LEASE OF CENTRAL CHILLED WATER COMMENTS AND QUESTIONS

LEASE OF CENTRAL CHILLED WATER COMMENTS AND QUESTIONS

P8,10 of 25	**Maintenance, Repairs and Service Items 7.1, 7.2 and 9.1**
	The State has no interest in entering into a subcontract with Bernhard Energy for the operation and maintenance of the Facilities. This stipulation is to be removed. Bernhard does not fully understand the State's statement or comment on this item. After the September 29, 2015, meeting, the State provided that it could operate the facilities cheaper than Bernhard. To decrease the thermal services rates under the Thermal Services Agreement, Bernhard agreed to offer a proposal whereby it subcontracted the operation and maintenance of the facilities back to the State. If the State has changed its mind and no longer desires to have the operation and maintenance of the facilities subcontracted back to it, Bernhard can retain the operation and maintenance responsibility. In this event, the Thermal Services rates would have to be adjusted to account for the increase in costs. In contrast, if the State does not wish to have Bernhard operate and maintain the facilities, this was, in large part the basis of the RFP, and it is unknown why the State would have issued the RFP, and allowed Bernhard and other respondents to expend substantial sums in pursuit of this project if the State had no intention of having a third party operate and maintain the facilities. In fact, the RFP specifically states, on p.4, that the selected firm "…would be **responsible for the operation and maintenance of the existing Chiller Facility** (emphasis added) both during any construction period, as well as **for the term of the Concession** (emphasis added)…". The RFP also indicates on p.4 that the "State is seeking information with respect to a company's ability to purchase concession rights, provide energy efficiency capital improvements, and to **provide an operation and maintenance strategy for the Chiller Facility** (emphasis added) in exchange for cash payments…". Bernhard's proposal is based on the State's RFP guidance. Please clarify your comment to this item based on the foregoing considerations.
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COOPERATIVE ENDEAVOR AGREEMENT COMMENTS AND QUESTIONS

P2 of 30	***"Whereas, the State, as owner and operator of the Central Chilled Water System, faces significant expenditures to expand the capacity and maintain efficiency of the Central Chilled Water System in order to maximize the value and production of these assets"***
	The State of Louisiana has normal and ongoing expenditures to maintain the efficiency of the Central Chilled Water System. The State of Louisiana does not face significant expenditures to expand the capacity of the central chilled water system – sufficient capacity for its expansion of its own facilities (Legislative Auditor Building) already exists. Funding from Office Facilities Corporation (OFC) rentals generate sufficient funding for efficiency improvements in Capitol Park. These statements appear to contradict the RFP. The RFP indicates on p.3 that the "The State's goal is to; …. Select a Proposer who will provide planning flexibility for building additions and renovations with guaranteed capacity without the need for State capital funding…" It is unknown why the State would include such a provision if the State did not contemplate significant expenditures to expand the capacity of its Central Chilled Water System at any point during the term of the CEA. While Bernhard is in agreement with the RFP and believes the State faces significant expenditures to operate, maintain and expand the Central Chilled Water Facilities to maintain a "N+1" requirement over the thirty (30) year term of the CEA—as opposed to the State having excess capacity in the short term—Bernhard proposes the following rephrasing of this clause consistent with the provisions of the RFP: "*Whereas the State, in an effort to monetize its assets and mitigate future costs associated with operational and maintenance expenses and the need for future expansion, seeks to have a third party (i) more effectively utilize the existing capacity of the Central Chilled Water Facilities; (ii) provide guaranteed availability of thermal services at a guaranteed rate; (iii) mitigate risks associated with utility increases; and (iv) to provide planning flexibility for building additions and renovations with guaranteed capacity from the third party without the need for capital outlay funding."*
P2 of 30	Frequent references are made with regard to "public purpose". While the Constitution of the State of Louisiana provides for the allowance of the state to engage in CEA's, Bernhard has not demonstrated to the satisfaction of the State of Louisiana that this criteria has been met. How can Bernhard guarantee a public benefit beginning day 1 of the contract and continue for a period of 30 years? The State has combined and utilized the terms ***public purpose*** and ***public benefit*** interchangeably. These are two separate and distinct concepts. Through its proposal and the provisions of the CEA Bernhard has provided and established how its proposal served a ***public purpose*** (see, e.g., pp. 41-42 of the proposal for a sample list of the ***public purposes*** served by this project). Some of these benefits include the following, consistent with the requirements of the RFP: --Lower Costs: The State may benefit from a lower annual operating cost due to the 3rd party's recovery of some of its fixed costs from other off-takers; -- Risk Transfer: The State's risk of higher costs in the future due to increases in utility rates is mitigated by the overall increase in energy efficiency and corresponding decrease in utility consumption; --Risk Transfer: The State no longer bears the risk of higher energy asset operating costs (staffing); --Risk Transfer: The State's risk of future capital costs resulting from additional capacity required

	to accommodate future growth is mitigated by the reduction in system demands resulting from increased energy efficiency (the lowest life cycle cost method of providing additional capacity for future growth is to increase energy efficiency and reduce existing loads); -- Set a Positive Example: The State will effectively demonstrate and model energy efficient behavior to other public and private enterprises. The State has never contested that the proposal does not serve these ***public purposes***, as well as others proposed by Bernhard. As opposed to the foregoing ***public purposes***, satisfaction of the ***public benefit*** test is ensured by Bernhard through the Formula Rate Plan Credit under the TSA. Bernhard has also provided the State with a detailed life cycle cost analysis demonstrating that the transaction will save the state approximately $23 million dollars over the term of the CEA. To our knowledge, the State has not contested Bernhard's analysis, nor economics associated with the transaction.
P3 of 30	***"Whereas, the State is also authorized to enter into this CEA pursuant to La. R.S. 33:9036 for the purpose of economic development as the project is located within a downtown development district in the city of Baton Rouge" and "Whereas, this CEA will result in economic development by enhancing the capacity of the Chilled Water Facilities and providing Chilled Water Services to third party off-takers and thereby generating increased revenues for the State"***
	The statements above indicate that economic development "will" occur as a result of this CEA. It is the State of Louisiana's desire and requirement that the provisions of the CEA will "guarantee" that it will receive any and all benefits touted within a proposal. Explain, in detail, how Bernhard Energy will "guarantee" economic development and provide definitive and complete information to the State as to how this will be accomplished without fail. Bernhard cannot "guarantee" that economic development will occur as a result of this project, and this was not a requirement of the RFP. As an example, however, if this project had been previously implemented it could have furthered economic development by reducing costs for IBM to relocate to the downtown development district. Over the thirty year life of this project, it is anticipated that other off-takers will locate in serviceable proximity to the Chilled Water Facilities, thereby increasing additional economic development. As in other locations, Bernhard also would endeavor to establish a sustainable energy district that employs energy assets in the most efficient and optimal for further utilization by third party off-takers. Bernhard, however, cannot pursue any additional off-takers that may further economic development until it has a definitive agreement with the State and has the means to serve the third party off-takers. Additionally, this terminology is included in the recitals as a means to structure the transaction through a direct lease via the Downtown Development District economic development statute, i.e., La. R.S. 33:9036. The direct lease model was the structure favored by the State and scoring committee in the May 2015 meeting (as opposed to a sub-lease through Office Facilities Corporation). Additionally, this was the structure favored by counsel for the State in subsequent conversations in September and October 2015.
	In addition, what costs/penalties above the $50,000 per year cap (as stated in the separate Thermal Services Agreement, Page 37, Formula Rate Plan Credit (FRPC)) would Bernhard Energy be willing to accept and become a part of the CEA in order to protect the State's interests? The CEA and the Thermal Services Agreement ("TSA") are not separate agreements, but must be interpreted together as the TSA is an exhibit to the CEA. Notwithstanding the foregoing, the payment and credit provisions

