

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company (U 39E) for Authority to Implement
and Recover in Rates the Cost of its Solar
Photovoltaic (PV) Program

Application 09-02-019
(Filed February 2, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
ANNUAL COMPLIANCE REPORT ON THE SOLAR
PHOTOVOLTAIC PROGRAM**

APPENDICES B (PORTIONS), C, D, F, AND I ARE CONFIDENTIAL

(CONFIDENTIAL VERSION)

CHARLES R. MIDDLEKAUFF
ALYSSA T. KOO
M. GRADY MATHAI-JACKSON

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-3386
Facsimile: (415) 973-5520
E-Mail: ATK4@pge.com

Dated: March 2, 2011

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company (U 39E) for Authority to Implement
and Recover in Rates the Cost of its Solar
Photovoltaic (PV) Program

Application 09-02-019
(Filed February 2, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U39E)
ANNUAL COMPLIANCE REPORT ON THE SOLAR PHOTOVOLTAIC PROGRAM**

APPENDICES B (PORTIONS), C, D, F, AND I ARE CONFIDENTIAL

(CONFIDENTIAL VERSION)

Pursuant to Decision (“D.”) 10-04-052 and Resolution (“R.”) E-4368, Pacific Gas and Electric Company (“PG&E”) hereby submits its first Annual Compliance Report on the Solar Photovoltaic Program (“PV Program”). In accordance with R. E-4368, PG&E is filing this Compliance Report consistent with the California Public Utilities Commission’s (“Commission”) confidentiality rules.

I. INTRODUCTION

The PV Program is a five-year program designed to promote the development of distributed solar photovoltaic (“PV”) in PG&E’s service territory, with a focus on ground-mounted projects in the one to 20 megawatt (“MW”) range. On April 22, 2010, the Commission adopted D. 10-04-052, which authorized PG&E to own and operate 250 MW of primarily ground-mounted solar PV facilities in the one to 20 MW range and to enter into long-term power purchase agreements (“PPA”) for 250 MW of similar facilities. As part of the PV Program, the Commission ordered PG&E to file an annual compliance report that furnishes information on the

status of its Solar PV Program.¹ Below, PG&E responds to each category of requested information set forth by the Commission in Attachment A of R. E-4368.

II. PPA PORTION OF THE PV PROGRAM

A. SOLICITATION INFORMATION

1. Documentation of all solicitations issued for power purchase agreements

PG&E launched the first PV PPA Program Request for Offers (“RFO”) on February 2, 2011, and is following the schedule set forth in Table 1 below. In this RFO, PG&E is seeking PPAs for a total of 50 MW from new PV facilities sized in the one to 20 MW range.

Table 1 - RFO Schedule

Date/Time	Event
February 2	PG&E issues RFO.
February 8	Bidders’ Conference.
March 2 1:00 P.M.	Deadline for Participants to submit Offers and to submit applications for interconnection. Offer evaluation begins.
March 22	Participants provide proof that interconnection applications have been deemed complete and that the Project has received a queue position.
April 15	PG&E notifies Participants of Selected Offers.
April 19	Participants with Selected Offers accept selection and continued participation in the RFO.
June 3	Participants with Selected Offers provide proof that interconnection screens have been passed or studies completed.
TBD	Participants provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for full capacity deliverability status.
June 10 5:00 P.M.	Participants with Selected Offers submit signed PPAs.

¹ D. 10-04-052, Ordering Para. 17, Appx. A, as organized in R. E-4368, Ordering Para. 14, Att. A.

June 17	PG&E executes PPAs.
July 15	Target Advice Letter Filing for executed PPAs.

The bidders' conference was held February 8, 2011 and was well attended, with approximately 270 people attending in person and another 200 people attending via the internet and/or by phone. The bidders' conference materials and an audio file of the conference are posted on PG&E's PV Program website:

<http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/PVRFO/>

The bidders' conference covered the following major subjects: (1) an overview of the commercial process that will be used in the solicitation; (2) the evaluation methodology that will be used to select winning offers; (3) the map of PG&E's distribution system showing areas with a higher likelihood for successful interconnection to PG&E's system; (4) the interconnection process and the implications for projects' ability to compete in this first RFO; (5) the documents that must be included with Offers; (6) the details of the Excel Offer form; (7) questions from conference attendees; and (8) the steps for completing a generation interconnection application. As the presentation on the generation interconnection application was cut short unexpectedly,² PG&E hosted an internet-based presentation of the generation interconnection application portion of the program on February 8, 2011. Over 100 people participated in this presentation.

PG&E maintains a Question and Answer section on the RFO website for questions of general interest. Participants are also encouraged to send questions to a PG&E PV PPA Program electronic mail address: PVProgram@pge.com.

In Appendix A to this Compliance Report, PG&E provides copies of all documentation issued on February 2, 2011, for the 2011 PV Program PPA RFO. This includes: (1) the PV

² A fire alarm was triggered and the auditorium was evacuated.

Program PPA Protocol Document; (2) the Offer Form; (3) the standard contract for facilities less than 3 MW in size; (4) the standard contract for facilities between 3-20 MW; (5) the Site Control Questionnaire; (6) the Demonstration of Interconnection Application; (7) the Acknowledgement and Commitment of Site Owner; and (8) the Supplier Diversity Questionnaire.

2. Description of the shortlist process

As set forth in the RFO schedule, sellers will submit binding offers to PG&E on March 2, 2011. Per the instructions in R. E-4368, PG&E will supplement its Compliance Report to include all information responsive to this category within 30 days of the filing of its Advice Letter for approval of executed PPAs.

3. A description of all bids received from the PPA solicitations, including the name of the bidder, the project, the bid price, and a description of the proposed facility (generating capacity, type of technology, annual average expected generation, interconnection point depicted on a map), and identification of the winning bids

Per the instructions in R. E-4368, PG&E will supplement its Compliance Report to include all information responsive to this category within 30 days of the filing its Advice Letter for approval of executed PPAs.

4. A description of all bids that were not shortlisted and the reasoning

Per the instructions in R. E-4368, PG&E will supplement its Compliance Report to include all information responsive to this category within 30 days of the filing its Advice Letter for approval of executed PPAs.

5. Information related to General Order 156 reporting requirements

Supplier Diversity will be considered as part of the PV PPA Program offer selection process. As part of the Offer package, Participants are required to include a completed Supplier

Diversity questionnaire.³ This questionnaire requests information concerning: (1) whether the Participant is a certified California woman, minority or disabled veteran business enterprise (“WMDVBE”); (2) whether the Participant commits to PG&E’s Supplier Diversity Program⁴; (3) whether the Participant intends to use WMDVBE suppliers in Participant’s materials and services supply chain; (4) whether the Participant’s company has a supplier diversity program and, if so, the efforts that company has made to increase business with WMDVBE firms; (5) whether the Participant’s company mentors WMDVBE suppliers; and (6) if the Participant is not a WMDVBE supplier, and if Participant intends to use WMDVBE suppliers to support its project if its Offer is executed, then Participant is asked to list in a table a plan for how the total cost of its proposed project would be split among those WMDVBE subcontracts.

A Supplier Diversity evaluation team will review the completed questionnaires and assign scores using standard criteria for use in the Offer selection process. PG&E has also reached out to potential WMDVBE developers to encourage their participation in the RFO. PG&E’s Supply Chain organization maintains lists of diverse supply companies and organizations that serve minority businesses. These companies and organizations were added to PG&E’s RFO mailing list and have received notifications about this RFO. Many of these companies and organizations with interest in solar development participated in the February 8, 2011 Bidders’ Conference.

PG&E also posted a Contract Opportunity Announcement on its website, which WMDVBE suppliers monitor for business opportunities. The announcement can be viewed at: [http://www.pge.com/includes/docs/word_xls/b2b/purchasing/bidopportunities/250 MW PPA C](http://www.pge.com/includes/docs/word_xls/b2b/purchasing/bidopportunities/250_MW_PPA_C)

³ See Appendix F to the solicitation documents, which may be found in Appendix A to this Compliance Report.

⁴ See <http://www.pge.com/b2b/purchasing/supplierdiversity/>

B. FACILITY PERFORMANCE INFORMATION

Attachment A to R. E-4368 requires PG&E to describe the total electrical output for all systems that are currently selling electricity to PG&E pursuant to PPAs entered into under the Solar PV PPA Program and a forecast of energy and capacity that will be sold to PG&E on an annual basis under the contract term of these PPAs. As described above, PG&E has not yet begun to receive deliveries from systems under PPAs from the PV Program and therefore cannot provide any further information at this time. Once deliveries begin under the Solar PV PPA Program, PG&E will include this facility performance information in future Compliance Reports.

C. INTERCONNECT INFORMATION

Attachment A to R. E-4368 requires information relating to the distribution and network upgrades needed for PG&E's Solar PV PPA Program, including descriptions of any necessary upgrades, costs, projects rejected or terminated because of the need for upgrades, and a summary of project interconnection results. PG&E has not yet received bids and therefore does not know where the projects may be located. PG&E has not had the opportunity to assess what distribution or network upgrades may be necessary generally to facilitate the PPA Program. PG&E will supplement its Compliance Report to include information responsive to this category within 30 days of the filing its Advice Letter for approval of executed PPA.

D. GENERAL PROGRAM INFORMATION

- 1. A comparison of bidders and bids received during the most recent PPA Program solicitation, RPS program, and any other Commission program available to projects bidding into the PPA Program to assess whether PPA projects are being bid into multiple programs**

Until PG&E receives bids under the Program, there is no way to compare bids to bids

received under other Commission programs. PG&E will supplement its Compliance Report to include information responsive to this category within 30 days of the filing its Advice Letter for approval of executed PPA.

2. An Independent Evaluator report

An Independent Evaluator (“IE”) is overseeing PG&E’s Solar PV PPA Program solicitation process and will assess the fairness and robustness of each solicitation and the degree to which the solicitation process conforms to solicitation protocols. Since PG&E initiated the PPA solicitation process on February 2, 2011, it is premature for the IE to report on the Solar PV PPA Program. PG&E will supplement its Compliance Report to include information responsive to this category within 30 days of the filing its Advice Letter for approval of executed PPA.

3. A description of the items that will be discussed at the program forum

As PG&E has not completed its first solicitation for the Solar PV PPA program and thus has not obtained feedback on the program, it is premature to identify all specific items that will be addressed at the program forum. Per Resolution E-4368, however, at a minimum PG&E intends to facilitate discussion on the following topics:

- Key issues raised in stakeholder feedback or identified in the independent evaluator’s report;
- Stakeholder experience with the solicitation, interconnection process, and the program in general;
- A proposal that a local capacity requirement designation serve as a tie-breaker among shortlisted projects, all else being equal;
- A proposal to modify the standard PPAs to clarify that the seller is obligated to seek a finding of full capacity deliverability to qualify for RA and to pay any costs associated with obtaining that finding; and
- Possible improvements to information provided by PG&E on preferred interconnection locations.

III. UOG PORTION OF THE PV PROGRAM

A. SOLICITATION INFORMATION

1. **Documentation of all solicitations issued for UOG projects, including the criteria PG&E established to evaluate bids; a description of the short list of bids, including the name of each bidder and the final price in the agreement, a description of the proposed facility name of the bidder, the project, the bid price, and a description of the proposed facility, including generating capacity, type of technology, annual average expected generation, and proposed interconnection point; and identification of the winning bids**

Attachment A of R. E-4368 requires information regarding all solicitations issued for UOG projects. To date, there has been a single solicitation issued for UOG projects.

Appendices B through B5 to this Compliance Report includes documentation providing the requested information regarding this solicitation.

Confidential Appendix B summarizes the bids submitted in response to the Solar PV UOG Program RFP, identifies the winning bids, identifies each proposed facility including, generation capacity and describes the proposed interconnection points for each proposed project.

The 2 MW Vaca-Dixon Solar Station (“Vaca-Dixon pilot project”), which was placed online on December 22, 2009, was a pilot project that pre-dated the approval of the overall PG&E Solar PV UOG Program. In order to provide the Commission with information regarding this operational project, PG&E has also provided information regarding the Vaca-Dixon pilot project in Confidential Appendix B and Appendix G. Specifically included as Appendix B1 and Confidential Appendix B2 are the following Protocols used for the Pilot Program: (1) 2 MW PV Pilot Project RFP Protocol for Suppliers, and (2) 2 MW PV Pilot Program Evaluation Protocol (Confidential).

PG&E has also included the following Protocols for the program solicitation as Appendices B3 and B4 and Confidential Appendix B5: (3) 250 MW PV Program EPC RFP

Protocol for Suppliers, (4) 250 MW PV Program Module RFP Protocol for Suppliers, and (5) 250 MW PV Program Evaluation Protocol (Confidential).

2. Information related to General Order 156 reporting requirements

PG&E is complying with all reporting requirements pertaining to General Order 156. The 2010 General Order 156 Annual Report on the WMDVBE Program is currently being drafted and will be submitted according to the required timeline. PG&E's approach to achieve supplier diversity for the PG&E Solar PV UOG Program is based on aggressive education and emphasis on competitive advantage with suppliers preceding the solicitation process to create the impetus for the suppliers to identify and create the MWDVBE opportunities. This process incorporated the following aspects: early education of suppliers on the supplier diversity program, research with PV Suppliers into the industry's value chain to identify potential opportunities, and significant outreach and clear messaging throughout the execution of the RFI and RFP process to maintain focus and energy on our Supplier Diversity Program and Goals. Here is a summary of the events held in support of the Solar PV UOG Program:

- On September 24, 2009, PG&E conducted a webinar to prepare the diverse subcontractors that would participate in the Solar PV UOG Program workshop/matchmaking event.
- On October 9, 2009, PG&E held a Solar PV UOG Program Workshop and Matchmaking Event at which 13 prime suppliers and 35 WMDVBE suppliers attended. The program included the education of the prime suppliers in the morning and match-making in the afternoon.
- On February 19, 2010, PG&E conducted a webinar to educate and prepare the Solar PV UOG Program RFI participants for their submittals. Participants were informed that the Supplier Diversity commitment was considered as part of evaluation criteria to shortlist bidders for the RFP. During this process, we explained the PG&E supplier diversity program, created an environment to increase the opportunity for diverse spend, and incorporated supplier diversity commitment as one of the important criteria to shortlist suppliers for participation in the subsequent RFP. Suppliers were encouraged to form bidding teams to strengthen their capabilities and increase diverse spend opportunities.

- On October 15, 2010, a webinar was conducted to provide assistance to the RFP participants and further emphasize the importance of supplier diversity to PG&E.

These efforts in support of the Solar PV UOG Program are forecasted to result in >60% supplier diversity results in 2011 (or more than \$100M diverse spend) based on the detailed subcontracting plans of the awarded prime suppliers.

B. PROJECT DEVELOPMENT INFORMATION (DESCRIPTION OF UOG FACILITIES)

- 1. A description of all UOG facilities for which work has been initiated or completed in the previous year, including: capital costs, and operations and maintenance expenses, generating capacity, type of technology, annual average expected generation, description of the site (existing PG&E-owned land or newly acquired/leased land, land/lease cost, proximity to substation), and progress toward completion**

Confidential Appendix C describes all UOG facilities for which work has been initiated in the previous year, including estimated capital costs, estimated operations and maintenance (“O&M”) expenses, generating capacity, technology description, annual average expected generation, description of the site, interconnection length, and construction status. As this is the first year of implementation of the Solar PV UOG Program, PG&E has not yet completed any UOG facilities under the Solar PV UOG Program.

- 2. Quantification of the UOG capacity that came online in the previous calendar year, and how much un-deployed UOG capacity will be carried forward to the subsequent year subject to the 10 megawatt (MW) carryover limit adopted by the decision**

Attachment A of R. E-4368 also seeks information regarding quantification of the UOG capacity that came online in the previous calendar year and the amount of un-deployed UOG capacity that will be carried forward. As this is the first year of PG&E’s Solar PV Program, no UOG facilities came online in the previous calendar year under this program, and there is no un-deployed UOG capacity to carry forward.

3. A forecast of the UOG energy and capacity that will be built on an annual basis throughout the contract term

PG&E's forecast for the UOG energy and capacity that will be built on an annual basis throughout the program term is as follows: PG&E currently expects 50 MW of capacity to come online in each of the Solar PV UOG Program's Project Years 1, 2, 3, 4, and 5.

C. FACILITY PERFORMANCE INFORMATION

1. Forecasted and actual calculation of the levelized cost of energy (LCOE) for each UOG facility that is in development or completed and interconnected to the grid. This calculation shall include work papers showing actual amounts for all cost and electrical output entries used to calculate the LCOE

Confidential Appendix D contains the calculation of the forecast levelized cost of energy ("LCOE") for each UOG facility that is in development, as well as for the Vaca-Dixon pilot project. Appendix D also includes the work papers showing the estimated amounts for all cost and electrical output entries used to calculate these LCOE. As this is the first year of implementation of the Solar PV UOG Program, PG&E has not yet completed any UOG facilities under the Solar PV UOG Program and therefore actual amounts are unavailable.

As PG&E's testimony in the Commission's proceedings on PG&E's application for approval of the Solar PV Program demonstrated, PG&E expects the costs for the earlier projects in the Solar PV Program to be higher than for the later projects. First, solar panel prices have been declining over time due to decreasing manufacturing costs. In addition, the solar PV industry continues to develop, with increased commitments for utility-scale PV projects. As a result, more solar panels are available and are competing for the business in California. The increased competition is expected to result in lower prices for future years.

