



# Mid-Term Reliability

## Request for Offers

### Phase 2

## Solicitation Protocol

**April 15, 2022**

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## I. Introduction and Overview

### I.A. Overview

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Pursuant to California Public Utilities Commission (“CPUC”) Decision 21-06-035 issued on June 30, 2021 (the “Decision”), Pacific Gas and Electric Company (“PG&E”) is issuing its Mid-Term Reliability Request For Offers (“RFO” or “Solicitation”) Phase 2 seeking offers (“Offers”) from participants (“Participants”) for the purchase (i.e., PG&E buys) of eligible system resource adequacy (“RA”) to come online by June 1, 2024, June 1, 2025 or June 1, 2026.<sup>1</sup>

The Decision requires PG&E to procure at least 2,302 megawatts (“MWs”) of additional net qualifying capacity (“NQC”). Compliance would be measured based on September NQC calculations using marginal ELCCs calculated by the Commission for each resource type for each future online year. The additional MWs are to come online between August 1, 2023 and June 1, 2026.<sup>2</sup> The Decision requires PG&E to procure and have online, 400 MW by August 1, 2023, 1,201 MW by June 1, 2024, 300 MW by June 1, 2025, and 400 MW by June 1, 2026. To meet the CPUC’s requirements, PG&E is soliciting Agreements in two phases:

- Phase 1 results were submitted via an Advice Letter for Commission approval on January 21, 2022 and scheduled to be approved by the Commission on April 21, 2022.
- Phase 2 for the remainder of the capacity PG&E is required to procure per D. 21-06-035.

This Mid-Term Reliability Request for Offers Phase 2 Solicitation Protocol (the “Solicitation Protocol”) sets forth the terms and conditions by which PG&E will seek Offers to meet system-level NQC needs. A Participant submitting an Offer in response to this RFO agrees to be bound by all the terms, conditions, and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E. The obligations of the Participant are further described in Section V.A, Agreement by Participant.

### I.B. Mid-Term Reliability RFO Website and Communication

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PG&E has established a website at <http://www.pge.com/rfo/midtermrfo-phasetwo> where Participants may access and download all RFO documents, announcements and Q&As that are posted.

All correspondence will be monitored by the Independent Evaluator (“IE”), Wayne Oliver of Merrimack Energy Group, who was selected to oversee this Solicitation. The IE is an

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<sup>1</sup> CPUC issued the Decision on June 30, 2021.

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

<sup>2</sup> Per the Decision, PG&E may be required to procure additional MWs of NQC (Backstop Procurement) should Load Serving Entities (LSEs) fail to procure their required MWs of NQC.

independent, third-party evaluator who is required by the CPUC to monitor and evaluate certain competitive solicitations.

To ensure the accuracy and consistency of information provided to all Participants, PG&E encourages Participants to submit any inquiries via e-mail to [MidTermRFO@pge.com](mailto:MidTermRFO@pge.com) and CC the IE, Wayne Oliver of Merrimack Energy Group, Inc., at [merrimackIE@merrimackenergy.com](mailto:merrimackIE@merrimackenergy.com). With respect to a matter of general interest raised by any Participant, PG&E may, without reference to the inquiring Participant, post the question and PG&E’s response on PG&E’s website. PG&E will attempt to respond to all inquiries but may decline to respond to any particular inquiry.

**I.C. Expected Schedule**

The expected schedule for the RFO is listed in Table I.2 below. All deadlines occur at 5:00 P.M. Pacific Prevailing Time (“PPT”), unless otherwise noted.

**Table I.2: PG&E Mid-Term Reliability RFO Phase 2 Schedule**

Event	Phase 2 Dates
Participants are invited to register online to receive notices regarding the RFO at <a href="http://www.pge.com/rfo">www.pge.com/rfo</a>	Ongoing
PG&E issues RFO	April 15, 2022
Participants’ Webinar	April 26, 2022 at 10am PST
Deadline for Participants to submit Offers via Power Advocate	June 1, 2022 at 1pm PST
PG&E notifies selected Participants that their Offer(s) will be included on a list of Offers for which PG&E may seek to enter into or negotiate an Agreement related to that Offer (“Shortlist”).  Shortlisted Participants are required to begin safety process as further described in Section V.C.	By August 1, 2022

Deadline for notified Shortlisted Participants to 1) Accept Shortlist Status, 2) Acknowledge Acceptance of Confidentiality Agreement, 3) Post Shortlist Offer Deposit, and 4) Begin safety process	August 8, 2022 <sup>3</sup>
Shortlisted Offers should provide redlines of commercial agreements	August 15, 2022 <sup>4</sup>
Shortlisted Participants may be required to have completed safety prequalification	October 1, 2022
Target Agreement execution – Zero Emitting, Firm Zero Emitting, Battery Long Duration Storage, 2024 online date Offers	November 30, 2022
Target Agreement execution – Remaining projects	Q1 2023
Target Advice Letter Filing with CPUC <sup>5</sup>	Q1 2023

The schedule and documents associated with the RFO are subject to change at PG&E’s sole discretion at any time and for any reason. PG&E will endeavor to notify Participants of any changes to the RFO, but shall not be liable for any costs or liability incurred by Participants or any other party due to a change or for failing to provide notice or acceptable notice of any change.

PG&E reserves the right to execute agreements resulting from this RFO (each an “Agreement”) with any individual Participant at any time. PG&E prefers projects that can agree to terms in an expedited fashion. Except for the terms that are binding upon execution, PG&E’s obligations under an Agreement will be conditioned upon PG&E’s receipt of CPUC Approval within a stated period of time, as described further in Section XIII, Approvals. PG&E reserves the right to seek CPUC Approval of certain Agreements prior to execution of others. PG&E intends to request CPUC approval within 180 days of filing the executed agreements with the CPUC, but the CPUC approval process could take longer. Participants should factor the CPUC’s approval process into their project development timelines and proposals.

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<sup>3</sup> PG&E may notify participants of shortlist status before August 1. When participants are notified of shortlist status, the deadline for participants to complete 1 through 4 will be within 5 business days after shortlist notification.  
<sup>4</sup> PG&E may notify participants of shortlist status before August 1. Redlined agreements will be due 10 business days after the Participant is noticed of shortlist status.  
<sup>5</sup> PG&E may submit multiple Advice Letters depending on the timing of execution.

## II. Solicitation Goals

### II.A. PG&E Resource Needs

PG&E seeks resources to provide system-level qualifying net qualifying capacity (NQC) with online dates beginning June 1, 2024 through June 1, 2026 depending on the category, as further described in Table II.1 . All resources will be expected to be considered incremental in counting towards PG&E’s procurement responsibilities, as specified in the Decision. All resources must provide Resource Adequacy by the contractual online date.

