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**RENEWABLES  
PORTFOLIO  
STANDARD**

**SOLICITATION  
PROTOCOL**

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*August 4, 2005*

*(Conformed with D.05-07-039)*

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## **LIST OF ATTACHMENTS**

Attachment A: RPS Solicitation Protocol Agreement

Attachment B: Form of Letter of Credit

Attachment C: Notice of Intent to Bid

Attachment D: Offer Form

Attachment E: Participant Credit-Related Information Form

Attachment F: FERC Order 2004 Waiver

Attachment G: Form of Master Power Purchase and Sale Agreement for As-Available Product (Eligible to participate in EIRP)

Attachment H: Form of Master Power Purchase and Sale Agreement for Generators with an As-Available Product (Not eligible to participate in EIRP)

Attachment I: Form of Master Power Purchase and Sale Agreement Peaking or Baseload and Dispatchable Products (Unit Firm)

Attachment J: Term Sheet (Buyout Option)

Attachment K: Power Purchase and Sale Agreement Term Sheet (Turnkey Option)

## **I. INTRODUCTION AND OVERVIEW**

### **A. Implementation of State Renewables Policy**

The California Renewables Portfolio Standard (“RPS”) Program was established by Senate Bill 1078, effective January 1, 2003. It requires that a retail seller of electricity such as Pacific Gas and Electric Company (“PG&E”) purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (“ERR”). The RPS Program is set out at Public Utilities Code Section 399.11, et seq. Each utility is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2017. As a matter of policy, the State Energy Action Plan has proposed accelerating the deadline to 2010.

The California Public Utilities Commission (“CPUC” or “Commission”) has published a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the CPUC issued its “Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program,” Decision (D.) 03-06-071. On June 9, 2004, the Commission adopted its Market Price Referent methodology for determining the utility’s share of the RPS seller’s bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c) (see D.04-06-015). On the same day, the Commission adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 (“Standard Terms Decision”) as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell the products requested in this solicitation were provided in D.04-07-029 issued on July 8, 2004 on “least cost best fit” methodology, in CPUC Rulemaking 04-04-026.

On June 21, 2005, the Commission approved PG&E’s 2005 Renewable Procurement Plan, including a draft of this solicitation (“Protocol”), as revised herein (see D.05-07-039). PG&E is soliciting offers, as discussed further in Section IVB, pursuant to this protocol and in accordance with applicable CPUC decisions and other applicable laws to satisfy PG&E’s RPS requirements (“RFO”).

### **B. Offer Submittal Deadline**

To be considered in this solicitation, an offer for sale of the Products, as defined herein, and in accordance with the terms hereof, including relevant attachments, (“Offer”) must be received by PG&E in accordance with this solicitation protocol (“Protocol”) no later than 3:00 p.m. Pacific Prevailing Time (“PPT”) on Thursday, September 15, 2005.

### **C. Disclaimers for Rejecting Offers and/or Terminating this RFO**

PG&E’s solicitation of Offers through the publication of this Protocol does not constitute an offer to buy and creates no obligation to execute any power purchase and sale agreement (“Agreement”) or to enter into a transaction under the Agreement (“Transaction”) as a consequence of this solicitation. PG&E shall retain the sole discretion to reject any Offer at any time on the ground that it does not conform to the terms and conditions of this Protocol. PG&E

also retains the discretion, in its sole judgment, to: (a) reject any Offer on the basis that it does not provide sufficient ratepayer benefit or that it would impose conditions that PG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of Offers; (c) negotiate with participants in this solicitation ("Participant") to maximize ratepayer benefit; (d) modify this Protocol as necessary to improve the implementation of this solicitation and to comply with applicable law or other direction provided by the CPUC or any other regulatory entity with applicable jurisdiction; (e) reject any selected Offer not supported by the Procurement Review Group, established pursuant to D. 02-08-071 and made applicable to this RFO by D.05-07-039, ("PRG") in a timely manner; (f) condition PG&E's acceptance of any selected Offer on the Participant's agreement to modify such Offer as recommended by the PRG; and (g) terminate this RFO if PRG concurrence is not timely obtained for any selected Offer. Notwithstanding the above, PG&E reserves the right to either suspend or terminate this solicitation at any time for any reason whatsoever. PG&E will not be liable, by reason of such withdrawal or rejection, to any Participant submitting an Offer in response to this solicitation.

In its sole discretion, PG&E may also elect to pursue an Agreement with any Participant that has submitted a selected Offer with which the PRG has not concurred, subject to PG&E obtaining Regulatory Approval of such Agreement as provided in Section XV of this Protocol and the applicable Agreement. Under no circumstances shall PG&E be contractually bound by the terms of any Participant's Offer prior to PG&E's execution of an Agreement with the Participant and Regulatory Approval of the Agreement. PG&E shall not be bound to commence purchases of power until Regulatory Approval, as defined herein and in the applicable Agreement, either has been obtained or, in PG&E's sole discretion, has been waived.

## **II. RFO GOALS**

### **A. Term**

PG&E is seeking Agreements with a delivery term of 10 to 20 years beginning in 2006 or beyond. Participants may offer delivery terms of 10, 15 or 20 years or a term 10 years or greater that is mutually agreeable and approved by the Commission.

### **B. Volume**

In this RFO, PG&E is seeking to procure approximately 1-2% of its retail sales volume or between approximately 700,000 and 1,400,000 MWhs per year. One percent of PG&E's retail sales volume translates to the following approximate contract capacity amounts depending on the expected annual capacity factor of the projects chosen:

**Table II.1: Target Procurement Capacity**

<b>Capacity Factor</b>	<b>Contract Capacity (MW)</b>
100%	81
80%	101
60%	135
40%	203
20%	406

### **C. Products**

Participants may submit Offers for four specific products:

- 1) As-Available 2) Baseload 3) Peaking 4) Dispatchable

Offers for As-Available, Baseload, and Peaking products must be 1 MW or greater. Offers for Dispatchable products must be 25 MW or greater<sup>1</sup>. PG&E adopts the product definitions specified in the Standard Terms Decision and further defines each of the product terms below for purposes of this solicitation. All capitalized terms not defined herein have the meaning provided in the Form of Agreements (Attachments G, H and I).

**As-Available** means, intermittent energy and capacity deliveries that are not directly controlled by the generator. The only projects eligible to bid in this category are: (1) wind; (2) solar; (3) run-of-river hydro; or (4) any other technology that PG&E determines qualifies to deliver energy meeting the criteria set forth in the preceding sentence.

**Baseload** means firm energy and capacity delivered on a “7x24”<sup>2</sup> schedule with an Annual Capacity Factor of at least 80%.

**Peaking** means energy and capacity delivered on a “5x8”<sup>3</sup> schedule during June thru September with a Capacity Factor of at least 95%.

**Dispatchable** means energy and capacity available for delivery on a Day-Ahead and Intra-Day Schedule with a monthly Availability Factor of at least 95% in each of the months of June thru September. Project providing a Dispatchable product must have a minimum run time of 8 hours or less and a minimum down time of 8 hours or less.

PG&E will consider Offers that are combinations of Products. For example, As-Available facilities that can provide a Peaking product but have additional deliveries outside of the Peak Period may bid the additional power as an As-Available product. Facilities that provide two blocks of power – a Baseload volume and a Peaking volume – may bid as two Products.

<sup>1</sup> Dispatchable offers must be 25 MW or greater to be efficiently incorporated into PG&E’s system dispatch protocol.

<sup>2</sup> 24 hours per day, 7 days per week.

<sup>3</sup> Hour ending (HE) 13-20 PPT, Monday through Friday, except NERC holidays.

Two types of combination of Products are permissible Offers:

- 1) Peaking and As-Available; and
- 2) Peaking plus other Firm deliveries in any combination of other TOD Periods.

Specifically, for the first option, an eligible combination Offer would combine the Peaking product, as defined in the this Protocol and the Form of Unit-Firm Agreement, plus additional energy in any TOD Period other than A1 on an As-Available (non-firm) basis, as described in the two Forms of As-Available Agreement.

For the second option listed above, an eligible combination Offer would include the Peaking product plus additional firm energy deliveries in any other TOD Period, so long as such an Offer included the Performance Requirements (and the associated liability for the applicable Performance Adjustments) that were no less than those for the applicable TOD periods for the Baseload product as provided in the Form of Unit Firm Agreement.

For this second option, an ineligible combination Offer would be one that either: (1) offered energy deliveries in time periods other than one or more of the eight TOD Periods (besides A1), or (2) offered firm Performance Requirements or Performance Adjustment Factors that were lower than those for the Baseload product in the applicable TOD period(s).

Combination Offers based on any other Product (As-Available, Baseload or Dispatchable) are not acceptable and will be rejected.

#### **D. Ownership Alternatives**

##### **Alternative I. Power Purchase Agreement with PG&E Buyout Option**

In addition to the Agreement described above, a Participant offering RPS eligible resources may also provide an Offer with an option price for PG&E to acquire the generation facility at the end of Year 5, or Year 10 of the delivery term along with all environmental attributes, land rights, permits and other licenses – thus enabling PG&E to own and operate the facility at the end of the pre-determined delivery term. ("Buyout Option"). Participants offering a Buyout Option should review carefully the Term Sheet provided as Attachment J.

If PG&E accepts the Buyout Option, PG&E would notify the Participant and exercise the option in Year 5, or Year 10 and pay for the buyout in Year 6, or Year 11 of the delivery term. Otherwise, the Agreement shall continue until the original term expires. The generating facility must be located on land owned or leased by the Participant, with land rights assigned to or purchased by PG&E as part of the facility acquisition. The generating facility and transmission interconnection must be designed and constructed in conformance with California Independent System Operator Corporation's ("CAISO") various reliability agreements, procedures, protocols, tariffs and standards. The Offer for the Buyout Option shall include (1) the all-in energy and capacity price for all Years of the delivery term (this is the contract price that will be paid by PG&E prior to the exercise of the Option, if applicable); (2) a option price for the Buyout Option. Qualifying Participants may apply for and receive Supplemental Energy Payments during the delivery term of the Agreement. Participant must be poised to sign a power purchase

agreement in substantially the form of the applicable Form of Power Purchase and Sale Agreement, as amended by the terms of Term Sheet to be submitted by Participant as part of the Offer. (See Attachments G, H and I).

