

Changes to RFPGC & Contract (12/08/2011)

- 1) RFP, page 4, Section 2.1.1 Dispatchable Generation Capacity Resource – Deleted Text: “*Each such unit shall be offered into the DAM or RTM using the same definition of total variable cost as used to determine the Supplier’s compensation for energy, as set forth in Article 6 of the Agreement.*” replaced with “*Each such unit shall be offered into the DAM or RTM by submitting a cost-based offer.*”
- 2) RFP, page 5, Section 3 Contract Structure – Last sentence changed from “*as described in section 6.1 m*” to “*as described in section 6.1 k*”
- 3) RFP, page 7, 6.1.a Proposal Content, Eighth Bullet Point in Section – Deleted Text: “*If the Respondent proposes to have a Guarantor guarantee its obligations, then the above information also must be provided for that Guarantor*” replaced with “*If the Respondent proposes to rely on the commitment from a parent or other company to demonstrate its financial strength, then the above information must also be provided for that company.*”
- 4) RFP, page 8, 6.1.a Proposal Content, Twelfth Bullet Point in Section – Deleted Text: “*Description of financial condition and evidence of creditworthiness, including senior unsecured long-term debt credit ratings from major rating agencies and the most recent two years’ audited financial statements for Respondent and Guarantor, if applicable*” replaced with “*and/or a parent or other company on which Respondent will rely to demonstrate its financial strength. For the latter, a letter must be provided by that company indicating their commitment to the development of the proposed project and to assist the Respondent in meeting all credit and other requirements under the Agreement.*”
- 5) RFP, page 11, Section 6.1.k Pricing Proposal, First Bullet Point – “... described in detail in Exhibit G of Attachment ...” changed to “... described in detail in Exhibit F of Attachment 8 ...”
- 6) RFP, page 11, Section 6.1.k Pricing Proposal— Inserted Second Bullet: “*Respondents are encouraged to submit two bids: one specifying a fixed fuel price and one specifying a variable fuel price. Either type of bid should specify a term of up to twenty years. To qualify as a fixed fuel price bid, a minimum of 5 years of fixed fuel prices must be offered.*”
- 7) RFP, page 11, Section 6.1.k Pricing Proposal, Third Bullet Point – “*Pricing may be specified for Capacity ~~in either of~~ the following forms:*” changed to “*Pricing may be specified for Capacity in the following form:*”
- 8) RFP, page 11, Section 6.1.k Pricing Proposal, Third Bullet Point, #1 – “*A Fixed/Indexed offer based on principles defined in Exhibit G of Attachment 8...*” changed to “*A Fixed/Indexed offer based on principles defined in Exhibit F of Attachment 8...*”