Table II.1 below shows the products PG&E is soliciting in Phase 2.

**Table II.1: Phase 1 PG&E Mid-Term Reliability Solicitation Resource Needs**

Procurement Category	Example Eligible Resources <sup>6</sup>	Delivery Term (Years)	Minimum Size (MW)	Required Online date <sup>78</sup>
Zero-Emitting	Paired <sup>9</sup> RPS and storage, Hybrid <sup>10</sup> RPS and storage	10 or 15	10	By June 1, 2025
Firm, Zero Emitting	RPS-eligible Geothermal, Biomass	10 or 15	10	By June 1, 2026
Long duration storage	Pumped Hydro Storage, Lithium-ion, Flow Battery, Compressed Air Energy Storage, etc.	10, 15, or 20 (UOG)	10	By June 1, 2024 (battery) <sup>11</sup> , By June 1, 2026
Any other type of non-fossil-fueled resource	Energy Storage	10, 15, or 20 (UOG)	10	By June 1, 2024

<sup>6</sup> Includes incremental capacity additions located at existing projects. A full description of resource eligibility criteria is below in section III. A

<sup>7</sup> Per D. 21-06-035 resources are required to be online by June 1 for IRP counting purposes. PG&E has a commercial preference in 2025 and 2026 for resources that can be online March 1 as opposed to June 1.

<sup>8</sup> For long lead-time resources PG&E has the option to file for an extension of the online date deadline out to June 1, 2028. In this Phase 2 RFO PG&E is targeting projects that can meet the 2026 deadline.

<sup>9</sup> Paired resources are defined as having two separate CAISO resource IDs and can be either contractually paired with two points of interconnection or co-located behind a single point of interconnection.

<sup>10</sup> Hybrid resources are defined as different technologies that operate under a single CAISO resource ID behind a single point of interconnection.

<sup>11</sup> PG&E will look to execute long duration battery storage projects that have a 2024 COD because the ELCC percentage is expected to be higher.



Table II.2 below shows PG&E’s minimum Mid-Term procurement requirements that PG&E is soliciting in Phase 2. PG&E expects that capacity procured in Phase 1 will meet the “other type of non-fossil-fueled resource” category below. However, PG&E is accepting Offers in this category if an open position is determined in the course of this RFO.

**Table II.2: PG&E Specific Minimum Mid-Term Procurement Requirements (in NQC MW)**

<b>Type of Resource</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>Total</b>
Zero-emissions generation, generation paired with storage, or demand response resources, required by 2025, not necessarily in 2025*	-	-	500	-	500
Firm zero-emitting resources**	-	-	-	200	200
Long-duration storage resources**	-	-	-	200	200
Any other type of non-fossil-fueled resource	400 <sup>†</sup>	1,201 <sup>†</sup>	300	-	1,901
Total	400	1,201	300	400	2,301

\* The zero-emissions resources required to replace Diablo Canyon must be procured by 2025, but may occur in any of the years 2023-2025; therefore, the columns do not add to the total

\*\* The 2026 online date categories’, also known as long-lead-time (LLT) in the Decision, resource requirements are divided into half from long-duration storage and half from firm, zero-emitting generation resources.

<sup>†</sup> These quantities were procured in our Phase 1 RFO, however PG&E is accepting Offers in this category if an open position is determined in the course of this RFO. Using the storage offer form Appendix A3 or A4, projects may offer a project to be considered for the “other” category.

### III. Eligibility Requirements

This Phase 2 Solicitation is for resources providing net qualifying capacity that are incremental to the baseline list, and for projects that can come online by June 1 of 2024, 2025, and 2026. Offers must meet the applicable specifications noted below. For projects with online dates in 2025 and 2026, PG&E has a commercial preference for resources that can come online by March 1.

#### III.A. Project Characteristics and Operating Requirements

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All resources must be incremental to the baseline used in the need determination model that was posted on the Commission's website on February 22, 2021.<sup>12</sup> Expansion of existing projects that are incremental (see Section III. G of the protocol) to the baseline will be considered in all procurement categories.

Projects may be transmission or distribution connected. Per the Decision, import Offers will be considered in all procurement categories. As noted in the qualitative evaluation section, PG&E has a preference for resources located in the CAISO footprint due to uncertainty of import allocation rights in the future.

A description of the procurement categories is listed below.

##### 1. Zero-Emitting Resources

###### I. Decision Requirements

- (a) Be from a generation resource, a generation resource paired with storage (physically or contractually), or a demand response resource;
- (b) Be available every day from 5 p.m. to 10 p.m. (the beginning of hour ending 1800 through the end of hour ending 2200), Pacific Time, at a minimum; and
- (c) Be able to deliver at least 5 megawatt-hours of energy during each of these daily periods for every megawatt of incremental capacity claimed.

###### II. Additional PG&E Requirements

Paired resources are defined as renewable generation paired with storage having two separate CAISO resource IDs and can be either contractually paired with two

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<sup>12</sup> Need Determination model available at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/long-term-procurement-planning/more-information-on-authorizing-procurement/irp-procurement-track>

points of interconnection or co-located<sup>13</sup> behind a single point of interconnection.

Hybrid resources are defined as renewable generation paired with storage that operates under a single CAISO resource ID behind a single point of interconnection.

- (d) Must be a paired resource, hybrid resource, or demand response
- (e) Participants are directed to use the Incremental ELCC Study for Mid-Term Reliability Procurement analysis by Astrape Consulting as guidance for sizing the generation and storage components;<sup>14</sup>
- (f) Paired resource must be from the same counterparty;
- (g) The contractual online dates for paired resources must be the same;
- (h) Hybrid resources must be fully deliverable. For paired resources, the storage component must be fully deliverable and the renewable component may be energy only or fully deliverable;
- (i) Any demand response resource must be able to demonstrate the ability to meet daily discharge without any energy storage and describe how incremental capacity will be counted.<sup>15</sup> The demand response must be a load reduction, not a load shift.
- (j) For paired resources, the storage component and renewable component may have different term lengths.

### III. PG&E's Preferences

- (a) PG&E has a preference for co-located, physically paired resources in this category. Offers will be accepted for contractually paired resources, as well as hybrid resources.

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<sup>13</sup> As defined in the CAISO Tariff.

<sup>14</sup> See [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/20210831\\_irp\\_e3\\_astrape\\_incremental\\_elcc\\_study.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/20210831_irp_e3_astrape_incremental_elcc_study.pdf)

<sup>15</sup> Per Energy Division Staff's response to frequently asked questions on Mid-Term Reliability. [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035\\_faqv2\\_20220318\\_redline.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_faqv2_20220318_redline.pdf)

- (b) For contractually paired resources, PG&E has qualitative preferences for renewable resources that will be fully deliverable.