**Alternative II. Turnkey Agreement**

Participants offering RPS eligible resources may also propose to develop, permit, and construct a new RPS eligible renewable generating facility for purchase by PG&E upon commercial operation of the facility (“Turnkey”). PG&E’s strong preference for Turnkey proposals is for small hydro and central station solar technologies. Participants offering a Turnkey Offer should review carefully the Power Purchase and Sale Agreement Term Sheet provided as Attachment K.

The facility must be located on land owned or leased by the Participant, with land rights assigned to or purchased by PG&E as part of the generation facility acquisition. The generating facility and transmission interconnection must be designed and constructed in conformance with CAISO’s various reliability agreements, procedures, protocols, tariffs and standards. Participants are also encouraged to propose options through alternative financing, sharing of commercial risks that would reduce the cost to PG&E.

**E. PG&E’s Renewable Resource Needs**

Starting in 2006, PG&E will require more capacity to meet its reserve margin requirements and additional peaking energy resources will be required to meet PG&E’s net energy requirements. After 2006, PG&E will require additional dispatchable peaking and shaping resources to meet energy and capacity requirements for all subperiods.

PG&E’s anticipated level of need for these products between 2006 and 2010 is shown in *Table II.2* below. PG&E welcomes Offers to supply energy even during periods of low need, as the optimal Offers will be those with the best combination of market value, fit with PG&E’s portfolio, and contribution to the other criteria specified in Section X.

**Table II.2: Assessment of PG&E Need by Product**

<b>Product</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
As-Available	Low	Low	Low	Low	Low
Baseload	Low	Medium	Medium	Medium	Medium
Peaking	High	High	High	High	High
Dispatchable	Medium	Medium	High	High	High

**III. COMMUNICATIONS**

PG&E has established a website at [www.pge.com/renewableRFO](http://www.pge.com/renewableRFO), where Participants may register and where all RFO documents, information, announcements and Q&A’s are posted and available for Participants to download.



To promote the accuracy and consistency of all RFO-related information for all Participants, PG&E prohibits Participants from speaking directly with PG&E employees about the commercial terms and conditions of this solicitation except in organized workshops or conferences. PG&E strongly prefers that all communications take the form of an email directed to [RenewableRFO@pge.com](mailto:RenewableRFO@pge.com). With respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility. PG&E will hold a Pre-Bid Conference as another opportunity to ask questions.

For questions regarding procedural or administrative matters, Participants may call Dave Landes at (415) 973-9326. PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

#### **IV. BINDING NATURE OF OFFER**

##### **A. Agreement by Participant**

By responding to this RFO, Participants agree to be bound by all terms, conditions and other provisions of this Protocol until such time as Participant is notified that it has not been short-listed, the Participant and PG&E agree to discontinue negotiations of a short-listed Offer, or Participant and PG&E execute a mutually agreeable agreement resulting from this RFO. The “RPS Solicitation Protocol Agreement” attached hereto as Attachment A requires the Participant agree to be bound by the terms of the RFO and to make specified representations and warranties to PG&E. Any response to this RFO must be accompanied by a copy of the RPS Solicitation Protocol Agreement which has been executed by Participant’s authorized officer. **Given the length of the regulatory approval process, Participants submitting PPAs must agree to be bound by their Offer(s) for a period of nine (9) months from the date of submittal. Participants submitting a Buyout Option or Turnkey Acquisition Offer must agree to be bound by their Offer(s) for a period of twelve (12) months from the date of the submittal.**

##### **B. Offer**

Participants may submit up to 6 discrete Offers for each Project. For purposes of this limit, the required Offer without Production Tax Credits (PTC) pursuant to Section VI.C of this Protocol does not count as one of the six discrete Offers.

##### **C. Bid Deposit**

The Participant must provide a deposit of cash or a Letter of Credit, as defined below, in the amount of \$3/kw of contract capacity (“Bid Deposit”) no later than five (5) business days after receiving notice from PG&E that it qualifies for PG&E's shortlist. For example, a Participant proposing a 20,000 kw project must submit a Bid Deposit of \$60,000. The Bid Deposit is intended to secure the obligation of each Participant during the evaluation period and to insure that each Offer has been carefully considered and represents a binding offer to PG&E. If the

Participant fails to submit the Bid Deposit within the five (5) business day deadline, the Participant's Offer will be rejected and removed from the shortlist.

As noted above, the form of the Bid Deposit may be either (a) a cash deposit through a wire transfer; or (b) a Letter of Credit, as described below. Bidders should notify Jack Foley of PG&E's Credit Department via email at [JRFC@pge.com](mailto:JRFC@pge.com) or call (415) 973-0004 prior to submitting their Bid Deposit to obtain detail of delivery instructions, and routing and account number requirements.

PG&E will pay interest on a cash deposit, calculated on a monthly basis and compounded at the end of each calendar month, from the date fully deposited to the earlier of: (i) the return of the cash deposit to Participant; or (ii) conversion of the Bid Deposit to collateral under an executed Agreement as applicable for each day cash is held by PG&E. The applicable interest rate will be the rate per annum equal to the Monthly Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519 or its successor publication ("Interest Rate"). The Interest Rate shall be calculated based on a 360 day year and shall be payable upon return of the cash deposit or conversion of the cash deposit into security under an executed Agreement, as described below.

**Letter of Credit** - The letter of credit must be an irrevocable, standby letter of credit, in the form attached hereto as Attachment B, issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having total assets of at least USD\$10 billion and a senior unsecured long term debt rating of no lower than A2 from Moody's Investor Services, Inc., or its successor ("Moody's") or A from Standard & Poor's Rating Group, or its successor ("S&P") ("Letter of Credit"). Costs of the Letter of Credit shall be borne by Participant. The Letter of Credit should be sent by overnight delivery to:

**PG&E**  
**77 Beale Street, Mail Code B28L**  
**San Francisco, CA 94105**  
**Attn: Manager, Credit Risk Management**

The Bid Deposits referenced above will be returned under the following conditions:

1. Failure of PG&E to satisfy the condition(s) precedent set forth in the Agreement;
2. Upon execution and approval of the Agreement and Participant's submission of the collateral required under the Agreement;
3. PG&E's rejection of the Offer subsequent to shortlist selection;
4. In the course of negotiation, the parties cannot agree on the terms of the Offer and Agreement, and PG&E rejects the Offer and Agreement as submitted by Participant;
5. If, at the time of PG&E's Shortlist selection, Participant has also been shortlisted by another California utility, including municipalities, water district(s) or irrigation district(s), for an offer submitted by Participant for the commitment of generation and/or capacity from the same Project and project location as the Offer submitted to PG&E, Participant shall have five (5) business days from the time of



such shortlist notification to notify PG&E in writing if it wishes to withdraw its Offer under this solicitation (“Permitted Withdrawal”). Documentation of such shortlist selection must accompany notification. If Participant does not notify PG&E within such timeframe of its intent to withdraw, Participant’s Offer will remain binding.

The Participant will forfeit the Bid Deposit in its entirety under the following conditions:

1. Participant’s withdrawal of the Offer other than a Permitted Withdrawal; or
2. Any material misrepresentation of pricing or non-price information submitted by Participant.

In the event that Participant forfeits the Bid Deposit, PG&E will be entitled to draw upon the Bid Deposit in its entirety as payment for direct and indirect damages incurred in connection with the Participant’s withdrawal of Offer or misrepresentation. PG&E shall also be able to draw on any Letter of Credit or retain any cash deposit provided as a Bid Deposit, as security under the Agreement, in the event that Participant fails to provide additional security and/or agrees to PG&E’s retention of the Bid Deposit as security in accordance with the terms of the executed Agreement, if applicable.

PG&E will not reimburse Participants for their expenses under any circumstances, regardless of whether the RFO reaches a successful conclusion or is terminated early at the sole discretion of PG&E.

## V. RFO SCHEDULE AND APPROVAL PROCESS

A. Below is the estimated RFO schedule, followed by a discussion of each step:

**Table V.1: PG&E RFO Schedule**

DATE	EVENT
August 4	PG&E issues Request for Offers
August 11	Participants file Nonbinding Notice of Intent to Bid
August 18	Pre-Bid Conference
September 15	Deadline for Participants to Submit Bids
October	PG&E selects Shortlist of Bids; Consults with PRG
December	PG&E & Participants execute Agreements subject to Regulatory Approval
January, 2006	PG&E submits Agreements for Regulatory Approval

The schedule is subject to change in PG&E’s sole discretion at any time. The RFO schedule may be affected by, among other things, deliberations of the PRG, negotiations with selected shortlisted Participants, and proceedings before the CPUC, including, but not limited to, proceedings to obtain Regulatory Approval. PG&E will endeavor to notify Participants of any schedule change, but will have no liability or responsibility to any Participant for failing to do so.

**B. Steps in the RFO:**

1. Online Registration. Participants may register at the RFO website: [www.pge.com/renewableRFO](http://www.pge.com/renewableRFO). Registering will establish the Participant on PG&E's notice list and insure that Participant receives timely announcements and updates.
2. Notice of Intent to Bid. Participants are requested to submit Attachment C by Thursday, August 11 with basic project information and an RSVP to the Pre-Bid Conference. The Notice is nonbinding and failure to submit Attachment C by the scheduled date will not disqualify a Participant.
3. Pre-Bid Conference. PG&E will hold a Pre-Bid Conference at the following time:

**PG&E 2005 RPS Solicitation  
Pre-Bid Conference  
Thursday, August 18, 2005  
1:00 – 5:00 p.m.**

**PG&E Auditorium  
77 Beale Street  
San Francisco, CA**

4. Offer Submittal Deadline. Participant's offer must be submitted by the deadline and include the documents described in Section VII. Submittals must be tendered electronically and in hard copy.