The Commission's PV decision placed a high priority on PV UOG projects being built by specific deadlines for each program year to ensure near-term renewable generation. While the

response rate to PG&E's RFP for the Solar PV UOG Program was robust, PG&E expects a higher response rate for future RFPs as the lead-times will be longer for these projects. For Program Year 1, the RFP process had a short timeline and suppliers needed to commit to develop projects prior to the end of the first year of the program. As the Solar PV Program has now been approved and implemented and the deadlines for future program years are further out, PG&E can initiate any appropriate RFP processes for future Program Years earlier and provide for a longer timeframe for bids, contract negotiations, and module supplies.

Another significant benefit of the program is the high viability of the PV UOG projects. The evaluation and negotiation process for these projects emphasized the need for certainty regarding costs, schedule, supply, and ability to complete the project, all of which will contribute towards the ability of the projects to meet construction start and commercial operation milestones on schedule within the expected costs estimates. PG&E's evaluation of the EPC bids submitted in response to the RFP included assessment of the EPC bidders' experience, including building utility scale ground mounted solar PV Projects and building PV or other power plants in California. In addition, in order to ensure that the projects meet the forecast energy production, PG&E provided a set of common and reasonable assumptions for the bids, including requiring the use of industry-accepted modeling software. The final contracts for EPC contractors include financial penalties and guarantees to provide certainty that the EPC contractors would successfully complete the projects on time. PG&E has firm price quotes for the EPC contracts; as a result the UOG projects reflect realistic capital costs resulting from binding prices arising out of a competitive solicitation. These factors all contribute to the high viability of the PG&E Solar PV UOG projects.

2. Electrical output by month for the previous year for each PG&E-owned UOG facility that is completed and interconnected to the grid

As this is the first year of PG&E's Solar PV Program, there are no existing UOG facilities that are completed and interconnected to the grid under this program. Once UOG facilities have come online under this program, PG&E will provide this information in future Compliance Reports.

D. INTERCONNECT INFORMATION

Attachment A to R. 4368 requires a summary of project interconnection results, including dates, milestones, and fees and costs. Appendix E to this Compliance Report provides a summary of the interconnection process information for the UOG projects in this reporting period, as well as for the Vaca-Dixon pilot project.

Attachment A of R. E-4368 also requires a description of project specific distribution and network upgrades as well as distribution and network upgrades generally needed to facilitate the UOG project. Confidential Appendix F describes the specific distribution and network upgrades for UOG projects in this reporting period.

In addition, all projects in the Solar PV UOG Program will generally need distribution upgrades. Typical distribution upgrades include, (1) Distribution transformer Load Tap Charger modifications, and (2) Distribution transformer protection modification to trip the new PV breakers. Likewise, all projects in the Solar PV UOG Program, with some exceptions, will generally need network upgrades. Network upgrades are defined as, "Additions, modifications, and upgrades to the Distribution Provider's Transmission System required at or beyond the point at which the Distribution System connects to the Distribution Provider's Transmission System to accommodate the interconnection of the Small Generating Facility to the Distribution Provider's Distribution System. Network Upgrades do not include Distribution Upgrades." Typical

network upgrades include Direct Transfer Trip equipment at the remote transmission substation(s) to trip the new PV breakers at the interconnected substation. This is to provide anti-island protection.

In addition, Appendix G includes a description of specific interconnection upgrades required for the Vaca-Dixon pilot project.

E. GENERAL PROGRAM INFORMATION

The Independent Evaluator (“IE”) report for the Solar PV UOG Program is attached as Appendices H (Public) and I (Confidential).

IV. ATTACHMENTS

Appendix A - 2011 PV Program PPA RFO Documentation

Appendix B – UOG Solicitation Information (Confidential)

(B1) 2 MW PV Pilot Project RFP Protocol for Suppliers,

(B2) 2 MW PV Pilot Program Evaluation Protocol (Confidential)

(B3) 250 MW PV Program EPC RFP Protocol for Suppliers

(B4) 250 MW PV Program Module RFP Protocol for Suppliers

(B5) 250 MW PV Program Evaluation Protocol (Confidential).

Appendix C - Project Development Information (Confidential)

Appendix D - Facility Performance Information (Confidential)

Appendix E - Interconnection Information

Appendix F - Distribution and Network Upgrades (Confidential)

Appendix G - Vaca-Dixon Information

///

///

///

Appendix A
2011 PV Program PPA RFO

(1)

PV Program PPA Protocol Document



Solar Photovoltaic Program – Power Purchase Agreements (PV Program PPA)

2011 Request for Offers

February 2, 2011

Table of Contents

Section	Page
I. Introduction and Overview.....	1
A. Overview	
B. Expected Schedule	
1. Schedule Overview	
2. RFO Process	
C. Disclaimers for Rejecting Offers and / or Terminating this RFO	
II. RFO Goals, Eligibility, and Evaluation Criteria.....	4
A. Eligibility Requirements	
B. Other Requirements for Participation	
C. Evaluation of Offers	
D. Submission Deadline, Content, and Form of Offers	
III. Information Regarding Interconnection to PG&E’s Electric System.....	10
IV. Communications.....	12
V. Submission of Binding Offers	12
VI. Procurement Review Group.....	12
VII. Regulatory Approval.....	13
VIII. Participants Wavier of Claims and Limitations of Remedies.....	13
IX. Termination of the RFO-Related Matters.....	14
X. Participant’s Representations and Warranties	14

Appendix

A. Offer Form.....	A
B. Form of PV PPA for projects 1 MW or greater and less than 3 MW (“Small PV PPA”)	B1
Form of PV PPA for projects 3 MW or greater and 20 MW or less (“Large PV PPA”)	B2

Pacific Gas and Electric Company
PV Program PPA Request for Offers

C. Site Control Questionnaire and Attestation.....C

D. Demonstration of Interconnection Application Submission.....D

E. Acknowledgement and Commitment of Site Owner.....E

F. Supplier Diversity Questionnaire.....F

I. Introduction and Overview:

A. Overview

Pacific Gas and Electric Company (“PG&E”) is issuing the 2011 Solar Photovoltaic Program Power Purchase Agreement (“PV Program PPA”) Request For Offers (“RFO”) to procure up to 50 megawatts (“MW”) of Product¹ from new solar photovoltaic (“PV”) generating facilities with a 20-year term.

PG&E’s goal with respect to the Power Purchase Agreement (“PPA”) portion of its PV Program is to procure, over a five (5) year period, PPAs for 250 MW of PV Products as authorized by California Public Utilities Commission (“CPUC”) Decision (“D.”) 10-04-052 adopted on April 22, 2010.² PG&E is seeking Offers from PV facilities that are 1 to 20 MW in size for a contract term of 20 years. The generating facility producing the Product must be a new PV facility located in PG&E’s service territory and interconnected to PG&E’s electric system. Except as noted under the circumstances specified in the form PV Program PPAs, the generating facility must be commercially operable within 18 months following CPUC approval of an executed PV Program PPA.

PG&E’s goal with the 2011 PV Program PPA RFO is to procure 50 MW. However, if less than 50 MW of Offers are selected, then the remaining MW will be added to a future year’s solicitation, if any, along with the MW of any projects that were selected via the RFO but which do not come online.

In connection with Offers pursuant to this RFO, a seller offering the Product pursuant to this RFO (“Participant”) must submit the required information, as discussed in Section II.

B. Schedule

1. Schedule Overview

The RFO schedule is subject to change at PG&E’s sole discretion at any time. PG&E will endeavor to notify Participants of any schedule change via notification on the Company’s RFO website. As further described below, Participants are encouraged to register at the RFO website to receive notice of these and other RFO changes by electronic mail. PG&E will have no liability or responsibility to any Participant for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is (all times are in Pacific Prevailing

¹ Product means the electricity generated by a Project (the eligible renewable energy resource described in an Offer), together with all capacity and ancillary products and services associated with the Project, and any other attributes required by the CPUC and/or the California Energy Commission (“CEC”) to count the electricity toward PG&E’s Renewables Portfolio Standard (“RPS”) requirements.

² Unless otherwise noted, all references to megawatts or MW in this RFO are to MW (AC).

Time (“PPT”):

Date/Time	Event
Ongoing	Participants may register online to receive notices regarding the RFO
February 2	PG&E issues RFO
February 8	Bidders’ Conference
March 2 1:00 P.M.	Deadline for Participants to submit Offers and to submit applications for interconnection. Offer evaluation begins.
March 22	Participants provide proof that interconnection applications have been deemed complete and that the Project has received a queue position
April 15	PG&E notifies Participants of Selected Offers
April 19	Participants with Selected Offers accept selection and continued participation in the RFO
June 3	Participants with Selected Offers provide proof that interconnection screens have been passed or studies completed ³
TBD	Participants provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for full capacity deliverability status
June 10 5:00 P.M.	Participants with Selected Offers submit signed PPAs
June 17	PG&E executes PPAs
July 15	Target Advice Letter Filing for executed PPAs

To be considered in this RFO, a Participant must submit to PG&E and the Independent Evaluator (“IE”)⁴ a complete Offer, in accordance with this RFO, no later than March 2, 2011 at 1:00 P.M.

³ See Section III “Information Regarding Interconnection to PG&E’s Electric System” for more information on screens and studies.

⁴ Wayne Oliver of Merrimack Energy Group, Inc. will be providing IE services for this RFO. His email address is waynejoliver@aol.com.

PG&E intends to seek CPUC approval of each PPA resulting from this RFO, and the PPAs will not be effective unless approved by the CPUC and any applicable review or appeal period has lapsed. As further described in Section II, one of the requirements in this RFO is that Participants do not make changes to the non-price terms and conditions in the form PV PPAs.

2. RFO Process

1. Registration. Participants may register online to receive announcements and updates about this RFO. Go to www.pge.com/rfo and click on RFO Bidder Registration. Alternatively, go directly to: <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/joinlist.shtml>.
2. Bidders' Conference. PG&E intends to hold a Bidders' Conference on February 8, 2011 to discuss this RFO. To register for this event, please complete the registration form and submit to PVProgram@pge.com. The registration form is available at: <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/PVRF/index.shtml>. Registration is required to attend this Bidders' Conference and companies will be limited to two attendees each.
3. Offers Due. Participant's Offer must be submitted by e-mail to both PG&E and the IE by March 2, 2011 at 1:00 P.M. PPT and must include all of the documents described in Section II.D, below. By responding to this RFO, the Participant agrees to be bound by all of the terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.
4. Participants' Interconnection Applications. On or before March 22, 2011, each Participant must submit documentation required by Appendix D showing that its application for interconnection has been deemed complete and that the Participant has received an electric interconnection queue position from either PG&E or the California Independent System Operator ("CAISO"), as applicable.
5. PG&E Selects Offers. Participants whose Offers have been selected will be notified via email by PG&E by 5:00 P.M. PPT on April 15, 2011. PG&E will select Offers according to the evaluation criteria described below until the next-best Offer would cumulatively exceed 50 MW. Some of the next-best Offers beyond those selected may be placed on a waiting list to be selected in order of priority should any selected Offers fail to complete the RFO process. Participants whose Offers have been selected will be required to accept by April 19, 2011 of their selection and continued participation in this RFO
6. Interconnection Screens or Studies Passed. On or before June 3, 2011, Participants with selected Offers must provide documentation to PG&E that all

electric interconnection screens have been passed or studies completed, in accordance with Section III of this RFO Protocol.

7. Submittal of Signed PPA. PG&E will notify Participants whose Offers are accepted for execution by PG&E. By 5:00 P.M. PPT on June 10, 2011, Participants with accepted Offers must submit a signed PPA. If one or more selected Offers fail to pass interconnection requirements or submit signed a PPA as described above, PG&E will select the next-best Offer on the waiting list that does not cause the cumulative capacity of the RFO to exceed 50 MW. Waiting list Offers must have satisfied each of the interconnection requirements described above to be selected.
8. Execution and Regulatory Approval. PG&E intends to execute PPAs on or before June 17, 2011, and plans to submit executed Agreements to the CPUC for approval via a Tier 2 advice filing.

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

This RFO does not constitute an offer to buy and creates no obligation to execute any PPA or to enter into a transaction under a PPA as a consequence of the RFO. PG&E shall retain the right at any time, in its sole discretion, to reject any Offer on the grounds that it does not conform to the terms and conditions of this RFO and reserves the right to request information at any time during the solicitation process. PG&E also retains the discretion, in its sole judgment, to: (a) reject any Offer on the basis that it does not provide sufficient ratepayer benefit or that it would impose conditions that PG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of Offers; (c) negotiate with any Participant to maximize ratepayer benefits; (d) modify this RFO including, with the approval of the CPUC, the form PV PPAs as it deems appropriate to implement the RFO and to comply with applicable law or other decisions or direction provided by the CPUC; and (e) terminate the RFO should the CPUC not authorize PG&E to purchase Products in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time for any reason whatsoever. 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 Participant, whether submitting an Offer or not.

II. RFO Goals, Eligibility, and Evaluation Criteria:

In this RFO, PG&E is seeking eligible new PV generating resources that meet the specifications noted in “Eligibility Requirements” below. Optimal Offers will be those that best provide PG&E the opportunity to procure the Products that are compatible with PG&E’s requirements, and best meet the evaluation criteria specified in this section.

A. Eligibility Requirements

PG&E will consider all timely Offers, submitted pursuant to this RFO, from any

Participant whose Offer meets the following criteria:

1. The generating facility must be a new photovoltaic electric generating facility.
2. The generating facility must be located within PG&E's service territory.
3. The nameplate capacity of the generating facility must be no less than 1 MW and no greater than 20 MW. Participants may offer different size options for their project to enhance their opportunity for resource selection within the 50 MW target. Aggregation of facilities to meet the minimum 1 MW size requirement is not allowed, unless each aggregated facility is no less than 500 kW and the project comprised of the aggregated facilities interconnects within a single PNode⁵ and is owned by a single Participant.
4. The contract price must be no greater than \$246/MWh (prior to adjustment for time of delivery).

B. Other Requirements for Participation

Interconnection

The generating facility must be interconnected to PG&E's electric distribution or transmission system. The delivery point for a generating facility will be the PNode for the generating facility. Proof that the facility owner has submitted an interconnection application must be included with the initial Offer submission. For information on PG&E's and CAISO's interconnection procedures, see Section III.

By June 3, Participants will be required to provide confirmation the applicable interconnection studies are completed, as further discussed in Section III, below. If there are significant upgrades, Participants must provide evidence supporting a reasonable conclusion that the upgrades will be completed no less than 3 months prior to the expected commercial operation date for the Project. PG&E retains sole discretion, without liability to any Participant, to decide whether any necessary interconnection upgrades can reasonably be completed in this timeframe based upon the evidence submitted by a Participant.

Price

Participants must submit with their Offer their best and final price. Participants will not be given another opportunity to update pricing. Under no circumstance will PG&E allow a "price refresh" for any reason whatsoever. The price must be a single value in \$/MWh which will remain constant for the term of the agreement. Pricing may not be indexed or escalated over the term of the agreement. In addition, PG&E will not consider any Offer

⁵ The CAISO Tariff defines Pricing Node ("PNode") as "[a] single network Node or subset of network Nodes where a physical injection or withdrawal is modeled and for which a Locational Marginal Price is calculated and used for financial settlements."

whose pre-time of delivery (“TOD”) cost of energy exceeds \$246/MWh, the cost cap imposed by D.10-04-052.

The price submitted by Participant for an Offer must include, without limitation, the following: (a) all awards, subsidies, tax credits with respect to the Project, (b) all other benefits that Participants expects to apply, (c) any costs incurred by Participant, including any interconnection costs, (d) the acceptance of the non-price terms and conditions as-is in the form PV PPA, and (e) the assumption that the Product price will be adjusted in each hour of delivery by the energy payment allocation factors set forth in Appendix C of the Small PV PPA and in Section 4.3 of the Large PV PPA.

Site Control

Participants must attest to site control when their Offers are submitted to PG&E. Evidence of site control and attestation to site control for the term of the PPA must be demonstrated by the Participant as detailed in Appendix C. Examples of site control include: (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other business relationship that, in the sole discretion of PG&E, amounts to the same right to develop property as provided in examples (1) or (2) above, between the Participant and another entity that has the right to sell, lease, or grant the right to possess or occupy the site for such a purpose.

Experience

A minimum level of developer experience is required for participation. Specifically, the Seller and/or a member of Seller’s project development team must have either completed or begun construction of a solar project that is at least 500 kW.

Form Agreements Terms and Conditions

Any successful Offers must be formalized by the execution of a final PPA based upon the applicable form PV PPA. PG&E has provided a form Small PV PPA and a form Large PV PPA in Appendices B1 and B2, respectively. The non-price terms and conditions of the form PV PPAs are non-negotiable. Under no circumstance will PG&E accept any Offer that makes changes to the terms and conditions of the form PV PPAs.

The delivery term of any Final Agreement will be 20 years. The period of 20 years will commence on the first date that the Participant delivers the Product to PG&E from the Project.

The form PV PPAs require a Participant to post security in the following amounts and time:

1 to less than 3 MW Offer	3 to 20 MW Offer
Project Development Security: \$20/kW within 30 days of the date conditions precedent are met.	Project Development Security: \$15/kW upon execution of the PPA. This amount will increase within 30 days once conditions precedent are met. Increased amounts are \$20/kW for projects with contract capacity less than 10 MW, \$35/kW for projects with contract capacity 10 MW or greater.
Delivery Term Security: Not required.	Delivery Term Security: an amount equal to six months of the contract price multiplied by the contract quantity in the first applicable contract year, due upon the commercial operation date.

