



*Pacific Gas and  
Electric Company®*

**Distribution Resources Plan**  
**Request for Offers**  
**Demo D-Huron Substation**  
**Solicitation Protocol**

**2017**  
**Distribution Resources Plan Request for Offers**

**May 16, 2017**

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## I. Introduction and Overview

### I.A. Overview

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Pacific Gas and Electric Company (“PG&E”) is issuing this 2017 Distribution Resources Plan (DRP) Request For Offers (“RFO” or “Solicitation”) to demonstrate how Distributed Energy Resources (DERs) can provide distribution services to increase distribution hosting capacity for periods of high DER output conditions, and distribution load capacity services for periods of high demand, as required by California Public Utilities Commission (“CPUC”) Decision (“D.”) 17-02-007<sup>1</sup> (the “DRP Decision”).

This Solicitation Protocol sets forth the terms and conditions by which PG&E will seek Offers. An entity submitting an Offer in response to this RFO, hereinafter a “Participant,” agrees to be bound by all the terms, conditions and other provisions of this RFO as contained in this Solicitation Protocol and any changes or supplements to it that may be issued by PG&E. The obligations of the Participant are further described in Section VII.A, Agreement by Participant.

### I.B. DRP RFO Website and Communication

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PG&E has established a website at [www.pge.com/rfo/DRP2017](http://www.pge.com/rfo/DRP2017), where Participants may access and download all RFO documents, announcements and Q&As that are posted.

To ensure the accuracy and consistency of information provided to all Participants, PG&E prefers that Participants communicate by e-mail to both [DRPRFO@pge.com](mailto:DRPRFO@pge.com), and to the Independent Evaluator (“IE”), [Alan.Taylor@sedwayconsulting.com](mailto:Alan.Taylor@sedwayconsulting.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.

All correspondence to and from a Participant will be monitored by the IE, Alan Taylor of Sedway Consulting, who the CPUC selected to oversee this Solicitation. The IE is an independent, third-party evaluator who is required by the CPUC to monitor and evaluate certain competitive solicitations.

### I.C. Schedule Overview

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The expected schedule for the RFO is listed in Table I.2 below.

**Table I.1: PG&E Distribution Resources Plan Solicitation Schedule**

Ongoing:	Participants are invited to register online to receive notices from
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<sup>1</sup> Decision Adopting Distribution Resources Planning Demonstration Project D, D.17-02-007.

	PG&E regarding the RFO at <a href="http://www.pge.com/rfo">www.pge.com/rfo</a>
May 16, 2017	PG&E issues RFO
May 24, 2017	Participants' Webinar
July 17, 2017, 1:00 PM Pacific	Deadline for PG&E to receive Offers
July 18, 2017	Deadline for IE to receive a flash-drive of Offers
September 29, 2017	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")
October 13, 2017, 5:00 PM Pacific	Participants notify PG&E whether they accept Shortlist status and acknowledge acceptance of the Confidentiality Agreement
By June 2018	PG&E submits Agreements with final Shortlist Participant(s) for CPUC Approval

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 after selecting the Shortlist. 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, CPUC Approval. PG&E will seek CPUC Approval of all executed Agreements. PG&E reserves the right to seek CPUC Approval of certain Agreements prior to execution of others. The CPUC's approval process may take 6 months or longer from the date PG&E submits an Agreement for CPUC Approval.<sup>2</sup> Participants should factor the CPUC's approval process into their project development timelines and proposals.

#### **I.D. Events in the RFO Schedule**

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- 1) **Online Registration:** Participants should register at the RFO website <http://www.pge.com/rfo> to receive timely announcements and updates about this RFO and other RFO-related information via email. Online registration is not required, but is strongly recommended.

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<sup>2</sup> Rule 12.1(c) of the Commission's Rules of Practice and Procedure.