- 9) RFP, page 11, Section 6.1.k Pricing Proposal, Fourth Bullet Point – “... as described in Exhibit G of Attachment 8...” changed to “...as described in Exhibit F of Attachment 8...”
- 10) RFP, page 11, Section 6.1.k Pricing Proposal, Fourth Bullet Point, #2, First Bullet Point – Deleted Text: “a defined heat rate (MMBtu {Higher Heating Value (HHV)}/MWh)~~as a function of fuel, load, ambient temperature, and output degradation factor,~~ and;”
and added text: “a defined annual heat rate (MMBtu {Higher Heating Value (HHV)}/MWh) and;”
- 11) RFP, page 11, Section 6.1.k Pricing Proposal, Fourth Bullet Point, #2, Second Bullet Point – Text added: “a fuel price (\$/MMBtu) based on either a a published daily index plus defined adjustments for transportation and local delivery service adder(s) or b) a fixed fuel price if it has been offered by the Supplier, which is applied to energy output in each hour.”
- 12) RFP, page 12, Section 6.1.k Pricing Proposal, Fourth Bullet Point, #3, Second Bullet Point – Text added: “A fuel component defined as the product of a specified start-up fuel amount in MMBtu/unit start and either a a fuel price (\$/MMBtu) based on a published daily index plus specified adjustments or b) a fixed fuel price if it has been offered by the Supplier.”
- 13) RFP, page 12, Section 6.2 Submittal of Proposals – In first sentence, “November 11, 2011” changed to “January 20, 2012”
- 14) RFP, page 12, Section 6.4 Expiration of Proposals – “March 1, 2012” changed to “April 30, 2012”
- 15) RFP, page 14, Section 6.5.3 Initial Shortlist – Non-Price Scores – Paragraph 1 text added: “Development Feasibility and Risk (10%)”
- 16) RFP, page 15, Section 6.5.3 Initial Shortlist – Non-Price Scores – Paragraph 2 text added: “Site Control and Permitting (10%)”
- 17) RFP, page 15, Section 6.5.3 Initial Shortlist – Non-Price Scores – Paragraph 3 text added” “Operational Viability Risk Impacts and Benefits (10%)”
- 18) RFP, page 15, Section 6.5.4 Initial Shortlist-Price Scores – First paragraph text added: “This value will be the forecasted annualized costs of a bid developed by adding together (a) the requested capacity payment and fixed O&M payment; and (b) operating costs, consisting of the annual fuel costs of the plant based on the units’ predicted capacity factor, heat rate, fuel price, variable O&M and start-up costs. Fuel prices will be determined using commercial forecasts either (a) a published daily index plus defined adjustments for transportation and local delivery service adder(s) or (b) a fixed fuel price if it has been offered by the Supplier. The annualized costs will be discounted to present day and compared on a \$/MWh basis.”
- 19) RFP, page 15, Section 6.5.4 Initial Shortlist – Price Scores – Last paragraph text added: “The bids with the highest total (i.e. price plus non-price) scores will be selected to the Initial Shortlist. Up to

two times the desired need (i.e. 3,000 MW) may be selected for the Initial Shortlist. The Commission may raise this target quantity at their discretion.

If less than 1,000 MW of fixed fuel price offers are selected in the initial ranking of 3,000 MW, a separate ranking of only fixed fuel price offers will be conducted to select additional bids to meet the 1,000 MW goal. In this separate ranking, 1.5 bonus points will be awarded and added to the price score for each year over five years that a fixed fuel price is offered. Fixed fuel price offers will then be ranked, and the offers with the highest combined price and non-price scores will be selected to the Initial Shortlist. For example, if no fixed fuel price offers are selected for the 3,000 MW of the Initial Shortlist, then the separate ranking will be used to select 1,000 MW of only fixed fuel prices offers. In this case, the total Initial Shortlist would be 4,000 MW.

- 20) RFP, page 17, Section 8 Schedule for RFP Process – Replaced entire table with new dates.
- 21) Attachment 2 Credit Requirements, page 1, Minimum Threshold Requirements — Text Deleted: *“Final shortlist bidders will be required to provide a commitment letter to provide credit security within 30 days of being selected to the final shortlist.”* replaced with *“At the same time that the Proposal is due, bidders will be required to provide a letter of intent to provide credit security within 30 days of being selected to the final shortlist.”*
- 22) Attachment 2 Credit Requirements, page 1, Completion Security – Text Deleted: *“Selected Respondents (Suppliers) are required to post Completion Security collateral in the amount of \$100 per kW of expected UCAP (approximately \$95 per kW of installed capacity for dispatchable resources) within 10 business days of execution of an Agreement.”*
- 23) Attachment 2 Credit Requirements, page 1, Plant Performance Security — Text Added: *“For fixed price fuel offers only, at the beginning of each Contract Year, the simple average of the Henry Hub Spot Price over the previous Contract Year will be compared to the fixed fuel price offered for the previous Contract Year. If the average Henry Hub Spot Price is 125% or greater than the fixed fuel price, the Buyer retains the right to request additional Completion and Performance Security. The amount of the additional Completion and Performance Security will be up to \$50 per kW. The additional Completion and Performance Security will be returned to the Supplier a) when the term of the fixed fuel price offer has expired, or b) when the annual comparison is performed and the average Henry Hub Spot Price is less than 125% of the fixed fuel price.”*
- 24) Attachment 7 Part A. Operating Data, page 3, Inserted new table for Contract Target Availability.
- 25) Attachment 7 Part B. Bid Price Form, page 4 – Added 3 rows at top of Bid Price Form to explicitly define a Confirmed Contract Quantity (UCAP MW) for the purposes of contract settlement.