	are more appropriately contained in the TSA, as the CEA is effectively a "master project agreement" and does not contain any general payment or credit provisions, other than the upfront consideration and any termination fees that may be due. When read together, the FRPC is included in the agreements to ensure the public benefit test is met, but is appropriately contained in the TSA. If it is absolutely necessary to reference the FRPC in the CEA, Bernhard is amenable to referencing the provision in the CEA.
P3 of 30	Ongoing references are made with regard to "public benefit" in the submittal. The State of Louisiana, currently operates and maintains its facilities in an efficient and effective manner (as Bernhard Energy has repeatedly acknowledged in prior meetings). The primary benefit for utilizing the extra capacity of the Central Plants would be for the State to receive monies from off-takers. As no "guaranteed" off-takers have been included in the submittals, the State fails to see the public benefit. The State is again confusing the terms ***"public benefit"*** and ***"public purpose"***. Please see the prior response to a similar question, above, and the listing of ***public purposes*** contained therein. To reiterate, the ***public benefit test*** is met through the inclusion of the FRPC. Also, absent an agreement with the State and contractual access to excess Central Chilled Water Facilities ("CCWF") capacity as contemplated by the RFP, Bernhard is unable to secure guaranteed arrangements with Off-Takers. Despite this challenge, however, Bernhard has agreed to guarantee economic benefit to the State. This guarantee is enforced by automatic rate adjustments via the FRPC) when needed to guarantee economic benefit as set forth in the Thermal Services Agreement. It should also be noted that the RFP issued by the State does not require the Selected Firm to "guarantee" off-takers. In fact, the RFP specifically contemplates the "potential" for off-takers. The RFP indicates on p.4 that "the Selected Firm will also generate and receive operational savings resulting from capital improvements made to the Chiller Facility. Operational savings may be generated through the implementation of energy cost reduction measures such as, equipment replacements, lighting retrofits, heating and cooling system renovation, distributed generation system utilization, general insulation and facility repair, efficient O&M strategies, potential implementation of cogeneration technologies, **potential system extensions** (emphasis added), and other energy reduction measures."
P3 of 30	***"Whereas, Bernhard Energy is willing and desires to participate and provide the financial resources, operational expertise and other necessary resources, and to take steps to ensure that expanded, efficient and effective Thermal Services are provided by the Chilled Water Facilities, all requiring no capital contribution from the State;"***
	There will be, in fact, an extremely large capital contribution and burden to the State of Louisiana as the proposal is currently submitted. For the same services now provided by the Office of State Buildings, the increased cost to the State will exceed $3 million in the first year alone and more in future years. Bernhard disagrees with this assertion. We do not understand how the State has determined that the increased cost to the State in the first year is $3 million. In the first year of the CEA, Bernhard is providing the State with an advance cash payment of $5 million. In addition, the estimated Thermal Services Agreement charges in the first year of the CEA, prior to any consideration of the Off-Taker Fixed Cost Recovery credit or any consideration of predicted energy savings, is less than $1.7 million (after deducting the Operations and Maintenance Credit ("OMC") of $240,000). It should be noted that this estimate is based on Bernhard's estimate of billing determinants (16.8 million ton-hours), which the State has previously contended to be too high. Consequently, it would seem that the State would perceive a net savings of at least $3.3 Million in the first year of the CEA, plus the Off-Taker Fixed Cost Recovery Credit and the energy savings. Bernhard has also reviewed its current analysis on numerous occasions with OSB

	personnel. To date, OSB personnel have not advised Bernhard of any flaws in this analysis.
P3 of 30	***Recitals***
	The proposal references ***"WHEREAS, the State and public will benefit from the avoided capital investment necessary to enhance and expand the provision of Thermal Services to State Buildings."***
	This reference appears to be in direct contradiction to Section 11.4 in the Thermal Services Agreement where it states; ***"The State shall be responsible for all Additional Works required as a result of the expansion of the Facilities, as further set forth in the CEA."***
	Can Bernhard Energy explain/correct this conflict? Under the CEA, the State will have no upfront expenditures for additional capital infrastructure improvements over the life of the CEA. The State, however, will be responsible for the necessity to increase capacity beyond the 10,200 tons of chilled water capacity, which increases related to Additional Works would be recovered through the rates under the TSA. To clarify, however, the State would not be responsible for any expansions as a result of increases for third party off-takers, but will only be responsible to the extent the State's needed capacity exceeds 10,200 tons of chilled water capacity.
P4 of 30	***Article I Definitions***
	The proposal references, ***"Additional Works" means additional capital expansion requirements required to increase the Thermal Services provided under the Thermal Services Agreement due to load growth of the State Buildings."***
	The State currently has excess capacity in the plants for the State's additional requirements. This stipulation is not necessary. See response to previous question. While the State has current excess capacity, over the 30-year life of the CEA, it is anticipated that the State may exceed its current needed capacity of 10,200 tons of chilled water capacity, as implicitly referenced in the RFP. The Additional Works provision is required in the event the capacity exceeds this set quantity. In the event it does not exceed this capacity, Additional Works (and any costs associated therewith) will not be required. As previously noted, the RFP indicates on p.3 that the "The State's goal is to …. Select a Proposer who will provide planning flexibility for building additions and renovations with guaranteed capacity without the need for State capital funding…" It is unknown to Bernhard why the State would have included this language in the RFP if the State did not contemplate significant expenditures to expand the capacity of the CCWF during the term of the CEA.
P6 of 30	***Article I Definitions***
	The proposal references ***"Off-Takers" means any potential Thermal Services customer, whether public or private, which is not receiving Thermal Services from the Central Chilled Water System as of the Effective Date."***

	The "potential" off-taker definition does not warrant confidence by the State of Louisiana for Bernhard Energy to offer the State, specifically no guarantees. Will Bernhard Energy be willing to offer a guaranteed minimum of off-taker capacity and allow for agreed upon penalties in the event the off-taker requirement is not met and maintained? As previously stated, Bernhard cannot secure Off-Takers until such time as it has a definitive agreement with the State. Consequently, Bernhard cannot guarantee Off-Takers. Bernhard has, however, met with numerous potential Off-Takers and has determined that substantial sales to Off-Takers will likely occur. Consequently, Bernhard is willing to accept the financial risk of lower Off-Taker sales than predicted. As previously stated, the FRPC component of the Thermal Services Agreement automatically reduces Bernhard's rates as needed to ensure economic benefit to the State. Consequently, Bernhard has already agreed to penalties (in the form of automatic rate reductions) in the event Off-Taker sales are lower than estimated and the State fails to receive a net public benefit.
P6 of 30	***Article I Definitions***
	"Off-Taker Credit" means the credit provided to the State for any Billing Month under the Thermal Services Agreement as a result of Bernhard Energy utilizing the Central Chilled Water System to provide Thermal Services to any Off-Taker. The Off-Taker Credit for any billing month shall be equal to thirty eight percent (38%) of the base rate for commodity and demand charges recovered from Off-Takers in the prior Billing Month."
	The State of Louisiana does not agree with the percentage offered of 38%; unless shown otherwise, this percentage should be more reasonably be applied to Bernhard Energy with the State of Louisiana retaining 62%. Will Bernhard be willing to negotiate these percentages to create a fair percentage to both parties? Bernhard has already increased the amount of the credit to the State to its maximum economic limit. Bernhard anticipates making a sizable capital investment of approximately $13 Million to provide capacity and distribution to Off-Takers. A credit of thirty eight percent (38%) to the State provides the State with every dollar of financial benefit resulting from Off-Taker sales in excess of Bernhard's cost of service. Stated differently, Bernhard's return is not increased by Off-Taker revenues. Bernhard is certain that the State would unlikely find another partner willing to accept the risk of Off-Takers without even the potential for a higher return. The State should also be aware that Bernhard has never previously, and will likely never again, offer such a favorable arrangement to customer. It should also be noted that the RFP issued by the State does not require the Selected Firm to allocate **any** portion of off-taker revenues to the State. The RFP indicates on p.4 that "It is expected that in addition to receiving fees from end-users (off-takers of chilled water) including the State, the Selected Firm will also generate and receive operational savings resulting from capital improvements made to the Chiller Facility."
P8 of 30	***Article 2 Scope of Cooperative Endeavor Section 2.2 Public Benefit***
	The contents describe the benefits to be achieved, however, are not "guaranteed". The Bernhard Energy proposal in item (i) does not "guarantee" these objectives. How can Bernhard Energy offer "guaranteed" and verifiable benefits on an ongoing and annual basis? Also, the State disagrees with section (ii) as we see no direct capital investment cost avoidance by the State. The Bernhard proposal provides an assurance that the public benefit test is met through FRPC. As opposed to an energy savings performance contract, there is no guaranteed savings provided under this project delivery method. The FRPC, however, does ensure that the State receives a net public benefit by automatically lowering