- 2) PG&E issues the Solicitation: All documents associated with the Solicitation, including documents which Participants will need to prepare their Offer, are posted to PG&E’s public website under “2017 Distribution Resources Plan RFO.”
- 3) Participants’ Webinar: PG&E will hold a Participants’ Webinar on May 24, 2017. The Webinar will provide an overview of the RFO and the requirements. Call-in information will be provided on the Solicitation website.
- 4) Offers Due: Offers must be received by PG&E by 1:00 P.M. Pacific on July 17, 2017. Participant Offer package(s) must be submitted through the online platform, Power Advocate. Offer package(s) must include the documents described in Section V.C, Required Information. PG&E encourages Participants to begin developing their Offer packages early and to send questions regarding the preparation of their Offer(s) to [DRPRFO@pge.com](mailto:DRPRFO@pge.com). In addition, as described below in Section V.A., Participants must submit their offer materials on a USB flash-drive to the IE for delivery no later than July 18, 2017.

PG&E may request a meeting or conference call to discuss a Participant’s Offer. The purpose would be to provide PG&E with a full understanding of the details of an Offer for the evaluation process. The IE will be invited to participate in these discussions.

- 5) PG&E Selects Shortlist: PG&E expects to notify Participants selected for PG&E’s Shortlist by October 16, 2017. PG&E reserves the right to request additional information and to add additional Participants to the Shortlist following the initial selection.
- 6) PG&E and Participants Execute Agreements: PG&E expects to negotiate with Participants on the Shortlist and may select any subset of Shortlisted Offers for execution of an Agreement.
- 7) PG&E Submits Agreements for CPUC Approval: PG&E will seek CPUC Approval of each Agreement, as further described in Section XIII, CPUC Approval.

## II. RFO Goals

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

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PG&E is seeking to enter into Agreements with DERs (“Projects”) that meet the specifications noted in Section IV, Eligibility Requirements.

The proposed location for this pilot demonstration is PG&E’s Huron substation, which is located within PG&E’s Gates distribution planning area. Huron Substation was selected due to its high penetration of DERs against this area’s distribution capacity. High penetration of DERs can lead to many possible grid issues if not addressed, including thermal overloading, and this RFO is seeking Projects to address these issues.

PG&E selected this distribution planning area as the subject of this Solicitation due to its unique loading profile that is forecast to resemble the “duck curve”: high distributed generation output during peak solar production hours and high peak demand during the evening hours. The distribution transformer may overload capacity during both conditions.

As a result, PG&E is seeking two distinct products through this RFO for delivery terms of 3 or 5 years. Participants must design, procure, finance, and cause the Project to be constructed, completed, tested and ready for placement into commercial operation by the online date specified below:

1) 4 MW of distribution hosting capacity

Due to high amounts of distributed generation and low load, PG&E expects to have reverse flow overload conditions starting in 2020. PG&E is seeking to procure 4 MW of DERs to provide hosting capacity by reducing generation or shifting load in accordance with the following parameters:

Online Date:

- February 1, 2020

Delivery Months:

- February through October

Delivery Days:

- Every day of the week

Delivery Hours:

- 10:00 am to 4:00 pm

PG&E’s objective is to address the reverse flow problem by reducing generation or moving load from a high load period into a low load period. Proposals that only increase load during the 10 a.m. to 4 p.m. time period will not be accepted. For load shift offers, Participants are required to describe the types of load they intend to move to the 10 a.m. to 4 p.m. Delivery Hours and the hours that it currently occurs.

2) 2 MW of distribution load capacity

Due to peak demand, PG&E expects to have load overload conditions starting in 2020. PG&E is seeking to procure 2 MW of DERs to provide load capacity by increasing

generation, reducing electrical consumption, or shifting load in accordance with the following parameters:

Online Date:

- June 1, 2020

Delivery Months:

- June and July

Delivery Days:

- Every day of the week

Delivery Hours:

- 6:00 pm to 12:00 am (midnight)

### 3) Restricted Periods

PG&E does not want the DERs it procures through this RFO to create additional problems on the distribution system. Any DERs procured through this Solicitation must not operate in a manner that negatively impacts the system. Projects may not operate during the following time periods:

- No increase in net loading (increase in electrical consumption or decrease in generation):
  - Between 5 pm and 7 am every day, April through October;and
- No decrease in net loading (decrease in electrical consumption or increase in generation):
  - Between 9 am to 5 pm every day of the year

## III. PG&E Customer Engagement Support

As part of this Solicitation, PG&E is offering different levels of customer engagement and lead generation support through its Customer Relationship Manager (CRM) team. The intent is to aid Participants in acquiring customers for behind-the-meter Projects by leveraging existing customer relationships, helping target high priority leads, initiating the customer relationship, and ultimately handing off the customer to the Participant. Typical functions of PG&E Customer Relationship Managers include:

- Identify opportunities within targeted territory/customer base
- Cultivate new & existing customer relationships
- Stimulate targeted customer interest, qualifying and generating new leads
- Qualify leads through the understanding of key customer needs

CRM support will be offered on an hourly basis. Participants may select zero, 50 or 200 hours of customer engagement support. Participants selecting 50 or 200 hours of customer engagement support are required to submit an Offer with zero hours.

## IV. Eligibility Requirements

Offers must meet the applicable specifications noted below.

### IV.A. Offer Eligibility

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PG&E must procure both distribution hosting capacity and distribution load capacity in accordance with Section II.A from one or more Projects. Participants may offer one or both products, but Offers for each product must be able to provide distribution services by the Online Date for all the Delivery Months, Delivery Days, and at least one of the following blocks of Delivery Hours:

For distribution hosting capacity:

- 10:00 am to 1:00 pm
- 1:00 pm to 4:00 pm
- 10:00 am to 4:00 pm

For distribution load capacity:

- 6:00 pm to 9:00 pm
- 9:00 pm to 12:00 am (midnight)
- 6:00 pm to 12:00 am (midnight)

Offers may be for Projects located in-front-of-the-meter or behind-the-meter. Projects must be a DER, which include:

- Demand Response
- Energy Storage
- Energy Efficiency
- Permanent Load Shift
- Renewable Distributed Generation (including curtailment)
- Electric Vehicles

Offers must be for at least 500 kW on a standalone or aggregated basis. Offers may not exceed 2 MW if offering distribution load capacity, or 4 MW if offering distribution hosting capacity.

Offers must be in 500 kW increments.

**IV.B. Resource Double Payment/Double Counting**

The goal of this Solicitation is to acquire DERs that are incremental to both existing DERs and DERs that are projected to be adopted during the forecast horizon. Participants are required to describe how their proposed Project is incremental to PG&E’s programs, tariffs, or other solicitations:

- PG&E’s EE program portfolio
- PG&E’s DR program portfolio
- PG&E’s Self-Generation Incentive Program (SGIP)
- PG&E’s Net Energy Metering (NEM) program
- PG&E’s energy storage solicitations
- PG&E’s renewable generation solicitations

Only DERs that are categorized as wholly incremental or partially incremental will be considered eligible for the purposes of this Solicitation. Participants must submit Appendix B5, Resource Double Payment/Double Counting, to show how their proposal is either wholly or partially incremental to ongoing PG&E incentive programs, tariffs, or other solicitations. Offers may be considered either fully incremental or partially incremental. The below table describes what PG&E considers to be wholly, partially, or non-incremental.

Category	Description	Incremental
Not already sourced through another program, tariff, solicitation	New technology or service that is not already being sourced or reasonably expected to be sourced through another solicitation, program, or tariff that meets the identified distribution need.	Yes.
Partially sourced through another program, tariff, solicitation	Existing technology or service that meets the identified distribution needs but at least some component of that technology or service is already being sourced through	Yes, but only the portion (if any) that is not currently being sourced or can reasonably be expected to be sourced through another solicitation, program, or tariff with

	another solicitation, program, or tariff.	the same locational and temporal granularity and performance guarantees as the bid technology.
Wholly sourced through another program, tariff, solicitation	Everything not covered above.	No. The technology is already being sourced or is reasonably expected to be sourced through another solicitation, program, or tariff with the same locational and temporal granularity and performance guarantees as the bid technology.