2. **Firm Zero-Emitting Resources**

Decision Requirements

- (a) have no on-site emissions or is eligible under the requirements of the renewables portfolio standard program;
- (b) have at least an 80 percent capacity factor;
- (c) must not be use limited or weather dependent;
- (d) cannot include storage.

3. **Long-duration Storage Resources**

I. Decision Requirements

An eligible project must be comprised of a single storage resource that is able to deliver at maximum capacity for at least eight hours.

II. PG&E's Preferences

The capacity that the storage is able to deliver for eight hours may be less than the facility's installed MW or interconnection limit. Counting towards the Mid-Term Reliability procurement targets will be limited to the maximum eight-hour capacity.

PG&E will consider technology diversity, including the ability to discharge beyond eight hours. PG&E will require operational experience with the proposed technology. In Appendix B, PG&E asks for Seller to demonstrate that the proposed technology for this solicitation has a completed project that has been in operation for at least one year and is at least 1 MW in size. Seller should be able to provide the operational data upon request.

PG&E has a preference for distribution connected resources to the extent that they are needed to fill AB 2514 targets. AB 2514 requires the distribution connected resources to be online by the end of 2024.

#### 4. **Other Non Fossil Fueled Resources**

PG&E will accept Offers in the Storage Offer Form for resources less than 8 hours durations that are able to come online by June 1, 2024. These resources must be at least four hours in duration and meet all applicable rules to count for Resource Adequacy. The need for these resources is described above in Section II.

PG&E has a preference for distribution connected resources to the extent that they are needed to fill AB 2514 targets. AB 2514 requires the distribution connected resources to be online by the end of 2024.

### **III.B. Imports**

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For Sellers offering a project that is all or partially outside of CAISO's footprint, Seller is directed to fill out the offer form using all the same guidance as projects inside the CAISO. Seller is responsible for securing the transmission that will be required to bring the energy into the CAISO. Seller is directed to explain in Appendix B how the resource will provide Resource Adequacy into the CAISO. Execution of any import deal is subject to PG&E's assessment and evaluation that the resource will be able to provide Resource Adequacy over the full contract term.

Imports must:

- (1) follow the CPUC and CAISO RA import rules in place at time of execution, and
- (2) come from new resources or increased capacity from existing resources, with online dates later than June 30, 2020.

Current RA import rules allow:

- Resource-specific imports, which must be dynamically transferred, either pseudo-tied or dynamically scheduled.
- Non-resource specific imports, which are imports that are not resource-specific imports as defined above. For non-resource specific imports, we want Participants to deliver from a pool of resources, where the pool is comprised of only the project under contract.

Import Offers need to identify in Appendix B what intertie the project will deliver to and what balancing authority the project is physically located in.

### **III.C. Project Size**

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See Table II.1 for applicable sizes.

### **III.D. Site Control**

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#### All Agreements for transmission- or distribution-connected Projects

Participants must demonstrate site control at the time of Offer submission. Examples of acceptable forms of Site Control are: 1) Fee Title, 2) Recorded Exclusive Easement, 3) Executed Option Agreement, 4) Lease (Non-revocable), 5) Lease Option (Non-revocable).

To demonstrate site control, counterparties must submit a signed copy from all parties of any of the acceptable forms.

Offers in the Zero-Emitting category will need to submit site control documentation for both components of the project.

### **III.E. Certain Performance and Operational Requirements**

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#### All Agreements for transmission- or distribution-connected Projects

Offers in this Solicitation must provide RA. Projects must meet the applicable CPUC RA requirements, CPUC Mid-Term Reliability requirements, CAISO requirements for deliverability, as well as any other requirements that will enable PG&E to receive all the RA benefits associated with the Project.

### **III.F. Electric Interconnection**

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#### All Agreements for transmission- or distribution-connected Projects

**Deliverability:** At the time of the Offer submittal, Participants must have Participating Transmission Operator (PTO) or Utility Distribution Company (UDC) documentation showing that the Resource has requested or is expected to receive Full Capacity Deliverability Status (FCDS) in order to support delivery of product, including RA, per the obligations of the corresponding agreement.

**Expected Online Date:** At a minimum, Resources must be in the queue and demonstrate that the project is in the queue. Seller must submit the most recent interconnection documentation provided by the PTO or UDC. PG&E will evaluate projects qualitatively based on the status of

their interconnection status and viability of coming online to meet the required COD. Participants must remain active in the applicable interconnection queue until the Resource's required network upgrades have been completed.

Transmission Upgrade Costs: Sellers that have not yet received transmission upgrade cost estimates from the PTO or UDC in the form of RNUs and DNUs should provide a Electric System Upgrades Cost Termination Rights value in the Offer Form. If projected upgrade cost from the PTO or UDC come in significantly higher than the input Electric System Upgrade Cost Termination Rights, PG&E may no longer consider the offer.

Import Offers are directed to provide evidence of their interconnection status and ability to meet the proposed online dates. Import Offers will also be required to provide additional evidence that Seller is able to secure transmission to get the energy and capacity from the project to the CAISO intertie that the project will deliver to. As mentioned in Section III. B Seller should indicate in Appendix B which CAISO intertie the project will deliver to.

Sellers are reminded that PG&E is releasing this RFO in its merchant function and in that function PG&E has no obligation nor ability to influence the Participating Transmission Operator or Utility Distribution Company. PG&E in its merchant function is not responsible or liable for delays in interconnection or transmission or distribution service or inability to obtain retail electric service for any Project. For more information, please refer to the Separation of Functions section of the applicable Agreement.

### **III.G. Incrementality**

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#### All Projects

Per the Decision, the resources must be incremental to the 2019-2020 IRP RESOLVE/SERVM baseline used in need determination, meaning they would need to be contracted and approved by the Commission after June 30, 2020. The 2019-2020 IRP RESOLVE/SERVM baseline generator list that includes all online and in-development resources will be made available and serve as the baseline for the procurement proposed<sup>16</sup>.

Units on the Baseline Generator List may count as incremental for D.21-06-035 compliance purposes if their planned retirement date in the Baseline Generator List is prior to the D.21-06-035 obligation year in question, provided that all other D.21-06-035 eligibility requirements are met. For repowered facilities with planned retirement dates beyond the D.21-06-035 obligation

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<sup>16</sup> Baseline Generator List of resources as required by D.21-06-035 available at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/long-term-procurement-planning/more-information-on-authorizing-procurement/irp-procurement-track>

year, only the additional capacity beyond the D.21-06-035 baseline capacity could be counted as incremental capacity for compliance purposes.