Participation in Other Procurement Programs

Neither the Participant nor the owner of the site may participate in the California Solar Initiative Program (“CSI”) or Net Energy Metering tariff (“NEM”). The owner of the site will be required to sign the letter, attached here as Appendix E, acknowledging familiarity with CSI and NEM, and committing not to apply for either program with respect to the Offer’s generating facility from the date a PPA is executed by Participant and PG&E until the contract term ends.

If Participant’s Offer is selected in this RFO and Participant elects to continue to participate in the RFO, then Participant must agree not to offer or commit the Project that is subject of the selected Offer to any other party for a period of six (6) months from the date of PG&E’s notification of Offer Selection. Violation of such agreement will result in disqualification from the RFO without any liability to PG&E.

Confidentiality

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

All information and documents in Participant’s Offer clearly identified and marked by Participant as “Proprietary and Confidential” on each page on which confidential information appears shall be considered confidential information. PG&E shall not disclose such information and documents to any third parties except for PG&E’s employees, agents, counsel, accountants, advisors, or contractors who have a need to

know such information and have agreed to keep such information confidential and except as provided below in this section. In addition, Participant's Offer will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to D. 02-08-071. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, the California Energy Commission ("CEC") and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to Participant's confidential information, or that confidentiality agreements or orders will be obtained from and/or honored by the PRG, the CEC, or the CPUC. By submitting an Offer, Participant agrees to the confidentiality provisions described in this section.

Treatment of confidential information by Participant discussed above continues to apply even after Offer is selected as a winning bid.

D.10-04-052 requires PG&E to develop confidentiality protocols to ensure that information given by Participants to PG&E through the interconnection or RFO process is not shared with PG&E's staff working on utility-owned PV Program generation. PG&E has developed a Code of Conduct to implement these confidentiality protocols, and all PG&E employees and consultants working on the PV Program are required to sign and abide by it. The Code of Conduct is posted on the RFO website at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/ind ex.shtml>. PG&E will establish separate files on the Company computer system to manage the information for the PPA portion of the PV Program, with approved secure access only for the appropriate staff involved in this project. Staff working on the utility ownership RFO will not be given access to these files.

Changes to RFO

By responding to this RFO, each Participant 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.

C. Evaluation of Offers

Once Participants have met the minimum requirements for Site Control, Interconnection and Participant Experience, PG&E will use price as the primary factor in selecting

Offers. The other selection criteria will be Supplier Diversity and Local Capacity Requirements.

Pricing. PG&E will rank order all qualifying Offers in order of contract price, with the objective of selecting the lowest-cost Offers that do not exceed 50 MW cumulatively.

Supplier Diversity. It is the policy of PG&E that Women-, Minority-, and Disabled Veteran-owned Business Enterprises (“WMDVBEs”) shall have the maximum practicable opportunity to participate in the performance of Agreements resulting from this Solicitation. PG&E will evaluate whether an Offer will contribute to PG&E’s supplier diversity goals. The Supplier Diversity evaluation will take into account the Participant’s status as a WMDVBE and/or an intent or policy of subcontracting with WMDVBEs.

Local Capacity Requirements. If needed as a tie-breaker criterion when selecting Offers, PG&E will favor Offers that will be located in CAISO-identified local capacity requirement (“LCR”) areas because capacity installed in those areas should provide greater customer value than capacity installed elsewhere in the PG&E system.

D. Submission Deadline, Content, and Form of Offers

All indicative non-binding Offers must be received by PG&E in electronic form by March 2, 2011 no later than 1:00 p.m. (PPT) via email to PVProgram@pge.com. The IE must also be included in the email transmission. The IE’s email address is waynejoliver@aol.com. An acknowledgement of receipt of each Offer will be sent by PG&E via return email.

Electronic Documents: The electronic documents must be in a Microsoft Word (standard edition 2003 SP3) and/or Excel file (standard edition 2003 SP3), as specified. The Participant should not provide documents in other electronic formats and versions.

Telephonic, telegraphic, hardcopy or facsimile transmission of an Offer is not acceptable.

The following documents, which are located in the Appendices, must be completed and included with each Offer:

1. **Completed Offer Form (Appendix A)** providing key details of the Participant’s Offer. [Format: Microsoft Excel 2003]
2. **A Completed PV PPA (Appendix B1 or B2)** including only the Offer facility details and pricing. Mark-ups of the non-price terms and conditions are not permitted and will result in rejection of the Offer. There are two form Agreements: (a) Small PV PPA (Appendix B1) and (b) Large PV PPA (Appendix B2). For a generating facility rated less than 3 MW, use the Small PV PPA, and for a generating facility rated 3 MW and greater, use the Large PV PPA.

3. **Site Control Questionnaire and Attestation (Appendix C).** Participant must attest to site control.
4. **Demonstration of Interconnection Application Submission (Appendix D).** Participant must provide proof that an interconnection application has been submitted.
5. **Acknowledgement and Commitment of Site Owner Letter (Appendix E).** The owner of the site on which Participant's Project is proposed to be located must attest to familiarity with the CSI and NEM program alternatives. The Participant and the owner of the site must also commit not to apply for either program with respect to the Offer's generating facility from the date the Agreement is executed by Participant and PG&E until the contract term ends.
6. **Supplier Diversity Questionnaire (Appendix F).** Participant must complete the Questionnaire which requires the Participant to describe its status, if applicable, as a WMDVBE and its plans, if any, to engage in activities that support PG&E's supplier diversity goals.

III. Information Regarding Interconnection to PG&E's Electric System and Interconnection Screens

Many factors influence the feasibility and cost of interconnecting PV systems to an electric system. These factors include, but are not necessarily limited to, the size of the system, substation and circuit load and capability, voltage regulation and voltage flicker. A map identifying areas in PG&E's service territory where the likelihood of a successful interconnection to PG&E's system is relatively greater is posted at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/>. This map is intended to assist Participants in identifying potential for PV systems. However, PG&E does not guarantee that conditions in these areas will remain the same or that property suitable for participation in this RFO is available. In addition, actual interconnection costs will be determined from further detailed studies which will consider a Participant's specific project location, size, and application date relative to PG&E's electric system and other projects in the same vicinity.

PG&E intends to update its map of locations prior to each annual PV PPA RFO, if necessary. The version of the map available at the website link above will always be the most current.

Distribution System Interconnections

Any application for interconnection to PG&E's distribution system must be directed to PG&E's Generation Interconnection Services at the email address gen@pge.com. Participants can also leave a message at 415-972-5676 to speak with a project manager. For additional information, go to the following site:

<http://www.pge.com/mybusiness/customerservice/nonpgeutility/generateownpower/wholesalegeneratorinterconnection/#thesmallgeneratorinterconnectionproceduresfortransmissionssysteminterconnectionstransmissionsgip>.

Once at the site, scroll to the section titled “Connecting to PG&E’s Distribution System: under 60kV” to find the relevant information. As discussed briefly in this section and in further detail in the Wholesale Distribution Tariff (“WDT”), there are three application procedures. Given the size requirement of 1 to 20 MW in the RFO, only two of the application procedures are applicable, and they are: (1) The “Fast Track Procedure” for generators 2 MW in size that pass the “Screens” given in section 2.2 of Attachment E of the WDT, and (2) the “Study Process” for all generators 20 MW and under in size including those that do not qualify for the “Fast Track Procedure.” The WDT can be found at:

<http://www.pge.com/includes/docs/pdfs/shared/customerservice/nonpgeutility/electrictransmission/tariffs/WD%20Tariff%20-%20eTariff%20Baseline%20Version.pdf>

PG&E’s lead interconnection program manager for this RFO is William Chung (415-973-1350, mwcb@pge.com).

On or before June 3, 2011, a Participant must provide evidence that its Selected Offer has completed a system impact study or initial review, as applicable.

Resource Adequacy and Reform

Currently, PG&E’s WDT interconnection procedures do not include an option to interconnect under “full capacity” interconnection service. Under the existing “energy only” interconnection service offering, projects are not studied for deliverability, a prerequisite for qualification as a Resource Adequacy (“RA”) resource. PG&E, in coordination with Southern California Edison Company and San Diego Gas and Electric Company, plans to revise its WDT interconnection procedures to offer “full capacity” interconnection service. PG&E plans to develop the tariff adjustments needed to add this new service through a stakeholder process and plans to file changes in the first quarter of 2011.

Please refer to PG&E's WDT Interconnection Reform Principles Document (PDF, 54 KB).

For more information and to participate in the reform, please contact William Chung.

Each Participant shall submit its Project for study for full deliverability when the opportunity to do so becomes available so as to enable it to provide RA to the extent it is eligible to do so under the interconnection rules and procedures available to it. This may involve requesting a finding of full capacity deliverability in the appropriate forum after seller has initially applied for interconnection. **To maintain eligibility to participate in this RFO, Participants must provide documentation on or before 2 weeks of the applicable resource adequacy forum deadline that they have made the request for full capacity deliverability status.** Participant is responsible for funding commercially reasonable network upgrades required to provide full capacity deliverability, and should reflect that assumption in its Offer price.

Transmission System Interconnections

Any application for interconnection to PG&E's transmission system must be directed to the CAISO in accordance with the CAISO Tariff. For more information, visit the CAISO website at: <http://www1.caiso.com/docs/2002/06/11/2002061110300427214.html>. This website provides information for generator interconnection information for generators 20 MW or less.

Please note that the Small Generator Interconnection Process ("SGIP") will be impacted by the Federal Energy Regulatory Commission's recent order regarding the CAISO's Generator Interconnection Process. *See California Independent System Operator*, 133 FERC ¶ 61,223 (2010). The next window for applications is in March 2011.

On or before June 3, 2011, a Participant must provide evidence that its Selected Offer has a completed CAISO System Impact Study.

IV. Communications:

PG&E has established a website at <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/PVRFO/index.shtml> where Participants may register and where all PV Program PPA RFO documents, information, announcements and Q&As are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E discourages Participants from speaking directly with PG&E employees about this RFO. PG&E strongly prefers that all communications take the form of an e-mail directed to PVProgram@pge.com. With respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion,

decline to respond to any email or other inquiry without liability or responsibility.

Any exchange of material information regarding this RFO between Participant and PG&E must be submitted to both PG&E and the Independent Evaluator, whose email address is waynejoliver@aol.com.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

V. Submission of Signed PPAs

By submitting an Offer, Participant agrees, if its Offer is selected, to execute a definitive PPA consistent with the mark-up of the form PPA submitted with the Participant's Offer.

On or before June 10, 2011 at 5:00 P.M. PPT, eligible Participants must submit a signed PV PPA for each selected project meeting all RFO conditions both to PG&E at PVProgram@pge.com and the IE at waynejoliver@aol.com.

VI. Procurement Review Group Review

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to its PRG. PG&E will consider any alternative recommendations proposed by the PRG. PG&E, in its sole discretion, shall determine whether any alternatives proposed by the PRG should be adopted. 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 Regulatory Approval.

VII. Regulatory Approval

The effectiveness of any executed PPA is expressly conditioned on PG&E's receipt of CPUC approval of such PPA.

VIII. Participant's 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 in the proceeding related to the CPUC's Decision ("D.") 10-04-052 adopted on April 22, 2010, or 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:

www.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 an Advice Letter Filing seeking 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 attorneys 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. Nothing in this Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this Solicitation or any other matter.

IX. 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 PPA, 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.

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.

Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more PPAs by selected Participants as described herein. In the event that no PPAs are executed, then the RFO will terminate automatically on 12 months after issuance of the RFO.

X. Participant's Representations and Warranties

Breach by any participant of the representations and warranties of the RFO Attachments is, in addition to any other remedies that may be available to PG&E under applicable law, 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.

(2)

Offer Form



Solar PV PPA Offer Sheet: Appendix A

When entering contract quantity below, take into consideration the following:

- The contract quantity should be the expected output of the facility.
- Degradation should be taken into consideration when entering the contract quantity for each contract year.
- Contract quantity should be net amount of energy delivered, net of station use.
- For offers where there is aggregation of facilities, input the TOTAL contract quantity of the aggregated facilities. No more than 6 sites can be aggregated for a total no greater than 3 MW. The tab Aggregated Facilities must also be completed.

WARNING: Need to enter a contract capacity on the Product Description tab for the capacity factor below to calculate.

Contract Year	Contract Year Start Date (mm/dd/yyyy)	Contract Year End Date (mm/dd/yyyy)	Contract Quantity (MWh)	Capacity Factor (%)
1	01/01/2011	12/31/2011		
2	01/01/2012	12/31/2012		
3	01/01/2013	12/31/2013		
4	01/01/2014	12/31/2014		
5	01/01/2015	12/31/2015		
6	01/01/2016	12/31/2016		
7	01/01/2017	12/31/2017		
8	01/01/2018	12/31/2018		
9	01/01/2019	12/31/2019		
10	01/01/2020	12/31/2020		
11	01/01/2021	12/31/2021		
12	01/01/2022	12/31/2022		
13	01/01/2023	12/31/2023		
14	01/01/2024	12/31/2024		
15	01/01/2025	12/31/2025		
16	01/01/2026	12/31/2026		
17	01/01/2027	12/31/2027		
18	01/01/2028	12/31/2028		
19	01/01/2029	12/31/2029		
20	01/01/2030	12/31/2030		

Average = 0.00

Solar PV PPA Offer Sheet: Appendix A

Project Information

Offer Number: _____ Total Offers: _____ Bid ID: 11PVRFO_0

Full Legal Project Name: _____

Enter Project Location Below:

Address: _____
 City: _____ State: _____ Zip: _____

Project Description: _____

Longitude: _____ Latitude: _____

System Characteristics

System Type: _____

Gross Power Rating, MW AC: _____

Solar Technology: _____

Panel Manufacturer: _____

Mounting: _____

Installation Area, acre: _____

Guaranteed Milestones

Guaranteed Construction Start Date (mm, dd, yyyy): _____

Guaranteed Commercial Operation Date (mm, dd, yyyy): January 1, 2011

Offer Characteristics

Product Price (\$/MWh, AC): _____

Contract Capacity (MW, AC): _____

Average Contract Quantity (MWh): 0.00

Mutual Exclusivity (provide description): _____

In the event selection of the full amount of this Offer would result in exceedance of the authorized annual solicitation amount, indicate whether Participant is willing to reduce the offer size at the same price

Contract Capacity Decrease Option	Step Down Increment (MW)	Lowered Contract Capacity (MW)
		0.0

Electrical Interconnection

Point of Interconnection: _____

Interconnection Voltage Level: _____

Interconnection Status: _____

Queue Position Number (if assigned): _____

Est. Direct Assignment Costs (Interconnection Facilities and Distribution Upgrades): _____

Est. of Network Upgrade Cost: _____

Est. Completion Date of Interconnection (mm, dd, yyyy): _____

Submission History

Counterparty Information

Company Name: _____

Address: _____
 City: _____ State: _____ Zip: _____

Participant Name: _____

Authorized Contact # 1: _____ Authorized Contact # 2: _____
 Title of Contact # 1: _____ Title of Contact # 2: _____

Phone Number #1: _____ Phone Number #2: _____
 Alt. Number (Cell) #1: _____ Alt. Number (Cell) #2: _____
 Fax #1: _____ Fax #2: _____
 Email Address #1: _____ Email Address #2: _____

Site Control

Form of Site Control: _____ Date Obtained: _____

Owner Name: _____

Street Address: _____
 City: _____ State: _____ Zip: _____

Brief Description of Generating Facility and All Components

Additional Comments

Acknowledgement of Non-Disclosure Terms and Conditions

By selecting "Yes", Participant hereby acknowledges that it will abide by the confidentiality terms and conditions stated in Section II of the PV PPA RFO Protocol Document.

Select "Yes" to certify that typed name acts as electronic signature: _____

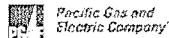
Electronic Signature: _____

Acknowledgement of Waiver of Claims and Limitations of Remedies

By selecting "Yes", Participant hereby acknowledges Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the Solicitation as described in Section VIII of the PV PPA RFO Protocol Document.

Select "Yes" to certify that typed name acts as electronic signature: _____

Electronic Signature: _____



Solar PV PPA Offer Sheet: Appendix A

When entering contract quantity below, take into consideration the following:

- The contract quantity should be the expected output of the facility.
- Degradation should be taken into consideration when entering the contract quantity for each contract year.
- Contract quantity should be net amount of energy delivered, net of station use.
- For offers where there is aggregation of facilities, input the TOTAL contract quantity of the aggregated facilities. No more than 6 sites can be aggregated for a total no greater than 3 MW. The tab Aggregated Facilities must also be completed.

WARNING: Need to enter a contract capacity on the Product Description tab for the capacity factor below to calculate.

Contract Year	Contract Year Start Date (mm/dd/yyyy)	Contract Year End Date (mm/dd/yyyy)	Contract Quantity (MWh)	Capacity Factor (%)
1	01/01/2011	12/31/2011		
2	01/01/2012	12/31/2012		
3	01/01/2013	12/31/2013		
4	01/01/2014	12/31/2014		
5	01/01/2015	12/31/2015		
6	01/01/2016	12/31/2016		
7	01/01/2017	12/31/2017		
8	01/01/2018	12/31/2018		
9	01/01/2019	12/31/2019		
10	01/01/2020	12/31/2020		
11	01/01/2021	12/31/2021		
12	01/01/2022	12/31/2022		
13	01/01/2023	12/31/2023		
14	01/01/2024	12/31/2024		
15	01/01/2025	12/31/2025		
16	01/01/2026	12/31/2026		
17	01/01/2027	12/31/2027		
18	01/01/2028	12/31/2028		
19	01/01/2029	12/31/2029		
20	01/01/2030	12/31/2030		

Average = 0.00

(3)

Standard Contract for Facilities Less Than 3 MW in Size

**SMALL PHOTOVOLTAIC GENERATOR
POWER PURCHASE AGREEMENT
BETWEEN**

**_____ AND
PACIFIC GAS AND ELECTRIC COMPANY**

PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation (“PG&E” or “Buyer”), and _____ (“Seller”) hereby enter into this Power Purchase Agreement (“Agreement”) dated as of _____ (the “Execution Date”). Seller and PG&E are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

1. DOCUMENTS INCLUDED; DEFINED TERMS

This Agreement includes the following appendices, which are specifically incorporated herein and made a part of this Agreement.