**IV.C. Interconnection**

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Projects must connect or be associated with load facilities that connect to one of the following feeders at the Huron 12kV substation:

- Huron 1106
- Huron 1108
- Huron 1112
- Huron 1116

There are no minimum interconnection study requirements for an Offer. However, PG&E will assess whether Projects are likely to meet the required online date. Seller should submit any applicable interconnection studies with their Offers.

**IV.D. Measurement and Verification (M&V)**

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Participants must submit Appendix B7, Measurement and Verification, describing in detail their proposed methodology for measuring distribution services under the Agreement. Preference will be given to proposals that employ existing M&V protocols adopted by the CAISO and CPUC as appropriate to the technology proposed.

**V. Offer Submittal Process**

**V.A. Submittal Process Overview**

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All Offers must be received by July 17, 2017 at 1:00 P.M. (Pacific), as specified in Table I.2, PG&E Distribution Resources Plan Solicitation Schedule.

**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. PG&E strongly encourages Participants to register with Power Advocate well before Offers are due. PG&E will post detailed instructions on the 2017 DRP RFO website for submitting Offer(s) and using the online platform. Power Advocate registrants should be listed under the entity submitting the Offer, the Participant, not its consultants.

In addition to the submission of Offers through Power Advocate, Participants must simultaneously submit their offer materials to the IE on a USB flash-drive for physical delivery no later than one day following the Power Advocate offer submission deadline (i.e., by July 18, 2017). The Participant's flash-drive must contain the same materials that were submitted through Power Advocate and must be sent to the IE at the following address:

Sedway Consulting, Inc.  
821 15<sup>th</sup> Street  
Boulder, CO 80302  
PH: (303) 581-4172

Participants will be sent an email confirmation from the IE of the receipt of their flash-drive package when the IE receives them. If a Participant does not receive a confirmation email, please email the IE at: [Alan.Taylor@sedwayconsulting.com](mailto:Alan.Taylor@sedwayconsulting.com)

Power Advocate Link:

- <https://www.poweradvocate.com/pR.do?okey=69550&pubEvent=true>

Power Advocate functions in most browsers; however it may not work as well in browsers older than Internet Explorer version 8.

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 files. Please make sure that file names for your submittals do **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) and the appendix (e.g., App B).

**Electronic Document Formats:** Electronic documents must be submitted as Microsoft Word, Microsoft Excel, or pdf files, as identified in Section V.C, Required Information. However, maps or drawings may be in alternate formats (e.g., jpg, kmz) as appropriate. Each Appendix must be a separate folder or 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.

## V.B. Number of Offers and Variations Allowed Per Seller

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There are no limits to the number of Offers Participants may submit.

## V.C. Required Information

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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.

Offers must contain all required information and must be organized in accordance with these instructions.

Participants must complete the following documents: (1) the initial Offer package (see Section V.C.1, Offer Package, below); and (2) the post-Shortlist package, if PG&E selects the Participant's Offer for the Shortlist (see Section V.2, Post-Shortlist Documents, below). Participants offer should be consistent with the obligations specified in the term sheet.

Note on Joint Offers: If a Participant is submitting an Offer jointly with another Participant, each Participant will need to be registered as a Participant in Power Advocate separately from any other Participant submitting an Offer and PG&E may require additional documentation or conditions, such as retaining separate legal counsel, restricting the sharing of certain information, or requiring all Participants to the joint Offer to acknowledge acceptance of a modified Confidentiality Agreement and agree to, and execute, modified terms for RFO participation, similar to those set forth in Section VII.A, Agreement by Participant.

### 1. Offer Package

Provide an **Introductory Letter** that describes the Project and all the Offers submitted, including identification of the differences between Offers, such as different Delivery Hours, delivery terms, sized, and technologies. In addition, complete all of the Appendices listed in Table V.1, below.

Price may include a \$/kW-month fixed price and may also include a \$/kWh variable price to be paid on days when the Project is notified that it is required to provide distribution services.

A separate Offer Form is required for each Offer variation, 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 and which sections are different.