### III.H. Agreement Types

The following section describes the Agreements or term sheets for each of the products being solicited in this RFO. Sellers are directed to use the Agreements and term sheets to price their Offers in the Offer Forms. PG&E is seeking third-party owned and utility-owned projects for Phase 2. All Offers are considered third-party owned except for Offers utilizing the Utility Owned Build Own Transfer Agreement. The table below summarizes the commercial documents for each category.

Procurement Category	Agreement Type
Zero-emitting, co-located & contractually paired	<ul style="list-style-type: none"> <li>• Zero-emitting term sheet, AND</li> <li>• LTRAA w/ ES agreement</li> </ul>
Zero-emitting, hybrid	<ul style="list-style-type: none"> <li>• Zero-emitting term sheet, AND</li> <li>• Hybrid zero-emitting compensation structure, AND</li> <li>• LTRAA w/ ES agreement</li> </ul>
Zero-emitting Demand Response	<ul style="list-style-type: none"> <li>• TBD</li> </ul>
Firm Zero-emitting	<ul style="list-style-type: none"> <li>• Firm Zero-emitting term sheet</li> </ul>
Long Duration Storage	<ul style="list-style-type: none"> <li>• LTRAA w/ ES agreement, OR</li> <li>• Build Own Transfer term sheet (UOG)</li> </ul>
Other non-fossil-fueled resources	<ul style="list-style-type: none"> <li>• LTRAA w/ ES agreement, OR</li> <li>• Build Own Transfer term sheet (UOG)</li> </ul>

#### 1. Zero-Emitting Resources

Sellers are directed to fill out the Zero-Emitting Resource Offer Form, Appendix A1. Further instructions for pricing of Offers is provided below. Final form agreements are currently being developed by PG&E and will be shared during negotiations.

All Zero-Emitting Offers will be required to offer a Meter Contract Price of \$10/MWh with the first project variant; however Sellers may submit other Meter Contract Prices in additional variants.

All projects that include a solar component are directed to price their Offer with the assumption that there will be no new tariffs as a result of the Commerce



Department's investigation into anti-dumping circumvention from four Southeast Asian countries. Offers should indicate in the Offer Form and Appendix B if sourcing is expected to be impacted by this case.

i) Paired Zero-Emitting Resources

To determine pricing submitted in Appendix A1, Sellers offering co-located or contractually paired projects are directed to use 1) the terms in the Zero-Emitting Generation term sheet Appendix E1 to price the renewable generation component AND 2) the terms in the LTRAA w/ ES agreement Appendix E4 to price the storage component.

ii) Hybrid Zero-Emitting Resources

To determine pricing submitted in Appendix A1, Sellers offering hybrid projects are directed to use Appendix E2, the Hybrid Zero Emitting term sheet for the compensation structure, AND the commercial terms in both the Zero-Emitting Generation term sheet Appendix E1 and LTRAA w ES agreement Appendix E4.

Seller is also directed to provide a generation profile in Appendix A1 of the hybrid resource. This hybrid generation profile should be in addition to a generation profile of the renewable component by itself.

Seller should also provide an explanation in Appendix B for why they are offering the paired components as a hybrid configuration versus being co-located.

iii) Demand Response

For demand response Offers, PG&E directs the Seller to fill out Appendix B to explain how the offer complies with the requirements of the Zero-Emitting category in D.21-06-035 and the FAQ.<sup>17</sup> Sellers should reach out to PG&E through the solicitation mailbox with this information as soon as possible. PG&E will reach out the counterparty for further steps after an initial review.

## 2. Firm Zero-Emitting Resource

Sellers are directed to fill out the Firm Zero-Emitting Resource Offer Form, Appendix A2. The Firm Zero-Emitting Resource term sheet, Appendix E3, is provided for this category to give guidance in commercial terms and pricing.

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<sup>17</sup> Per Energy Division Staff's response to frequently asked questions on Mid-Term Reliability. [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035\\_faqv2\\_20220318\\_redline.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_faqv2_20220318_redline.pdf)

### 3. Long-duration storage

PG&E is soliciting Offers for long duration storage of various technology types.

#### i. **Long Term Resource Adequacy Agreement with Energy Settlement (LT RAA w/ES)**

PG&E is requiring all third party long duration storage technologies to price Offers using Appendix E4, PG&E's Long-Term Resource Adequacy Agreement with Energy Settlement.

Counterparties are directed to e-mail the solicitation mailbox if they have questions about this pricing.

#### ii. **Build Own Transfer (BOT) Agreement**

PG&E will consider Offers for storage resources that will provide Energy, Resource Adequacy, Ancillary Services, and any other Products available from the project. The project will be constructed on a third-party-owned site. PG&E would take ownership of the project once it has been constructed to the specifications in the BOT Agreement, is operational, and has satisfied certain tests. UOG Offers are instructed to fill out the UOG offer form, Appendix A4. For further details on the proposed BOT structure, see the BOT term sheet Appendix E5.

For the BOT Agreement, PG&E requires entering into a long-term agreement to support the ongoing maintenance and performance of the energy storage resource. For additional details on the proposed Long Term Performance and Maintenance Agreement (LTPMA) structure, see Appendix E6.

### 4. Other Non Fossil Fueled Resources

#### i. **Long Term Resource Adequacy Agreement with Energy Settlement (LT RAA w/ES)**

PG&E is soliciting Offers for incremental energy storage capacity. PG&E is requiring storage technologies seeking the "other" category of procurement to price Offers to PG&E's Long-Term Resource Adequacy Agreement with Energy Settlement. Sellers are to fill out the storage offer form, Appendix A3. Sellers may offer the same project to both the long duration category and this "other"

category. Sellers do not need to offer to both categories.

i. Build Own Transfer (BOT) Agreement

PG&E will consider Offers for storage resources that will provide Energy, Resource Adequacy, Ancillary Services, and any other Products available from the project. The project will be constructed on a third-party-owned site. PG&E would take ownership of the project once it has been constructed to the specifications in the BOT Agreement, is operational, and has satisfied certain tests. For further details on the proposed BOT structure, see Appendix E5. UOG Offers are instructed to fill out the UOG offer form, Appendix A4.

For the BOT Agreement, PG&E requires entering into a long-term agreement to support the ongoing maintenance and performance of the energy storage resource. For additional details on the proposed Long Term Performance and Maintenance Agreement (LTPMA) structure, see Appendix E6.

## IV.Credit

Upon execution of an Agreement with PG&E, the Participant must post collateral with PG&E. Furthermore, each Agreement requires that the Participant post additional collateral with PG&E following commercial operation of the facility in varying amounts and form, as provided in the applicable Agreement. If providing a Letter of Credit, please carefully review the Letter of Credit requirements set forth in the applicable Agreement. For reference, Table IV.1 and Table IV.2 below highlight a few of the collateral requirements in each of the Agreements.