	Bernhard's rates if needed. With regard to the capital investment cost provision, the State will have no direct capital investment or capital outlay expenditures under the CEA. The State will, however, be required to pay the costs of Additional Works to the extent that the capacity must be increased to greater than 10,200 tons of chilled water capacity. As previously stated, the RFP issued by the State appears to indicate that capital funding to provide capacity for building additions and renovations is contemplated.
P8 of 30	***Article 2 Scope of Cooperative Endeavor Section 2.4 Termination Option. The proposal references "Notwithstanding any provision to the contrary, Bernhard Energy shall have the right to terminate the Transaction Documents without penalty during the Transition Period."***
	Will the State of Louisiana have the exact same termination option benefit should it decide to do the same, i.e., without any penalty? Bernhard has requested this provision in the event that the State refuses to pay for costs of the ISDC that exceed $255,000, or fails to remedy items that exceed this budgetary sum. Bernhard is willing to remove this provision to the extent the State mandates it will either pay for additional repairs, or repair these items itself or through a third party. Bernhard, however, cannot provide a reciprocal provision as it will have already secured funding prior to the transition period and would incur substantial costs for any termination during the transition period.
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P12 of 30	***Section 5.17 Additional Works***
	The State disagrees with this provision. The State has the needed excess capacity, therefore, this should be deleted from this proposal. Bernhard disagrees with the State. As previously stated, the RFP issued by the State appears to indicate that capital funding to provide capacity for building additions and renovations is contemplated. As set forth above, while the State has current excess capacity, over the 30-year life of the CEA, it is anticipated that the State may exceed its current needed capacity of 10,200 tons of chilled water capacity, as implicitly referenced in the RFP. The Additional Works provision is required in the event the capacity exceeds this set quantity. In the event it does not exceed this capacity, Additional Works (and any costs associated therewith) will not be required.
	Section 5.14 Additional State Obligations
	The concept of having a State entity, i.e., Office of State Buildings contract with Bernhard Energy and then have the state pay for the services back to Bernhard Energy does not appear to be logical from the State's perspective. This would additionally place a state entity (Office of State Buildings) serving both a private contractor at the same time as providing services to its State tenants. Doing so could would likely

	result in not providing the expected service levels to the agencies we serve and it direct conflict with achieving the agency mission. An example would be to provide a comfortable environment for its tenants; If the needed a/c for an agency is needed, but not providing because to do so, the State would be penalized monetarily. Bernhard is confused by the response of the State on this item. During a meeting with Bernhard representatives on September 29, 2015, the State indicated that it could operate the facilities cheaper than Bernhard. To decrease the rates under the Thermal Services Agreement, Bernhard agreed to offer a proposal whereby it subcontracted the operation and maintenance of the facilities back to the State. If the State does not wish to have the operation and maintenance of the facilities subcontracted back to it, Bernhard can retain the operation and maintenance and the costs associated with the operation and maintenance of the facilities would be recovered through the rate structure previously proposed. In contrast, if the State does not wish to have Bernhard operate and maintain the facilities, which was, in large part the basis of the RFP, and it is unknown why the State would have issued the RFP, and allowed Bernhard and other respondents to expend substantial sums in pursuit of this project if the State had no intention of having a third party operate and maintain the facilities. In fact, the RFP specifically states, on p.4, that the selected firm "…would be responsible for the operation and maintenance of the existing Chiller Facility both during any construction period, as well as for the term of the Concession…" Please clarify this comment based on the foregoing. Additionally the hypothetical offered by the State is illogical under the CEA, as the State would maintain its current levels of comfort and would have a firm offtake requirement to meet the needed levels of comfort. Any Off-taker would have a non-firm requirement and would never have a standard of comfort that is in conflict with that of a state agency based on the firm and non-firm nature of the contracts.
P13 of 30	***Section 6.4 Operation and Maintenance***
	Again, the State is not receptive to the concept of having a state agency (Office of State Buildings) contracting to a private contractor. See response to the prior statement. Bernhard reiterates that it responded to the RFP in good faith. If this statement is read in its literal sense, if the State did not wish to have a private contractor (e.g., Bernhard) operate and maintain the facilities, which was part the basis of the RFP, it is unknown why the State would have issued the RFP, and allowed Bernhard and other respondents to expend substantial sums in pursuit of this project, if in fact the State had no intention of having a third party operate and maintain the facilities.
P13 of 30	***Section 6.5, Item (b)***
	The proposal indicates a maximum cumulative liability for correcting Initial System Deficiencies of $255,000. Can Bernhard Energy provide a detailed listing of the identified deficiencies for review/approval by the State of Louisiana? Would Bernhard Energy be willing to allow and agree to pay a third party company to perform an independent assessment for deficiencies through the State of Louisiana? Bernhard has not yet conducted an inspection to identify the deficiencies but subsequent to conducting the inspection, Bernhard will provide the ISDCs for review/approval by the State. Bernhard would allow the State or a third party to perform an independent assessment and would be willing to include the costs of a third party review in the costs of the project.

P14/15 of 30	***Section 6.6 Improvements to Chilled Water Facilities***
	Bernhard Energy includes various strategies to achieve energy optimization services. The original listing appeared to be extensive, however, the overwhelming majority of items included on the list had been or were already in the process of being implemented by the Office of State Buildings. One particular strategy was identified (the Diversion credit at the North Central Plant) by Bernhard Energy and was initiated by the Office of State Buildings. Bernhard Energy requests throughout the latest submittal that they require this efficiency to be credited to Bernhard Energy and included for the duration of the contract. Since the State of Louisiana has/had no contractual obligation with Bernhard Energy, the State exercised its ability to acquire the savings on behalf of the State's taxpayers. In the event a contract is initiated, Bernhard Energy would receive the benefit offered. With that said, will Bernhard Energy specifically exclude the strategies already underway and previously implemented by the Office of State Buildings in order to create a level and fair playing field? Secondarily, will Bernhard Energy offer any other unidentified strategies from the initial proposal for review by an independent third party to review/assess and advise the State of Louisiana that these strategies, would in fact, offer extensive and financially beneficial energy optimization savings? Bernhard does not agree that the overwhelming majority of items included on the list have been, or were already in the process of being implemented by OSB. Bernhard's retro-commissioning process and building automation system sequences of operation and programming are proprietary. It should also be noted that the RFP explicitly indicates in several locations that energy savings can be achieved. The RFP indicates on p.3 that "The State's goal is to; … Select a Proposer who will retro-commission existing facilities in order to optimize energy efficiency (reduce consumption)." The RFP indicates on p.4 that "Operational savings may be generated through the implementation of energy cost reduction measures such as, equipment replacements, lighting retrofits, heating and cooling system renovation, distributed generation, system utilization, general insulation and facility repair, efficient O&M strategies, potential implementation of cogeneration technologies, potential system extensions, and energy reduction measures." The RFP also indicates on p.5 that the "RFI's objective is to obtain information regarding your company's ability to provide the following…Secure Commissioning of renovated Chiller Facility and reduction of utility and energy consumption." The State has previously agreed to credit Bernhard for savings resulting from the State's implementation of energy cost reduction measures suggested by Bernhard (such as the diversion credit at the North Plant) when evaluating whether or not the State receives a net public benefit from the CEA. Bernhard has also previously agreed that its FRPC calculations will not credit Bernhard for savings resulting from energy savings strategies previously implemented by OSB that were not suggested by Bernhard. The State has also previously agreed that Bernhard should not be required to fully disclose its energy savings strategies to the State prior to execution of the CEA, as Bernhard considers these methods, strategies to and processes to be proprietary and intellectual property. The RFP issued by the State does not require the Selected Firm to disclose its intellectual property. Finally, as previously stated, Bernhard has agreed to provide the State with a guarantee of a net public benefit in the form of the FRPC.
P16 of 30	***Section 6.8 Extension of Central Chilled Water System***
	The State does not agree with incurring any additional cost as a result of the extension of the Chilled Water System. Nothing in the proposal, the CEA, or Section 6.8 of the CEA requires the State to incur additional costs for