- 26) Attachment 7 Part B. Bid Price Form, page 5 – Repasted identical table but deleted the following language: **“Under Cost of Service Pricing, the Contract Energy Price and Contract Start Cost are determined as defined in Attachment 9.”**
- 27) Attachment 7 Part B. Bid Price Form, page 6 – Added Emission Components section at bottom of Bid Form Spreadsheet to explicitly define emissions rates for the purposes of contract settlement.
- 28) Attachment 7 Part B. Bid Price Form, page 7 – Inserted new table for fixed fuel price offers.
- 29) Attachment 7 Part B. Bid Price Form, page 8 – Inserted new table for Contract Annual Heat Rate values to be used to calculate Contract Energy Price.
- 30) Attachment 8/Contract, page 5, Article 1 General Definitions – *“Availability Deficiency” shall have the meaning set forth in Section ~~3.4(e)(4)~~ of this Agreement.*” changed to *“Availability Deficiency” shall have the meaning set forth in Section 3.1(f)(4) of this Agreement.*”
- 31) Attachment 8/Contract, page 7, Article 1 General Definitions – Text Added: *“Contract Annual Heat Rate”*
- 32) Attachment 8/Contract, page 7, Article 1 General Definitions – **“Target Availability”** was renamed to **“Contract Target Availability”** and the definition was moved to the appropriate alphabetical section: **“Contract Target Availability” means the percentage Availability (for a particular Contract Year) that the Supplier has committed under the terms of this Agreement to maintaining the Facility over the period of a given Contract Year, reflecting adjustments for forced outages and planned maintenance, as stated in Exhibit C to this Agreement.**”
- 33) Attachment 8/Contract, page 12, Article 1 General Definitions *““Monthly Payment Amount” has the meaning set forth in Exhibit G hereto”* changed to *““Monthly Payment Amount” has the meaning set forth in Exhibit F hereto”*
- 34) Attachment 8/Contract, page 19, Section 2.2 Location – Text added: *“The Facility shall be physically located entirely within the Southwest MAAC Locational Deliverability Area as defined by PJM and interconnected to the System such that the Facility’s Original Contract Quantity shall be interconnected to a node within the Southwest MAAC Locational Deliverability Area as defined by PJM.”*
- 35) Attachment 8/Contract, page 23, Section 2.6.d Requirements for Commercial Operation– Text changed from: *“as determined by the MDPSC in accordance with Section ~~3.3~~ of this Agreement”* to *“as determined by the MDPSC in accordance with Section 3.2 of this Agreement”*
- 36) Attachment 8/Contract, page 26, Section 3.1. Operations and Performance Requirements – Throughout entire section 3.1, **“Target Availability”** has been changed to **“Contract Target Availability”**