Appendix A - Definitions

Appendix B - Initial Energy Delivery Date Confirmation Letter

Appendix C - Time of Delivery (“TOD”) Periods and Factors

Appendix D – Scheduling Requirements

Appendix E – Data and Weather Station Requirements

Appendix F - Counterparty Notification and Forecasting Requirements

Appendix G – Form of Letter of Credit (and Exhibit A – Sight Draft)

Appendix H – Facility Description

Appendix I – Dispute Resolution

2. SELLER’S GENERATING FACILITY, PURCHASE PRICES AND PAYMENT

2.1 Facility. This Agreement governs PG&E’s purchase of Product from the electrical generating facility or Aggregated Facilities (hereinafter referred to as the “Facility” or “Unit”) as described in this Section. Information describing the individual facilities comprising an Aggregated Facility is provided hereto as an attachment as necessary.

2.1.1 The Facility is located at the following site(s):

- a. _____ in _____ County, California.
- b. _____ in _____ County, California.
- c. _____ in _____ County, California.
- d. _____ in _____ County, California.

e. _____ in _____ County, California.

f. _____ in _____ County, California.

2.1.2 The Facility has a nameplate rating of ____ kilowatts (“kW”), at unity power factor at 60 degrees Fahrenheit at sea level and has a primary voltage level of ____ kilovolts (“kV”)(AC). Seller shall not modify the Facility to increase the nameplate rating without the prior written consent of PG&E, and in no event shall PG&E be obligated to receive or pay for, in any hour, any energy that exceeds the nameplate rating.

2.1.3 The Facility is connected to the PG&E electric system at ____ kV.

2.1.4 The Facility’s scheduled Commercial Operation Date is _____, which date may be extended as provided in Section 5.

2.1.5 A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with PG&E’s electric distribution system, is attached and incorporated herein as Appendix H. If the Facility is an Aggregated Facility, the description must encompass each component facility (by site) and include the gross power rating of each facility.

2.1.6 The name and address PG&E shall use to locate the electric service account(s) and premises used to interconnect the Facility with PG&E’s distribution systems is:

2.1.7 The obligations of Seller hereunder may be satisfied by one or more units participating as a single “Aggregated Facility” subject to the following.

2.1.7.1 An Aggregated Facility shall mean two or more facilities located on one or more contiguous or non-contiguous sites, each of which individual facilities is composed of units that are under common ownership of the Seller and each of which has a nameplate capacity of no less than 500 KWs, provided that all the facilities comprising the Aggregated Facility share a single resource ID (that is, are deemed to deliver to the same p-node.)

2.1.7.2 For the purposes of this Agreement, all references to “site” shall mean “sites” and all references to “Facility” shall mean the “Aggregated Facility,” when applied to an Aggregated Facility.

2.2 Transaction. During the Delivery Term of this Agreement, and as otherwise provided in Section 2.3, Seller shall sell and deliver, or cause to be delivered, and PG&E shall purchase and receive, or cause to be received, Energy produced by and Capacity Attributes provided from the Facility at the Delivery Point. PG&E shall pay Seller the Contract Price, set forth in Section 2.5, in accordance with the terms hereof. Seller agrees to sell to PG&E the Facility’s gross output in kilowatt-hours, net of Station Use and transformation and transmission losses to the Delivery Point, together with all Green Attributes and Resource Adequacy Benefits.

2.2.1 In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to PG&E under this Agreement (except with respect to energy delivered to PG&E in connection with scheduling Energy Deviations) or substitute any element of such Product.

2.2.2 PG&E shall have no obligation to receive or purchase Product from Seller prior to the Initial Energy Delivery Date, or after the end of the Delivery Term, except test energy during the Test Period as provided in Section 2.3.

2.2.3 The Parties agree that the execution and performance of the Parties under this Agreement shall satisfy PG&E's obligations, if any, under the Public Utility Regulatory Policies Act and its implementing regulations, i.e., 18 C.F.R. §292.303.

2.2.4 Seller shall purchase all energy required to serve the Facility's on-site load, net of station use, from PG&E pursuant to PG&E's applicable tariff.

2.3 Test Period. For the period prior to the Initial Energy Delivery Date and after the CAISO informs Seller in writing that Seller may deliver energy from the Facility to the CAISO Grid, which period shall not exceed ninety (90) consecutive days, Seller may deliver test energy to PG&E, which PG&E shall purchase and receive ("Test Period").

2.4 Delivery Term. The Seller shall deliver the Product from the Facility to PG&E for a period of twenty (20) Contract Years ("Delivery Term"), which shall commence on the first date on which energy is delivered from the Facility to PG&E ("Initial Energy Delivery Date") under this Agreement and continue until the end of the last Contract Year unless terminated by the terms of this Agreement. The Initial Energy Delivery Date shall occur after the Test Period only when all of the following conditions have been satisfied:

2.4.1 the Commercial Operation Date has occurred;

2.4.2 the Facility's status as an Eligible Renewable Energy Resource is demonstrated by Seller's receipt of certification from the CEC and is registered in WREGIS; and

2.4.3 the Conditions Precedent in Section 12.1 have been satisfied or waived.

As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix B on the Initial Energy Delivery Date

2.5 Contract Price Payment

2.5.1 Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year shall be _____ ("Contract Price").

2.5.2 TOD Periods and TOD Factors. The time of delivery periods ("TOD Periods") and the time of delivery factors ("TOD Factors") are specified in Appendix C.

2.5.3 Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period ("Monthly TOD Payment") the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$\text{Monthly TOD Payment} = \text{Contract Price} \times \text{TOD Factor} \times \text{Delivered Energy MW}_{\text{hour}}$$

2.6 Test Period Payment. During the Test Period, Seller's full compensation for such Product shall be (a) the credits and other payments received by Buyer, as Seller's Scheduling Coordinator, as a result of test energy from the Facility delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Facility for, or attributable to, scheduling and deliveries from the Facility under this Agreement. PG&E shall promptly forward such revenues to Seller.

2.7 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Facility, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.

2.8 Payment

2.8.1 Seller Data and Invoice. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with this Section 2.

2.8.2 Buyer Payment. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

2.8.3 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 6.2, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 2.8.3 within twelve (12) months after the invoice is rendered or

any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

2.9 CAISO Charges.

2.9.1 Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions.

2.9.2 Buyer shall be responsible for all CAISO costs and charges with respect to scheduling and imbalances except as provided in Section 2.9.3 below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits associated with the Energy generated from the Facility.

2.9.3 Forecasting Penalties.

2.9.3.1 In the event Seller does not in a given hour either: (a) provide the access and information required in Appendix E, Section 1; (b) comply with the installation, maintenance and repair requirements of Appendix E, Section 4; or (c) provide the forecast of Available Capacity required in Appendix D, Section 3, and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

2.9.3.2 The Performance Tolerance Band is five percent (5%) multiplied by Contract Capacity multiplied by one (1) hour ("Performance Tolerance Band").

2.9.3.3 The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 2.9.3 ("Forecasting Penalty").

2.10 Title and Risk of Loss. Title to and risk of loss related to the Energy produced from and Capacity Attributes provided by the Facility shall transfer from Seller to PG&E at the Delivery Point. Seller warrants that it will deliver to PG&E all Product from the Facility free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

2.11 Governmental Charges. Seller shall be responsible for paying all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Facility. Buyer shall be responsible for paying all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point.

2.12 No Additional Incentives. Seller agrees that during the Term of this Agreement, Seller shall not seek additional compensation or other benefits with respect to the Facility pursuant to the Self-Generation Incentive Program as defined in CPUC Decision 01-03-073, the California Solar Initiative as defined in CPUC Decision 06-01-024, PG&E's net energy metering tariff, or programs that succeed or replace these programs, unless such program(s) are for a future product related explicitly to energy storage on the utility side of the meter. Seller may participate in other California ratepayer subsidized programs relating to energy production with respect to the Facility so long as such participation does not adversely affect Seller's delivery of Product or performance of its obligations under this Agreement.

3. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS

3.1 Conveyance of Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

Further, “Green Attributes” also means any and all credits that satisfy the requirement to procure electricity from ERRs, pursuant to the California Renewables Portfolio Standard, that are directly attributable to electric production from the Facility. Seller represents that the Energy, Capacity Attributes, ancillary services and Green Attributes from the Facility have not been, nor will be, sold or used to satisfy any obligation other than PG&E’s California Renewables Portfolio Standard obligation.

3.2 WREGIS. Prior to the Initial Energy Delivery Date, Seller shall register the Facility in WREGIS and take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time. Subject to the Compliance Cost Cap, Seller warrants that it shall take all necessary steps to ensure the Renewable Energy Credits transferred to Buyer under this Agreement are tracked in WREGIS and transferred in a timely manner to Buyer through WREGIS for purposes of satisfying Buyer’s California Renewables Portfolio Standard Requirements, as may be amended or supplemented by the CPUC or CEC from time to time. Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. For purposes of this Section, the term “contract” has the same meaning as the term “Agreement” and the phrase “renewable energy credit” has the same meaning as the defined term “Renewable Energy Credit”.

3.3 Resource Adequacy Benefits. Seller conveys to PG&E all Resource Adequacy Benefits attributable to the physical generating capacity of Seller’s Facility. Seller shall comply with all applicable reporting requirements and take all reasonable actions and execute documents and instructions necessary to enable Buyer to secure Resource Adequacy Benefits, subject to the Compliance Cost Cap.

3.4 Compliance Cost Cap. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$10,000.00 per MW of Contract Capacity and in the aggregate throughout the Delivery Term at \$20,000.00 per MW of Contract Capacity (collectively, the “Compliance Cost Cap”). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice, Buyer shall provide Seller Notice of (a) Buyer’s request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (b) Buyer’s initiation of Dispute Resolution under Appendix I, or (c) Buyer’s waiver of Seller’s performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Delivery Term of any such Compliance Costs that are incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Facility beyond the Delivery Term of this Agreement. Any Compliance Cost reimbursement by Buyer to Seller shall be subject to CPUC approval, and the amount of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the

Compliance Cost Cap and which give rise to the payment that is the subject of the above referenced CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

4. REPRESENTATION AND WARRANTIES; COVENANTS

4.1 Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

4.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

4.1.2 the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

4.1.3 this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

4.1.4 it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

4.1.5 there is not pending or, to its knowledge, threatened against it or any of its affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and

4.1.6 it is acting for its own account, has made its own independent decision to enter into this Agreement, and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

4.2 General Covenants. Each Party covenants that throughout the Term of this Agreement:

4.2.1 it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

4.2.2 it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

4.2.3 it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

4.3 Seller Representation and Warranty and Covenant. In addition to the representations and warranties specified in Sections 4.1 and 4.2, Seller makes the following additional representations and warranties as of the Execution Date:

4.3.1 Seller has not received an incentive under the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, or the California Solar Initiative, as defined in CPUC Decision 06-01-024.

4.3.2 Seller warrants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Facility in order to receive Resource Adequacy Benefits.

4.3.3 Covenant. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

4.3.4 The term "commercially reasonable efforts" as used in Section 4.3.3 of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

5. GUARANTEED COMMERCIAL OPERATION DATE

5.1 Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree the Commercial Operation Date must be achieved in a timely fashion or Buyer will suffer damages. Seller shall comply with Buyer's reasonable request for any requested documentation to support the Seller's progress in achieving the Commercial Operation Date within twenty (20) Business Days of receipt of such request by Seller.

5.2 Milestone Report. Within thirty (30) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, Seller shall provide to Buyer a monthly progress report in a form provided by Buyer and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The monthly progress report shall indicate whether Seller has met or is on target to achieve Commercial Operation.

5.3 Construction Start Date. The Construction Start Date shall occur no later than three hundred and sixty (360) days after the Effective Date of this Agreement, provided that the Construction Start Date may be extended on a day-for-day basis for not more than one hundred and eighty (180) days:

5.3.1 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Facility, but is unable to obtain such permits due to delays beyond Seller's reasonable control ("Permitting Delay");

5.3.2 if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the PG&E system or CAISO Grid and to complete all electric system upgrades needed, if any, in order to interconnect the Facility to the PG&E system or CAISO Grid, but

fails to secure any necessary commitments from CAISO or PG&E for such interconnection and upgrades due to delays beyond Seller's reasonable control ("Transmission Delay"); or,

5.3.3 in the event of Force Majeure without regard to Transmission Delay or Permitting Delay provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

5.4 Guaranteed Commercial Operation Date Seller shall demonstrate Commercial Operation no later than five hundred and forty (540) days after the Effective Date of this Agreement (the "Guaranteed Commercial Operation Date"), provided that the Guaranteed Commercial Operation Date may be extended on a day-for-day basis for (a) any extension claimed by Seller pursuant to and in accordance with Section 5.3, and (b) Force Majeure occurring after the Construction Start Date, provided that the total number of such further extension days under this subpart (b) shall not exceed one hundred and eighty (180) days.

5.5 Permitted Extensions. If Seller claims Permitting Delay, Transmission Delay or Force Majeure in accordance with Section 5.3 or 5.4 (collectively or individually, "Permitted Extension(s)"), such extensions shall be concurrent, rather than cumulative, during any overlapping days. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to the Construction Start Date or the Guaranteed Commercial Operation Date (as applicable), which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure.

6. GENERAL CONDITIONS

6.1 Facility Care, Interconnection and Transmission Service. Seller shall execute a Small Generator Interconnection Agreement ("SGIA") with PG&E's Generation Interconnection Services Department and pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable PG&E, CAISO, CPUC and FERC tariff provisions, including applicable interconnection and metering requirements. Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. Prior to the Commercial Operation Date, Seller shall include updates on the status of the SGIA in Seller's monthly progress report provided pursuant to Section 5.2. During the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with PG&E. To make deliveries to PG&E, Seller must maintain an interconnection agreement with PG&E in full force and effect.

6.2 Metering Requirements. All output from the Facility, or in the case of an Aggregated Facility, all output from each site composing the Facility, per the terms of this Agreement must be delivered through a single CAISO revenue meter per site and that meter must be dedicated exclusively to the Facility (or in the case of an Aggregated Facility, the portion of the Facility located on such site). All Product purchased under this Agreement must be measured by the Facility's CAISO revenue meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Facility. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 2.8, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later

than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

6.3 Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities, except facilities installed by PG&E, in conformance with all applicable Law and regulations and in accordance with Good Utility Practices, as defined by PG&E's Wholesale Distribution Tariff and the CAISO Tariff, as they may be amended, supplemented or replaced (in whole or in part) from time to time; (b) obtain any governmental authorizations and permits required for the construction and operation thereof; and (c) generate and perform services hereunder in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Good Utility Practices, as provided in clause (a) above. Seller shall reimburse PG&E for any and all losses, damages, claims, penalties, or liability PG&E incurs as a result of Seller's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.

6.4 Access Rights. PG&E, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice (which in no case shall be less than three (3) Business Days) during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to PG&E by Law, or its tariff schedules, PG&E Interconnection Handbook and rules on file with the CPUC. In connection with the foregoing, PG&E, its authorized agents, employees and inspectors must (a) at all times adhere to all safety and security procedures as may be required by Seller, (b) not interfere with the operation of the Facility, and (c) unless waived in writing by Seller, be escorted by a representative of Seller. PG&E shall make reasonable efforts to coordinate its emergency activities with the safety and security department(s), if any, of the Facility operator. Seller shall keep PG&E advised of current procedures for communicating with the Facility operator's safety and security department(s).

6.5 Protection of Property. Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities and such other Party shall not be liable for any such damages so caused.

6.6 Performance Excuses.

6.6.1 PG&E Performance Excuse. PG&E shall not be obligated to accept or pay for Energy produced by or Capacity Attributes provided from the Facility during a Curtailment Period, or Force Majeure.

6.6.2 Seller Curtailment. Seller shall interrupt or reduce Energy deliveries from the Facility as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Curtailment Period.

6.7 Notices of Outages. Whenever possible, PG&E shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required and shall coordinate with Seller to mitigate the impact of such outages consistent with PG&E and CAISO Tariffs and the SGIA.

6.8 Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap.

7. PERFORMANCE ASSURANCE

7.1 Project Development Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

7.1.1 Project Development Security in the amount equal to \$ _____ [amount equal to \$20/kw], and in the form of _____ [specify cash or Letter of Credit] from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 12.1 are either satisfied or waived.

7.2 Liquidated Damages. Except for termination of this Agreement for failure of the Facility to achieve timely Commercial Operation as provided in Section 13.1.1, the amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. The Parties agree that Seller's forfeiture of the Project Development Security in connection with termination of the Agreement as provided in Section 13.1.1 shall be considered liquidated damages and not a penalty, in accordance with Section 9.

7.3 Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security within five (5) Business Days.

7.4 Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security at the Interest Rate.