**Deadline: September 15, 2005, 3:00 p.m. (PPT)**

5. PG&E Selects Shortlist. Consults with PRG. PG&E intends to select a shortlist of Offers for further negotiations. The shortlist and results of subsequent negotiations will be shared with PG&E's PRG. Participants who have been selected for the shortlist will be required to post a bid deposit described in section IV. C. and execute a Confidentiality Agreement in the form attached to the RPS Solicitation Protocol Agreement (Exhibit 1 to Attachment A) agreeing to keep confidential the terms discussed during the course of negotiating the final Agreement.
6. CPUC Releases the Market Price Referents (MPR). The MPR will be used to calculate how much of Participant's price will be paid directly by PG&E under the Agreement and how much, if any, will be eligible to be paid as Supplemental Energy Payments ("SEP") by the utilities' Public Goods Charge account, administered by the California Energy Commission.

7. PG&E and Shortlisted Participants Finalize Agreements. The final Agreements will be shared with the PRG.
8. PG&E and Final Participants Execute Agreements. The effectiveness of the contracts is subject to CPUC Approval as defined in the Agreement, and any other conditions precedent set forth in the particular Agreement.
9. PG&E Submits Agreements for Regulatory Approval. If Participants intend to be eligible for SEP's, they must apply for ERR certification and seek the SEP award from the California Energy Commission ("CEC"). See Section XVI for information. PG&E will seek final CPUC Approval of each Agreement after Participant has obtained all necessary SEP commitments from the CEC, as applicable.

## **VI. ELIGIBILITY REQUIREMENTS**

### **A. Project Eligibility**

PG&E will consider all timely Offers from any Participant that proposes to supply capacity and energy to PG&E from either an existing or a new generating facility to be developed that employs an ERR or multiple ERRs.

For purposes of this RFO and any Agreement executed pursuant thereto, an ERR is a facility that is certified by the CEC, meets all the criteria set forth in Public Utilities Code Sections 383.5 and 399.12 and the CEC's "Renewable Portfolio Standard Eligibility Guidebook", "New Renewable Facilities Program Guidebook", and "Overall Program Guidebook for the Renewable Energy Program". As set forth in the above authorities, the following resources constitute ERRs:

1. Photovoltaic generating facility;
2. Wind generating facility;
3. Geothermal generating facility;
4. Solar thermal generating facility;
5. Hydroelectric generating facility provided that the generating facility has a Net Nameplate Capacity of 30 MW or less and further provided that a new hydroelectric generating facility will not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code;
6. Thermal electric generating facility, or other generating facility, whose thermal energy input comes from the combustion of biomass fuel, digester gas, or landfill gas;
7. Ocean wave, ocean thermal, or tidal current generating facility;
8. Fuel cell using renewable fuels; or
9. Municipal solid waste conversion generating facility using a non-combustion thermal process as defined by Public Resources Code section 25741 (a)(3);

Participant's generating facility must either: (i) be located in California; or (ii) if located outside of California, demonstrate delivery of its generation to the in-state market hub or the in-state substation located within the California Independent System Operator ("CAISO") control area of the Western Electricity Coordinating Council (WECC) transmission system designated by PG&E.<sup>4</sup> If selected, the project will have to participate in an RPS tracking and verification system approved by the CEC, and satisfy the "Delivery Requirements" established by the CEC. Additional requirements apply in order for RPS-participating generation to qualify for SEPs.<sup>5</sup>

Any Offer that meets the foregoing requirements will not be deemed ineligible on the grounds that the Participant proposes to store the energy generated by the ERR(s) prior to delivery to PG&E, provided that the storage technology employed does not result in the delivery of energy from a generating resource other than an ERR, as defined above.

Each Participant shall be solely responsible for securing all necessary interconnection, distribution, transmission, and scheduling services associated with the Participant's Offer, including any necessary regulatory approval(s) for such services. PG&E will not act as a scheduling coordinator ("SC") for any Participant; a Participant must be its own SC or engage a third party SC.

All deliveries of energy and capacity to PG&E must be by SC-to-SC transfer and net of all transformation and transmission losses and Generation Meter Multiplier adjustments, in accordance with ISO Protocols. PG&E prefers the delivery point to be NP-15 but will allow bids that propose delivery of the product to SP-15, ZP-26 or any other delivery point in the CAISO Control Area, which Participant confirms is eligible for an SC-to-SC transfer.

Participant must agree (i) to schedule and dedicate the contracted amount of electrical output from the generation facility to PG&E, net of station use and electrical losses; and (ii) not sell, deed, grant, convey, transmit, or otherwise provide any energy, capacity, ancillary services or any other related electricity product, including Environmental Attributes, as defined in the Standard Terms Decision, or capacity attributes associated with the output to an entity other than PG&E.

## **B. Existing Projects**

PG&E will consider any timely Offer to supply electric energy and, capacity from an existing ERR generating facility ("Existing Project"). An expansion or repowering of a generating facility shall be considered a new project. PG&E will also consider Offers from Existing Projects to replace current Agreements with PG&E, such as those from renewable "Qualifying Facilities," meaning generation facilities meeting the requirements of the Federal Energy Regulatory Commission's rules (18 Code of Federal Regulations 292) implementing the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. 796, et. seq.). PG&E will incorporate into its evaluation any net ratepayer impacts that would result from terminating the existing agreement ("Existing PPA"). If Participant proposes to replace the Existing PPA with an entirely

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<sup>4</sup> See, "Eligibility of Out-of-State Facilities", *CEC Renewables Portfolio Standard Eligibility Guidebook*, Publication #500-04-002F1, adopted August 11, 2004, at pp. 17-19.

<sup>5</sup> See Publication #500-04-002F1, pages 6-7 and *New Renewable Facilities Program Guidebook*, Publication #500-04-001F)

new Agreement, the Offer must clearly quantify any proposed increase of electrical energy, and, if applicable, expansion of electrical capacity from the Existing Project above that provided for in the applicable Existing PPA. If the Existing Project is a QF, the Offer must also include: (1) the full name of the QF as well as the QFID number or any other information that the Participant deems sufficient for PG&E to identify the QF project; and (2) a statement of the date on which the Existing PPA will terminate.

### **C. Production Tax Credit**

As of the issuance of this RFO, the Production Tax Credit ("PTC") legislation for renewable energy had been approved by Congress, but not yet signed into law by President Bush. Participants should review carefully the requirements for "qualified facilities" as stated in Internal Revenue Code Section 45(d), to be amended by the Energy Policy Tax Incentives Act of 2005, Title XIII of the Energy Policy Act of 2005, H.R. 6, 109th Cong., 1st Sess., 151 Cong. Rec. H2278-2284 (2005). For purposes of this RFO, Participants who intend to utilize the PTCs must submit two price offers in Section IV.B. of this Protocol.

## **VII. PARTICIPANT OFFERS**

### **A. Overview**

All Offers must be received in *both* hard copy and electronic form by **Thursday, September 15, 2005 at 3:00 p.m. (PPT)**. If there is a disagreement between the electronic and hard copies, the hard copy will prevail.

*Hard copy documents:* Participants must submit three (3) bound and one (1) unbound copy via hand-delivery or overnight delivery to:

**RPS Solicitation  
Power Contracts Dept.  
245 Market Street, Room 1245B, Mail Code N12E  
San Francisco, CA 94105**

*Electronic Documents:* The electronic documents must be in a Microsoft Word or Excel file, as applicable, with any proposed changes to the Form Agreement in a Microsoft Word file marked to show all changes. Electronic Documents must be in the form of a compact disk (CD) accompanying the hard copy documents.

*Telephonic, telegraphic, e-mail or facsimile transmission of a Participant's Offer is not acceptable*

### **B. Required Forms**

The following documents, data, and other information must be included in any Offer:



1. *Signed RPS Solicitation Protocol Agreement* attesting to Participant's agreement to be bound by the conditions of the Protocol in submitting Participant's Offer (Attachment A).
2. *Offer Forms and Term Sheet:*
  - a. *For Participants seeding to enter into a Power Purchase Agreement or submit an Alternative I Offer (Buyout Option), provide a fully completed Offer Form (Attachment D) that includes the applicable pricing sheet and a Project Generation Profile (except for Dispatchable). Participants should review carefully and complete the Offer Form, as much of the information requested in the Offer Form appears again in the Agreement. Alternative I Offers will also need to include a fully completed term sheet (Attachment J.)*
  - b. *For Participants submitting an Alternative II Offer (Turnkey); provide a fully completed Turnkey Offer Form (Attachment D) that includes the applicable pricing sheet and a Project Generation Profile (except for Dispatchable.) Alternative II Offers will also need to include a fully completed term sheet (Attachment K).*
3. *An attachment to the Offer Form* that describes in detail Participant's ultimate corporate parent if Participant is a direct or indirect subsidiary or affiliate of any other corporation; and/or each of Participant's general partners if Participant is a partnership; and/or each of Participant's joint ventures if Participant is a joint venture (identifying the controlling entity of the joint venture); and/or each of Participant's members if Participant is a limited liability company (identifying all manager(s) and officers); and/or each member of a consortium or other association, organization or group of persons acting in concert if Participant is a group or a member of a group acting in concert for purposes of this RFO (identifying the controlling group member(s)). In the case of partnerships, joint ventures, consortia, or other associations or groups, the Participant must provide information sufficient for PG&E to identify the ultimate corporate parent if the general partner, joint venture, controlling member or other relevant actor or agent is a direct or indirect subsidiary or affiliate of another corporation.
4. *An attachment to the Offer Form* that provides, if available, copies of or URLs to Participant's most recent Annual Report to shareholders or Annual Report on Form 10-K as filed with the Securities and Exchange Commission ("SEC") for the past two years containing audited financial statements of Participant and Participant's most recent quarterly report on Form 10-Q as filed with the SEC, and, if applicable, for each entity identified on the attachment to the Offer Form specified in item 4 above that is required to file reports under the Securities Exchange Act of 1934, the most recent Annual Report to shareholders or Annual Report on Form 10-K as filed with the SEC containing audited financial reports and the most recent quarterly report on Form 10-Q as filed with the SEC for each such entity. If none of the foregoing applies, Participant shall supply either (a)

copies of the most recent audited financial statements, including a certified independent accountant's report thereon, of the Participant, or, if applicable, for each person or entity identified in the attachment to the Offer Form specified in item 4 above for at least the three prior full fiscal years or, if shorter, the life of the relevant entity; or (b) a description of the business of each such person or entity and of the material matters relating to such business, including all matters that would be required to be disclosed if such entity were subject to the disclosure requirements of Items 3 and 7 of Form 10-K.