	Bernhard to extend the Chilled Water System to other off-takers.
P16 of 30	***Section 6.10 Public Benefit***
	There is stipulated "assurance" but no "guarantee" that there will be energy and operational savings achieved by the implementation of the Energy Optimizations Services in Section 6.6 to meet the public benefit test of the Act. The State of Louisiana will require "guarantees" and if not achieved, penalties. The Thermal Services Agreement caps the guarantee at $50,000. Will Bernhard Energy be receptive to establishing with the State and accepting penalties in the event the public benefit objective is not met? The RFP issued by the State does not require a guarantee of energy and operational savings. Despite the lack of any requirement to guarantee energy and operational savings in the RFP, Bernhard has previously agreed to provide a financial guarantee of a net public benefit. Please see previous responses regarding a net public benefit. The Thermal Services Agreement ensures the public benefit test is met, and if it is not met, Bernhard is penalized through the Formula Rate Plan Credit. Additionally, the FRPC is incorrectly capped at $50,000 and should instead be subject to a maximum credit of $600,000 per year, or $50,000 per month.
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P18 of 30	***Section 7.6 Termination Fee***
	As previously stated, the State disagrees with the proposed termination language. Will Bernhard Energy be willing to agree to a fair and balanced resolution to termination to protect both parties? Bernhard has previously had extensive negotiations with the State's counsel and consultants regarding the required termination provisions that are compliant with State law and protect the interests of both parties. Bernhard has offered the termination provisions pursuant to those discussions and Bernhard is willing to discuss these provisions with counsel for the State to ensure compliance with State law and protection of the interests of all parties.
	Under State Default Item (a) (i), would Bernhard Energy be receptive to a limit (possibly 5 years or less) on the outstanding service payments under the Thermal Services Agreement in lieu of the entire contract period? For example, in the event the State, for whatever reason, defaulted in first year of the contract, the State would owe Bernhard Energy all payments for an additional 29 years? Is this seriously what Bernhard Energy expects to receive without the any work being performed over the remaining term of the contract?

	Bernhard has previously had extensive negotiations with the State's counsel and consultants regarding the required termination provisions that are compliant with State law and protect the interests of both parties. Bernhard has offered the termination provisions pursuant to those discussions and Bernhard is willing to discuss these provisions with counsel for the State to ensure compliance with State law and protection of the interests of all parties. Additionally, the State has misinterpreted this provision. All outstanding service payments through the "Termination Date" would be through the date the contract terminates (which would likely be at most three months), and not through the entire pre-supposed life of the 30-year contract.
	Under State Default Item (a) (iii) as well as Item (b)(iii), would Bernhard Energy be able to quantify, prior to the execution date of the contract, interest rates and define reasonable returns in order that the State of Louisiana can understand what costs could be expected for default? The interest would be set at the then appropriate judicial interest rate the State would be allowed by law. To further clarify the amount of any termination fee, Bernhard could prepare a schedule setting forth the termination fee for each year of the contract, if necessary, prior to execution of the agreements.
	Under Termination for Convenience Item (b)(i), the same question applies to the Convenience termination verbiage as the Default verbiage. Would Bernhard Energy be receptive to a limit (possibly 5 years or less) on the outstanding service payments under the Thermal Services Agreement in lieu of the entire contract period? As previously stated, the State has misinterpreted this provision. All outstanding service payments through the "Termination Date" would be through the date the contract terminates (which would likely be at most three months), and not through the entire pre-supposed life of the 30-year contract.
P19 of 30	***Section 7.6 Termination Fee Item (b) Termination Fee Upon Termination for Convenience***
	Can Bernhard Energy explain the rationale regarding the premium charged of not less than 10% of the Thermal Services fees for the preceding Project Year? Bernhard would have expended substantial sums in investing in the project and extending services to other off-takers, which would not be recoverable. While the ten percent (10%) fee will be far less than the costs expended by Bernhard, the premium is charged to further discourage a termination for convenience and to provide some mechanism of cost recovery. Bernhard is open to further negotiation of this item, or a complete elimination of any right to terminate for convenience.
P19 of 30	***Section 7.6 Termination Fee Item (d) Payment***
	Under Item (d), Payment, and in the event of a required termination fee, the State would be desirous of a detailed itemized listing of termination fees subject to review and approval recommendation from a third party, hired by the State of Louisiana. Bernhard Energy would be advised of the third party prior to the proceedings. This review period shall not exceed ninety (90) days with payments forwarded in not more than one hundred twenty (120) days. Will Bernard Energy agree to this requirement? In concept, Bernhard is conceptually amenable to this requirement subject to reductions in the time periods set forth above (for financing and equity reasons), as well as the State paying the costs of the consultant. Additionally

	Bernhard would want to refrain from a drawn out dispute on this item and could remedy this through the inclusion of a termination fee schedule, or the complete elimination of any right to terminate for convenience.

THERMAL SERVICES AGREEMENT COMMENTS AND QUESTIONS

P1 of 37	Reference is made that ***"Whereas, under the terms of this Agreement as well as the CEA and Lease, Bernhard has acquired the exclusive right to use, operate and maintain the Chilled Water Facilities and use these facilities to be the exclusive provider of Chilled Water Services to the Facilities on an ongoing and continuing basis, for a term of thirty (30) years commencing from the Commercial Operation Date;"***
	The State of Louisiana is not receptive to the language "exclusive provider of Chilled Water Services"; instead "primary provider of Chilled Water Services" would be appropriate. Will Bernhard Energy be accepting of this modification? No. The phrase "primary provider," as requested by the State, does not establish a contractual obligation of the State to purchase its chilled water from the Selected Firm. The RFP issue by the State implicitly indicates that the State will purchase its chilled water from the Selected Firm. The RFP indicates on p.4 that "It is expected that in addition to receiving fees from end-users (off-takers of chilled water), **including the State** (emphasis added), the Selected Firm will also generate and receive operational savings resulting from capital improvements made to the Chiller Facility." Nearly all, if not all, utility services contracts contain "exclusive provider" requirements. Absent, this language, the service provider has no revenue certainty to justify its investments. Had the State indicated in its RFP, that it had no intention of being contractually obligated to take service from the Selected Firm, Bernhard would not have expended considerable sums of money to develop and submit its proposal. It is a requirement that Bernhard be the exclusive provider of the Chilled Water Services. Without this provision, the State should alternatively have no right to firm service, and would also potentially have the right to construct additional facilities that would remove the pro forma load estimated by Bernhard as the basis for investing in the project.
P2 of 37	**"Chilled Water Facilities"**
	Reference is made that the North Central Plant and South Central Plant are to be operated and maintained by Bernhard Energy. The State of Louisiana currently operates and maintains these plants in an efficient and economical manner. Will Bernhard Energy agree to allow the Office of State Buildings to continue to operate and maintain these facilities? Bernhard is confused by the response of the State on this item. After the September 29, 2015, meeting, the State indicated that it could operate the facilities cheaper than Bernhard. To decrease the thermal services rates under the Thermal Services Agreement, Bernhard agreed to offer a proposal whereby it subcontracted the operation and maintenance of the facilities back to the State. If the State does not wish to have the operation and maintenance of the facilities subcontracted back to it, Bernhard can retain the operation and maintenance and the costs associated with the operation and maintenance of the facilities would be recovered through the rate structure previously proposed. In contrast, if the State does not wish to have Bernhard operate and maintain the facilities, this was, in large part the basis of the RFP, and it is unknown why the State would have issued the RFP, and allowed Bernhard and other respondents to expend substantial sums in pursuit of this project if the State had no intention of having a third party operate and maintain the facilities. In fact, the RFP specifically states, on p.4, that the selected firm "…would be responsible for the **operation and maintenance of the existing Chiller Facility** (emphasis added) both during any