8. INDEMNITY

Each Party as indemnitor shall save harmless and indemnify the other Party and the directors, officers, employees, agents and representatives of such other Party against and from any and all loss and liability for injuries to persons including employees of either Party, and damages, including property of either Party, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or operation of; or (b) the installation of replacements, additions, or betterments to the indemnitor's facilities. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss, resulting from its sole negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

9. LIMITATION OF DAMAGES

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 8 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES

RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. NOTICES

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Whenever this Agreement requires or permits delivery of a “notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All written notices shall be directed as follows:

To PG&E: Pacific Gas and Electric Company
Attention: Manager, Contract Management
245 Market Street, Mail Code N12E
San Francisco, CA 94177-0001

To Seller: _____

11. INSURANCE

11.1 General Liability Coverage.

11.1.1 Seller shall maintain during the performance hereof, “General Liability Insurance” of not less than \$1,000,000 or below of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

11.1.2 General Liability Insurance shall include coverage for Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations.

11.1.3 Such insurance shall provide for thirty (30) days written notice to PG&E prior to cancellation, termination, alteration, or material change of such insurance.

11.2 Additional Insurance Provisions.

11.2.1 Evidence of coverage described above in Paragraph 11.1 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by PG&E.

11.2.2 PG&E shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

11.2.3 Seller shall furnish the required certificates and endorsements to PG&E prior to commencing operation.

11.2.4 All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

Pacific Gas and Electric Company
Attention: Manager, Insurance Department
77 Beale Street, Room E280
San Francisco, CA 94105

12. **TERM OF AGREEMENT**

12.1 Conditions Precedent. The Term shall commence and all terms and conditions contained in this Agreement shall be in full force and effect, enforceable and binding in all respects, upon the occurrence of all of the following (“Conditions Precedent”):

12.1.1 This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

12.1.2 CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

12.1.3 The advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order.

12.2 Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 12.1.2 and 12.1.3 are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

12.3 Term.

12.3.1 The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 12.1 of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 13 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (a) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security is released and/or returned as applicable (the “Satisfaction Date”) or (b) in accordance with the survival provisions set forth in Section 12.3.2 below.

12.3.2 Survival. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Section 8 (Indemnity) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (b) all rights and obligations under Section 15 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years.

12.4 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under: Appendix A; Sections: 2.2, 2.4, 4.1, 4.2, 4.3; and Articles: 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21 and , 22.

13. EVENTS OF DEFAULT. An “Event of Default” shall mean:

13.1 With respect to Seller, the occurrence of any of the following:

13.1.1 The Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date, as extended by any Permitted Extensions;

13.1.2 Following the Commercial Operation Date, Seller has not sold or delivered Energy from the Facility to PG&E for a period of twelve (12) consecutive months, provided that the time period under this Section 13.1.2 shall be extended for up to an additional sixty (60) days if Seller is making diligent efforts to cure such failure to perform; or

13.1.3 Seller breaches the covenant set forth in Section 4.3.3 of the Agreement and fails to remedy or cure such failure to perform within thirty (30) days, provided during such period in lieu of the Contract Price, Buyer shall pay Seller for Delivered Energy based on the simple average overall Settlement Intervals in the cure period of the day-ahead Locational Marginal Price for the Existing Zone Generation Trading Hub associated with the current NP 15 zone.

13.2 With respect to either Party, the occurrence of any of the following:

13.2.1 If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made, or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after Notice thereof from the non-breaching Party to the breaching Party;

13.2.2 Except for an obligation to make payment when due, upon the other Party’s failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure) if such failure is not remedied within forty-five (45) days after Notice of such failure is provided by the non-breaching Party to the breaching Party of such failure; or

13.2.3 If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice of such failure is provided by the non-breaching Party to the breaching Party.

13.3 Rights upon Event of Default. If an Event of Default described in Section 13.1 or 13.2 has occurred and is continuing, the non-defaulting Party shall have the right to: (a) send notice, designating a day, no earlier than five days after such notice is deemed to be received (as provided in Section 10) and no later than 20 days after such notice is deemed to be received (as provided in Section 10), as an early termination date of this Agreement (“Early Termination Date”); (b) accelerate all amounts owing between the Parties; (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; (d) withhold any payments due to the Defaulting Party under this Agreement; (e)

suspend performance; (f) exercise its rights to draw upon and retain Performance Assurance as provided in Section 7; and (g) exercise any other rights or remedies available at law or in equity against the other Party (including seeking monetary damages).

14. SCHEDULING

14.1 Scheduling Obligations. PG&E shall be Seller's designated Scheduling Coordinator (as defined by CAISO tariff). Specific scheduling duties and obligations of the Parties are identified in Appendix D.

14.2 EIRP Requirements. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP. As soon as practicable, but not more than ninety (90) days after such protocols are finalized and made effective by the CAISO, Seller shall apply to have the Facility certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (defined by the CAISO Tariff). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Subject to the Compliance Cost Cap, following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term.

14.3 Access to Data and Installation and Maintenance of Weather Stations. Seller shall comply with the data and weather station requirements identified in Appendix E.

14.4 Outage Notification. Seller shall comply with PG&E's Outage Notification Procedures.

15. CONFIDENTIALITY

15.1 Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows: (a) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to a confidentiality agreement; (c) to the CPUC under seal for purposes of review; (d) for disclosure of those certain terms specified in and pursuant to subsection 15.4; (e) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (f); or (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

15.2 If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection 15.1(e) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (a) to notify the other Party prior to disclosing the confidential information and (b) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

15.3 The Parties agree that the confidentiality provisions are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their

Affiliates; provided however, that the confidentiality provisions shall govern confidential treatment of all information exchanged between the Parties as of and after the Execution Date.

15.4 Notwithstanding anything to the contrary contained herein, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Facility characteristics and location, Contract Capacity, anticipated Commercial Operation Date, Initial Energy Delivery Date, Delivery Point, and the net power rating of the Facility.

16. ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to (a) its financing provider(s) or (b) an affiliate with equal or greater creditworthiness than the transferring Party, provided that any such assignee shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party, and provided further that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

17. APPLICABLE LAW

17.1 This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

17.2 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term: (a) complete financial statements and notes to financial statements; and (b) financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter. Any information provided to Buyer pursuant to this Section 17.2 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

17.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

18. SEVERABILITY

If any provision in this Agreement is determined to be invalid, void or unenforceable by the CPUC or any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

20. MOBILE SIERRA

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

21. PREVAILING WAGE

21.1 Producer shall use reasonable efforts to ensure that all Electricians hired by Producer, and its contractors and subcontractors are paid wages at rates not less than those prevailing for electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Producer, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code.

21.2 To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

22. GENERAL

The CPUC has reviewed and approved the form of this Agreement. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

[SELLER, a (*include place of formation and business type*)]

**PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

Definitions

- 1.1. “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2. “Aggregated Facility” has the meaning set forth in Section 2.1.7.
- 1.3. “Available Capacity” means the capacity from the Facility, expressed in whole megawatts, that is available to generate Product.
- 1.4. “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday during the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party in each instance shall be the Party from whom the notice, payment or delivery is being sent.
- 1.5. “Buyer” has the meaning set forth in the Preamble.
- 1.6. “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.7. “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.
- 1.8. “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.
- 1.9. “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 2.9.3 of this Agreement.
- 1.10. “CAISO Tariff” means the CAISO FERC Electric Tariff, Fourth Replacement Volume Nos. I and II, as amended, supplemented or replaced in whole or in part from time to time.
- 1.11. “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bill 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.
- 1.12. “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

- 1.13. “CEC” means the California Energy Commission or its successor agency.
- 1.14. “Commercial Operation” means the Facility described in Section 2.1 is operating and is in compliance with applicable interconnection and system protection requirements and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.
- 1.15. “Commercial Operation Date” means the date on which Seller provides written notification of Commercial Operation to the CAISO as required under the CAISO Tariff or California ISO Generator Interconnection Manual.
- 1.16. “Compliance Cost Cap” has the meaning set forth in Section 3.4.
- 1.17. “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.2 (WREGIS), 3.3 (Resource Adequacy Benefits), 4.3.3 (Covenant), 6.8 (Greenhouse Gas Emissions Reporting), and 14.2 (EIRP Requirements), including but not limited to registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.
- 1.18. “Conditions Precedent” has the meaning set forth in Section 12.1.
- 1.19. “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the engineering, procurement, and construction contractor for the Facility, and (b) for ground-mounted Projects, Notice that grading and site preparation for the Facility has commenced, and for a Facility mounted on buildings or structures, notice that similar physical material actions toward installation of the Facility have begun.
- 1.20. “Contract Capacity” shall mean [_____] MW (AC) net of all auxiliary loads and station electrical uses.
- 1.21. “Contract Price” has the meaning set forth in Section 2.5.1.
- 1.22. “Contract Year” means a period of twelve (12) consecutive months with the first Contract Year commencing on the first day of the month immediately following the Initial Energy Delivery Date and each subsequent Contract Year commencing on the anniversary of the Initial Energy Delivery Date.
- 1.23. “CPUC” means the California Public Utilities Commission, or successor entity.
- 1.24. “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
- (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

- 1.25. “Curtailment Period” means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”), (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.
- 1.26. “Day-Ahead Availability Notice” has the meaning set forth in Appendix D, Section 3(b).
- 1.27. “Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.
- 1.28. “Delivered Energy” means all Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the CAISO revenue meter of the Facility.
- 1.29. “Delivery Point” means the point of interconnection to the PG&E distribution system.
- 1.30. “Delivery Term” has the term set forth Section 2.4.
- 1.31. “Dispute Resolution” means the process set forth in Appendix I.
- 1.32. “Early Termination Date” has the meaning set forth in Section 13.3.
- 1.33. “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.
- 1.34. “Eligible Intermittent Resource Program” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

- 1.35. “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in Public Utilities Code Sections 399.12 and California Public Resources Code Section 25741, as either code provision may be amended or supplemented from time to time.
- 1.36. “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.47, “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.
- 1.37. “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid (as defined in the CAISO Tariff) submitted for the Project for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.
- 1.38. “Execution Date” means the date set forth in the Preamble.
- 1.39. “Existing Zone Generation Trading Hub” has the meaning set forth in the CAISO Tariff.
- 1.40. “Facility” has the meaning set forth in Section 2.1.
- 1.41. “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.42. “Forecasting Penalty” has the meaning set forth in Section 2.9.3.3.
- 1.43. “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Force Majeure shall not be based on: (i) PG&E’s inability economically to use or resell the energy or capacity purchased hereunder; (ii) Seller’s ability to sell the energy, capacity or other benefits produced by or associated with the Facility at a price greater than the price set forth in this Agreement, (iii) Seller’s inability to obtain approvals of any type for the construction, operation, or maintenance of the Facility; (iv) Seller’s inability to obtain sufficient fuel to operate the Facility, except if Seller’s inability to obtain sufficient fuel is caused by an event of Force Majeure; (v) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure; (vi) a strike or labor dispute limited only to Seller, Seller’s affiliates, the engineering, procurement, and construction contractor or subcontractors thereof; or (vii) any equipment failure not caused by an event of Force Majeure.
- 1.44. “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility resulting in the unavailability of the Facility, in whole or in part, in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Facility for operation, in whole or in part, for maintenance or repair that is not a scheduled maintenance outage and not the result of Force Majeure.
- 1.45. “Good Utility Practice” has the meaning set forth in the CAISO Tariff.

- 1.46. “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.
- 1.47. “Governmental Charges” has the meaning set forth in Section 2.11.
- 1.48. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.
- 1.49. “Guaranteed Commercial Operation Date” has the meaning set forth in Section 5.4.
- 1.50. “Hour-Ahead Scheduling Process” has the meaning set forth in the CAISO Tariff.
- 1.51. “Integrated Forward Market Load Uplift Obligation” has the meaning set forth in the CAISO Tariff.
- 1.52. “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.
- 1.53. “Initial Energy Delivery Date” has the meaning set forth in Section 2.4.
- 1.54. “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.
- 1.55. “Interest Payment Date” means the last Business Day of each calendar year.
- 1.56. “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.
- 1.57. “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.I5-519, or its successor publication.
- 1.58. “Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.
- 1.59. “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with sufficient assets in the United States, as determined by Buyer, with either such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix G to this Agreement.
- 1.60. “Locational Marginal Price” has the meaning set forth in the CAISO Tariff.
- 1.61. “Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c), as may be amended or modified from time to time.
- 1.62. “Monthly Forecast” has the meaning set forth in Appendix D, Section 3(a).
- 1.63. “Monthly TOD Payment” has the meaning set forth in Section 2.5.3.
- 1.64. “Notice” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).
- 1.65. “Outage Notification Procedures” means the procedures specified in Appendix F. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.66. “Participating Intermittent Resource” has the meaning set forth in the CAISO Tariff.
- 1.67. “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.
- 1.68. “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.

- 1.69. “Performance Tolerance Band” has the meaning set forth in Section 2.9.3.2.
- 1.70. “Permitted Extensions” means extensions to either of the Construction Start Date or Guaranteed Commercial Operation Date due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, as applicable, pursuant to Section 5.3 or 5.4.
- 1.71. “Permitting Delay” has the meaning set forth in Section 5.3.1.
- 1.72. “PG&E Wholesale Distribution Tariff” means the Pacific Gas and Electric Company FERC Electric Tariff First Revised Volume No. 4, as it may be amended, supplemented or replaced (in whole or in part) from time to time.
- 1.73. “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Available Capacity.
- 1.74. “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Facility is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Available Capacity.
- 1.75. “Producer” has the meaning set forth under the definition of “Seller.”
- 1.76. “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Facility, including, without limitation, renewable attributes, Renewable Energy Credits, Resource Adequacy Benefits, Capacity Attributes and Green Attributes.
- 1.77. “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 7.1
- 1.78. “Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.
- 1.79. “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions 04-10-035 and 05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings 04-04-003 and 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.
- 1.80. “Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.
- 1.81. “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Delivery Term.

- 1.82. "Satisfaction Date" has the meaning set forth in Section 12.3.1.
- 1.83. "Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator", of the CAISO Tariff, as amended from time to time.
- 1.84. "Scheduling and Logging system for the CAISO" or "SLIC" has the meaning set forth in the CAISO Tariff.
- 1.85. "Seller" has the meaning set forth in the Preamble. For the purposes of Section 21.1, the term "Producer" has the same meaning as the term "Seller".
- 1.86. "Settlement Interval" means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.87. "Settlement Interval Actual Available Capacity" means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.
- 1.88. "SGIA" means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and, as applicable, the CAISO governing the terms and conditions of Seller's interconnection with the Participating TO's transmission or distribution system, including any description of the plan for interconnecting to Participating TO's transmission or distribution system.
- 1.89. "Station Use" means energy consumed within the Facility's electric energy distribution system as losses, as well as energy used to operate the Facility's auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, cooling towers, boiler feeds pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps.
- 1.90. "Term" has the meaning provided in Section 12.3.1.
- 1.91. "Test Period" has the meaning set forth in Section 2.3.
- 1.92. "Third-Party SC" means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Facility pursuant to this Agreement.
- 1.93. "TOD Factors" has the meaning set forth in Section 2.5.2
- 1.94. "TOD Periods" has the meaning set forth in Section 2.5.2.
- 1.95. "Transaction" means the particular transaction described in its entirety in Section 2.2.
- 1.96. "Transmission Delay" has the meaning set forth in Section 5.3.2.
- 1.97. "Unit" has the meaning set forth in Section 2.1.
- 1.98. "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

APPENDIX B

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Small Photovoltaic Power Purchase Agreement dated _____ (“Agreement”) by and between Pacific Gas and Electric Company (“PG&E”) and _____ (“Seller”), this letter serves to document the parties further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and PG&E has received the Energy, as specified in the Agreement, as of this _____ day of _____, _____. This letter shall confirm the Initial Energy Delivery Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix C
Time of Delivery (“TOD”) Periods and Factors

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June - September	A1	A2	A3
B. Oct. - Dec., Jan. & Feb.	B1	B2	B3
C. March – May	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. June - September;
- B. October, November, December, January and February; and
- C. March - May.

TOD Period Definitions. The TOD Periods are defined as follows:

1. **Super-Peak** (5x8) = hours ending 13-20 (Pacific Prevailing Time (PPT)) Monday - Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 12,21 and 22 PPT Monday - Friday (*except* NERC Holidays); and hours ending 7-22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1-6,23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-”Night” hours and any remaining hours shall be calculated as “Night” hours.

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	2.20490	1.12237	0.68988
B. Oct. - Dec., Jan. & Feb.	1.05783	0.93477	0.76384
C. March – May	1.14588	0.84634	0.64235

APPENDIX D – SCHEDULING REQUIREMENTS

1. Designation of Scheduling Coordinator. At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller’s Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller’s Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

2. Buyer’s Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller’s Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for the Day-Ahead Schedule or in the Hour-Ahead Scheduling Process.

3. Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller’s availability forecasts below shall include Facility availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 2.9.3 of this Agreement, Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(a) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer (“Monthly Forecast”).

(b) Daily Updates to the Forecast of Available Capacity. During each month of the Delivery Term, if the hourly Available Capacity for any hour differs by more than one (1) MW relative to the forecast for such hour provided for that day in the Monthly Forecast of Available Capacity, whether due to Forced Outage, Force Majeure or other cause, Seller or Seller’s agent shall provide a revised day ahead forecast of Available Capacity (the “Day-Ahead Availability Notice”) to Buyer or Third-Party SC (as applicable) via Buyer’s internet site, for each affected day no later than fourteen (14) hours before the beginning of the “Preschedule Day” (as defined by the WECC) for such affected day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday

- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Prescheduling Calendar.” Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone (at Buyers’ discretion) and shall send a revised notice to Buyer’s internet site indicated in Appendix F, section 8. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

Day-Ahead Trading Desk
Primary Telephone: (415) 973-6222
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (i) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and Seller and (ii) to the extent Seller’s failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties.

