will take to obtain and have governmentally approved an equivalent replacement PPA. Credit support related to</p>

		<p>capacity charges will be valued at the contract price for a minimum period of about 18 months of payments. Credit support related to energy charges will be based on the Company’s assessment of replacement energy cost, also for a minimum period of about 18 months, compared to the contract’s energy pricing formula (commodity fuel price, heat rates, fixed dollar, etc.)</p> <p>Any credit collateral will be in a form acceptable to Cleco Power and may include a parental guarantee from a creditworthy entity, a letter of credit from an investment grade institution, or cash on deposit in escrow.</p>
<p>Entergy</p>	<p>Draft 2006 RFP for Long-Term Supply-Side Resources</p> <p>Options include PPA, Tolling and ownership acquisitions.</p>	<p>Credit/Collateral Requirements</p> <p>Each conforming proposal will be analyzed by the Credit Evaluation Team to assess potential credit risks and collateral requirements. The credit evaluation seeks to assure that the Bidder’s credit quality, combined with its proposal to ESI, is in compliance with ESI’s corporate credit risk standards, and that any requirements for additional collateral or security associated with the proposal are identified. Considering construction lead times and 20 year plus contracts, the critical credit risk management issue will be protecting the Buyer from the risk of a Bidder’s non-performance over the duration of the contract. This risk is tied to the necessity to replace power and/or capacity from higher cost resources than the contracted-for resources should a supplier become unable to perform.</p> <p>Bidder Requirements:</p> <p>ESI will evaluate all proposals on an economic basis and will not exclude or prohibit a potential bidder from participating in the RFP on the basis of credit.</p> <p>Bidders who have been notified of their “final selection” will be required to provide a letter of credit in the amount of \$2 million.</p> <p>The Credit Evaluation Team will determine a maximum uncollateralized supplier exposure for each bidder as a function of the credit rating.</p>

		<p>ESI will require bidders who execute an agreement with ESI to provide acceptable collateral. ESI will consider a variety of traditional forms of collateral as well as some non-traditional collateral such as liens on assets and step-in rights on a case-by-case basis.</p> <p>The Collateral Requirements outlined in Appendix F to the RFP include: (1) \$200/kW for long-term PPA and ownership acquisition of a baseload solid fuel facility after 6/1/07; (2) \$100/kW for a long-term non-tolling and tolling PPAs from load following CCGT's; and (3) \$0 for ownership of a load following CCGT and ownership acquisition of a busload solid fuel facility online no later than 6/1/07)</p>
<p>Puget Sound Energy, Request for Proposals from All Generation Sources.</p>	<p>Eligible resources include PPAs, Exchange Agreements, Capacity Products and Asset Ownership options (joint development, transfer of ownership).</p>	<p>Credit Requirements: PPA Acquisitions and Power Exchanges.</p> <p>Respondents with senior unsecured credit ratings of at least BBB- and Baa3 by S&P and Moody's or, alternatively, that have received a credit rating from Puget's credit department equivalent to at least BBB+, or that provides a parent or affiliate guarantee in form and substance acceptable to PSE from a guarantor with senior unsecured credit ratings of at least BBB- and Baa3, or, alternatively, from a guarantor that is assigned a credit rating equivalent to at least BBB+ by PSE's credit department will be considered Investment-Grade Respondents. Reciprocal credit terms in the Definitive Agreements will include an adequate assurance clause similar to that set forth below:</p> <p>Adequate Assurance Clause: When reasonable grounds for insecurity arise with respect to the performance of either party, the other party may in writing demand adequate assurance of the due performance under the definitive agreement by the First Party, and the failure of the First Party to provide to the Second Party such adequate assurance of due performance within 3 business days following the First Party's receipt of the demand shall be deemed to be a material breach of, and an Event of Default under, the Definitive Agreement by the First Party.</p> <p>Other credit terms, including but not limited to collateral thresholds, rating triggers and/or similar financial</p>