	construction period, as well as **for the term of the Concession** (emphasis added)…" Please clarify this comment based on the foregoing.
P6 of 37	**Article II Section 2.1 Performance of Chilled Water Services**
	Reference is made that during the Term, ***"Bernhard shall be the exclusive service provider to the State regarding its Chilled Water for use at the Facilities."*** The State desires the language to change from "exclusive" to "primary" service provider for use at "designated" facilities. Will Bernhard Energy agree to this language modification? No. The phrase "primary provider," as requested by the State, does not establish a contractual obligation of the State to purchase its chilled water from the Selected Firm. The RFP issue by the State implicitly indicates that the State will purchase its chilled water from the Selected Firm. The RFP indicates on p.4 that "It is expected that in addition to receiving fees from end-users (off-takers of chilled water), **including the State** (emphasis added), the Selected Firm will also generate and receive operational savings resulting from capital improvements made to the Chiller Facility." Nearly all, if not all, utility services contracts contain "exclusive provider" requirements. Absent, this language, the service provider has no revenue certainty to justify its investments. Had the State indicated in its RFP, that it had no intention of being contractually obligated to take service from the Selected Firm, Bernhard would not have expended considerable sums of money to develop and submit its proposal. It is a requirement that Bernhard be the exclusive provider of the Chilled Water Services. Without this provision, the State should alternatively have no right to firm service, and would also potentially have the right to construct additional facilities that would remove the pro forma load estimated by Bernhard as the basis for investing in the project.
P6 of 37	**Article IV Bernhard Service and Performance Responsibilities Section 4.1.3**
	The State does not desire for Bernhard Energy to operate and maintain the Chilled Water Facilities, thus this statement should be removed. Will Bernhard Energy agree to this deletion? Bernhard is confused by the response of the State on this item. After the September 29, 2015, meeting, the State provided that it could operate the facilities cheaper than Bernhard. To decrease the thermal services rates under the Thermal Services Agreement, Bernhard agreed to offer a proposal whereby it subcontracted the operation and maintenance of the facilities back to the State. If the State does not wish to have the operation and maintenance of the facilities subcontracted back to it, Bernhard can retain the operation and maintenance and the costs associated with the operation and maintenance of the facilities would be recovered through the rate structure previously proposed. In contrast, if the State does not wish to have Bernhard operate and maintain the facilities, this was, in large part the basis of the RFP, and it is unknown why the State would have issued the RFP, and allowed Bernhard and other respondents to expend substantial sums in pursuit of this project if the State had no intention of having a third party operate and maintain the facilities. In fact, the RFP specifically states, on p.4, that the selected firm "…would be responsible for the operation and maintenance of the existing Chiller Facility both during any construction period, as well as for the term of the Concession…" Please clarify this comment based on the foregoing. Throughout its comments the State seems to waiver back and forth as to whether it wishes for Bernhard to operate

	and maintain the facilities. Based on these contradictions, Bernhard seeks to know if the State ever wished for a third party to operate and maintain the facilities, as set forth in the RFP, that Bernhard and other respondents responded to and spent considerable sums responding in good faith thereto.
P7 of 37	**Article V Responsibilities of the State Section 5.1 General Responsibilities of the State Item 5.18**
	Reference to "**If the State is subcontracted…"** The State does not desire to subcontract to Bernhard Energy for operation and maintenance services. This reference is to be removed. Bernhard is confused by the response of the State on this item. After the September 29, 2015, meeting, the State provided that it could operate the facilities cheaper than Bernhard. To decrease the thermal services rates under the Thermal Services Agreement, Bernhard agreed to offer a proposal whereby it subcontracted the operation and maintenance of the facilities back to the State. If the State does not wish to have the operation and maintenance of the facilities subcontracted back to it, Bernhard can retain the operation and maintenance and the costs associated with the operation and maintenance of the facilities would be recovered through the rate structure previously proposed. In contrast, if the State does not wish to have Bernhard operate and maintain the facilities, this was, in large part the basis of the RFP, and it is unknown why the State would have issued the RFP, and allowed Bernhard and other respondents to expend substantial sums in pursuit of this project if the State had no intention of having a third party operate and maintain the facilities. In fact, the RFP specifically states, on p.4, that the selected firm "…would be responsible for the operation and maintenance of the existing Chiller Facility both during any construction period, as well as for the term of the Concession…" Please clarify this comment based on the foregoing. To reiterate, throughout its comments the State seems to waiver back and forth as to whether it wishes for Bernhard to operate and maintain the facilities. Based on these contradictions, Bernhard seeks to know if the State ever wished for a third party to operate and maintain the facilities, as set forth in the RFP, that Bernhard and other respondents responded to and spent considerable sums responding in good faith thereto.
P8 of 37	***Article VII Chilled Water Requirements Section 7.2 Modification of Chilled Water Requirements***
	The State is not receptive to the entirety of Section 7.2 in its present form, given the fact that the State currently has chilled water capacity to meet its increased chilled water requirements and therefore should not be penalized financially when additional chilled water requirements are needed. (Example: New Legislative Auditor facility currently under design). These statements appear to contradict the RFP. The RFP indicates on p.3 that the "The State's goal is to …. Select a Proposer who will provide planning flexibility for building additions and renovations with guaranteed capacity without the need for State capital funding…" It is unknown why the State would have included such a statement in the RFP if the State did not contemplate significant expenditures to expand the capacity of its central chilled water system at any point during the term of the CEA While the State has current excess capacity, over the 30-year life of the CEA, it is anticipated that the State may exceed its current needed capacity of 10,200 tons of chilled water capacity, as implicitly referenced in the RFP. The Additional Works provision is required in the event the capacity exceeds this set quantity. In the event it does not

	exceed this capacity, Additional Works (and any costs associated therewith) will not be required. This provision is not a penalty but only a mechanism of cost recovery, as would be required by any utility that has to expand its generating facilities due to increased demand.
P9 of 37	***Article VIII Chilled Water Service Charges***
	Since the state is operating and maintaining the plants, paying all utilities for the water provided to the state buildings and assuming all the risk of loss, position of the State is that they are not receptive to pay a demand charge for chilled water that the State will be producing. Will Bernhard agree to this stipulation? No. The demand charge is part of the rate design previously proposed and negotiated by the parties. The rate design has been specifically structured to provide accurate recovery of Bernhard's fixed and variable costs at varying levels of consumption while preserving an economic incentive for energy conservation. It should also be noted that for the term of the CEA, as established by the RFP, the State is not producing the chilled water. Under the CEA, Bernhard has purchased the right to use the CCWF (effectively leasing the CCWF from the State) for an advance cash payment of $5 million and other consideration. Consequently, under the CEA, Bernhard is producing the chilled water. These terms and conditions of the CEA were acknowledged by the State in the RFP it issued to Bernhard and others. In fact, p. 3 of the RFP indicates that "The State's goal is to: Take advantage of existing excess capacity by monetizing assets (cash upfront) **<u>in exchange for the Concession rights</u>** (emphasis added) to utilize excess capacity to third parties." On page 6 of the RFP, the term "Concession" is defined to be a "CEA that **<u>grants the Contractor the long use all Facility assets</u>**, (emphasis added) **<u>including responsibility for all operation</u>** (emphasis added) and investment. Asset ownership remains with the Agency. Assets revert to the Agency at the end of the concession period, including assets purchased by the Contractor. In a concession the Contractor typically obtains its revenues directly from the consumer and so it has a direct relationship with the consumer. A concession covers an entire infrastructure system (so **<u>may include the operator taking over existing assets</u>** (emphasis added) as well as construction and operating new assets)."
P9 of 37	***Article VIII Chilled Water Service Charges Section 8.3 Rate Adjustment***
	Why should the State pay a rate adjustment if the chilled waters return temperature isn't in compliance with the Return Standards when the State is paying the utility bills for the production and distribution of the chilled water? The Office of State Buildings has shown proven savings over the course of the last 8 years and without a "Penalty incentive" to reduce energy consumption. Bernhard will be investing considerable sums of money to implement Energy Optimization Services and CCWF improvements intended to reduce consumption and increase energy efficiency. Trends provided by the State to Bernhard indicate that actual chilled water temperature difference is in the range of 9 to 10 deg. F during weekday periods and in the range of 6 to 7 deg. F during night and weekend periods. A significant portion of Bernhard's investment is intended to increase chilled water temperature difference to optimum levels (12 deg. F) or higher during both occupied and unoccupied periods. Under the CEA, however, Bernhard is not operating or maintaining the chilled water consuming equipment (i.e. air handling units) and thereby, has little control over chilled water temperature difference. Low chilled water temperature difference materially reduces CCWF energy efficiency. Since Bernhard is exposed to significant penalties (automatic rate reductions in the form of the FRPC) if a net public benefit is not achieved (potentially caused by an energy savings deficit), Bernhard has legitimate concerns regarding