5. *The Participant Credit-Related Information Form* (Attachment F), which provides relevant credit information critical to PG&E's evaluation.
6. *An attachment to the Offer Form* that provides a written description of the existing or proposed generating facility (the "Project Description"), not to exceed 10 pages, single spaced, that contains at least the following information:
  - (a) A description of the electricity generation process sufficient to establish to PG&E's satisfaction that the generating facility will deliver energy generated by means of one or more ERRs; including, if fueled by biomass, digester gas or landfill gas, or municipal solid waste conversion, a description of access to a lasting and stable fuel supply, including the contractual term of such access;
  - (b) Information about the major and auxiliary equipment of the generating facility;
  - (c) Identification of the current or proposed point of interconnection to the PG&E or ISO transmission system, including the cluster as specified in the Transmission Cost Ranking Report, and a description of any transmission upgrades required;
  - (d) Status of the transmission system interconnection application and studies, if any;
  - (e) Status of Participant's application for transmission and/or distribution services, as applicable;
  - (f) If Participant desires PG&E to assess the potential for sharing gen-tie costs among it and other selected Participants as provided by D.04-06-013, finding of fact 3, Participant must list its gen-tie costs separately in its Offer in sufficient detail to enable a reasonably reliable evaluation of the potential for the sharing of gen-tie costs.
  - (g) Legal description of the site sufficient to confirm the location and Participant's legal control of the Project site, including any necessary easements and rights-of-way and a description of any possessory rights that

must still be required and/or which are not yet secured for the entire term of the proposed contract;

- (h) Description of all host community approvals required, if any, and the status of such approval(s), including any public opposition;
  - (i) Description of all required permits for both the Project as well as the transmission upgrades required and the status of applications for such permits, including any public opposition;
  - (j) Description of all water supplies, air emission offsets and other consumables of the project requiring advanced procurement or planning;
  - (k) Description of the viability of the technology, including historical performance information, and Participant's experience with developing, constructing, operating and maintaining facilities of the technology; and
  - (l) Description of any social, reliability, environmental or resource diversity benefits of the proposed facility, per Pub. Util. Section 399.11 and 399.14(c) (5).
7. *An attachment to the Offer Form* that provides a project milestone schedule describing financing, permitting, engineering, procurement, construction and startup timelines and status.
  8. *An attachment to the Offer Form* that provides a street map showing the location of the Project, access roadway and the rights-of-way for all interconnecting utilities.
  9. *An attachment to the Offer Form* that provides an 8 ½ x 11 copy of the appropriate section of a USGS (or equivalent) map showing the Project site, access roadway and the rights-of-way for all interconnecting utilities.
  10. *An attachment to the Offer Form* that identifies any CEC funds awarded or expected to be received by, Participant and/or any entity or person identified with respect to the Project setting forth the information, including, without limitation, any subsidies, awards, grants, supplemental energy payments, or special tax treatment or credits available to Participant by virtue of Participant's generation or proposed generation from a renewable energy resource.
  11. *An attachment to the Offer Form* that describes the Participant's experience and staff qualifications, including but not limited to: developing, financing, designing and constructing, and operating and maintaining power generation facilities; contracting to sell and deliver long-term power supplies; and the proposed facility's development, design and construction, and operations and maintenance

organizations, including the staff make-up and size and the identification and resumes of Participant's key personnel and management.

12. *FERC Order 2004 Waiver* (Attachment F), which authorizes PG&E's transmission department to share certain transmission information with PG&E's merchant business unit, as further explained in Section XX of this Solicitation.
13. *Form Agreements:*
  - a. For Power Purchase Agreement Offers and Alternative I Offers (Buyout Option): Participant should (i) review thoroughly *all* of the terms in the applicable Form Agreement; and (ii) provide *all* of the information and make *all* of the selections requested in those documents. In particular, Participant should examine Article Eight: Credit and Collateral Requirements of the Form Agreement (both in the Cover Sheet and the Addendum). For example, Sections 8.2 and 8.4 provide alternatives for the type of performance assurance, credit support or other collateral requirements that a Participant may provide to cover all or a portion of PG&E's potential replacement cost exposure under the Agreement in the event of a termination due to a default by the Participant. Specifically, Section 8.4 calls for a Participant to post (i) a fixed amount of security, during the period prior to the Construction Start Date, as defined in the Agreement of the project; (ii) a fixed amount of security between the Construction Start Date and Commercial Operation Date; and (iii) a fixed performance assurance amount based on monthly revenues for the period after the applicable Commercial Operation Date of the project. Participant should also review Sections 8.3 and 8.5 regarding the security interest and remedies to which PG&E will be entitled upon the posting of such security, performance assurance or credit support by Participant and PG&E's rights and Participant's obligations with respect to any letter of credit that is provided as security, performance assurance or credit support. PG&E does not intend to provide performance assurance, credit support or any other security.
  - b. For all Offers, including the Alternative I Offer (Buyout) and Alternative II Offer (Turnkey) Participant may include in its Offer(s) requested exceptions and/or modifications to the applicable Agreement or Term Sheet, as applicable. Any requested exceptions and/or modifications must be specifically identified by reference to the affected section(s) of the applicable form of Agreement or Term Sheet and shall set forth the actual text of the proposed exception and/or modification. In addition, Participant must state in its Offer whether acceptance by PG&E of the proposed exception(s) and/or modification(s), if any, are material conditions of the Participant's Offer. The resulting document will be considered part of the Participant's binding offer; that is, PG&E will assume that the Participant is willing to execute an Agreement or negotiate an agreement based upon the Term Sheet as submitted. Participant's material conditions will be considered in the overall bid evaluation process.

## VIII. CALCULATION OF OFFER PRICE

Offers for the four Products must be made in the following units:

**Table VIII.1: Product Pricing Units**

Product	Price Units
As-Available	\$/MWh
Baseload	\$/MWh
Peaking	\$/MWh
Dispatchable	Capacity: \$/kw-year Energy: \$/MWh

Participants will enter prices into the Offer Sheet (Attachment D). Prices should be fixed for the delivery term of the contract, i.e., no indexed prices, although they may be different from year-to-year. Prices should include any gen-tie costs as a separate price component, as discussed further in Section IX. The price should be an all-in-price for energy and capacity.

For As-Available, Baseload, and Peaking Products, Sellers will be paid for energy delivered, in \$/MWh, according to the Time of Delivery (“TOD”) schedule shown in *Table VIII.2* below that reflects the relative value of the energy during the respective periods. For example, Sellers will be paid their contract price times 1.543 for each Super-Peak hour of delivery from June 1 to September 30. Similarly, Sellers will be paid their contract price times 0.673 for each Night Hour of delivery from March 1 to May 31.

As noted in Section II.C, PG&E will consider Offers that are combinations of Products. Given that the TOD factors represent the value of the energy for the particular period, Offers that span products, e.g., a Peaking product with additional energy outside of the 5x8 Peak period, will not be disadvantaged because they include two different products. They will be evaluated based on their combined energy deliveries and resulting TOD value.

**Table VIII.2: Time of Delivery (TOD) Periods & Factors**

Monthly Period	Super-Peak <sup>1,4</sup>	Shoulder <sup>2,4</sup>	Night <sup>3,4</sup>
Jun - Sep	1.543	1.024	0.747
Oct.- Dec., Jan. & Feb.	1.310	1.065	0.787
Mar. - May	1.104	.920	0.673

Definitions:

1. Super-Peak (5x8) = HE (Hours Ending) 13 - 20, Monday - Friday (*except* NERC holidays).
2. Shoulder = HE 7 - 12, 21 and 22, Monday - Friday (*except* NERC holidays); and HE 7 - 22 Saturday, Sunday and *all* NERC holidays.
3. Night (7x8) = HE 1 - 6, 23 and 24 all days (*including* NERC holidays).
4. NERC (Additional Off-Peak) Holidays include: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the last Thursday in November. New Year’s Day, Independence Day, and Christmas Day, by definition, are predetermined dates each year. However, in the event they occur on a Sunday, the “NERC Additional Off-Peak Holiday” is celebrated on the Monday immediately following that Sunday. However, if any of these days occur on a Saturday, the “NERC Additional Off-Peak Holiday” remains on that Saturday.

For Dispatchable products, capacity payments will be paid based on demonstrated availability. *Table VIII.3* below allocates the annual capacity payment among the 12 months of the year by Time of Availability (TOA) according to the relative value of capacity in each month. The sum of the TOA factors equals exactly one.

**Table VIII.3: Time of Availability and Minimum Availability Factors**

Month	TOA Factor	Minimum Availability
Jan	8%	90%
Feb	5%	90%
Mar	4%	70%
Apr	4%	70%
May	4%	70%
Jun	8%	95%
Jul	14%	95%
Aug	15%	95%
Sep	11%	95%
Oct	9%	90%
Nov	9%	90%
Dec	9%	90%
<b>100.0%</b>		<b>85%</b>

To receive the full capacity payment in a given month, the project will have to demonstrate an Availability Factor at or above the specified Minimum Availability. To improve the potential value of its Offer, Participant has the option, but not the obligation, to offer higher Minimum Availability Factors in its Offer on the Dispatchable worksheet of the Bid Form.