(c) Hourly Forecast of Available Capacity. During the Delivery Term, if the hourly Available Capacity for any hour differs by more than one (1) MW relative to the forecast for such hour in either the Monthly Forecast of Available Capacity or the Day-Ahead Availability Notice, whether due to Forced Outage, Force Majeure or other cause, Seller shall notify Buyer of such changes in Available Capacity as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit a schedule in the Hour-Ahead Schedules Process. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Scheduling Process, but before the CAISO Hour-Ahead Scheduling Process deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC, if applicable and Seller shall follow PG&E’s Outage Notification Procedures. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Capacity shall be communicated by telephone (at Buyer’s discretion) to Buyer’s Hour-Ahead Trading Desk and shall be sent to Buyer’s internet site indicated in Appendix F, section 8:

Hour-Ahead Trading Desk
Primary Telephone: (415) 973-4500

4. Replacement of Scheduling Coordinator.

(a) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller’s SC. These actions include (i) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (ii) causing the newly-designated SC to submit a letter to the CAISO accepting the

designation; and (iii) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(b) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (i) thirty (30) days prior to the end of the Delivery Term or (ii) the date of any early termination of this Agreement.

5. Authorized Representative. Each Party shall provide Notice to the other Party of the person(s) authorized to schedule or dispatch order for the delivery of the Product or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such person(s) from time to time in its sole discretion by providing Notice.

6. Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Appendix C and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

APPENDIX E – DATA AND WEATHER STATION REQUIREMENTS

1. Data Access Requirements. Commencing on the first date on which the Facility generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, historical basis:

- (a) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (f) of this list, and energy output information collected by the supervisory control and data acquisition (or SCADA) system for the Facility;
- (b) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Facility;
- (c) full, real time access to the Facility's Scheduling and Logging for the CAISO SLIC client application;
- (d) net plant electrical output at the CAISO revenue meter;
- (e) time-average data including 10-minute and hourly values of solar irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, barometric pressure and, if applicable, visibility in winter fog areas; and
- (f) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of solar irradiance, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly Settlement Interval Actual Available Capacity in a form provided by Buyer. Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report, in a form provided by Buyer. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Appendix E, Section 1; provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

2. Validation. Buyer reserves the right to validate the data provided pursuant to Appendix E, Section 1 with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

3. Data Availability. Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Appendix E, Section 1, which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

4. Installation, Maintenance and Repair.

(a) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Facility to monitor and report the meteorological data required in Appendix E, Section I. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Appendix E, Section I.

(b) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(c) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(d) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

5. Additional Information. Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller. Seller hereby voluntarily consents to allow PG&E, as a Participating Transmission Owner, to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide PG&E with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

6. Recorded Data At Initial Energy Delivery Date. No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than two (2) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Facility. Such weather station shall provide, via remote access to Buyer, all data relating to (a) solar irradiance, air temperature, wind speed and direction, barometric pressure, and visibility in winter fog areas as applicable (forward scatter sensor) at the Facility, as well as time-average data including 10-minute and hourly values of irradiance, air temperature, wind speed, wind direction, standard deviation of wind direction, barometric pressure and visibility in winter fog areas as applicable; (b) elevation, latitude and longitude of the weather station; and (c) any other data that would be required for participation in the EIRP.

APPENDIX F -- COUNTERPARTY NOTIFICATION AND FORECASTING REQUIREMENTS

1. CAISO Approval of Outage(s). In accordance with the CAISO Tariff, Seller is responsible for securing CAISO approvals for Facility outages, including securing changes in its outage schedules when CAISO disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any CAISO-required changes to Buyer in a timely manner, in accordance with this Appendix F, Sections 7 and 8.

2. Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Facility for the following calendar year no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Facility must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Facility during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

3. Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in this Appendix F, Sections 7 and 8. Seller shall notify Buyer in writing when the Facility is again capable of meeting its Contract Quantity on a pro rata basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Facility during a Prolonged Outage.

4. Force Majeure. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Facility during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

5. Communications with CAISO. In accordance with the CAISO Tariff, Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform

Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Facility outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer upon request. If either Party receives information through CAISO regarding maintenance that will directly affect the Facility, it will provide this information promptly to the other Party.

6. Changes to Operating Procedures. Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

7. Notification Requirements for Start-Up and Shutdown. Prior to paralleling to or after disconnecting from the electric system, Seller should always follow the balancing authority rules and notify your designated balancing authority control center as follows:

- (a) Call the balancing authority control center to parallel before any start-up
- (b) Call the balancing authority control center again with parallel time after start-up.
- (c) Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

8. Submission of Available Capacity And Facility Outages. Seller shall:

(a) Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.

(b) If the website is unavailable, implement the procedures set forth below:

- 1) For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Facility #2 Daily Forecast of Available Capacity")
- 2) For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
- 3) For Daily Update to Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500 (if such an Update is required per Appendix D, section c). Also send email to DAenergy@pge.com.
- 4) For Hourly Update to Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com (if such an Update is required per Appendix D, section d).

- 5) For Facility outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat_Settlements@pge.com
- i. Email subject Field: dd/mm/yyyy – dd/mm/yyyy XYZ Company Facility #2
Outage Notification
 - ii. Email body:
 1. Type of Outage: Planned Outage, Forced Outage, Prolonged Outage
 2. Start Date and Start Time
 3. Estimated or Actual End Date and End Time
 4. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted
 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.

APPENDIX G

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or
 - B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX H -- FACILITY DESCRIPTION

[Seller to complete pursuant to Section 2.1.5 of the Agreement.]

APPENDIX I – DISPUTE RESOLUTION

1. Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to, be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the Arbitrator shall administer by and in

accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

(4)

Standard Contract for Facilities Between 3 – 20 MW

PV PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions that “may not be modified” per CPUC Decision 07-11-025 are shown in shaded text.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

Note 1: This Form of Power Purchase Agreement requires deliveries to PG&E in PG&E’s service territory.

Note 2: This Form of Power Purchase Agreement is available only for projects of 3 to 20 MW (AC).

POWER PURCHASE AGREEMENT

TABLE OF CONTENTS

PREAMBLE

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS.....	1
ARTICLE TWO: GOVERNING TERMS AND TERM.....	19
2.1 Entire Agreement.....	19
2.2 Interpretation.....	19
2.3 Authorized Representatives.....	20
2.4 Conditions Precedent.....	20
2.5 Term.....	20
2.6 Binding Nature.....	21
ARTICLE THREE: OBLIGATIONS AND DELIVERIES.....	21
3.1 Seller's and Buyer's Obligations.....	21
3.2 Green Attributes.....	29
3.3 Resource Adequacy	30
3.4 Transmission and Scheduling.....	30
3.5 Standards of Care.....	3 4
3.6 Metering.....	34
3.7 Outage Notification.....	35
3.8 Operations Logs and Access Rights	36
3.9 New Generation Facility.....	37
ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS.....	41
4.1 Contract Price.....	41
4.2 TOD Periods.....	41
4.3 TOD Factors and Monthly TOD Payment.....	42
4.4 Excess Delivered Energy.....	43
4.5 CAISO Charges	43
4.6 Test Period Payments.....	44
4.7 Additional Compensation.....	44
ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES.....	44
5.1 Events of Default.....	44
5.2 Remedies.....	46
5.3 Calculation of Termination Payment.....	47
5.4 Notice of Payment of Termination Payment	47

5.5	Disputes With Respect to Termination Payment.....	48
5.6	Rights And Remedies Are Cumulative.....	48
5.7	Duty to Mitigate.....	48
5.8	Damage Payment for Failure to Achieve Guaranteed Dates.....	48
ARTICLE SIX: PAYMENT.....		48
6.1	Billing and Payment; Remedies.....	48
6.2	Disputes and Adjustments of Invoices.....	49
ARTICLE SEVEN: LIMITATIONS.....		49
7.1	Limitation of Remedies, Liability and Damages.....	49
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.....		50
8.1	Buyer Financial Information.....	50
8.2	Seller Financial Information.....	50
8.3	Grant of Security Interest/Remedies.....	51
8.4	Performance Assurance	51
8.5	Letter of Credit.....	53
ARTICLE NINE: GOVERNMENTAL CHARGES.....		54
9.1	Cooperation.....	54
9.2	Governmental Charges.....	54
ARTICLE TEN: MISCELLANEOUS		54
10.1	Recording.....	54
10.2	Representations and Warranties.....	55
10.3	Covenants.....	56
10.4	Title and Risk of Loss.....	57
10.5	Indemnities.....	57
10.6	Assignment	58
10.7	Confidentiality.....	58
10.8	RPS Confidentiality.....	59
10.9	Audit	59
10.10	Insurance.....	60
10.11	Access to Financial Information.....	62
10.12	Governing Law.....	63
10.13	General.....	63
10.14	Severability.....	63
10.15	Counterparts.....	63
10.16	Mobile Sierra	64
ARTICLE ELEVEN: TERMINATION EVENTS.....		64

11.1	Force Majeure Termination Event.....	64
ARTICLE TWELVE: DISPUTE RESOLUTION.....		66
12.1	Intent of the Parties.....	66
12.2	Management Negotiations.....	66
12.3	Arbitration Initiation.....	66
12.4	Arbitration Process.....	67
ARTICLE THIRTEEN: NOTICES.....		68
SIGNATURES.....		69

APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Attachment A Form of Monthly Progress Report
- Appendix IV Project Description Including Description of Site
- Appendix V Delivery Term Contract Quantity Schedule
- Appendix VI Commercial Operation Certification Procedure
- Attachment A Form of Certification
- Appendix VII GEP Damages Calculation
- Appendix VIII Notification Requirements for Available Capacity and Project Outages
- Appendix IX Certification of Third Party Agreement
- Appendix X Resource Adequacy
- Appendix XI Notices List
- Appendix XII Form of Consent to Assignment
- Appendix XIII Seller Documentation Condition Precedent
- Appendix XIV Form of Actual Availability Report
- Attachment A Form of Actual Availability Report

POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and [Seller], a *[include place of formation and business type]* (“Seller”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i).

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.4 “Arbitration” has the meaning set forth in Section 12.3.

1.5 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.

1.6 “Availability Workbook” has the meaning set forth in Appendix XIV.

1.7 “As-Available Product” means a Product for which, subject to the terms of this Agreement, (a) Seller is obligated to sell and deliver and (b) Buyer is obligated to purchase and receive, the Energy component of the Product from the Project whenever such Energy is capable of being generated from the Project.

1.8 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator,

administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

1.10 “Buyer” has the meaning set forth in the Preamble.

1.11 “Buyer’s Notice” has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.12 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.13 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.14 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO revenue meter.

1.15 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

1.16 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case “CAISO Penalties” do not include the costs and charges related to Scheduling and imbalances as addressed in Section 4.5(b) of this Agreement.

1.17 “CAISO Revenues” means (a) the credits and other payments received by Buyer, as Seller’s Scheduling Coordinator, as a result of test energy from the Project delivered to the real-time market by Seller during the Test Period, including revenues associated with CAISO dispatches and (b) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Project for, or attributable to, scheduling and deliveries from the Project under this Agreement.

1.18 “CAISO Tariff means the CAISO FERC Electric Tariff, First Replacement Volume No. 1, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.19 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code

Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.20 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

1.21 “CEC” means the California Energy Commission or its successor agency.

1.22 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.23 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.24 “Commercial Operation” means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement.

1.25 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has commenced and (b) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix VI, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix VI hereto.

1.26 “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.1(j) (Greenhouse Gas Emissions Reporting), 3.1(k) (WREGIS), 3.1(n) (Obtaining and Maintaining CEC Certification and Verification), 3.3 (Resource Adequacy), 3.4(b) (EIRP Requirements), and 10.2(b) (ERR), and under Appendix X (Resource Adequacy), including but not limited to registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.

1.27 “Compliance Cost Cap” has the meaning set forth in Section 3.1(o).

1.28 “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.4(a)(i) through (iv) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.4(a)(i) through (iv).

1.29 “Construction Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.30 “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Attachment A to Appendix VI.

1.31 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.32 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the material Governmental Approvals received or obtained by Seller as of the Guaranteed Construction Start Date (as may be extended pursuant to Section 3.9(c)(iii)).

1.33 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 4.1.

1.34 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e).

1.35 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

1.36 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

1.37 “CPUC” or “Commission or successor entity” means the California Public Utilities Commission, or successor entity.

1.38 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance

with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

1.39 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

1.40 “Cure” has the meaning set forth in Section 8.5(a).

1.41 “Curtailed Period” means the period of time during which there is any of the following: (a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff (“System Emergency”), (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected; (b) a curtailment directed by the CAISO due to over generation as defined in the CAISO Tariff, or a forecast or expectation of over generation, including, but not limited to, a request by the CAISO to manage over generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (c) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (d) scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or (e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.42 “Daily Delay Damages” means with respect to a Guaranteed Project Milestone, an amount equal to (a) the Project Development Security Amount posted as of the first date that Daily Delay Damages are payable under this Agreement with respect to such Guaranteed Project Milestone, divided by (b) one hundred and eighty (180).

1.43 “Damage Payment” means the dollar amount equal to (a) the amount initially posted as Project Development Security pursuant to Section 8.4(a)(ii), less (b) amounts collected by Buyer as Daily Delay Damages pursuant to Section 3.9(c)(iv).

1.44 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).

1.45 “Day Ahead Schedule” has the meaning set forth in the CAISO Tariff.

1.46 “Defaulting Party” means the Party that is subject to an Event of Default.

1.47 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).

1.48 “Delivered Energy” means all Energy produced from the Project and delivered to the Delivery Point as measured in MWh at the CAISO revenue meter of the Project.

1.49 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).

1.50 “Delivery Term” has the meaning set forth in Section 3.1(c).

1.51 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

1.52 “Disclosing Party” has the meaning set forth in Section 10.7.

1.53 “Disclosure Order” has the meaning set forth in Section 10.7

1.54 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to PG&E’s distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of Interconnection, as defined in the PG&E Wholesale Distribution Tariff, at the point where PG&E’s meter is physically located, and the first point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

1.55 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.

1.56 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

1.57 “Early Termination Date” has the meaning set forth in Section 5.2.

1.58 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.4(a) have been satisfied or waived in writing by both Parties.

1.59 “Electrical Losses” means all applicable losses, including, but not limited to, the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.60 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if the Participating TO’s electric system is not part of the CAISO Grid.

1.61 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.62 “Eligible Intermittent Resource Program” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.63 “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

1.64 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 1.90, “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.

1.65 “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the Final Hour Ahead Schedule (as defined in the CAISO Tariff) for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (b) Delivered Energy for the Settlement Interval.

1.66 “Energy Investment Tax Credit” or “ITC” means the tax credit for “energy property” described in Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.67 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.68 “EPC Contractor” means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s; provided, however, that the Seller or the Seller’s affiliate(s) may serve as the EPC Contractor.

1.69 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.70 “Event of Default” has the meaning set forth in Section 5.1.

1.71 “Exclusivity Period” has the meaning set forth in Section 3.9(e) or Section 11.1(b)(i), as applicable.

1.72 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.73 “Executive(s)” has the meaning set forth in Section 12.2(a).

1.74 “Exempt Wholesale Generator” has the meaning provided in 18 CFR Section 366.1.

1.75 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.76 “Final Output Report” means the unabridged and unredacted final report provided to Buyer as set forth in Section 3.9(a)(vii) concerning the Energy producing potential of the Site, inclusive of anticipated Planned Outages and Forced Outages on an annual basis, prepared by a Licensed Professional Engineer who shall be retained by Seller. The Energy producing potential of the Site as reflected in the Final Output Report may be expressed on a calendar year by calendar year basis, if necessary to reflect adjustments in such potential over time due to any anticipated degradation of the photovoltaic panels.

1.77 “First Offer” has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

1.78 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subsection (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(i).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;

(v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;

(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or

(ix) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.79 "Force Majeure Construction Extension" has the meaning set forth in Section 3.9(c)(iii)(A).

1.80 “Force Majeure Failure” means either Force Majeure Project Failure or Force Majeure Development Failure, as applicable.

1.81 “Force Majeure Development Failure” has the meaning set forth in Section 11.1(a)(ii).

1.82 “Force Majeure Project Failure” has the meaning set forth in Section 11.1(a)(i).

1.83 “Forced Outage” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.84 “Forecasting Penalty” has the meaning set forth in Section 4.5(c)(iii), and “Forecasting Penalties” means more than one Forecasting Penalty.

1.85 “Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.86 “GEP Cure” has the meaning set forth in Section 3.1(e)(ii).

1.87 “GEP Damages” has the meaning set forth in Section 3.1(e)(ii).

1.88 “GEP Failure” means Seller’s failure to produce Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.89 “GEP Shortfall” means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

1.90 “Good Utility Practice” has the meaning provided in the CAISO Tariff.

1.91 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.92 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

1.93 “Governmental Charges” has the meaning set forth in Section 9.2.

1.94 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.95 “Guaranteed Commercial Operation Date” has the meaning set forth in Section 3.9(c)(iii)(B).

1.96 “Guaranteed Construction Start Date” has the meaning set forth in Section 3.9(c)(iii)(A).