	chilled water temperature difference. In an effort to resolve this matter, Bernhard will remove the chilled water return temperature adjustment from the commodity rate if the State agrees to language requiring the State to use "reasonable and best efforts" to operate and maintain the chilled water consuming equipment (i.e. air handling units) in a manner resulting in a 12 deg. F or higher chilled water temperature difference and the State agrees to revise the formula for the FRPC such that the actual chilled water efficacy is adjusted downward if the average chilled water temperature difference for the billing period is less than 12 deg. F. Bernhard will revise the contract in accordance with the foregoing.
P10 of 37	
P13/14 of 37	**Article XI Material Changes and Change in Law Section 11.1 Material Change Items 11.1.1 thru 11.1.10**
	Will Bernhard Energy agree to develop what reasonably comprises material changes for the State's facilities to protect both parties? The nature of state business creates various influences and often times unanticipated modifications which dictate changes. It would be critical to insure that reasonable changes be allowed without formal advance notification and without penalty. Bernhard proposes the following revisions to the Material Change language in the TSA: **SECTION 11.1 MATERIAL CHANGE.** A Material Change shall include any change in the Facilities or Chilled Water Facilities, whether structural, operational or otherwise in nature which could reasonably be expected to increase or decrease annual Chilled Water consumption for the Facilities, by greater than twenty percent (20%) from the prior Project Year, or that would require Additional Works as a result of the need for additional capacity of the Chilled Water Facilities. Events that may result in a Material Change include: 11.1.1. Change in the manner of use of the Facilities; 11.1.2. Change in the hours of operation for any Facility, or for equipment or energy using systems within the Facility; 11.1.3. Change in the occupancy of a Facility; 11.1.5 Change in the structure of a Facility; 11.1.6 Modification, renovation or construction of a Facility, or the Facilities; 11.1.8 Casualty, closing or condemnation of a Facility; 11.1.9 Change in the utility provider or utility rate classification for a Facility; or 11.1.10Any other condition (other than climate) affecting Chilled Water use at the Facilities that meets the minimum threshold set forth in this Section 11.1.

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P15 of 37	**Article XIII Force Majeure Section 13.3 Termination by Reason of Force Majeure**
	The language requires that the State be held liable for payment of the Termination Fee under the CEA. The State is not receptive to these terms. Will Bernhard Energy accept revised terms to allow for fair and reasonable protection for both parties? Bernhard has previously discussed the termination provisions with counsel for the State. If the agreement is required to be terminated due to a force majeure event, the termination fee must be required to ensure that there is an opportunity for recovery of fixed costs. The termination fee, however, could potentially be funded through insurance proceeds. Bernhard is amenable to discuss this provision with the State and its counsel in greater detail.
P15 of 37	**Article XIV Discontinuance of Service**
	Reference is made that ***"Bernhard does not warrant or guarantee uninterrupted Chilled Water Service to the State."*** Egregious penalties area mandated throughout this offering and places the State of Louisiana at extremely high financial risk. Given these prescribed penalties, why would Bernhard Energy not warrant or guarantee uninterrupted Chilled Water Service to the State without penalty of an equally significant nature? A reading of the **entirety** of Section 14.1 provides that if Bernhard has normal and uninterruptible power, and there is no ongoing event of force majeure (and the State or no other party has interfered with the chilled water lines), then Bernhard shall be responsible for providing Chilled Water Services. The reference to no "warrant" or "guarantee" is only necessary due to the resulting factors, all of which are beyond the control of Bernhard.
P16 of 37	**Article XIV Discontinuance of Service Sections 14.2 Defective Condition, and Section 14.3 Suspension of Service and 14.4 No Waiver**
	The State of Louisiana is not receptive to the terms comprising these sections. Will Bernhard Energy accept material changes to the 15 days notifications and forego discontinuance of the State's Chilled Water Services for any reason? The State's legal section will need to review as well. Bernhard is amenable to discussion of these provisions with the State and its counsel. As set forth above, however, there are varying factors that allow for payment and cure by the State. If the State is able to satisfy its obligations (and has not incurred and event of non-appropriation), Bernhard should have the right to suspend performance or terminate the contract if the State refuses to pay its bills after ample time for payment and cure. Similarly if the State did not pay its electricity, communications or water bills after several months, the public service providers would eventually suspend service.
P24 of 37	**Exhibit A Line Diagram of Delivery Points and Points of Return**
	This specific information has not been included. Will Bernhard Energy, prior to any signature of a Contract provide this information in advance? If yes, please offer the timeframe in advance the information will be provided and include all delivery points where committed off-takers are included.

	Please see attached line diagram. With regard to "committed" off-takers, Bernhard cannot negotiate agreements with other off-takers until it has a firm commitment from the State to proceed with this project. Stated differently, Bernhard cannot negotiate to provide something it does not possess, nor have the right to possess.
P25 of 37	**Exhibit B Performance Standards Item B**
	Reference is made that ***"Bernhard shall be excused from performing the Chilled Water Services to comply with this Exhibit B for as long as the outage."***
	Will Bernhard Energy deduct from the contract any and all periods whereby the State is not receiving Chilled Water Services? If not, why not? The State will not be charged a commodity charge for any periods it does not receive service due to an outage but will be charged other fixed costs.
P25 of 37	***Exhibit B Performance Standards Items A Chilled Water***
	Reference is made that Bernhard will provide chilled water from 40 degrees to 45 degrees. If the off takers require 42 degree water and are located at the end of the pipe run, then Bernhard will likely be required to provide 40 degree water and as a result of this off taker requirement, the state will receive 40 degree water. Driving the chilled water temperature down to 40 degrees will increase the cost of utilities. According to the Chilled Water Services payment the State will be credited for Off-Taker Utility Costs. Is the difference in electricity used to lower the current water temps from 42 to 40 degrees also applied in the credit and if not, does Bernhard agree to apply this credit due to the fact the State does not need 40 degree water? Yes, the FPRC is based on the actual CCWF efficacy.
P25 of 37	**Exhibit B Performance Standards Item C Measurement and Verification**
	The Bernhard Energy proposal states ***"As a part of Bernhard's Chilled Water Services, Bernhard shall monitor, measure, record and report the Chilled Water…"***
	Will Bernhard Energy agree to have a third party perform all monitoring, measuring, record-keeping and reporting? If not, why not? A portion of the obligations assumed under the agreements are for Bernhard to monitor, measure and report under the TSA. Bernhard questions why the State would seek for a third party to monitor, measure and report under the TSA. If the State seeks to have independent review of the M&V obligations, Bernhard has no opposition to such arrangement provided the third party costs are included in the costs of the project.
P27 of 37	***Exhibit C Return Standards Section A Water Temperature Return Standards***
	From previous proposals received, it has been understood by the State and Bernhard that there will be a baseline year after all new equipment has been implemented in the plants and facilities. The baseline year will determine what return standards can be achieved and then applied. The TSA states that the Chilled Water Return Standard is already set at a 12 degree temperature difference. How can this be determined without first proving that 12 degrees is achievable? [Please refer to prior discussion regarding chilled water temperature difference. As indicated, Bernhard is agreeable to removing a financial penalty for low temperature difference.
	Also, from the Return Temperature Rate Adjustment Charge formula, if water is returned with a 12 degree temperature difference, as required, then the formula should equal 0. Instead of equaling 0 with no