Participants must also provide a Project Generation Profile (a Project Availability Profile for Dispatchable products). The applicable profile should represent the Contract Capacity Factor (Contract Availability Factor for Dispatchable products) and take into account planned maintenance and estimated Forced Outage rates.

Projects providing Baseload or Peaking products must meet the Capacity Factors by TOD Period as specified in *Table VIII.4* below:

**Table VIII.4: Minimum Capacity Factors for Baseload & Peaking Products**

Monthly Period	Time of Delivery Period		
	Super-Peak	Shoulder	Night
Jun – Sep	95%	90%	80%
Oct. – Dec., Jan. & Feb	90%	85%	65%
Mar. – May	80%	75%	65%

To the extent the Seller does not meet the above Capacity Factors, the Seller will be liable for Performance Adjustments. For Baseload and Peaking products, for each 1 percentage point by which the Capacity Factor in each TOD Period is less than the Performance Requirement for such TOD Period, Seller shall owe the following percentages of its period revenues:

**Table VIII.5: Performance Adjustments for Substandard Delivery**

Monthly Period	Time of Delivery Period		
	Super-Peak	Shoulder	Night
Jun – Sep	3.00%	2.00%	1.25%
Oct. – Dec., Jan. & Feb.	2.50%	1.75%	1.25%
Mar. – May	1.50%	1.25%	1.00%

*Note: Revenues calculated as the maximum potential revenue for the operations period.  
See the applicable Form of Agreement for the Dispatchable product performance adjustments.*

## **IX. TRANSMISSION**

Transmission availability and transmission-related costs will be part of the RFO evaluation. Projects must bid to one of the selected clusters shown on the map below and identified in PG&E’s Transmission Ranking Cost Report, as listed in *Tables IX.1.* in this section. These clusters were developed from responses by developers in the CPUC investigation to resolve transmission constraint issues (I.001-11-001, Transmission Proceeding) and responses to PG&E’s annual solicitations to assess development potential. Participants who wish to connect to a PG&E substation not identified in the clusters should choose the cluster closest to the desired injection point. These tables provide guidance to Participants on transmission availability and the cost of potential network upgrades. This section also gives guidance on incorporating a project’s gen-tie costs into its Offer.

## **A. Direct Assignment Facilities**

The Participant shall include in its bid price the estimated cost of all the facilities needed to interconnect the renewable energy generation facility to the first point of interconnection with the transmission system grid. These facilities are referred to as direct assignment facilities, or gen-ties. Direct assignment facilities include the transformer bank used to step-up the generation output to transmission voltage, the outlet line between this step-up transformer bank and the transmission system, and protection and communication facilities needed for interconnection and safe operation of the generator.

If Participant desires PG&E to evaluate the potential for sharing gen-tie costs among it and other selected Participants in the same cluster, as provided by Decision 04-06-013, finding of fact 3, Participant must identify its gen-tie costs in its Offer, including the above-listed direct-assignment facilities, in sufficient detail to enable a reasonably reliable evaluation. The gen-tie costs should be stated on the Offer Form in both total capital costs (in first year dollars) and \$/MWhr (\$/kw for Dispatchable products) so that PG&E can make the appropriate Offer price reduction if the Bidder's gen-tie costs can be reduced.

## **B. Network Upgrades**

Network upgrades include all facilities necessary to: (1) reinforce the transmission system after the point where a renewable project's electricity first interconnects with and enters the subject utility's transmission grid; and (2) transmit or deliver the full amount of power from the project. Network Upgrades include transmission lines, transformer banks, special protection systems, substation breakers, capacitors, and other equipment needed to transfer power to the consumer.

1. Transmission Adders to reflect the cost of potential Network Upgrades will be developed for bid evaluation purposes as follows:
  - i. Renewable Resource Projects With Completed System Impact Study and Facilities Studies

For renewable resource projects that have already obtained cost estimates from completed System Impact Study and Facilities Studies ("SIS/FS") through the California Independent System Operator ("CAISO") Interconnection Process, the Participant shall submit the CAISO cost estimate for the needed Network Upgrade with the Offer. PG&E will then use the SIS/FS cost estimate to evaluate and rank the Offers pursuant to CPUC Decision 03-06-071 and Decision 04-06-013<sup>6</sup> and Decision 05-07-040.

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<sup>6</sup> Decision 04-06-013, Attachment A contains a detailed description of the methodology for development and consideration of transmission costs in initial RPS procurement.

ii. Renewable Resource Projects Without Completed System Impact Study and Facilities Studies

For renewable resource projects that have not completed and obtained the cost estimates from the SIS/FS through the CAISO Interconnection Process, PG&E will use the Transmission Ranking Costs included in *Table IX.1*. These Transmission Ranking Costs are part of a Transmission Ranking Cost Report PG&E prepared and filed in compliance with CPUC Decision 05-07-040. PG&E's Transmission Ranking Cost Report identifies and provides cost information associated with transmission upgrades that may be needed to interconnect new renewable energy generation facilities to the grid and provide the transmission capacity needed to accommodate the facility's output<sup>7</sup>. PG&E will then use the Transmission Ranking Cost(s) from the associated cluster(s) to evaluate and rank the Offers pursuant to CPUC Decision 03-06-071, Decision 04-06-013 and Decision 05-07-040.

2. Transmission Ranking Cost Tables

In developing their Offers, Participants that have not completed the SIS/FS should use the Transmission Ranking Costs for information regarding expected Network Upgrades.

It is important to note that PG&E's estimates of transmission costs will be used solely for the purpose of ranking and evaluating Offers. The actual transmission upgrade cost for a specific renewable project may differ from these estimates and PG&E is not responsible or in any way liable for deviations between estimated and actual costs.

Consistent with Decision 04-06-013 Attachment A and Decision 05-07-040, PG&E has developed Transmission Ranking Costs based on potential transmission congestion, the associated proxy transmission network upgrades and the associated capital costs that may be needed to accommodate each cluster of renewable resources. For each cluster, PG&E has identified various levels of possible additional transmission capacity and the related costs<sup>8</sup>. Accordingly, Level 1 reflects the available transmission capacity after taking into account all approved reliability and economic transmission projects, as well as upgrades planned for generation projects in the ISO interconnection queue based on their completed System Impact Studies and Facilities Studies. The next Level and subsequent Levels reflect the next most cost-effective proxy network upgrade(s). The number of Levels depends on the number of proxy network upgrades to reasonably accommodate the anticipated total amount of renewable resources in each cluster.

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<sup>7</sup> The report costs will be based on conceptual transmission studies submitted previously in I.00-11-001, other conceptual transmission studies, and System Impact Studies and Facilities Studies prepared for projects that have initiated the California Independent System Operator Corporation (ISO) interconnection process.

<sup>8</sup> Costs are equal to the total capital cost of the proxy transmission network upgrade project and are stated in 2005 constant dollars. Net present value (NPV) amounts of each alternative would differ.

*Tables IX.1 lists PG&E's Transmission Ranking Costs by cluster and by seasonal delivery period. Table IX.1 shows the network upgrade costs for deliveries in: (1) Peak and Shoulder periods only; (2) Night periods only, and (3) all periods year-round. The break-out of costs by delivery period may be useful for projects with the ability to control their dispatch to avoid deliveries during periods that would trigger large upgrade expenses (see Section D below).*

For projects located north of PG&E's service territory, the associated cluster will be Round Mountain Substation. Pursuant to CPUC Decision 04-06-013, Seller is responsible for transmission service charges incurred by the generation facility to transmit the power to PG&E's service territory from facilities located outside California. For Projects located to the east of PG&E's service area, the associated cluster will be PG&E's side of the Summit Metering Station. For Projects located south of PG&E's service area, the associated cluster will be PG&E's Midway Substation. Pursuant to CPUC Decision 04-06-013, Transmission Ranking Cost(s) published by SCE and SDG&E to transmit power to PG&E's service territory from corresponding clusters in SCE or SDG&E service territory will be added to PG&E's Midway Cluster Transmission Ranking Cost in PG&E's evaluation of project-related transmission costs.

