

Appendix A: Long Term Request For Offers Agreement

April [____], 2005

Pacific Gas and Electric Company
Electric Resource Procurement
245 Market Street, Room 1280A (MC-N12G)
San Francisco, CA 94105

Attention: Long Term RFO Project Manager

**Re: Agreement to terms in PG&E Long Term Request For Offers of March 18, 2005
("RFO")**

Dear PG&E:

[INSERT PARTICIPANT NAME- Full legal name] ("Participant") hereby acknowledges receipt of Pacific Gas and Electric Company's Long Term Request For Offers. Participant has reviewed and agrees to abide by and be fully bound by **all** of the terms and conditions set forth in the RFO by execution of this letter ("Long Term Request For Offers Agreement") and by submission of any Offer in response to the PG&E RFO. All capitalized terms not defined herein shall have the meaning provided in the RFO.

In particular, Participant makes the following representations, which shall confirm and supplement the representations set forth in the RFO:

- A. Participant has read, understands, and agrees to be bound by all terms, conditions and other provisions of the RFO.
- B. Participant has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFO and all Appendices to the RFO.
- C. Participant has obtained all necessary authorizations, approvals and waivers, if any, required by Participant as a condition of submitting its Offer and will obtain, prior to the submittal of its Final Offer, all necessary authorizations, approvals and waivers, if any, required by Participant as a condition of executing an Agreement with PG&E in the form submitted with its Final Offer, if Participant's Final Offer is selected.
- 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 section 454.5.

E. Participant has not engaged in and will not engage in, communications with any other Participant in the RFO concerning any terms contained in Participant's Offer, unless explicitly authorized by PG&E, and has not engaged in collusion or other unlawful or unfair business practices in connection with the RFO.

F. Participant is not an affiliate of PG&E, PG&E Corp., or any of their subsidiaries or affiliates.

Participant agrees that it shall execute and return to PG&E the attached form of Confidentiality Agreement (Exhibit 1) within three (3) business days of Participant's receipt of written notice of its selection for PG&E's shortlist under Section V.B.7. of the RFO. The Confidentiality Agreement shall be sent by overnight delivery to the following:

Pacific Gas and Electric Company
Electric Resource Procurement
245 Market Street, Room 1280A (Mail Code:-N12G)
San Francisco, CA 94105

Long Term Request For Offers Project Manager

IN WITNESS WHEREOF, Participant has caused this letter to be duly executed and delivered by its proper and duly authorized officer as of the date set forth below.

[PARTICIPANT NAME]

Name: _____

Title: _____

Date: _____

CONFIDENTIALITY AGREEMENT

This confidentiality agreement (“CA”) is entered into by and between Pacific Gas and Electric Company, a California corporation (“PG&E”) and _____ (“Participant”), each of which may be referred to herein separately as a Party or together as the Parties.

In the interest of developing a mutually agreeable purchase and sale agreement and transaction (“PSA”) or power purchase agreement and transaction (“PPA”), each an “Agreement”, in connection with PG&E’s long term request for offers (“RFO”) pursuant to California Public Utilities Commission Rulemaking R.01-10-024, the Parties have furnished and are furnishing certain Confidential Information to each other. The term “Confidential Information” shall mean (i) with respect to PG&E, all information described below, and (ii) with respect to Participant, all information, marked “Proprietary and Confidential” pursuant to and in accordance with the terms of the Long Term Request For Offers dated March 18, 2005 that such party (“Provider”) has furnished or is furnishing to the other party (“Recipient”), whether furnished before or after the date of this CA, whether intangible or tangible, and in whatever form or medium provided, as well as all information generated by the Recipient or its Representatives, as defined below, that contains, reflects, or is derived from the furnished information.