	additional charges, meeting the required 12 degree temperature difference will result in the formula equaling 0.75 which results in a built in penalty. We believe 0.75 is egregious and there appears to be a problem with your formula. How will the Return Temperature Rate Adjustment apply to the monthly rate and why is there a built in penalty? Please refer to prior discussion regarding chilled water temperature difference. As indicated, Bernhard is agreeable to removing the financial penalty for low temperature difference.
P27 of 37	**Exhibit C Return Standards Item B Lost Water**
	The Bernhard Energy proposal states ***"Subject to allowable losses, the State shall be responsible for returning water to the Chilled Water Facilities…"***
	What does Bernhard Energy consider to be "allowable losses"? Please define. Bernhard proposes a definition of Allowable Losses to be set at 5,000 gallons/year.
P28 of 37	***Exhibit D Chilled Water Requirements***
	All demand tons and ton hours shall be confirmed for State Facilities after the new flow meters have been installed and calibrated. Does Bernhard agree to confirm demand tons and ton hours after the installations are complete? Yes.
P29 of 37	***Exhibit D Chilled Water Requirements Item B Maximum Chilled Water Requirements***
	Reference is made in the table indicating a redundant capacity of 4,800 tons. The State proposes an additional row to the table indicating the Maximum Available Capacity Allowed to be 2,400 tons for any/all Firm off-takers, as follows:
	Maximum Available Capacity for Firm off-takers | Tons | 2,400
	Bernhard is unsure as to why the State needs the additional row when Bernhard has to ensure it meets the State's capacity requirements under the TSA. If the State can provide a basis for this request, Bernhard will consider the request.
P29 of 37	***Exhibit D Chilled Water Requirements Item D Additional Works/Increases in capacities in the course of the agreement***
	The State currently has excess chilled water capacity to meet any increased chilled water requirements and therefore should not bear the cost and responsibility to construct "additional works", therefore the State is not receptive to this requirement. While the State has current excess capacity, over the 30-year life of the CEA, it is anticipated that the State may exceed its current needed capacity of 10,200 tons of chilled water capacity, as implicitly referenced in the RFP. The Additional Works provision is required in the event the capacity exceeds this set quantity. In the event it does not exceed this capacity, Additional Works (and any costs associated therewith) will not be required.
P31 of 37	***Bill Month Savings (BMS)***
	The State will not consider as a credit; ACC, BASACC, MRACC, ISDCC, OML, BMERPC and SSDCS. The RFP implicitly indicates the State will own all improvements. Consequently, any reasonable calculation of

savings should consider the value of these assets. Additionally, these items are required to be included in any comparison of life cycle costs under any reasonable calculation of savings..

Our specific response to each item of proposed credit is provided below:

ACC (Advanced Capital Contribution): ACC is the $5 Million advanced capital contribution provided by Bernhard. Any credible life cycle cost analysis or value for money analysis would consider these funds to be providing a public benefit.

BASACC (Building Automation System Avoided Capital Costs): The BASACC represents Bernhard's investment of approximately $5 Million to upgrade Building Automation System in the State's buildings. As previously noted, the State will own these assets. Given that the expected service life of a building automation system is considerably shorter than the term of the CEA, the State would have undoubtedly incurred this cost at some point during the term of the CEA absent the transaction. Consequently, any credible life cycle cost or value for money analysis would consider these funds to be providing a public benefit.

MRACC (Metering Repair and Renewal Avoided Capital Cost): The MRACC represents Bernhard's investment of approximately $600,000 to repair and replace existing chilled water and electricity meters in the CCWF and State Facilities. The State has previously acknowledged that the meters must be repaired or replaced and calibrated. Given that the expected service life of a these meters is considerably shorter than the term of the CEA, the State would have undoubtedly incurred this cost at some point during the term of the CEA absent the transaction. Consequently, any credible life cycle cost or value for money analysis would consider these funds to be providing a public benefit.

ISDCC (Initial Services Deficiency Correction Costs): The ISDCC means the costs incurred by Bernhard in correcting the Initial Service Deficiency Corrections as defined by the CEA. The State would have undoubtedly incurred this cost at some point during the term of the CEA absent the transaction. Consequently, any credible life cycle cost or value for money analysis would consider these funds to be providing a public benefit. Additionally the ISDCC will only be included to the extent of any ISDCCs.

OMC (Operations and Maintenance Credit): OMC is the credit to the State for the cost of operating, maintaining, repairing, renewing, and replacing CCWF equipment. Provided the State provides the O&M services, this credit is for the benefit of the State. Since this amount is deducted from Bernhard's invoice amount (refer to Calculation of Chilled Water Services Charge), it must either be credited as a savings (as Bernhard has proposed) or deducted from the cost when establishing whether or not the State has realized a net public benefit.

BMFRPC (Billing Month Facility Rate Plan Credit): BMFRPC is the credit to the State that adjusts the State's obligations under the Formula Rate Plan, as required to ensure a net public benefit. Since this amount is deducted from Bernhard's invoice amount (refer to Calculation of Chilled Water Services Charge), it must either be credited as a savings (as Bernhard has proposed) or deducted from the cost when establishing whether or not the State has realized a net public benefit.

SSDCS (Sanitary Sewer Diversion Credit Savings): SSDCS is the savings resulting from the sanitary sewer diversion meter for the North Plant cooling tower make-up suggested by Bernhard and recently installed by OSB. As previously indicated, the State has already agreed to account for these savings when evaluating whether or not it has received a net public benefit.

	The State will only recognizes savings from SBCWCS, SBECS, SBNGCS, CWFES and CWFWS up to the amount guaranteed by Bernhard Energy (per this document) which is capped at fifty-thousand dollars $50,000.00). Will Bernhard Energy agree to the above? No. Refer to the discussion above. The State will realize savings (or cost avoidance) from other sources set forth above. Any credible life cycle cost analysis or value for money analysis would consider these other sources to be providing a public benefit. Additionally, is not capped at $50,000 annually but is up to $600,000 annually as previously discussed herein.
P32 of 37	**Demand Charge (DC)**
	The Bernhard Energy proposal states ***"Demand Charge (DC) means the cost for the demand cost related to the Chilled Water Services during a Billing Month. The DC recovers fixed costs related to chilled water consumption. The DC for the first Project Year is One Hundred Twenty Thousand Dollars ($120,000) per Billing Month. For each subsequent Project Year, the DC shall escalate at 2.2% annually."***
	In this proposed contract, the State is (1) responsible for all operations and maintenance costs, (2) responsible for all equipment replacement costs, (3) responsible for any expansion of Facilities costs, (4) responsible to pay for all utilities, (5) Responsible to pay for all insurance and (6) responsible for paying all the taxes. Furthermore the facilities and equipment area constructed and operated with no capital investment from Bernhard Energy required. How can Bernhard Energy justify charging the State $1,440,000 per year with a 2.290 escalation rate per year for a demand charge? The TSA indicates the demand charge will escalate at 2.2% and not 2.29%. Contrary to the above and in accordance with the RFP, Bernhard is responsible for operation, maintenance, repair, renewal, and replacement costs and not the State. As previously stated, Bernhard based on the September 29, 2015 meeting, Bernhard proposed contracting these responsibilities to the State and crediting the State for its efforts in the form of the Operations and Maintenance Credit ("OMC"). When the OMC credit is deducted, the effective demand charge in the first year of the CEA is $1.2 million and not $1,440,000. Bernhard is, however, ultimately responsible for operations and maintenance. The effective demand charge of $1.2 million recovers Bernhard's other fixed cost of service including capital, depreciation, and taxes. Bernhard will be making a substantial investment in the form of the advance capital contribution, correction of initial service deficiencies, CCWF operator training, CCWF improvements, Energy Optimization Services, and the extension of service to Off-Takers. Each of these investments is explicitly discussed in the RFP the State issued to Bernhard and others. Additionally, the Bernhard proposal (including subsequent revisions) fully detailed these items.
P32 of 37	***CWF Electricity Savings (CWFES)***
	What does .91, 100 and 1.02 represent? The "0.91" value represents the baseline efficacy of the CCWF expressed in kW per Ton. Bernhard has determined this value based upon extensive evaluation of trend and meter data provided by the State. Bernhard has previously reviewed its calculation of the baseline efficacy with the State. The "100" value represents the conversion of the average electricity unit cost expressed in cents per kWh to dollars. The "1.02" value represents the estimated ratio of total chilled water production at the plants inclusive of distribution losses and chilled water pump refrigeration effect to total chilled water consumption at the buildings.