### **C. Need for Application for Interconnection through the ISO**

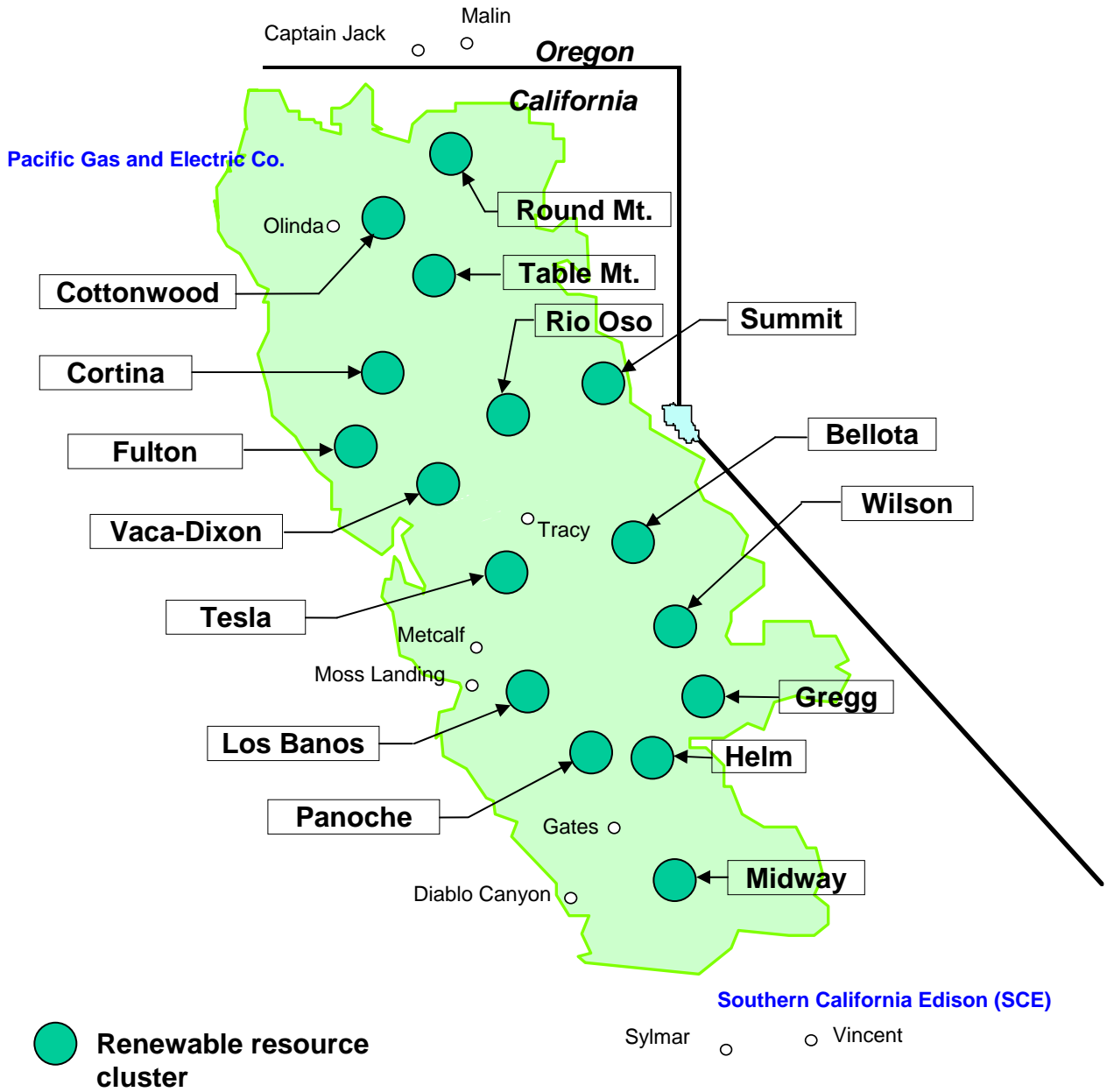
All renewable projects selected in this solicitation must apply for interconnection through the ISO generation Interconnection Process and complete the System Impact Study and Facilities Study. It is through this ISO process that costs of connecting a renewable resource to the grid can be determined. Please see [www.caiso.com](http://www.caiso.com) for the CAISO Interconnection Process and the PG&E web site for its Interconnection requirements.

### **D. Curtailing Project Generation Output to Reduce Transmission Adder**

For projects that have completed the SIS/FS, the resultant cost estimates should reflect the project's choice of whether to curtail generation output during congested periods to avoid Transmission Network Upgrades.

Projects that have not completed the SIS/FS may use the information in the Transmission Ranking Cost Tables to adjust their proposals to curtail generation to reduce Transmission Adders. For example, based on the Transmission Ranking Cost developed for a cluster, participants may offer a Project Generation Profile that would allow the project to avoid certain congestion periods and thereby lower the Transmission Adders that would be applied in the Offer evaluation. If the project is subsequently selected as one of the winning Participants, this Project Generation Profile will be used as the basis for negotiation of the Agreement or Term Sheet, as applicable.

# PG&E SUBSTATIONS ASSOCIATED WITH RENEWABLE RESOURCE CLUSTERS



**Table IX.1: Transmission Ranking Cost**

Substation Associated With Cluster Of Potential Generation	Level	Super-peak, Peak and Shoulder			Night			Base Load & As Available		
		Year Round			Year Round			Year Round		
		Maximum MW of Potential Generation in each Level	Cost of Proxy Network Upgrades to accommodate MW Level of Potential Generation (\$ millions in 2005 dollars)		Maximum MW of Potential Generation in each Level	Cost of Proxy Network Upgrades to accommodate MW Level of Potential Generation (\$ millions in 2005 dollars)		Maximum MW of Potential Generation in each Level	Cost of Proxy Network Upgrades to accommodate MW Level of Potential Generation (\$ millions in 2005 dollars)	
Proxy Voltage Support Devices*	Other Proxy Transmission upgrades		Proxy Voltage Support Devices*	Other Proxy Transmission upgrades		Proxy Voltage Support Devices*	Other Proxy Transmission upgrades			
Bellota 230 kV	1	600	32	0	600	32	0	600	32	0
Cortina 115 kV	1	0	0	0	350	18	0	0	0	0
	2	400	21	71	200	11	51	200	11	51
	3	250	13	51						
Cottonwood 230 kV	1	0	0	0	200	11	0	0	0	0
	2	400	21	259	600	32	34	600	32	292
Fulton 230 kV	1	700	37	0	200	11	0	200	11	0
	2				350	18	19	350	18	19
Gregg 230 kV	1	0	0	0	350**	18	0	0	0	0
	2	500	26	4	500**	26	44	500	26	49
	3	300	16	4	900**	47	188	900**	47	225
	4	100	5	22						
	5	200	11	3						
	6	50	3	8						
Helm Sub 230 kV	1	600	32	0	100	5	0	100	5	0
	2				350	18	44	350	18	44
Los Banos 230 kV	1	450	24	0	50	3	0	50	3	0
	2				800	42	44	400	21	44
Midway 230 kV	1	1000	53	0	0	0	0	0	0	0
	2				550	29	482	550	29	482
	3				550	29	89	450	24	89
	4				500	26	188			
Panoche 230 kV	1	750	39	0	100	5	0	100	5	0
	2	450	24	44	700	37	44	700	37	44
	3	330	17	17	250	13	188	250	13	188
	4				250	13	17	480	25	17
Rio Oso 230 kV	1	0	0	0	500	26	0	0	0	0
	2	180	9	13				180	9	13
Round Mt 230 kV	1	0	0	0	350	18	0	0	0	0
	2	400	21	259	100	5	34	350	18	259

Substation Associated With Cluster Of Potential Generation	Level	Super-peak, Peak and Shoulder			Night			Base Load & As Available		
		Year Round			Year Round			Year Round		
		Maximum MW of Potential Generation in each Level	Cost of Proxy Network Upgrades to accommodate MW Level of Potential Generation (\$ millions in 2005 dollars)		Maximum MW of Potential Generation in each Level	Cost of Proxy Network Upgrades to accommodate MW Level of Potential Generation (\$ millions in 2005 dollars)		Maximum MW of Potential Generation in each Level	Cost of Proxy Network Upgrades to accommodate MW Level of Potential Generation (\$ millions in 2005 dollars)	
Proxy Voltage Support Devices*	Other Proxy Transmission upgrades		Proxy Voltage Support Devices*	Other Proxy Transmission upgrades		Proxy Voltage Support Devices*	Other Proxy Transmission upgrades			
Summit Metering Station 115 kV	1	0	0	0	150	8	0	0	0	0
	2	200	11	31	50	3	13	200	11	31
Table Mt 230 kV	1	0	0	0	200	11	0	0	0	0
	2	250	13	38				200	11	38
Tesla 230 kV	1	1000	53	0	1000	53	0	1000	53	0
Vaca Dixon 230 kV	1	0	0	0	500	26	0	0	0	0
	2	500	26	71				500	26	71
Wilson 230 kV	1	450	24	0	450**	24	0	450	24	0

Note: The Transmission Ranking Costs in this table are capital cost in constant 2005 dollars. The "Levels" in each cluster are defined in Decision 04-06-013.

\* Voltage Support Devices can be added incrementally so the cost listed can be prorated in proportion to the size of the Project over the Maximum MW amount in the Level.

\*\* The maximum potential generation for these levels assumes that it is cost effective to increase pumping at Helms Pump Storage Plant (PSP) during off-peak (night) periods using the new generation at these clusters. In addition, for the off peak (night) hours for the months of June through September, the maximum MW generation in each level could be increased by another 300 MW when maximum pumping at Helms PSP is likely.

## **X. EVALUATION OF OFFERS**

PG&E will base its evaluation of Offers upon the information contained in the submitted attachments to this RFO, as applicable, and Offer Forms. This evaluation will identify each project with which PG&E will enter into negotiations, that is, a “Short-listed Project”. Participants are responsible for the accuracy of all figures, descriptions and calculations. Projects that incorporate the Buyout Option or Turnkey option will be evaluated using the same criteria as other projects.

### **A. Market Valuation (50% of score)**

#### Initial Market Valuation

PG&E will conduct a market valuation of the deliveries based on initial energy delivery date and delivery term of the Transaction, price, and TOD profile.

For As-Available, Baseload, and Peaking products, the contract price is a single all-in price, in \$/MWh. For Dispatchable products, the contract price is submitted as a fixed capacity price (in \$/kW-yr) and a fixed energy price (in \$/MWh).

From the Participant information, a market valuation can be made of the energy to be delivered or, in the case of Dispatchable products, made available. For each product offered to PG&E, the contract price will be compared to the market value of the energy deliveries reflecting the delivery location.

Baseload and Peaking products are viewed as forwards, so the contract price will be compared to PG&E's forward market price curve.

As-Available products are viewed as variable-quantity forwards, where the quantities take into account the schedule of deliveries, so the contract price will be compared to PG&E's forward market price curve.

Dispatchable products are viewed as options, with the energy price as the option strike and the capacity price as the option premium; the option will be evaluated using an option pricing model. These comparisons will yield the net benefit (market value minus contract price) of each product being offered to PG&E.

PG&E will also consider the debt equivalent impacts of an Offer consistent with the guidance adopted in D.04-12-048. Debt Equivalence in this context refers to the debt-like characteristics of contracts not classified as interest bearing liabilities under Generally Accepted Accounting Principles.

### **B. Portfolio Fit (20% of score)**

The "Resource Needs" table in Section II (D) provides an annual listing of portfolio needs by product type. PG&E will compare the “fit” between the project’s online date and generation profile with PG&E’s portfolio needs, taking into account the Offer's contract price and PG&E's

forward market price curve. An Offer that provides reliable capacity that serves to meet PG&E’s forecasted short positions will score higher than a comparably priced Offer that provides less reliable capacity or that provides power during periods when PG&E is long and may be required to remarket the power. The cost of remarketing can be characterized as the transaction cost between the purchase and sale sides of the market: the “bid-ask spread.”