**Table V.1: PG&E Distribution Resources Plan RFO Offer Package**

<b>Appendix</b>	<b>Title</b>	<b>Description</b>	<b>Format</b>
	Introductory Letter	Describe the Project and Offer information. A sample introductory letter outline is provided.	MS Word
A	Offer Form	Provide the requested information.	MS Excel
B1	Project Description	Describe the existing or proposed Project, format as single spaced, and include the requested information. Include interconnection study, if applicable	MS Word
B2	Site Control	Provide information relating to the Project's location	MS Word, PDF
B3	Project Milestone Schedule	Provide milestone schedule to support required online date.	MS Word
B4	Experience and Qualifications	Describe the Participant's experience and staff qualifications, including information requested.	MS Word
B5	Resource Double Payment/Double Counting	Describe whether Project or customers are expected to be enrolled in other PG&E programs and how the Project is incremental.	MS Word
B6	Organizational Information	Provide Participant corporate or organizational information, including a certificate of good standing or similar document from Participant's state of formation. The entity name on the certificate must match the name of Participant	MS Word
B7	Measurement & Verification Plan	Describe the Project's methodology for measuring distribution services under the Agreement.	MS Word

## 2. Post-Shortlist Documents

If the Participant is notified that it is eligible for and accepts PG&E's Shortlist position, then the Participant must complete the Appendices listed in Table VI.2, below. Any delay in providing the Appendices below will impact the Participant's Shortlist position.

**Table V.2: PG&E Distribution Resources Plan RFO - Post-Shortlist Appendices**

<b>Appendix</b>	<b>Title</b>	<b>Description</b>	<b>Format</b>
C	Confidentiality Agreement	Participants must acknowledge acceptance of the Confidentiality Agreement when accepting a position on the Shortlist.	
D	Redline of Term Sheet	Provide a redline of the Term Sheet that reflects the Offer(s) Shortlisted	MS Word
E	Participant Financial Information	Provide Participant finance information	MS Word

## VI. Evaluation of Offers

PG&E's evaluation will apply "least-cost, best-fit" principles, using quantitative and qualitative criteria to evaluate the submitted Offers.

PG&E will evaluate Offers using quantitative and qualitative criteria, which may include, but are not limited to:

### Quantitative Attributes:

#### Net Market Value (NMV)

- a) Benefits (Distribution Deferral Value)
- b) Fixed and Variable Costs

### Qualitative Attributes:

- a) Project Viability (experience, technology viability, interconnection, site control)
- b) Supply Chain Responsibility
- c) Technology, Counterparty Concentration
- d) Safety

### **Quantitative Attributes**

PG&E will perform a quantitative evaluation of each complete Offer conforming to the RFO requirements and rank those Offers based on each Offer's net market value per unit – from highest to lowest. The net market value per unit is calculated using total net market value in dollars for the numerator, and average monthly volume in kilowatts for the denominator. The result of the quantitative analysis is a merit-order ranking of all complete and conforming Offers.

NMV compares an Offer's costs to its market value. NMV is calculated for each Offer as follows:

$$\text{Net Market Value} = D - (F + V)$$

where

D = Distribution Deferral Value

F = Fixed Cost

V = Variable Cost

1. Distribution Deferral Value ("D")

Distribution deferral value represents the value that an Offer provides by allowing PG&E to defer an otherwise planned investment.

## 2. Fixed Cost (“F”)

The Fixed Cost for an Offer will be calculated as the sum of the projected monthly fixed payments, based on the Capacity Price of \$/kw-month specified in the Offer.

Each Offer will also be assigned an annual fixed overhead cost independent of the size of the Project, representing administrative costs.

Each Offer that selects the use of PG&E’s Customer Engagement support hours will be assigned a fixed cost based on the number of hours chosen.

## 3. Variable Cost (“V”)

Variable cost will be calculated as the sum of the projected monthly variable payments, based on the number of times PG&E anticipates needing distribution services for a month and the variable O&M price in \$/kWh specified in the Offer.