In consideration of the Provider’s disclosure to Recipient of the Confidential Information Recipient agrees to the following:

1. Recipient agrees that it will maintain the Confidential Information in strict confidence and that the Confidential Information will not, without Provider’s prior written consent, be disclosed by the Recipient or by its officers, directors, partners, employees, agents, or representatives (collectively, “Representatives”) in any manner whatsoever, in whole or in part, and shall not be used by Recipient or by its Representatives other than in connection with the negotiation of the Agreement. Moreover, Recipient agrees to transmit the Confidential Information only to such of its Representatives who need to know the Confidential Information for the sole purpose of assisting the Recipient in evaluating the Agreement; provided that such Representatives shall be informed of the terms of this CA and agree in writing to be bound by its terms hereto. In any event, Recipient shall be fully liable for any breach of this CA by its Representatives.
2. Recipient further agrees that it:
 - (a) Shall not disclose any such Confidential Information provided to it by Provider to any third party for any purpose;
 - (b) Shall not duplicate or distribute all or any portion of such Confidential Information to any Representative for any purpose other than evaluating the Confidential Information in connection with the RFO; and

(c) Shall destroy or return all such Confidential Information upon Provider's request.

3. For purposes of this CA, Confidential Information does not include: (a) information that is in the public domain through no violation of this CA or any other confidentiality obligation known to the Recipient, (b) information that Recipient can demonstrate was already in its possession and was not acquired, directly or indirectly, from Provider on a confidential basis, or (c) information that is independently developed by Recipient without use of or reference to the Confidential Information.
4. Recipient agrees not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as Recipient may be required to disclose to duly authorized governmental or regulatory agencies ("Required Disclosure"). In the event that Recipient or any of its Representatives becomes subject to a Required Disclosure, Recipient agrees:
 - a. To notify Provider immediately of the existence, terms, and circumstances surrounding such request;
 - b. To consult with Provider on the advisability of taking legally available steps to resist or narrow such request; and
 - c. If disclosure of such Confidential Information is required to prevent Recipient from being held in contempt or subject to other penalty, to furnish only such portion of the Confidential Information as it is legally compelled to disclose and to exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information.

In addition to the Required Disclosure PG&E shall be permitted to disclose Participant's Confidential Information as follows: (a) to PG&E's Procurement Review Group, as defined in California Public Utilities Commission ("CPUC") Decision (D) 02-08-071 and made applicable to this CA by D.04-06-015, subject to a confidentiality agreement, (b) to the CPUC (including CPUC staff) under seal for purposes of review, (c) the Independent Evaluator as specified in the RFO, or (d) in order to comply with (i) any applicable law, regulation, or any exchange, control area or ISO rule or (ii) any applicable regulation, rule, or order of the CPUC, California Energy Commission, or the Federal Energy Regulatory Commission.

5. Recipient acknowledges and agrees that, in the event of any breach of this CA, Provider would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled in law or equity and under the Long Term Request For Offers dated March 18, 2005, issued by PG&E in connection with the RFO, Provider shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to prevent breaches or threatened breaches of this CA and/or

to compel specific performance of this CA, and that neither Recipient nor its Representatives will oppose the granting of such relief.

6. This CA shall be effective as of the date first set forth below and shall terminate two years from such date or earlier upon the mutual written consent of the Parties.
7. No waiver of any provision of this CA or of a breach hereof shall be effective unless it is in writing signed by both Parties, nor shall any waiver of a breach of this CA, whether express or implied, constitute a waiver of a subsequent breach hereof.
8. This CA may not be amended or modified except by a written agreement executed by both Parties.
9. THIS CA SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES AGREE THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED IN ANY WAY TO THIS CA SHALL BE BROUGHT SOLELY IN A COURT OF COMPETENT JURISDICTION SITTING IN THE CITY AND COUNTY OF SAN FRANCISCO. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE JURISDICTION OF ANY SUCH COURT AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING IN ANY SUCH COURT, ANY OBJECTION TO VENUE WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF THE PLACE OF RESIDENCE OR DOMICILE OF ANY PARTY THERETO. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATED TO THIS CA.
10. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this CA.
11. This CA may be signed in counterparts, each of which shall be deemed an original. This CA may be executed and delivered by facsimile and the Parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this CA by the Parties to the same extent that an original signature could be used.
12. Any notice given hereunder by either Party shall be made in writing and delivered by facsimile, certified mail, or overnight delivery as follows:

To Participant:

To PG&E:

Either party may periodically change any address to which notice is to be given it by providing written notice of such change.

IN WITNESS WHEREOF, each of PG&E and Participant have caused this CA to be duly executed and delivered by its proper and duly authorized agent as of the date set forth below.

Pacific Gas and Electric Company

[Insert Company Name]

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____