**C. Non-Price Factors (30% of score)**

Credit (20%)

Scoring for credit (*Table X.1 below*) will be based on the amount and form security that the Participant agrees to post during the pre- and post- commercial operation date periods. Participants will have the option to (i) not post security; or (ii) post security as either: (1) a fixed amount, as provided under Section 8.4 of the Agreement (“Security Deposit”); (2) an amount of security determined by PG&E in a commercially reasonable manner, per Section 8.2(c) of the Agreement, which amount will not be less than the Replacement Cost Collateral described below, (“Credit Assurance”); or (3) a fluctuating amount of security to cover Participant’s exposure to PG&E for the entire delivery term of the product, per Section 8.2(b) of the Form Agreement (“Replacement Cost Collateral”). Participants agreeing to post any form of security must be able to demonstrate their financial ability to provide such security. Additionally, PG&E will evaluate alternative forms of security in comparison to the standards of *Table X.1*.

**Table X.1: Performance Assurance Standards**

Score	10 Yr Contract	15 Yr Contract	20 Yr Contract
20 Points	(1) Security Deposit: Development: \$20/kw; Post-commercial operation date: 6 mos. revenue  (2) Credit Assurance  (3) Replacement Cost Collateral	(1) Security Deposit: Development: \$20/kw; Post- commercial operation date: 9 mos. revenue  (2) Credit Assurance  (3) Replacement Cost Collateral	(1) Security Deposit: Development: \$20/kw; Post- commercial operation date: 12 mos. revenue  (2) Credit Assurance  (3) Replacement Cost Collateral
10 Points	(1) Security Deposit: Development: \$20/kw; Post-commercial operation date: 3 mos. revenue	(1) Security Deposit: Development: \$20/kw; Post-commercial operation date: 4 ½ mos. revenue	(1) Security Deposit: Development: \$20/kw; Post-commercial operation date: 6 mos. revenue
0 Points	No security	No security	No security

*Notes:*

(1) Revenue is calculated as the maximum potential revenue for the Delivery Term.

(2) Security Deposit means cash or Letter of Credit during development. Post-commercial operation, Security Deposit, Credit Assurance, and Replacement Cost Collateral shall be in the form of cash, Letter of Credit or an acceptable guaranty.

Status of Project (5%)

PG&E will assess the stage of development and financial wherewithal of each project. Those in operation or advanced development (e.g., permits received, equipment purchased, sites and



easements obtained, financing committed) will score higher than those in early stages of development. PG&E's assessment of the financial wherewithal of the project will include a review of the information provided in Attachment E.

#### Technology Viability (5%)

PG&E will assess the probability that the project will operate as proposed based on historical commercial data of the technology and Participant experience.

#### **D. Adjustment for Transmission Adders and Integration Costs**

Any Transmission Cost Adders or Integration Costs attributed to the project will also be considered in bid ranking. Transmission Cost Adders are described in Section IX. Integration costs are defined as the costs and values of integrating an electrical resource such as a generation project into a system-wide electrical supply. The primary categories of integration costs are regulation and load following.

PG&E is required, pursuant to the Pub. Util. Code Section 399.14(a) (2) (B), to consider integration costs in the rank ordering and selection of least-cost and best-fit renewable resources. In implementing this provision, the CPUC has directed PG&E to rely on the results of the integration studies conducted by the California Energy Commission ("CEC"). The CEC issued an interim report "*California RPS Integration Costs Analysis-Phase I: One Year Analysis of Existing Resources*" in December 2003. The CEC's report recommended an integration methodology and preliminary values, but the methodology and preliminary values are still undergoing CEC review. D.04-07-029, directed PG&E to assume an integration value of zero in its least-cost, best-fit evaluation for the 2004 RPS solicitation. PG&E will continue to assume this value of zero unless it is updated in a future CEC report or CPUC decision, resolution or ruling.

#### **E. Other Non-Price Considerations**

- Social, Reliability, Environmental, Resource Diversity, Transmission Network Benefits

Any non-quantitative factors identified in D.04-07-029 asserted in the proposal will be incorporated in PG&E's project review. As directed by D.04-07-029 a project in which these factors play a significant part, which would have narrowly missed being shortlisted, may be included on the shortlist.

- Modifications to RFO requirements and Agreement (Attachment G, H, or I)

PG&E will assess the materiality and cost impact of any modifications to the Form of Agreement or Term Sheet, as applicable.

## **XI. CONFIDENTIALITY/SARBANES-OXLEY DISCLOSURE**

### **A. Confidentiality**

Except with PG&E's prior written consent, no Participant shall disclose its participation in this RFO (other than by attendance at any meeting held by PG&E with respect to the RFO) or collaborate on, or discuss with any other Participant or potential Participant bidding strategies or the substance of any Offer(s), including without limitation the price or any other terms or conditions of any Offer(s).

Except as provided below, all information and documents clearly identified by Participant as "Proprietary and Confidential" on the page(s) on which confidential information appears shall be considered confidential information. PG&E shall not disclose such information and documents to any third parties except for PG&E's employees, agents, counsel, accountants, advisors, or contractors who have a need to know such information and have agreed to keep such information confidential and except as provided below.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO will be provided to the CPUC, its staff, the PRG, and an independent evaluator retained by PG&E for this solicitation. PG&E will seek confidential treatment under the currently applicable protective order in CPUC Docket No. 01-10-024 and/or, if the currently applicable protective order is not deemed applicable, will seek a new protective order from the CPUC pursuant to Public Utilities Code section 583 and General Order 66-C of the CPUC, with respect to any Participant-supplied non-public RFO information and documents ("Participant's Confidential Information") that are submitted by PG&E to the CPUC for the purpose of obtaining Regulatory Approval. PG&E will also seek confidentiality and/or non-disclosure agreements with the PRG applicable to confidential information submitted by Participants in connection with the RFO. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to Participant's confidential information, or that confidentiality agreements or orders will be obtained from and/or honored by the PRG or the CPUC.

PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, CEC and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant.

As provided in Section V.5, once a Participant is selected for PG&E's shortlist, the Participant must execute a Confidentiality Agreement attached to the RPS Solicitation Protocol Agreement (Attachment A) and return such Confidentiality Agreement, along with the required Bid Deposit within five (5) business days of notification of their selection in order to continue to participate in the RFO.

## **B. Sarbanes-Oxley Disclosure**

For each Participant who enters into an Agreement with PG&E, Generally Accepted Accounting Principles and Securities and Exchange Commission rules require PG&E to evaluate if the Participant's financial information must be consolidated by PG&E. Some general guidelines for determining whether consolidation must occur include:

- i) Determination if the Participant is a variable interest entity under Generally Accepted Accounting Principles;
- ii) Determination of allocation of risk and benefits;
- iii) Proportion of total project output being purchased by PG&E;
- iv) Proportion of expected remaining project life being committed to PG&E; and
- vi) Pricing provisions of the contract, that is, does the contract contain fixed long-term prices or does pricing vary over the term of the agreement based on market conditions or other factors.

If PG&E determines that consolidation is required, PG&E shall require the following during every calendar quarter for the term of a Agreement:

- i) Complete financial statements and notes to financial statements; and
- ii) Financial schedules underlying the financial statements, all within 15 days of the end of each quarter.

Any information provided to PG&E shall be treated confidentially and only disclosed on an aggregate basis with other similar entities for which PG&E has power-purchase contracts. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

## **XII. PRG REVIEW**

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to the PRG. Such information will include at least the all-in cost ranking of Offers, an explanation of the application of transmission cost adders and other integration costs, the use of non-price evaluation criteria, and PG&E's recommendations based on such information. If the PRG concurs with PG&E's recommendation to select an Offer without material modification, PG&E will proceed to notify selected Participants in the manner provided in Section XIII below. PG&E, in its sole discretion, shall determine whether a modification proposed by the PRG is material. In the event that the PRG proposes material modifications to PG&E's recommendation, or does not concur with some or all of the results of the evaluation, PG&E may, in its sole discretion and without limitation, do any of the following, as it deems appropriate: (1) inform identified Shortlisted Participants of the results of the PRG evaluation, and seek Regulatory Approval of identified Offers in accordance with this Protocol without regard to the recommendation of the PRG; (2) notify identified Shortlisted Participants of the modifications proposed by the PRG and, if such modifications are mutually acceptable to PG&E and the affected Participants, seek Regulatory Approval of the selected Offers as modified; (3) if recommended by the PRG, reevaluate the Offers and submit the reevaluated

results to the PRG for additional review; (4) reject the Offers; or (5) terminate the RFO. PG&E has no obligation to obtain the concurrence of the PRG with respect to any Offer.

PG&E assumes no responsibility for the actions of the PRG, including actions that may delay or otherwise affect the schedule for this RFO, including the timing of the selection of Participants and the obtaining of Regulatory Approval.

### **XIII. NOTIFICATION TO SELECTED PARTICIPANTS**

Assuming that the tentative RFO schedule set forth in Section V above is not modified, PG&E expects to be able to provide e-mail notification to Participants whose Offers have been shortlisted by approximately November 1, 2005, and invite the shortlisted Participants to conduct discussions and negotiations with PG&E regarding Participant's Offer. PG&E anticipates notifying those Participants not selected to the shortlist shortly thereafter. PG&E also reserves the right to contact selected Participants during the evaluation process to clarify any Offers.

### **XIV. EXECUTION OF AGREEMENT**

By submitting an Offer, Participant agrees, if its Offer is selected, to execute the Agreement substantially in the form of the applicable form of Agreement as may be amended in Participant's Offer or negotiate an agreement based upon the Term Sheet, with respect to the Buyout Option or Turnkey Option, submitted with Participant's Offer. PG&E, in its sole discretion, will determine whether any proposed modifications or alterations of the form of Agreement are material and reserves the right to decline to execute any Agreement with a selected Participant.