### **Qualitative Factors**

#### **a) Project Viability**

Project viability means the likelihood that the Project under an Offer can be successfully developed and then provide the product for the period stated in the Offer. This assessment is based on a review of the status and plans for key Project activities (e.g., financing, site control, permitting, engineering, procurement, construction, interconnection, start-up and testing, operations, etc.) as well as experience and technology evaluation.

#### **b) Supply Chain Responsibility**

PG&E may consider Participant’s status as a Small Business Administration self-certified small business. PG&E is committed to supply chain responsibility which includes supplier diversity, sustainability and ethical supply chain practices. The Supplier Diversity Program, launched in 1981, aims to provide diverse suppliers with economic opportunities to supply products and services. The Supplier Sustainability Program, launched in 2007, encourages supplier responsibility, excellence and innovation.

Promoting an ethical supply chain means that Health and Safety, Labor Issues and Human Rights, Ethical Business Conduct and Conflicts of Interest are important considerations in supplier selection.

Additional information on PG&E's DBE program can be found at:  
[www.pge.com/supplychainresponsibility](http://www.pge.com/supplychainresponsibility)

**c) Counterparty and Technology Concentration**

PG&E may consider the volume of energy or capacity already under contract from a particular counterparty, as well as Offers submitted in this RFO.

**d) Safety**

PG&E may consider Participants' commitment to safety, based on the safety history and practices of the entities that will construct, operate, or maintain the Projects and safety information related to the technology for the Project and Project development.

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

## **VII. Terms for RFO Participation**

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

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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. Unless otherwise specified in the Offer Form, 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 at the conclusion of negotiations.

5. Participant is submitting its Offer subject to all applicable laws including, but not limited to, D.17 -02-007, 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 XI, 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, unless explicitly authorized by PG&E, 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"), so long as: (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 V.C, Required Information, above).

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.

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.

### **VII.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.

### **VII.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 B8, Participants are required to identify in their Offers known safety-related hazards and risks associated with their Project's technology and Participant's ability to mitigate safety risks and comply with applicable safety-related codes and standards identified by the Participant.

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. The Agreement will 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.

## VIII. Confidentiality

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, and PG&E's Procurement Review Group ("PRG"). 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, 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 form attached as Appendix D and within five (5) 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 B6, PG&E may require additional confidentiality obligations with collaborating entities.

## **IX. Procurement Review Group Review**

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 all-in cost 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.

## **X. 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 negotiations with PG&E regarding the Offer selected for the Shortlist. PG&E anticipates notifying those Participants whose Offers were not Shortlisted shortly thereafter.

## **XI. Execution of Agreement**

By submitting an Offer, Participant agrees, if its Offer is selected for PG&E's Shortlist, that it is prepared to (1) enter into a definitive Agreement consistent with the term sheet, and (2) negotiate and execute a definitive Agreement consistent with the Participant's Offer and containing such other terms and conditions as may be mutually acceptable to PG&E and the Participant. PG&E's evaluation of a Participant's Offer and PG&E's Shortlisting of a Participant does not constitute an agreement by PG&E.

## **XII. Credit**

Upon CPUC Approval of an Agreement with PG&E, the Participant must post collateral to PG&E to mitigate PG&E's risk in the event that the Project is not constructed or placed into commercial operation, or the Participant is otherwise unable to meet the conditions of the Agreement. Participant is required to post collateral in the form of cash or letter of credit from a reputable U.S. bank in the following amounts and by the time discussed below:

Project Development Security: \$60/kW for new resources, or \$25/kW for existing resources, due within five (5) Business Days following CPUC approval of the Agreement.

Delivery Term Security: The higher of \$125/kW or 10% of 3-year capacity payments due by the Online Date.

## **XIII. CPUC Approval**

Whether an Agreement becomes effective and binding on the parties is expressly conditioned on PG&E's receipt of CPUC Approval, which will be more specifically defined in the Agreement 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 DRP demonstration compliance requirement, that the terms are reasonable, and that PG&E will recover the costs incurred under the Agreement in its rates. Additionally, the Agreement will be subject to a no-fault termination if CPUC Approval does not occur within a specified period. 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.