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P32 of 37	***CWF Water Savings (CWFWC)***
	What does 2.5, 1.02 and 1000 represent? The “2.5” value represents the estimated cooling tower make-up in gallons per Ton-Hour. This value was calculated by Bernhard based on meter data provided by the State. Bernhard also independently derived this value based on the heat of evaporation of water, estimated blowdown losses, and estimated drift losses. The “1.02” value represents the estimated ratio of total chilled water production at the plants inclusive of distribution losses and chilled water pump refrigeration effect to total chilled water consumption at the buildings. The “1,000” value represents the conversion of water consumption in gallons to water consumption in Mgallons.
P32 of 37	***Cooling Tower Make-Up Cost Savings (CTMUCS)***
	What does 2.5 and 1000 represent? The “2.5” value represents the estimated cooling tower make-up in gallons per Ton-Hour. This value was calculated by Bernhard based on meter data provided by the State. Bernhard also independently derived this value based on the heat of evaporation of water, estimated blowdown losses, and estimated drift losses. The “1,000” value represents the conversion of water consumption in gallons to water consumption in M gallons.
P33 of 37	**Formula Rate Plan Credit (FRPC)**
	Why is there a limitation of $50,000 credit to the State in any Project Year? The FRPC is incorrectly listed at $50,000. It should instead be listed at a maximum of $600,000 in any given Project Year.
P33 of 37	**Initial Service Deficiency Correction Costs (ISDCC)**
	Will Bernhard Energy provide its itemized breakdown of costs for the ISDCC and consider increasing the $255,000 cap in the event it is determined to be necessary via inspections? Bernhard has not yet conducted an inspection to identify the deficiencies but subsequent to conducting the inspection, Bernhard will provide the ISDCs for review/approval by the State. Bernhard would be willing to increase this amount provided the State pays for any additional costs, or performs the repairs itself.

AST COMMENTS AND QUESTIONS

General:

Based on information distributed thus far, all off-takers are firm loads. Where will excess capacity needed during equipment failure come from?

We anticipate that all Off-Taker service will be non-firm. As previously stated, all service to Off-Takers will be curtailed prior to curtailing service to the State Facilities.

As a thought since the State is paying all on-going bills, Bernhard could extend the chilled water lines and add the necessary additional equipment, then the State could collect revenue from Bernhard's sale of chilled water to off-takers. This is assuming the State continues to do operation and maintenance at plant(s).

Bernhard is uncertain as to how to respond to this comment other than to say that Bernhard developed and submitted a proposal based on the RFP issued by the State which explicitly seeks proposals for Cooperative Endeavor Arrangements.

The RFP on p.4 states "In order to obtain Concession rights to the Chiller Facility, please provide an asset monetization strategy centered on a viable Private-Public Partnership that effectively monetizes the Concession, and maximizes the financial benefit to the State. The contract vehicle utilized for implementation of this action would be a Cooperative Endeavor Agreement (CEA)."

The RFP on p.5 states "The State's objectives for this RFI are to: Enter into a long-term CEA with a responsible party who will provide good stewardship over the Chiller Facility."

Bernhard's proposal and the proposed CEA (and ancillary agreements) are compliant with these objectives. Bernhard is happy to further discuss the foregoing if it does not fully address the question.

At the end of the agreement (currently 30 years, with 10 year renewal periods), the State basically purchases the costs of the improvements from Bernhard. How is this cost established? If spread over time, what are the terms of that "loan?"

There is no loan with regard to the purchase of improvements. The State would have the option to purchase the improvements (e.g., chilled water extensions) from Bernhard if it choose to purchase the lines. The costs of the extensions would be at fair market value at the then current time of purchase. With regard to the leased assets, those assets would return to the State under the terms of the Lease.

What is the responsibility of the State to continue serving the off-takers?

The State would have no responsibility to continue serving the off-takers, as previously discussed with counsel for the State.
Under the SBECS: State Building Electricity Cost Savings:

• For a given present load reducing the consumption will result in a lower utility cost. The Stipulated Electric Unit Cost has a multiplier of $0.0682/ KWH with a 3.3% increase every year. This rate exceeds the rate rise for the raw power. Where did this come from? Why not simply establish the cost as the actual cost. If the action of the Bernhard group saves energy above what the State was saving, then do those savings simply go to Bernhard without any multipliers?

Bernhard is unable to control electricity rates. Consequently, Bernhard is unwilling to accept the risk of electricity rate fluctuations, which would unlikely be accepted by any proposer.

The escalation rate of 3.3% is the rate calculated by the Energy Escalation Rate Calculator established by NIST based on the applicable term and location. It should also be noted that in recent years after Louisiana approved a Formula Rate plan for Entergy that rates have increased each year at a rate far higher than 3.3%.

Finally, it should also be noted that Bernhard does not receive any portion of the savings. The Formula Rate Plan Credit only serves to reduce Bernhard's effective rates as needed to provide a net public benefit.

AST COMMENTS AND QUESTIONS

From Cooperative Endeavor Agreement:

Paragraph 5.14 and 6.4: Assume there is no separate operating agreement.

Bernhard does not comprehend the comment and is therefore, unable to respond. Bernhard is happy to discuss this provision with the State and AST.

Paragraph 6.5 (b): For the discovered deficiencies as a result of Bernhard's investigation: The State should have the opportunity to perform or contract out these changes themselves as they choose. Otherwise, there is no review of the costs stated by Bernhard. No checks and balances for the stated cost to do the work as apparently Bernhard does not have to bid competitively as per State bid laws.

Bernhard has not yet conducted an inspection to identify the deficiencies but subsequent to conducting the inspection, Bernhard will provide the ISDCs for review/approval by the State.

Paragraph 6.6 (c) (IV): What provisions are to be made to maintain the current comfort conditions? Will any alterations to the operating schedules go to the State for approval? What about special cases where a normal operating schedule is required to be altered? Is there a penalty for this? Additionally, the Capitol and Annex currently are never shut down completely.

Bernhard will not make alterations that adversely impact current comfort conditions in the State Facilities.

Bernhard will review its proposed revisions to any operating schedule with the State prior to implementing the revisions. In part, this is why Bernhard has provided a period for notice of changes in operations under the CEA.

If a current operating schedule is revised to increase or decrease occupancy, Bernhard will work with the State to adjust baseline electricity, natural gas, and chilled water consumption algorithms as would be appropriate for IPMVP Option C measurement and verification.

Bernhard will not impose any penalties for adjustments to operating schedules.

Page 10 of 37 – 9.4: Attorney's to review.

Bernhard is happy to discuss this and other items with counsel for the State.

Page 14 of 37 – 11.1.10: "Any other condition", very broad statement. Needs to be more definitive.

Please see proposed revisions to the Material Change definition in the TSA, set forth above.

Page 15 of 37 – 13.2: "state not excused from its obligation to make the chilled water services payment during said period." Why?

During the force majeure period, if the State is not receiving service, any commodity costs will not be charged.

Fixed costs, however, will still be required to be charged and services payments would be due, as would be required under a standard public services relationship. This is a standard provision and is fair and reasonable to both parties.

Page 17 of 37 – Section 16.2: State's attorneys to review.

Bernhard is happy to discuss this and other items with counsel for the State.

Page 18 of 37 – Article XVII and XVIII: State's attorneys to review.

Bernhard is happy to discuss this and other items with counsel for the State.

AST COMMENTS AND QUESTIONS

Page 19 of 37 – Article XIX: State's attorneys to review.

Bernhard is happy to discuss this and other items with counsel for the State.

Page 20 of 37 – Article XXI: State's attorneys to review.

Bernhard is happy to discuss this and other items with counsel for the State.

Page 21 of 37 – Article XXII and XXIII: State's attorneys to review.

Bernhard is happy to discuss this and other items with counsel for the StatePage 31 of 37 – Formula Rate Plan Credit? How is this determined/calculated?

The FRPC for any Project Year is the deficit in Net Savings, if any, from the prior Project Year, but it shall not be greater than Six Hundred Thousand Dollars ($600,000.00) in any Project Year. A more detailed version of the entire calculation is contained in Exhibit E.

Additionally, while Bernhard does not anticipate negative Net Savings in any year, Bernhard is amenable to providing a sample calculation showing the calculation of the credit in a year where net savings are negative.