**Table IV.1: Credit/Collateral Requirements for 3<sup>rd</sup> Party Owned Resources**

Category	Pre-Delivery Term Security	Delivery Term Security
<b>Zero Emitting (Energy Storage + Intermittent RPS)</b>	\$80/kW within 5 days of Execution	Greater of A) \$40/kW or B) 10% of the highest 3 consecutive years of estimated monthly payments
<b>Firm, Zero Emitting (Baseload RPS)</b>	\$90/kW within 5 days of Execution	5% Minimum Expected Revenue with a minimum of higher of (i) \$300/effective kW and (ii) \$250,000
<b>Storage</b>	\$80/kW within 5 days of Execution	Greater of A) \$40/kW or B) 10% of the highest 3 consecutive years of estimated monthly payments

**Table IV.2: Credit/Collateral Requirements for Utility Owned Resources**

Category	Pre-Delivery Term Security	Post COD/Post-closing
<p align="center"><b>Storage (Build Own Transfer)</b></p>	<p>\$15/kW due 10 business days after Execution date, and Greater of A) \$45/kW or B) 10% of Purchase Price due 10 Business days after CPUC approval</p>	<p>10% of the purchase price due on the Commencement Date plus an acceptable warranty by an issuer acceptable to the Utility.</p>

**V. Terms for RFO Participation**

**V.A. Agreement by Participant**

Each Participant submitting an Offer shall provide their electronic signature of a duly authorized officer of Participant in the Offer Form. By providing such signature the Participant (a) agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E, and (b) makes the following representations and warranties:

1. Participant has read, understands, and agrees to be bound by all terms, conditions, and other provisions of the RFO.
2. 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.
3. Participant is not PG&E, an affiliate of PG&E, PG&E Corporation, or any of their affiliates.
4. Participant has obtained all necessary authorizations, approvals and waivers, if any, required of Participant as a condition of: (i) submitting its Offer and, if Participant's Offer is selected; (ii) executing an Agreement with PG&E in the form submitted with its Offer, or at the conclusion of negotiations.
5. 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, and all amendments thereto.
6. Participant represents that it has carefully considered the terms and conditions of its Offer and that it is submitting its Offer in good faith, such that PG&E may reasonably expect Participant to enter into a definitive Agreement, and to negotiate, if requested by PG&E, as provided in Section XII, Execution of Agreement, below.

7. 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 and has not engaged in activities in violation of State or Federal antitrust laws or other unlawful or unfair business practices in connection with the RFO ("Prohibited Communication Activities").

Notwithstanding the foregoing, Participant may engage in communications with its advisors, counsel, experts or employees who have a need to know the content of the communications and have agreed to keep such information confidential (collectively, "advisors"). In addition, Participant may engage in communications with other Participants submitting an Offer in the RFO and their advisors ("Other Participants"), subject to the following requirements: (1) such Other Participants are under common ownership and control with Participant; (2) Participant and Other Participants do not engage in Prohibited Communication Activities; and (3) in the event Participant and Other Participant share a common advisor, Participant has, prior to sharing communications with such Other Participant and the common advisor, provided PG&E with (a) notice of such Other Participant and common advisor and (b) an attestation that Participant has not and will not engage in Prohibited Communication Activities with either the Other Participant or the common advisor.

8. If Participant's Offer is selected for the Shortlist and Participant accepts the position on the Shortlist, then Participant agrees to acknowledge acceptance of a Confidentiality Agreement, to negotiate in good faith, and to inform PG&E if the Project that is the subject of the Offer on the Shortlist has been submitted into another solicitation with PG&E or any other entity.
9. If a Participant is submitting an Offer jointly with other entities, and the Offer is selected for the Shortlist, PG&E may require, as part of the shortlisting process, additional representations and warranties, along with additional documentation, from all entities involved in the joint Offer (see Section VI.D, Required Information, below).
10. Participant will promptly notify PG&E of any change in circumstances that may affect its ability to fulfill the terms of its Offer, at any time from Offer submission to PG&E's acceptance of the Offer, as evidenced by PG&E's execution of an applicable Agreement, or Participant's withdrawal of the Offer.
11. Participant will list any additional services its Energy Storage resource will provide outside of this solicitation, per CPUC D.18-01-003, on Multiple-Use Application Issues.

A BREACH BY ANY PARTICIPANT OF THE REPRESENTATIONS AND WARRANTIES IN SECTION V.A OF THIS SOLICITATION PROTOCOL, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO PG&E UNDER APPLICABLE LAW, IS GROUNDS FOR IMMEDIATE

DISQUALIFICATION OF SUCH PARTICIPANT FROM PARTICIPATION IN THE RFO AND, DEPENDING ON THE NATURE OR SEVERITY OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.

#### **V.B. PG&E's Reservation of Rights**

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This RFO is an invitation to submit Offers to PG&E; it does not constitute an offer to buy and creates no obligation to execute any Agreement or to enter into a transaction under an Agreement as a consequence of the RFO. PG&E reserves the right to request information from a Participant at any time during the solicitation process. PG&E reserves the right, in its sole discretion, to reject any Offer at any time for any reason, including but not limited to grounds that the Offer does not conform to the terms and conditions of this RFO or contains terms that are not acceptable to PG&E. PG&E also retains the discretion, in its sole judgment, at any time; (a) to formulate and implement new or additional criteria for the evaluation and selection of Offers; (b) to negotiate with any Participant or withdraw PG&E's Shortlist selection; or (c) to modify this RFO as it deems appropriate to implement the RFO and to comply with applicable law or other direction provided by the CPUC. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time for any reason. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any third party, including any Participant. PG&E will not reimburse the Participant for its expense of participating in this RFO under any circumstances.

#### **V.C. Safety**

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PG&E is committed to providing safe utility (electric and gas) service to its customers. As part of this commitment, PG&E requires that the Participants recognize safety is of paramount importance. In connection with this Solicitation and executed Agreement, Participants will be required to meet certain safety standards, provide safety information related to the technology for the Project, and provide information regarding safety history, including for the entities that will construct, operate, or maintain the Project(s). Per Appendix B and Appendix H of this Solicitation, Participants are required to identify in their Offers known safety-related hazards and risks associated with their technology and Participant's ability to mitigate safety risks and comply with applicable safety-related codes and standards identified by the Participant.

Participants selected for the Shortlist may be required to demonstrate that they meet the acceptable prequalification criteria similar to Section 3 of PG&E's Contractor Safety Program Requirements (<http://www.pge.com/contractorsafety>), which may require Shortlisted Participants to register with PG&E's primary contractor safety management system, ISNetworld ([www.isn.com](http://www.isn.com)). PG&E recommends Participants familiarize themselves with ISNet and PG&E's Contractor Safety Program prequalification requirements.