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

1.97 “Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 3.1(e).

1.98 “Guaranteed Project Milestones” are the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date set forth in 3.9(c)(iii).

1.99 “Hour Ahead” has the meaning set forth in the CAISO Tariff.

1.100 “Initial Energy Delivery Date” has the meaning set forth in Section 3.1(c).

1.101 “Initial Negotiation End Date” has the meaning set forth in Section 12.2(a).

1.102 “Interconnection Customer’s Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

1.103 “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

1.104 “Interconnection Point” means *[Seller to identify the physical interconnection point of the Project]*,

1.105 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

1.106 “Interest Payment Date” means the last Business Day of each calendar year.

1.107 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

1.108 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

1.109 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.110 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.38 “CPUC Approval,” 1.94 “Green Attributes,” 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.111 “Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank with sufficient assets in the United States, as determined by Buyer, with either such bank having a Credit Rating of at least A from S&P or A2 from Moody’s, substantially in the form as contained in Appendix I to this Agreement.

1.112 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.113 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

1.114 “Manager” has the meaning set forth in Section 12.2(a).

1.115 “Milestones” means the key development activities required for the construction and operation of the Project, as set forth in Appendix III.

1.116 “Monthly Progress Report” means the report similar in form and content attached hereto as Attachment A to Appendix III.

1.117 “Monthly Period” has the meaning set forth in Section 4.2.

1.118 “Monthly TOD Payment” has the meaning set forth in Section 4.3.

1.119 “Moody’s” means Moody’s Investor Services, Inc., or its successor.

1.120 “MW” means megawatt (AC).

1.121 “MWh” means megawatt-hour.

1.122 “NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

1.123 “NERC Holiday” has the meaning set forth in Section 4.2.

1.124 “Network Upgrades” has the meaning set forth in the CAISO Tariff.

1.125 “New Generation Facility” means a project that (a) has not previously been operational and able to produce and deliver Energy to another entity or (b) must be re-powered or expanded in order to deliver the Product pursuant to the terms set forth in this Agreement.

1.126 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.

1.127 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.128 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix XI contains the names and addresses to be used for Notices.

1.129 “Notice to Proceed” means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Project without any delay or waiting periods.

1.130 “Obligor” means the Party breaching the terms of this Agreement.

1.131 “Outage Notification Procedures” means the procedures specified in Appendix VIII, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

1.132 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.

1.133 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

1.134 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

1.135 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security.

1.136 “Performance Measurement Period” has the meaning set forth in Section 3.1(e).

1.137 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).

1.138 “Permitting Delay” has the meaning set forth in Section 3.9(c)(iii)(A).

1.139 “Permitted Extensions” means extensions to either of the Guaranteed Project Milestones due to Permitting Delay, Transmission Delay, Force Majeure Construction Extension, as applicable, to each Guaranteed Project Milestone pursuant to Section 3.9(c)(iii)(A) or (B), as applicable.

1.140 “Permit Failure” has the meaning set forth in Section 3.9(d).

1.141 “PG&E Wholesale Distribution Tariff” means the Pacific Gas and Electric Company FERC Electric Tariff First Revised Volume No. 4, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.142 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

1.143 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

1.144 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii).

1.145 “Product” means the Energy, capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.146 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.147 “Program Agreements” has the meaning set forth in Section 3.4(b).

1.148 “Project” means all of the Unit(s), the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including but not limited to the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described on Appendix IV. For purposes of Section 1.90, “Green Attributes,” the word “project” shall have the meaning set forth in this definition.

1.149 “Project Cure Period” has the meaning set forth in Section 3.9(c)(iv).

1.150 “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 8.4(a).

1.151 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

1.152 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.

1.153 “Qualifying Protocols” has the meaning set forth in Section 3.4(b).

1.154 “RA Capacity” means the maximum megawatt amount that the CAISO recognizes from a Project that qualifies for Buyer’s Resource Adequacy Requirements and is associated with the Project’s Capacity Attributes.

1.155 “Reductions” has the meaning set forth in Section 4.7(b).

1.156 “Referral Date” has the meaning set forth in Section 12.2(a).

1.157 “Remedial Action Plan” has the meaning provided in Section 3.9(c)(ii).

1.158 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

1.159 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

1.160 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.

1.161 “Revised Offer” has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.

1.162 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.163 “Satisfaction Date” has the meaning set forth in Section 2.5.

1.164 “Schedule” has the meaning set forth in the CAISO Tariff.

1.165 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of

undertaking the functions specified in “Responsibilities of a Scheduling Coordinator”, of the CAISO Tariff, as amended from time to time.

1.166 “SEC” means the U.S. Securities and Exchange Commission.

1.167 “Seller” has the meaning set forth in the Preamble. For the purposes of Section 3.1(m)(i), the term “Producer” has the same meaning as the term “Seller”.

1.168 “Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.

1.169 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.170 “Settlement Amount” means the amount in US\$ equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

1.171 “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).

1.172 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

1.173 “SGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and, as applicable, the CAISO governing the terms and conditions of Seller’s interconnection with the Participating TO’s transmission or distribution system, including any description of the plan for interconnecting to Participating TO’s transmission or distribution system.

1.174 “SGIP” means the Small Generator Interconnection Procedures set forth in the PG&E Wholesale Distribution Tariff or CAISO Tariff, as applicable, and associated documents; provided that if the SGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO’s transmission or distribution system or (b) of generating facilities with an expected net capacity equal to or greater than the Project’s Contract Capacity, the term “SGIP” shall then apply to such successor procedure.

1.175 “Site” means the location of the Project as described in Appendix IV.

1.176 “System Emergency” has the meaning provided in Section 1.41, “Curtailed Period.”

1.177 “Term” has the meaning provided in Section 2.5.

1.178 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.179 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.180 “Test Period” means the period of not more than ninety (90) consecutive days commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Project to the CAISO Grid and ending when Seller advises Buyer of the occurrence of the Initial Energy Delivery Date.

1.181 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.

1.182 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.

1.183 “TOD Factors” has the meaning set forth in Section 4.3(a).

1.184 “TOD Period” has the meaning set forth in Section 4.2.

1.185 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

1.186 “Transmission Delay” has the meaning set forth in Section 3.9(c)(iii)(A).

1.187 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point. For purposes of this Agreement the Transmission Provider is CAISO.

1.188 “Unit” means the *[insert technology, including any applicable model]* used to produce the Products, which are identified in Appendix IV for the Transaction entered into under this Agreement.

1.189 “WECC” means the Western Electricity Coordinating Council or successor agency.

1.190 “WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.191 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

1.192 “WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

1.193 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.194 “Work” means (a) work or operations performed by a Party or on a Party’s behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”, and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation

The following rules of interpretation shall apply in addition to those set forth in Section 10.13:

(a) The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

2.3 Authorized Representatives.

Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.6 hereof, the Term shall not commence until the occurrence of all of the following:

(i) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(ii) CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

(iii) The advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order; and

(iv) Buyer receives from Seller the documentation listed in Appendix XIII (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.5 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.4(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.4(b), Section 5.2 or Section 11 of this Agreement (the "Term"); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (the "Satisfaction Date") or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 (Indemnities) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.7 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1 (b) shall survive the Satisfaction Date for two (2) years.

2.6 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

- (i) Sections 5.1(a)(iv)-(v), and 5.1(b)(v);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;
- (iii) Sections 5.2 through 5.7;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.15; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is an As-Available Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (i) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or (ii) sell Product from the Project to a third Party other than in connection with Energy Deviations. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or

charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(c) Delivery Term. “Delivery Term” shall mean the period of twenty (20) Contract Years beginning on the first date that Seller delivers Product to Buyer from the Project (“Initial Energy Delivery Date”) in connection with this Agreement and continuing until the end of the twentieth Contract Year unless terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied: (A) the Commercial Operation Date has occurred; (B) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable; (C) Seller shall have obtained the requisite CEC Certification and Verification for the Project; (D) all of the applicable Conditions Precedent in Section 2.4(a) of the Agreement have been satisfied or waived in writing, and (E) Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent such status is available at such time as the conditions in subsections (A) through (D) of this Section 3.1(c) are satisfied. If subsection (E) is applicable, Seller shall obtain such certification no later than one hundred twenty (120) days following the Commercial Operation Date. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “Initial Energy Delivery Date Confirmation Letter” attached hereto as Appendix II on the Initial Energy Delivery Date. Eighteen (18) months prior to the anticipated conclusion of the Delivery Term, the Parties shall provide notice of their intentions with respect to the Project, including if desired, any proposed extension of this Agreement.

(d) Delivery Point. The Delivery Point shall be the Interconnection Point.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule,” attached hereto as Appendix V, which amount is inclusive of outages. ***[Seller shall provide the Contract Quantity amount listed in its Offer on the worksheet in the Bid Offer Forms applicable to the Product. Such amounts should account for annual degradation of PV.]***

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Delivered Energy, as measured in MWh, equal to the product of (x),(y), where (x) is one hundred sixty percent (160%) of the then-applicable Contract Quantities for the Performance Measurement Period, (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = (160% * Contract Quantity in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(B) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly notify Seller of such failure. Seller may cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the next following Contract Year (“GEP Cure”). If Seller fails to generate sufficient Delivered Energy to make the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix VII (GEP Damages Calculation), provided however that in lieu of paying GEP Damages, Seller shall have the one-time option to reduce the Contract Capacity to no less than seventy percent (70%) of the original Contract Capacity.

(I) In the event that the Contract Capacity is reduced pursuant to Sections 3.1(e)(ii)(B) above, (i) the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule set forth in Appendix V shall be adjusted proportionately with such reduction, and (ii) the Guaranteed Energy Production shall be adjusted to one hundred sixty percent (160%) of the then-applicable Contract Quantities for the Performance Measurement Period, as described by the following formula:

Guaranteed Energy Production = (160% * adjusted Contract Quantity in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]

(II) Seller shall not incur or be subject to any liability, including but not limited to GEP Damages hereunder as a result of such one-time reduction in the Contract Capacity or adjusted Contract Quantities pursuant to Section 3.1(e)(ii)(B).

(III) The Parties agree that the damages sustained by Buyer associated with Seller’s failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(IV) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice. If Seller does not pay the GEP Damages within the sixty (60) day time period, Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(vi)(A). If Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(vi), if Seller has failed to pay the GEP Damages, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller’s failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(vi)(B).

(f) Contract Capacity. The generation capability designated for the Project shall be [_____] MW (AC) net of all auxiliary loads, station electrical uses, and Electrical Losses (the “Contract Capacity”). Throughout the Delivery Term, Seller shall sell and Schedule all Product produced by the Project (net of station use) solely to Buyer and Buyer shall purchase all Product produced by the Project; provided, however, that in no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred and ten percent (110%) of Contract Capacity.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer’s prior written consent. The Project is further described in Appendix IV.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6(b). Seller shall be deemed to have relinquished possession of the Project if after the Commercial Operation Date Seller has ceased work on the Project or ceased production and delivery of Product for a consecutive thirty (30) day period and such cessation is not a result of a Force Majeure event or direct action of Buyer.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer’s Interconnection Facilities, including metering facilities to be maintained; and (C) comply with the procedures set forth in the SGIP and applicable agreements or procedures provided under the SGIP.

(ii) Coordination with Buyer. Seller shall (A) provide to Buyer copies of all material correspondence related thereto; and (B) provide Buyer with written reports of the status of the SGIA on a monthly basis. The foregoing shall not preclude Seller from executing an SGIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from achieving the Guaranteed Energy Production and the Capacity Factor for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. The performance of Buyer to receive or pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller’s failure to perform, or (C) during Curtailment Periods.

(iii) Curtailement. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project as directed by the CAISO, Buyer, or the Participating Transmission Owner during any Curtailement Period.

(iv) No Excuse. Except for a failure or curtailment resulting from a Force Majeure or during a Curtailement Period, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of Energy to be provided under this Agreement.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap.

(k) WREGIS. Seller shall, at its sole expense, but subject to the Compliance Cost Cap, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in section 3.1(k)(viii); provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Project's metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(l) Access to Data and Installation and Maintenance of Weather Station.

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the following data on a real-time basis and, if applicable, historical basis:

(A) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary

for use in the equation under item (F) of this list, and energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project;

(B) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(C) full, real time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application;

(D) net plant electrical output at the CAISO revenue meter;

(E) time-average data including 10-minute and hourly values of total global horizontal irradiance or direct normal insolation, total global radiation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and, if applicable, visibility in winter fog areas; and

(F) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix XIV (Form of Actual Availability Report). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(1)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Buyer reserves the right to validate the data provided pursuant to Section 3.1(1)(i) with information publicly available from NOAA and nearby weather stations and substitute such data for its settlement purposes if Seller's data is inconsistent with the publicly available data or is missing; provided that Buyer shall notify Seller promptly of Buyer's substitution of such data.

(iii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(1)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e, cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least thirty (30) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) total global horizontal irradiance or direct normal insolation, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in winter fog areas as applicable (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure and visibility in winter fog areas as applicable; (B) elevation, latitude and longitude of the weather station; and (C) any other data that would be required for participation in the EIRP.

(m) Prevailing Wage.

(i) Producer shall use reasonable efforts to ensure that all Electricians hired by Producer, and its contractors and subcontractors are paid wages at rates not less than those prevailing for electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Producer, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code.

(ii) To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(o) Compliance Cost Cap. Costs applicable to the Compliance Cost Cap are only those costs applicable under the term's definition (section 1.26) and are new costs associated with a change in law from the contract's execution date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$10,000.00 per MW (AC) of Contract Capacity and in the aggregate throughout the Delivery Term at \$20,000.00 per MW (AC) of Contract Capacity (collectively, the "Compliance Cost Cap"). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) days after the change, amendment, repeal, or enactment of Law after the Execution Date which Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such change in Law. Within thirty (30) days of the delivery of such Notice with the estimate, Buyer shall provide Seller Notice of (i) Buyer's request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (ii) Buyer's initiation of dispute resolution under Article 12, or (iii) Buyer's waiver of Seller's performance of such obligations. The Parties shall agree on a reasonable allocation, as between Seller and Buyer, over the remaining Term of any such Compliance Costs that are incurred after the fifteenth (15th) Contract Year and that are expected to benefit the Project beyond the Term of this Agreement. Any reimbursement by Buyer to Seller referenced above in this Section 3.1(o) shall be subject to CPUC approval, and the amount of such reimbursement shall not be paid by Buyer to Seller until such time as the CPUC has approved such payment. Seller shall be relieved from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap and which give rise to the payment that is the subject of the above reference CPUC approval until such time as the CPUC issued its approval of the reimbursement payment in final and non-appealable form.

3.2 Green Attributes.

Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

3.3 Resource Adequacy..

During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Subject to the Compliance Cost Cap, Seller agrees that during the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix X to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements.

3.4 Transmission and Scheduling..

(a) Transmission.

(i) Seller's Transmission Service Obligations. As of the Test Period and during the Delivery Term:

(A) Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement.

(B) Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to the Delivery Point.

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy to the CAISO Grid.

(ii) Buyer's Transmission Service Obligations. As of the Test Period and during the Delivery Term,

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

(B) Buyer shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Point.

(C) Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(D) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) EIRP Requirements. The Parties acknowledge that as of the Execution Date, the CAISO has not yet established protocols for scheduling solar power to permit solar projects to participate in EIRP (“Qualifying Protocols”). As soon as practicable, but not more than ninety (90) days after Qualifying Protocols are finalized and made effective by the CAISO, Seller shall apply to have the Project certified as a Participating Intermittent Resource and shall thereafter diligently pursue such process to completion, subject to the Compliance Cost Cap, including negotiating and executing all necessary documents to become a Participating Intermittent Resource (each as defined by the CAISO Tariff and collectively, the “Program Agreements”). Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller’s receipt of such notice of certification. Following certification and whenever applicable, Seller shall participate in and comply with EIRP as directed by Buyer or Third-Party SC and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during all hours of the Delivery Term, and Buyer, as Scheduling Coordinator, shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller’s participation in and compliance with EIRP and such additional protocols, to the extent such actions are at *de minimis* cost to Buyer.

(c) Scheduling Coordinator. Buyer shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Test Period Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller’s Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller’s Scheduling Coordinator. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Test Period and Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all Scheduling in full compliance with the terms and conditions of this Agreement, the applicable CAISO Tariff, all requirements of EIRP (if applicable), and protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff.

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(c)(ii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including but not limited to automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (II) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Forecast of Available Capacity. During each month of the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix VIII, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

(1) Monday - Preschedule Day for Tuesday

- (2) Tuesday - Preschedule Day for Wednesday
- (3) Wednesday - Preschedule Day for Thursday
- (4) Thursday - Preschedule Day for Friday and Saturday
- (5) Friday - Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Prescheduling Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW (AC) as of a time that is more than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for Day-Ahead Schedules, then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VIII. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other necessary information.

Day-Ahead Trading Desk
Primary Telephone: (415) 973-6222
Backup Telephone: (415) 973-4500

If Seller fails to provide Buyer with a Day-Ahead Availability Notice as required herein, then, (I) until Seller provides a Day-Ahead Availability Notice, Buyer may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Buyer and Seller and (II) to the extent Seller's failure contributes to an imbalance charge, Seller shall be subject to the Forecasting Penalties set forth in Section 4.5(c)(ii).