- 37) Attachment 8/Contract, page 29, Section 3.1.g Operations and Performance Requirements– Text added in first sentence: “*The Supplier shall demonstrate that it has maintained the Facility’s **Contract Annual Heat Rate** in accordance with the terms of this Agreement by conducting a heat rate test on an annual basis.*”
- 38) Attachment 8/Contract, page 30, Section 3.1.g.4 – Text added in second sentence: “*If the tested heat rate is greater than the **Contract Annual Heat Rate** listed in Exhibit C to this Agreement for the specific Site and atmospheric conditions at the Facility during the test by more than 5%...*”
- 39) Attachment 8/Contract, page 32, Section 3.2.a PJM Market Participation – Text added: “*(a) The Supplier warrants that the Facility is eligible to and will participate in and offer into all PJM Markets pursuant to guidelines established by the MDPSC, including but not limited to the BRA, the Day-Ahead Energy Market, **Real-Time Energy Market**, and the Ancillary Services Market consistent with PJM Rules.*”
- 40) Attachment 8/Contract, page 32, Section 3.2.b.2 PJM Market Participation – Text added: “*Beginning on the Commercial Operations Date, the Supplier will have the Units offer and participate in the Day-Ahead Energy Market, **Real-Time Energy Market**, and Ancillary Services Market. The Units shall submit cost-based offers only.*”
- 41) Attachment 8/Contract, page 33, Section 3.2.d PJM Market Participation – Text added: “*This Agreement is exclusive with the Supplier providing the Buyer, upon Commercial Operation, with the Supplier’s revenues from sales and other activities, including but not limited to those from the sale of the Facility’s electricity products and services into the PJM energy and capacity markets, **but excluding those from the PJM Ancillary Service Markets**, and any other revenues available to the Facility, which revenues are netted against the Monthly Payment Amount described in Article 6.*”
- 42) Attachment 8/Contract, page 40, Section 6.2.e Adjustments to Monthly Payment Amount – “**Target Availability**” changed to “**Contract Target Availability**”
- 43) Attachment 8/Contract, page 49, Section 8.1.d.2 Events of Default of Supplier – Deleted Text: “*The Facility’s performance on an annual heat rate test falls more than 5% below the **threshold level** established in Exhibit C.*” replaced with “*The Facility’s performance on an annual heat rate test falls more than 5% below the **Contract Annual Heat Rate** established in Exhibit C.*”
- 44) Attachment 8/Contract, page 59, Section 10.1.a Completion and Performance Security Amount – Added Text: “**For fixed price fuel offers only, at the beginning of each Contract Year, the simple average of the Henry Hub Spot Price over the previous Contract Year will be compared to the fixed fuel price offered for the previous Contract Year. If the average Henry Hub Spot Price is 125% or greater than the fixed fuel price, the Buyer retains the right to request additional Completion and Performance Security. The amount of the additional Completion and Performance Security will be up to \$50 per kW. The additional Completion and Performance Security will be returned to the**

Supplier a) when the term of the fixed fuel price offer has expired, or b) when the annual comparison is performed and the average Henry Hub Spot Price is less than 125% of the fixed fuel price.”

- 45) Attachment 8/Contract, page 64, Section 12.1.a Change of Control, Sale of Facility, or Assignment – Text Added: “... shall be allowed without the MDPSC’s approval pursuant to **Title 6-105** of the **PVAPUA**. By entering into this Agreement, the Supplier agrees to submit to the jurisdiction of the MDPSC for purposes of **Title 6-105** of the PUA and to comply with the provisions of that article. The successor entity must assume all responsibilities and obligations of the Supplier under this Agreement and must sufficiently demonstrate to the MDPSC that it has the technical, managerial, and financial wherewithal to serve as the Supplier for the remainder of the Term and that the transaction meets the requirements of **Title 6-105(g)(3)**.”
- 46) Attachment 8/Contract, page 81, Section 13.3 Exhibit C –
- a) Changed “**Heat Rate (Warranted Heat Rate)**” from a single value to “**Contract Annual Heat Rate. This table must match the Contract Annual Heat Rate table provided in Attachment 7 Part B for the purposes of contract energy price calculation**” and included new table for annual values.
 - b) Deleted “**Add table from Project Description Template showing annual target availability and Contract Quantities for each Contract Year.**” And replaced with “**Contract Target Availability. This table must match the Contract Target Availability table provided in Attachment 7 Part A for the purposes of calculating Availability Bonus or Deficiency.**” and included new table for annual values.
 - c) Deleted: “**Heat Rate for Combined Cycle Facilities: Base Warranted Heat Rate: Btu/kWh (hhv) for MW Duct Firing Heat Rate: Btu/kWh (hhv) for MW**”
- 47) Attachment 8/Contract, page 88, Section 13.7 Exhibit F - “Section 13.7 Exhibit **G**” changed to “Section 13.7 Exhibit **F**”
- 48) Attachment 8/Contract, page 93, Section 13.7 Exhibit F – Deleted Text:
“**MRSO2E = Monthly Reference SO2 Emission Allowance Expense, \$**
= MRFC * SO2ER_L / 2000 * Applicable multiplier for multiple retirements
*** MSO2P**”
And replaced
“**MRVC = Monthly Reference Variable Cost, \$**
= ~~MEP~~ * VOMe + MStrt * VOMs + MRFE + MREAE” with
“**MRVC = Monthly Reference Variable Cost, \$**
= MEQ * VOMe + MStrt * VOMs + MRFE + MREAE”