A Participant's obligations with respect to safety may vary based on the particular Agreement and Project and product type, as well as the commercial relationship of the entities involved in the transaction. Each of the Agreements contain specific requirements intended to ensure that the Participant and the entities that construct, operation, or maintain the Project, as applicable, do so in a safe, reliable and efficient manner that protects the public health and safety of California residents, business, employees, and the community. Participants will be responsible for any fees and costs associated with meeting PG&E's safety requirements in the Solicitation and the Agreement. Prior to a Participant submitting an Offer, PG&E recommends that Participants review the safety provisions in the form of Agreement and PG&E's Contractor Safety Program Requirements.

#### **V.D. Shortlist Offer Deposit**

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~~PG&E is no longer requiring shortlist offer deposits in this RFO. If Participant is notified that it is eligible for PG&E's Shortlist and accepts the Shortlist position, then the Participant must post a deposit (the "Shortlist Offer Deposit") in the amount of \$3 per kilowatt (kW) of Payment Quantity or Contract Quantity (as that term is defined in the form Agreements) for each Offer on the Shortlist before 5:00 P.M. PPT on August 8, 2022 or within five business days after shortlist notification, whichever comes first.<sup>18</sup> Participant shall maintain the Shortlist Offer Deposit with PG&E until the termination of negotiation with PG&E or as otherwise provided pursuant to the terms of the definitive Agreement.~~

##### ~~**1. Purpose of Shortlist Offer Deposit**~~

~~The Shortlist Offer Deposit is intended to secure the obligation of each Participant with respect to this Solicitation Protocol and to negotiate a definitive Agreement, as expressly provided in Section XII, Execution of Agreement, below.~~

##### ~~**2. Form of Shortlist Offer Deposit**~~

~~The form of the Shortlist Offer Deposit may be either: (a) a cash deposit, or (b) a Letter of Credit. These two options are detailed below. NOTE: If the Participant fails to submit the Shortlist Offer Deposit within the required time period, the Participant's Offer may be rejected and removed from the Shortlist.~~

##### ~~a) Cash Deposit~~

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<sup>18</sup>~~This date will move day for day if the Shortlist Notification Date is earlier or later than August 1, 2022.~~

~~Cash may be deposited with PG&E to be held as collateral through a wire transfer, as instructed in the Shortlist Notification. PG&E will pay interest on each cash deposit, calculated on a monthly basis and compounded at the end of each calendar month, from the date on which the cash is fully deposited to the date on which the deposit is returned to the Participant. The applicable interest rate will be the rate per annum equal to the Monthly Federal Funds Rate (as reset on a monthly basis, as of the first day of the month, 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 three hundred sixty (360) day year and shall be payable upon the return of the cash deposit.~~

~~b) Letter of Credit~~

~~A Letter of Credit posted by a Participant as collateral must satisfy all of the requirements below.~~

~~“Letter of Credit” means an irrevocable, non-transferable, stand-by letter of credit in the form attached hereto as Appendix G1, (a) issued either by (i) a U.S. commercial bank or (ii) a U.S. branch of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by PG&E, and (B) it is acceptable to PG&E in its sole discretion; and (b) for which the issuing U.S. bank or foreign bank, must have a Credit Rating of at least “A” from S&P or “A3” from Moody’s, with a stable outlook designation. In the event the issuer is rated by both rating agencies and the ratings are not equivalent then the lower rating will apply. If the Letter of Credit is issued by a branch of a foreign bank, PG&E may require changes to the form Letter of Credit. All costs of the Letter of Credit shall be borne by Participant. The Letter of Credit should be sent by overnight delivery to:~~

~~\_\_\_\_\_ Pacific Gas and Electric Company  
\_\_\_\_\_ Attn: Manager, Credit Risk Management  
\_\_\_\_\_ 77 Beale Street, Mail Code B28L  
\_\_\_\_\_ San Francisco, CA 94105~~

~~3. Return of Shortlist Offer Deposit~~



~~The Shortlist Offer Deposit will be returned to Participant by PG&E under one or more of the following conditions:~~

- ~~a) Upon execution of the Agreement and Seller's submission of the collateral required under the Agreement;~~
- ~~b) PG&E's rejection of the Offer subsequent to Shortlist selection; or~~
- ~~c) In the course of negotiations, if PG&E and Participant cannot agree on the terms of the Offer and Agreement.~~

#### ~~4. Forfeiture of Shortlist Offer Deposit~~

~~The Participant will forfeit the Shortlist Offer Deposit in its entirety in the event of: (i) any material misrepresentation in information submitted in Participant's Offer; (ii) Participant unilaterally withdrawing its Offer from the Solicitation; or (iii) a breach of this Solicitation Protocol including failure to register and complete the ISNet prequalification. In the event that Participant forfeits the Shortlist Offer Deposit, PG&E will be entitled to draw upon the Shortlist Offer Deposit in its entirety as payment for direct and indirect damages incurred in connection with the Participant's misrepresentation or breach of this Solicitation Protocol.~~

#### ~~5. Shortlist Offer Deposit as Security~~

~~PG&E may retain any cash deposit or draw on any Letter of Credit provided as a Shortlist Offer Deposit as security under an executed Agreement in the event that Participant fails to provide additional security and/or agrees to PG&E's retention of the Shortlist Offer Deposit as collateral in accordance with the terms of the executed Agreement, if applicable.~~

## VI. Offer Submittal Process

### VI.A. Offer Form Information

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Participants are strongly advised to carefully review the relevant Agreement(s) and term sheets prior to inputting data into an Offer Form. PG&E will utilize the Offer Form submitted to populate the relevant data in the Agreement(s) or term sheet. Participants should input data into Offer Forms with the understanding that this information will result in terms with contractual implications. Participants will need to ensure that the Offer Form is completely and accurately filled out. Participants who request changes to the information in their Offer Form after the offer submittal date may be removed from any further participation in the Solicitation and if shortlisted, may forfeit their Shortlist Offer Deposit.

## VI.B. Phase 2 Submittal Process Overview

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All Offers must be received by June 1, 2022 at 1:00 P.M. (PPT), as specified in Table I.1.

Offer packages for utility ownership projects must be independent and packaged separately from any non-utility ownership Offer package and materials.

**Submitting Documents:** All Offers for this RFO *must* be submitted electronically through Power Advocate. Prior to submitting an Offer, Participants must register with Power Advocate. Please ensure Offers are submitted to the applicable site. PG&E strongly encourages Participants to register with Power Advocate as early as possible in advance of the Offer submission deadline. PG&E will post detailed instructions on the Mid-Term Reliability RFO website for submitting Offer(s) and using the online platform. Power Advocate registrants should be listed under the entity submitting the Offer, not its consultants.