	<p>covenants will not apply to Puget but may apply to the Investment Grade Respondent.</p> <p><u>Speculative Grade Respondents</u> Respondents with a senior unsecured credit rating equal to or below BB+ and Ba1, or alternatively, that receive a credit rating from Puget’s credit department equal to or below BB+, or that provide a parent or affiliate guarantee in form and substance acceptable to Puget from a guarantor with senior unsecured credit ratings equal to or below BB+ and Ba1, or alternatively from a guarantor that is assigned a credit rating of BB+ or below by Puget’s credit department will be considered Speculative Grade Respondents.</p> <p>Generation Project Acquisitions and Project PPA Acquisitions</p> <p>Puget prefers acquisitions that do not impose credit support requirements on Puget. If any respondent intends to propose that Puget provide credit support (e.g. in the form of a letter of credit or otherwise), the respondent must describe in its proposal all desired terms and conditions regarding such credit support.</p> <p>Puget reserves the right to require adequate credit assurances that provide security for, among other things, the value associated with market-based damages for failure to perform, delays in construction, failure to meet minimum availability levels and/or other forms of default or non-performance. Such assurances may include, without limitation, a parent or affiliate guaranty and/or letter of credit, each in the form and substance, for a term and from a parent, affiliate or a financial institution, acceptable to Puget. In the event that Puget anticipates that adequate credit assurances may be required from a respondent, Puget reserves the right to request that the respondent reply in writing regarding its intent to provide such credit assurances prior to the beginning of negotiations of any Definitive Agreement.</p> <p>Model PPA include with the RFP but no security levels are included. However, section 7.4.1 of the PPA states:</p> <p><i>With respect to the obligations of Seller set forth in</i></p>
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		<p><i>Sections 6.3, 7.1, 7.2 and 7.3, Seller shall cause one or more of its respective affiliates (each a Seller Guarantor) having an Earnings-to-Interest Ratio of at least 2.00, to execute and deliver to Purchaser prior to the Commercial Operation Date a guaranty in favor of Purchaser, in the form attached as Exhibit G, under the terms of which Seller Guarantor unconditionally guarantees the full and prompt payment of Seller’s payment obligations of this Agreement, in a maximum aggregate amount not to exceed _____ dollars. Such guaranty shall remain in effect for the Term and thereafter until Purchaser has certified to the Guarantor that no damages are owed by the seller.</i></p>
<p>Pacific Gas and Electric 2004 Long Term Request for Offers Power Purchase, March 18, 2005</p>	<p>Eligible Resources include Power Purchase Agreements and Asset Acquisitions</p>	<p>RFP document includes a Power Purchase Agreement Term Sheet.</p> <p>Credit Requirements:</p> <p>The amount of unsecured credit to be extended will be determined based on the credit rating of the counterparty. The Collateral Threshold amount may be set at zero. The buyer intends to compute a market value for the products sold under the Agreement, with weekly collateral posting requirements (in excess of the collateral threshold amount) tied to changes in the market value of the products. From the initial delivery date, the seller will also be subject to an amount equal to the product of \$30,000 multiplied by the maximum monthly contract capacity to be provided in any month of the services term during the first two years for a 24-month generation technology and \$60,000 multiplied by the maximum number of MW of capacity to be provided in any month of the term during the first five years for a 60 month generation technology. The parties agree that each party will post collateral equal to the collateral requirements in accordance with the formula contained in the Term Sheet (when positive for such Party), which is based on an on-going rolling two or five year Mark to Market Value, calculated in accordance with Attachment 2 (formula). If Seller has to post collateral, seller will have the option to post in the form of a Letter or Credit or cash. The determination of the two or five years is dependent on the generation technology and the length of time that would be required to procure a like-kind replacement of the agreement in the market.</p>

		<p>The collateral requirement at any point in time for seller after the initial delivery date is the amount calculated which is equal to (x) less (y) but no less than 0, where (x) equals the positive amount of the Mark-to-Market Value as determined pursuant to Attachment 2 plus the Independent Amount (established amount above) and (y) is the amount of collateral previously provided by seller plus the collateral threshold amount applicable to the seller.</p> <p>Formula included in Attachment 2 compares the price of a monthly forward NP-15 peak and off-peak power price with the gas price adjusted for the heat rate and the variable O&M cost summed over 24 or 60 months.</p>
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