### **XV. REGULATORY APPROVAL**

As described in Article 11 of the each form of Agreement or as a provision of each Term Sheet, Participant's obligation to deliver, and PG&E's obligation to purchase, electric power from Participant's project are expressly conditioned on the occurrence of Regulatory Approval and other conditions precedent set forth in that provision. As used within this Protocol and in the context of the RFO, "Regulatory Approval" means a final and non-appealable order or orders of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which does the following:

1. Approves PG&E's Agreement with Participant in its entirety, including payments to be made by PG&E, subject to CPUC review of PG&E's administration of the Agreement, and finds PG&E's entry into the Agreement is reasonable.
2. Authorizes PG&E to recover approved payments and/or revenue requirements in utility rates.

3. Finds that any procurement pursuant to the Agreement constitutes procurement from an eligible renewable energy resource which is either *incremental* procurement or procurement for the purpose of baseline replenishment with respect to PG&E's obligations pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.

## **XVI. SUPPLEMENTAL ENERGY PAYMENT AWARDS**

Participants are encouraged to contact the California Energy Commission (“CEC”) and begin the process of establishing ERR certification of the generation facility or pre-certification for facilities that are not yet on-line.

The CEC has published three guidebooks concerning its administration of the Renewable Energy Program:

1. *Renewables Portfolio Standard Eligibility Guidebook (publication no. 500-04-002F1) (“Eligibility Guidebook”)* – provides the eligibility requirements and process for certifying eligible renewable resources for California's Renewables Portfolio Standard and Supplemental Energy Payments. Available at: [http://www.energy.ca.gov/portfolio/documents/guidebooks/2004-08-20\\_500-04-002F1.PDF](http://www.energy.ca.gov/portfolio/documents/guidebooks/2004-08-20_500-04-002F1.PDF)
2. *New Renewable Facilities Program Guidebook (publication no. 500-04-001F)* – provides the conditions to qualify for and receive Supplemental Energy Payments from the New Renewable Facilities Program element. Available at: [http://www.energy.ca.gov/portfolio/documents/guidebooks/2004-05-25\\_500-04-001F.PDF](http://www.energy.ca.gov/portfolio/documents/guidebooks/2004-05-25_500-04-001F.PDF)
3. *Overall Program Guidebook for the Renewable Energy Program (publication no. 500-04-026)* – addresses the CEC's Renewable Energy Program, administration of the Renewables Portfolio Standard, and the New Renewable Facilities Program. Available at: [http://www.energy.ca.gov/portfolio/documents/guidebooks/2004-06-08\\_500-04-026.PDF](http://www.energy.ca.gov/portfolio/documents/guidebooks/2004-06-08_500-04-026.PDF)

Facilities seeking certification as an ERR must submit a completed application, along with any necessary backup materials, to the CEC as described in the *Eligibility Guidebook*. An application for certification is expected to be processed within 10 business days of receipt if no supplemental information is required; otherwise, an application will be processed within 30 days.

At the time of Offer submittal, a Participant must inform PG&E of the status of any New Renewable Resource Account (“NRRA”) funds that it may hold. A project holding a conditional funding award from the Energy Commission's NRRA under SB 90 may participate in an IOU solicitation under the new RPS structure, but must elect between continued eligibility for SB 90 payments and SEPs.

To participate in this solicitation, Participants with SB 90 awards whose projects are not yet on-line must state their intention to either: 1) keep the SB 90 award and agree to be ineligible for SEPs; or 2) relinquish the SB 90 award and compete for potential SEPs. Similarly, on-line projects that have already received payments from the New Renewable Resources Account under

SB 90 cannot receive SEPs unless they state their intention to relinquish their SB 90 award when they submit their SEP application. Further, any funding awarded through SEPs will be reduced by the amount of any payments already made to these projects under SB 90.

A winning Participant that chooses to keep its SB 90 award can receive payments under that award's terms and conditions, but is ineligible for SEPs resulting from this solicitation. A winning Participant that chooses to be eligible for SEPs must relinquish its SB 90 award, or any payments already made under that award, once it executes a contract with PG&E regardless of whether or not the Participant ultimately qualifies for SEPs.

## **XVII. PARTICIPANT'S WAIVER OF CLAIMS AND LIMITATION OF REMEDIES**

Except as expressly set forth in this Protocol, by submitting an Offer, Participant knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, including the CPUC, except as expressly provided below, the Federal Energy Regulatory Commission ("FERC"), the Superior Court of the State of California ("State Court") or United States District Court ("Federal Court") concerning or related in any way to the RFO, the Protocol and/or any attachments to the Protocol ("Waived Claims"). The assertion of any Waived Claims by Participant at the CPUC, FERC, State Court, or Federal Court, or otherwise shall, to the extent that Participant's Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the RFO or otherwise, and may result in PG&E electing to terminate the RFO.

By submitting an Offer, Participant further agrees that the sole forum in which Participant may assert any challenge with respect to the conduct or results of the RFO is the CPUC's RPS OIR docket, R.04-04-026<sup>9</sup>. Participant further agrees that the sole means of challenging the conduct or results of the RFO is a protest to an advice letter Filing or application seeking approval of one or more Agreements entered into as a result of the RFO, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the RFO in accordance with this Protocol, and the exclusive remedy available to Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the RFO that the CPUC determines was not previously conducted in accordance with the Protocol. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorneys fees. Unless PG&E elects to do otherwise in its sole discretion, during the pendency of such a protest the RFO and any related regulatory proceedings related to the RFO, including the RPS OIR, will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the RFO or PG&E has elected to terminate the RFO.

Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by Participant or as a result of

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<sup>9</sup> Order instituting Rulemaking to implement the California Renewables Portfolio Standard Program, Rulemaking 04-04-026.

a Participant's protest to an advice letter filing or application, as applicable, with the CPUC resulting from the RFO.

Except as expressly provided in this Protocol, nothing herein including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E.

## **XVIII. TERMINATION OF THE RFO - RELATED MATTERS**

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any kind to or responsibility of PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived Claims by a Participant or a determination by PG&E that, following evaluation of the Offers, there are no Offers that provide adequate ratepayer benefit.

PG&E reserves the right to change the Offer evaluation criteria for any reason, to terminate further participation in this process by any Participant, to accept any Offer or to enter into any definitive Agreement, to evaluate the qualifications of any Participant, and to reject any or all Offers, all without notice and without assigning any reasons and without liability to PG&E or anyone acting on PG&E's behalf. PG&E shall have no obligation to consider any Offer.

In the event of termination of the RFO for any reason, PG&E will not reimburse Participant for any expenses incurred in connection with the RFO except the Bid Deposit as expressly provided in Section IV. PG&E shall have no obligation to reimburse any Participant's expenses regardless of whether such Participant's Offer is selected, not selected, rejected or disqualified.

Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more Agreements by selected Participants as described herein.

## **XIX. PARTICIPANT'S REPRESENTATIONS AND WARRANTIES**

Each Participant submitting an Offer shall be deemed to have made the following representations and warranties to PG&E, which representations and warranties shall be deemed to be incorporated in their entirety into each Participant's Offer. Participant shall execute and provide the RPS Solicitation Protocol Agreement (Attachment A) attesting to Participant's agreement to be bound by the conditions of the Protocol in submitting Participant's Offer.

- A. Participant has read, understands, and agrees to be bound by all terms, conditions and other provisions of the Protocol.
- B. Participant has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFO, the Protocol and all Attachments to the Protocol.

- C. Participant has obtained all necessary authorizations, approvals and waivers, if any, required by Participant as a condition of submitting its Offer and, if Participant's Offer is selected, executing an Agreement with PG&E in substantially the forms of the Form Agreement, as amended if applicable.
- D. Participant is submitting its Offer subject to all applicable laws including, but not limited to, the Federal Power Act and all amendments thereto, and Public Utilities Code sections 383.5, 399.11 et seq., and 454.5.
- E. Participant has not engaged, and will not engage in any Communications, as defined herein, with any other Participant in the RFO concerning the price terms contained in Participant's Offer, and has not engaged in collusion or other unlawful or unfair business practices in connection with the RFO.
- F. The Offer provided by Participant is a binding Offer subject only to PG&E's acceptance, in PG&E's sole discretion, at any time prior to the termination of the RFO, and satisfaction or waiver of any unsatisfied conditions precedent or subsequent in the Agreement.
- G. Participant is not an affiliate of PG&E, PG&E Corp., or any of their subsidiaries or affiliates.
- H. The Offer provided by Participant pertains solely to generation from a generation facility employing an ERR or ERRs meeting the requirements, as provided hereunder, as a means of producing electricity and, as applicable, capacity. Participant agrees to submit to any audit required by the CEC, CPUC, or PG&E for the purpose of confirming, prior to execution of the Agreement and thereafter, that the Project meets and has maintained the eligibility requirement set forth herein.

**BREACH BY ANY PARTICIPANT OF THE FOREGOING REPRESENTATIONS AND WARRANTIES IS, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO PG&E UNDER APPLICABLE LAW, GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH PARTICIPANT, AND, DEPENDING ON THE NATURE OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.**

## **XX. FERC ORDER 2004 NOTICE**

Pursuant to the FERC Standards of Conduct issued November 25, 2003, enacted through FERC Order 2004, PG&E's transmission planning group unit ("Transmission") is prohibited from sharing non-public transmission-related information to the PG&E's marketing or "merchant" business unit. In order to evaluate any transmission system benefits proposed in an Offer, Transmission would need to share its conclusions regarding the local reliability component of

each Offer with PG&E's merchant business unit. To that end, PG&E seeks a waiver from each Participant authorizing Transmission to share such conclusions with PG&E's merchant business unit. The form of waiver is attached hereto (Attachment F) and is available on the RPS Solicitation website. Please sign the waiver and return it to PG&E with your Offer.