Power Advocate Link:

- 3<sup>rd</sup> Party Owned – Zero Emitting:  
<https://www.poweradvocate.com/pR.do?okey=132912&pubEvent=true>
- 3<sup>rd</sup> Party Owned – Firm Zero Emitting:  
<https://www.poweradvocate.com/pR.do?okey=132913&pubEvent=true>
- 3<sup>rd</sup> Party Owned – Storage:  
<https://www.poweradvocate.com/pR.do?okey=132914&pubEvent=true>
- Utility Owned – Storage: (Participants must submit Appendix D2-Utility Owned Confidentiality Agreement, before access is granted)  
<https://www.poweradvocate.com/pR.do?okey=132915&pubEvent=true>

Each Offer should be uploaded as a “Commercial and Administrative” document type in Power Advocate. If submitting more than one Offer, each Offer should be in separate zip file. All document file names should **not** contain any special characters such as \*&#, and please keep file names short, but do include short references to Participant’s name (such as an acronym), project name, and the appendix (e.g., App B). **For Offer Forms contained within each Offer submittal, please make sure the Offer Form file name is the same as the Offer ID for each offer as created in the corresponding form.**

**Electronic Document Formats:** Electronic documents must be submitted as Microsoft Word, Microsoft Excel, or pdf files, as identified in Table VI.1. However, maps or drawings may be in alternate formats (e.g., jpg, kmz) as appropriate. Each Appendix must be a separate document, not one long document. To the extent possible, pdf files should be provided in a searchable

format. The Participant should not provide documents in other electronic formats, unless specifically requested.

Offers must contain all required information noted in Table VI.1, Table VI.2, or Table VI.3 below and must be organized in accordance with these instructions.

The following tables outline the required documents by technology type that must be submitted for each offer package to be complete.

**Table VI.1: Mid-Term Reliability RFO Phase 2 Offer Package for All Offers**

Appendix	Title	Description	Format
	Introductory Letter	Describe the Project and Offer information.	MS Word
A1 – A4	Offer Form	<p>Select the appropriate Appendix A1, A2, A3, or A4 depending on the category and attributes of the project.</p> <p>Appendix A4 is to be used for the Build Own Transfer Offers.</p> <p>Provide the requested information.</p> <p>Offer Form file name must be the same as Offer ID contained within the file. Offer Form information must be consistent with Agreements and Term Sheets</p>	MS Excel
B	Supplemental RFO Documents Required for Participation	<p>Appendix B is to be used for all Offers</p> <p>Describe the existing or proposed Project, format as single spaced, and include the requested information.</p> <p><b>Participants must fill in every section of Appendix B that applies to the project within the actual document. Do not reference an additional document in answers.</b></p>	MS Word
C	FERC 717 Waiver	Authorizes the disclosure of Participant’s transmission-related information to PG&E’s marketing or merchant business unit (“PG&E Merchant”).	MS Word

Appendix	Title	Description	Format
		<i>Only for projects located in PG&amp;E's service territory</i>	
G1	Letter of Credit (if applicable)	Provide the requested Letter of Credit information, if using a Letter of Credit for the Shortlist Offer Deposit (see Section V.D, Shortlist Offer Deposit, for more information on the two accepted forms for the Shortlist Offer Deposit).	MS Word
G2	Request for Taxpayer ID (W-9) Form (if applicable)	Provide the requested information if posting a cash deposit.	PDF
H	Safety Review Questionnaire	Provide the requested project safety information.	MS Excel
	Map of Project Facilities	Provide the following files of the Project's major facility components, which include, at a minimum, the generation facility, access roads, electric and gas connection routes to utility facilities, and the outline of the land parcel that the facilities are located on.	Google KML/KMZ or ESRI Shapefile
	Interconnection Report or Agreement	<p>Provide an interconnection report or agreement as a result of an interconnection request demonstrating that the project is in the CAISO queue. Provide the most recent interconnection documentation available including any Material Modification Assessments. Additionally, provide evidence that the project has received or is expected to receive Full Capacity Deliverability Status (FCDS).</p> <p>Import offers should submit an interconnection report or agreement from their balancing authority or PTO that demonstrates the resource will come online in time for the online date.</p>	PDF

### **VI.C. Need for Complete Offer Packages**

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Each Participant's Offer must be complete at the time of submission. Participant's failure to provide all required information may prevent PG&E from being able to evaluate and rank the Offer, which means that the Offer may not be considered for the Shortlist.

**Due to the time-sensitive nature of this RFO, PG&E will not be able to engage with Sellers that submit incomplete Offers or inaccurate Offer information.**

### **VI.D. Number of Offers and Variations Allowed Per Seller**

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Participants may submit up to 5 offer variations at a specific interconnection point.

### **VI.E. Utility Owned Confidentiality Agreement**

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Participants must read and agree to Appendix D2 – Utility Ownership Confidentiality Agreement before they are given access to Power Advocate. Participants can send their acknowledgement via email to [MidTermRFO@pge.com](mailto:MidTermRFO@pge.com).

### **VI.F. Additional Offer Information**

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Note on Joint Offers: If a Participant wishes to submit a joint Offer with another Participant, each Participant must first provide notice to PG&E and obtain PG&E's prior written consent before submitting any such Offer. In connection with evaluating any such request and as a condition of any such consent, PG&E may require additional documentation or conditions, including, without limitation, retaining separate legal counsel, restricting the sharing of certain information, or requiring all Participants submitting the joint Offer to execute a modified Confidentiality Agreement and agree to, and execute, modified terms for RFO participation, similar to those set forth in Section V.A, Agreement by Participant. Any Participant submitting a joint Offer must comply with its obligations under Section V.A.7, including the prohibition against Prohibited Communication Activities.

Note on Multiple Offers: Participants should address any potential changes to the Project due to multiple Offers in the appropriate Appendices. A separate Offer Form is required for each Offer, but an entirely new offer package is not required. There is no need to submit unchanged, duplicate Appendices if the information is the same, but please provide a short note indicating which sections are duplicative over multiple Offers.

## VII. Pricing

Participants are required to provide a complete Offer package and include pricing in their Offer Form, using the corresponding Agreement or term sheet as guidance. The only exception to this is for demand response resources which should fill out Appendix B1 and e-mail PG&E at the solicitation mailbox for initial review as soon as possible.

## VIII. Evaluation of Offers

PG&E's Evaluation will apply "least-cost, best-fit" principles, using quantitative and qualitative criteria to evaluate the submitted Offers, which may include, but are not limited to:

### Quantitative Attributes:

The quantitative valuation compares an Offer's costs to its benefits to calculate the Net Market Value ("NMV"). The cost may consist of the contract fixed cost, variable cost, and transmission network upgrade cost. The benefit may consist of capacity value, energy value, and green attributes to the extent provided in the Agreement or term sheet.

Additionally, the valuation will include adders to the NMV to create an Adjusted NMV . Offers will be ranked based on the Adjusted NMV. The Adjusted NMV includes impacts a resource has on compliance and how it fits with PG&E's energy position.

For long duration storage Offers, projects will be attributed a RA value based on a four hour duration. If the project's capacity while delivering for eight hours is less than the interconnection capacity, the project may have up to double the RA capacity compared to IRP counting.

### Qualitative Attributes:

In addition to the criteria specifically listed above, PG&E may consider qualitative factors that could impact the value of an Offer, including, but not limited to: interconnection status; credit; safety history; previous adverse commercial experience; Agreement or term sheet modifications; ability to meet the Initial Delivery Date, including commercial preferences for earlier dates; Supply Chain Responsibility status; developer experience; location and completeness of Offer.

**Any or all qualitative factors may impact a Project's status for Shortlisting or Agreement execution.**

## IX. Confidentiality Agreement

Except with PG&E's prior written consent, no Participant shall disclose its participation in this Solicitation (other than by attendance at any meeting held by PG&E with respect to the Solicitation) 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 "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 or PG&E Corporation's, officers, directors, 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. PG&E may use Confidential Information, consolidated with other market information and not specifically attributed to the Provider, to analyze or forecast market conditions or prices, for its own internal use or in the context of regulatory or other proceedings.

It is expressly contemplated that materials submitted by a Participant in connection with this RFO will be provided to the CPUC, its staff, the Independent Evaluator, PG&E's Procurement Review Group ("PRG"), and Cost Allocation Mechanism ("CAM"). PG&E will seek confidential treatment pursuant to D.08-04-023, General Order 66-C, and Public Utilities Code section 583, 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 CPUC Approval. PG&E will also seek confidentiality and/or non-disclosure agreements with the PRG applicable to the Participant's confidential information. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to a Participant's confidential information, or that those confidentiality agreements or orders will be obtained from and/or honored by the PRG or the CPUC.

With respect to any information or documents provided by the Participant, PG&E shall have the right to disclose to the CPUC, its staff, the Independent Evaluator, the PRG, CAM, CAISO, other control area operator or balancing authority and any other entity in order to comply with any applicable law, regulation, or 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 the Participant and without liability or any responsibility of PG&E to the Participant.

Once a Participant is selected for the Shortlist, the Participant must acknowledge acceptance of the Confidentiality Agreement in the applicable form attached as Appendix D within two (2) business days of notification of their selection in order to continue to participate in the RFO.

Depending upon Participant's submittal in response to Appendix B, PG&E may require additional confidentiality obligations with collaborating entities.

## **X. Procurement Review Group**

Following completion of the evaluation and ranking of Offers, PG&E will submit the results of the evaluation and its recommendations to its PRG. Such information will include at least the notional value ranking of Offers, the consideration of non-price evaluation criteria, and PG&E's recommendations based on such information. 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 Solicitation, including the timing of the selection of Offers and the obtaining of CPUC Approval.

## **XI. Shortlist Notification to Participants**

The Solicitation schedule set forth in Section I.C, Schedule Overview, may be modified at PG&E's sole discretion. PG&E expects to be able to provide an e-mail notification to Participants whose Offers have been selected for the Shortlist and invite each Participant on the Shortlist to conduct discussions and limited negotiations (Participants should consider the form of Agreement in its current state) with PG&E regarding the Offer(s) selected for the Shortlist. PG&E anticipates notifying those Participants whose Offers were not Shortlisted shortly thereafter. As previously stated, PG&E may contact Participants prior to Shortlisting during the evaluation process to seek or notify Participants of deficiencies in their Offers or Offer Packages, however Participants should not expect this level of guidance due to the time constraints of the RFO.

## **XII. Execution of Agreement**

By submitting an Offer, Participant agrees, if its Offer is selected for PG&E's Shortlist, that it is prepared to negotiate and execute a definitive Agreement consistent with the form of Agreement submitted with the Participant's Offer, including the data which must be consistent with the Offer Form and containing such other terms and conditions acceptable to PG&E and the Participant. PG&E's evaluation of a Participant's Offer and PG&E's shortlisting of a Participant will not constitute an agreement by PG&E to any of the Participant's form of Agreement submitted.



### **XIII. Approvals**

After Agreement execution, PG&E will submit executed 3<sup>rd</sup> Party Owned Agreements to the CPUC for approval via an Advice Letter filing. PG&E will submit executed Utility Owned Agreements to the CPUC for approval via an Application filing.

The effectiveness of any executed Agreement is expressly conditioned on PG&E's receipt of final and non-appealable CPUC approval of such Agreement.

Whether an Agreement goes into effect or not is expressly conditioned on PG&E's receipt of Approval, which is more specifically defined in each of the Agreements and Term Sheet. At a minimum PG&E will require a finding from the CPUC that PG&E's entry into the Agreement satisfies PG&E's compliance with the Final Decision, that the terms are reasonable, and that PG&E will recover the costs incurred under the Agreement in its rates. Additionally, most Agreements will be subject to a no-fault termination if Approvals does not occur within a specified period, as set forth in each of the applicable Agreements; CPUC Approval typically requires the approval of the Agreement by the CPUC to be final and non-appealable without any modifications that are unacceptable to either of the parties.

### **XIV. Waiver of Claims and Limitations of Remedies**

Except as expressly set forth in this Protocol, by submitting an Offer, Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the Solicitation, the Solicitation Protocol and/or any attachments to the Solicitation Protocol ("Waived Claims"). The assertion of any Waived Claims by Participant may, to the extent that Participant's Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the Solicitation or otherwise.

By submitting an Offer, Participant agrees that the only forums in which Participant may assert any challenge with respect to the conduct or results of the Solicitation is through the Alternative Dispute Resolution ("ADR") services provided by the CPUC pursuant to Resolution ALJ 185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC's website at the following link:

[http://docs.cpuc.ca.gov/published//Agenda\\_resolution/47777.htm](http://docs.cpuc.ca.gov/published//Agenda_resolution/47777.htm)

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the Solicitation is a protest to PG&E's filing seeking CPUC Approval of one or more Agreements entered into as a result of the Solicitation, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the Solicitation 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 Solicitation that the CPUC determines was not previously conducted in accordance with the Solicitation Protocol. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorney's fees. Unless PG&E elects to do otherwise in its sole discretion during the pendency of such a protest or ADR process, the Solicitation and any related regulatory proceedings related to the Solicitation, will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the Solicitation or PG&E has elected to terminate the Solicitation.

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 a Participant's protest to an advice letter filing with the CPUC resulting from the Solicitation.

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.

## **XV. 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 the Participant for any expenses incurred in connection with the RFO regardless of whether such Participant's Offer is selected, not selected, rejected or disqualified.