(D) Hourly Forecast of Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW (AC) or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer or Third-Party SC (as applicable) is required to submit Hour-Ahead schedules to the CAISO. Available Capacity changes after one (1) hour before the CAISO deadline for Hour-Ahead Schedules, but before the CAISO Hour-Ahead deadline, shall also be reported by Seller to Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW (AC), and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall (I) use commercially reasonable efforts to notify Buyer of such outage immediately following Seller Available Capacity notification to the CAISO via SLIC and Seller shall follow the Outage Notification Procedures in Appendix VIII of this Agreement. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Project during or after the end of such outage. These notices and changes to Available Capacity shall be

communicated by telephone to Buyer's Hour-Ahead Trading Desk and shall be sent to Buyer's internet site as set forth in Appendix VIII:

Hour-Ahead Trading Desk
Primary Telephone: (415) 973-4500

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third- Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering.

All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to

retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification..

(a) CAISO Approval of Outage(s). Seller is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Seller's schedules or cancels previously approved outages. Seller shall communicate any CAISO-required changes to Buyer in a timely manner, in accordance with the provisions set forth in Appendix VIII.

(b) Planned Outages. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with the Annual Forecast of Available Capacity procedure set forth in Appendix VIII no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct Planned Outages during the months of January, June through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage. After any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may request that Seller change its outage schedule. Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the provisions in Appendix VIII. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis using the same notification procedure as used with initial notice. Seller shall not substitute Energy from any other source for the output of the Project during a Prolonged Outage.

(d) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of

a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Products from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(e) Communications with CAISO. Seller shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide Buyer with copies of all outage plans and clearance requests submitted to CAISO, and shall promptly inform Buyer of all clearance approvals and disapprovals and other communications with CAISO pertaining to the status of planned or in-progress Project outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to Buyer and the Participating Transmission Owner upon request. If either Party receives information through CAISO or directly from the Participating Transmission Owner regarding maintenance that will directly affect the Project, it will provide this information promptly to the other Party.

(f) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix VIII. Seller understands and acknowledges that the specified transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described therein are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not

interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

(a) Seller, at no cost to Buyer, shall be responsible to:

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Interconnection Facilities to Schedule and deliver the Product.

(iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project and provide to Buyer specifications and design drawings of any such changes.

(vi) Within fifteen (15) days after the close of each month from the first month following the Execution Date until the Commercial Operation Date, provide to Buyer a Monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The Monthly Progress Report shall indicate whether Seller has met or is on target to meet the Milestones.

(vii) Provide to Buyer a copy of the Final Output Report, and any updates thereafter for the time period beginning on the Effective Date and ending on the last day of the first Contract Year.

(b) Buyer shall have the right, but not the obligation, to:

(i) Notify Seller in writing of the results of the review within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.

(c) Construction Milestones.

(i) Milestones. The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree certain Milestones must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

(ii) Remedial Action Plan. If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”), which is outlined in the Monthly Progress Report and requires Seller to provide a detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.

(iii) Guaranteed Project Milestones. “Guaranteed Project Milestones” are as follows:

(A) The Construction Start Date shall occur no later than _____ (the “Guaranteed Construction Start Date”); provided that the Guaranteed Construction Start Date may be extended on a day for day basis for not more than three hundred sixty (360) days:

(I) if Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller’s reasonable control (“Permitting Delay”);

(II) if Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid and to complete all Electric System Upgrades needed, if any, in order to interconnect the Project to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller’s reasonable control (“Transmission Delay”);

(III) in the event of Force Majeure (“Force Majeure Construction Extension”) without regard to Transmission Delay or Permitting Delay; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request.

Notwithstanding the foregoing, if Seller claims Permitting Delay and Transmission Delay, such extensions cannot cumulatively exceed three hundred sixty (360) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(B) Seller shall have demonstrated Commercial Operation per the terms of Appendix VI no later than eighteen (18) months after the Effective Date of this Agreement, (the “Guaranteed Commercial Operation Date”), provided that (I) the Guaranteed Commercial Operation Date may be extended on a day for day basis equal to any extension claimed by Seller pursuant to and in accordance with Section 3.9(c)(iii)(A), and (II) the Guaranteed Commercial Operation Date may be extended further on a day for day basis for Force Majeure occurring after the Construction Start Date provided that the total number of such further extension days shall not exceed three hundred sixty (360) days.

(C) If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days Notice prior to original date of the applicable Guaranteed Project Milestone, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure Construction Extension, if sixty (60) days in impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(iv) Cure Period and Delay Damages.

(A) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure after Construction Start Date or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions, then Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (1) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions for up to a total of sixty (60) days (“Project Cure Period”); or (2) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions for up to a total of sixty (60) days (“Construction Cure Period”). The Parties agree that Buyer’s receipt of Daily Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 5.1 and (y) not limit Buyer’s right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer’s default right pursuant to Section 5.2.

(B) Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller’s delay in achieving either of the Guaranteed Project Milestones would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller’s failure to meet the Guaranteed Construction Start Date only if Seller meets the Guaranteed Commercial Operation

Date (as may be extended by Permitted Extensions) as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay Damages drawn (or which Buyer is entitled to draw) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date (both as may be extended by Permitted Extensions), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions).

(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the Guaranteed Construction Start Date (as may be extended pursuant to this Agreement) final and non-appealable material Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in Section 3.1(f), after using commercially reasonable efforts to do so (including, but not limited to, timely filings with all applicable Governmental Authorities and timely payment of any required fees) ("Permit Failure"), Seller shall make a Contract Capacity Commitment on the Guaranteed Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the initial Contract Capacity set forth in Section 3.1(f), provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable material Governmental Approvals that Seller has received as of the Guaranteed Construction Start Date (as may be extended) and may not be under one (1) MW (AC), and provided further that for a period of two (2) years from any such resizing pursuant to this Section 3.9(d), Seller must offer Buyer a Right of First Offer for any Products from the Project up to the initial Contract Capacity set forth in Section 3.1(f) as further provided in Section 3.9(e), below. Seller shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Guaranteed Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Sections 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Schedule attached hereto shall be adjusted proportionately with such reduction.

(iii) In the event that the Contract Capacity and Contract Quantity are reduced pursuant to Sections 3.9(d)(i) and (ii), the revised Contract Capacity and Contract Quantity shall be used to determine Seller's performance under the Agreement, including but not limited to the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security required under Section 8.4.

(iv) If the final Contract Capacity is less than the initial Contract Capacity due to a resize of the project pursuant to Section 3.9(d)(i), then Seller shall forfeit a proportional share of the Project Development Security on a percent-for-percent basis.

(e) Right of First Offer.

(i) If Seller resizes the Project due to Permit Failure, then for a period of two (2) years from the date on which Seller Notifies Buyer of the Contract Capacity Commitment ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates

shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project in excess of the Contract Capacity Commitment, up to the initial Contract Capacity set forth in Section 3.1(f), to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming the Permit Failure.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller’s certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year shall be as follows:

Contract Year	Contract Price (\$/MWh)
1-20	/MWh

4.2 TOD Periods.

The time of delivery periods (“TOD Periods”) specified below shall be referenced by the following designations:

Monthly Period	TOD PERIOD		
	1. Super-Peak	2. Shoulder	3. Night
A. June - September	A1	A2	A3
B. Oct. -Dec., Jan. & Feb.	B1	B2	B3
C. Mar. – May	C1	C2	C3

Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. June - September;
- B. October, November, December, January and February; and
- C. March - May.

TOD Period Definitions. The TOD Periods are defined as follows:

1. **Super-Peak** (5x8) = hours ending 13-20 (Pacific Prevailing Time (PPT)) Monday - Friday (*except* NERC Holidays) in the applicable Monthly Period.
2. **Shoulder** = hours ending 7 - 12, 21 and 22 PPT Monday - Friday (*except* NERC Holidays); and hours ending 7-22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.
3. **Night** (7x8) = hours ending 1-6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday. Notwithstanding anything to the contrary in this Section 4.2, NERC Holidays shall be calculated as “Shoulder” hours for all non-”Night” hours and any remaining hours shall be calculated as “Night” hours.

4.3 TOD Factors and Monthly TOD Payment.

(a) TOD Factors. In accordance with all other terms of this Article Four, the Contract Price for Delivered Energy shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified TOD Periods in which Delivered Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June - September	2.20490	1.12237	0.68988
B. Oct. -Dec., Jan. & Feb.	1.05783	0.93477	0.76384
C. Mar. – May	1.14588	0.84634	0.64235

(b) Monthly TOD Payment. For each month, Buyer shall pay Seller for Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the Delivered Energy in each hour:

$$\text{Monthly TOD Payment} = \text{Contract Price} \times \text{TOD Factor} \times \text{Delivered Energy } MW_{\text{hour}}$$

4.4 Excess Delivered Energy.

In any Contract Year, if Seller delivers Delivered Energy in excess of one hundred twenty percent (120%) of the annual Contract Quantity amount, the Contract Price for such Energy in excess of such one hundred twenty percent (120%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties, incurred by Seller because of Buyer’s actions.

(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Section 4.5(c) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) Subject to Force Majeure, in the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(c)(iii), and the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is five percent (5%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.6 Test Period Payments.

During the Test Period Seller's full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward promptly to Seller.

4.7 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default.

An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading.

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) failure by Seller to meet the Guaranteed Construction Start Date as extended by any Permitted Extensions, and after the applicable cure period has expired due solely to Seller’s inability to obtain, after the use of commercially reasonable efforts, any of the following in time to achieve the Guaranteed Construction Start Date: (A) permits necessary to construct or operate the Project, or (B) an SGIA that provides for the Project being physically interconnected to the CAISO Grid or the Participating Transmission Owner’s distribution system, and for the completion of any necessary Electric System Upgrades;

(iii) failure by Seller to meet the Guaranteed Commercial Operation Date as extended by any Permitted Extensions, and after the applicable cure period has expired due solely to Seller's inability to achieve, after the use of commercially reasonable efforts, by the Guaranteed Commercial Operation Date either the physical interconnection of the Project to the CAISO or any necessary Electric System Upgrades;

(iv) failure by Seller for any reason other than those explicitly provided in Sections 5.1(b)(ii) and (iii) above and Section 1.1(a)(ii) to meet either of the Guaranteed Project Milestones as may be extended by Permitted Extensions and in each case after the applicable cure period has expired;

(v) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement and such failure is not cured within any applicable cure period;

(vi) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e)(ii) of this Agreement as follows:

(A) after the one (1)-year GEP Cure period Seller has failed to cure the GEP Failure and has failed to pay GEP Damages in the time period set forth in Section 3.1(e)(ii); or

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Sections 3.9(d) and 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the cumulative GEP Shortfall for purposes of this subsection.

5.2 Remedies.

If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date");

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

(c) (i) collect the Damage Payment in accordance with Section 5.8 below, if the Event of Default arose under Sections 5.1(b)(ii) or Section 5.1(b)(iii), or (ii) collect the Termination Payment for any other Event of Default;

(d) withhold any payments due to the Defaulting Party under this Agreement;

(e) suspend performance;

(f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance;

(g) demand payment for damages due to Buyer's unexcused failure to take delivery or pay for Product; and

(h) exercise any other rights or remedies available at Law or in equity to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same Delivery Point, (d) for the remaining Delivery Term, and (e) any other commercially reasonable manner. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the

Termination Payment is due to the Non- Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative.

The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate.

Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

5.8 Damage Payment for Failure to Achieve Guaranteed Dates.

The Parties agree that the Damage Payment to be paid by Seller for an Event of Default arising under Section 5.1(b)(ii) or Section 5.1(b)(iii) associated with Seller's failure to achieve the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date shall be considered liquidated damages and not a penalty, in accordance with Section 7.1.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies.

On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Sections 4.3 and 4.4, as adjusted pursuant to Section 4.5 (CAISO Charges) (which may include charges incurred in preceding months), and, if applicable, Section 4.6. Buyer shall pay the undisputed amount of such invoices less the amount of any Forecasting Penalties (as applicable), on or before the later

of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices.

In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN.

UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information.

If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

8.2 Seller Financial Information

If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end

of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty days of the delivery of the Project Development Security or Delivery Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance

(a) Project Development Security; Delivery Term Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$ *[insert dollar amount equal to \$15/kw multiplied by the capacity of the Project as reflected in Seller's Offer]* and in the form of *[specify cash or Letter of Credit]* within five (5) Business Days following the Execution Date of this Agreement until Seller posts Project Development Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Project Development Security pursuant to this Section 8.4(a)(ii) in the amount set forth in Sections 8.4(a)(ii)(A)-(B), below, as applicable, in the form of *[specify cash or Letter of Credit]* from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Section 2.4 are either satisfied or waived until Seller posts Delivery Term Security pursuant to Section 8.4(a)(iii) below with Buyer; provided that if Buyer collects or is entitled to collect Daily Delay Damages from Seller during the Construction Cure Period for failure to achieve the Guaranteed Construction Start Date (after giving effect to Permitted Extensions), Seller agrees that within ten (10) Business Days following the end of the Construction Cure Period it shall replenish the Project Development Security by an amount equal to the encumbered Project Development Security; provided further that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Project Development Security posted pursuant to this Section 8.4(a)(ii);

(A) For Projects with a Contract Capacity of less than 10 MW (AC), \$ *[insert dollar amount equal to \$20/kw, multiplied by the capacity of the Project as reflected in Seller's Offer]*; or

(B) For Projects with a Contract Capacity of 10 MW (AC) or greater, *[insert dollar amount equal to \$35/kw, multiplied by the capacity of the Project as reflected in Seller's Offer]*.

(iii) Delivery Term Security pursuant to this Section 8.4(a)(iii) in the amount of \$ *[insert dollar amount equal to six months of the Contract Price multiplied by the Contract Quantity in the first applicable Contract Year]* and in the form of *{specify cash, Letter of Credit or Guarantee}* from the Commercial Operation Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(iii).

Except as provided in Section 5.2(c)(i), the amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.4(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). If Seller has met the Guaranteed Commercial Operation Date, then the Project Development Security returned shall include amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date. The Project Development Security (or portion thereof)

due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii).

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security, as applicable, at the Interest Rate; provided that, such interest shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.4(a)(iii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XI (Notices List). After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security.

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to Section 4.5 (CAISO Charges), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting)

(f) Adjustment of Security Amounts for Project Resizing. The required amount of Delivery Term Security shall be proportionally and automatically adjusted in connection with any resizing of the Project under Sections 3.1(e)(ii), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security in connection with any such adjustment.

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

(b) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party’s exemption is lost or reduced, each Party’s responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Recording.

Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer’s employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(c) and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and

may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

10.2 Representations and Warranties.

(a) **General Representations and Warranties.** On the Execution Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (A) CPUC Approval in the case of Buyer, and (B) all permits necessary to install, operate and maintain the Project in the case of Seller;

(iii) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

(b) Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) The term “commercially reasonable efforts” as used in Section 10.2(b) of this Agreement shall not require Seller to incur Compliance Costs in excess of the Compliance Cost Cap.

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and the Transaction; and

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including but not limited to payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation date or as soon as practicable thereafter.

10.4 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person or entity arising prior to or at the Delivery Point.

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's operation and/or maintenance of the Project, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors, or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6(b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project (including any tax equity or lease financing) without the prior written consent of the Buyer; provided that the financing provider(s), enter(s) into a Consent to Assignment substantially in the form attached hereto as Appendix XII under which such financing provider(s) shall agree that upon exercising its rights to assume the Agreement, it shall be bound by the terms and conditions hereof; and provided further that Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including without limitation attorneys' fees. In connection with the foregoing, Buyer endeavors to negotiate such Consent to Assignment with Seller's financing provider(s) in good faith.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality

Confidentiality Notification: If checked, Seller has waived its right to notification in accordance with Section 10.7(b).

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

(ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,

(iii) to the CPUC under seal for purposes of review,

(iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;

(v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or

(vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

(b) If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection (a)(v) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(c) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all information exchanged between the Parties as of and after the Effective Date.

10.8 RPS Confidentiality

Notwithstanding Section 10.7(a) of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

10.9 Audit

Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to

verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Insurance.

Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than \$1,000,000 for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than \$3,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(iv) Coverage shall:

(A) by "Additional Insured" endorsement add as insured PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket

endorsement;”

(B) be endorsed to specify that the Seller’s insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 “any auto”.

(ii) The limit shall not be less than \$1,000,000 each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Professional Liability Insurance.

(i) Errors and Omissions Liability insurance appropriate to the Seller’s profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$2,000,000 per claim,

(iii) Coverage shall:

(A) be endorsed to specify that the Seller’s insurance is primary and that any Insurance or self-insurance maintained by PG&E shall not contribute with it; and

(B) be endorsed to specify that the selection of counsel, paid for by the insurer, to defend PG&E and its officers, directors, agents, and employees against covered or potentially covered claims shall be by mutual consent of PG&E and insurer.

(e) Additional Insurance Provisions.

(i) Before commencing performance of the Work, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to PG&E.

(iii) PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. The process starts with the PG&E Contract Administrator submitting negotiated insurance terms in the Exigis website. An e-mail will be generated from

“Exigis.com” that will include a login, password, and link to the web-portal requesting specific information from the vendor. Vendor provides insurance broker information, which will trigger an e-mail to the insurance broker. The insurance broker provides insurance information and sends pdf or fax of insurance documents to Exigis. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to bind coverage on its behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge> Helpline: 1 (888) 280-0178

Certificate Holder:
Pacific Gas and Electric Company
c/o Exigis

(iv) Reviews of such insurance may be conducted by PG&E on an annual basis and, in addition, PG&E may inspect the original policies or require complete certified copies at any time.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(f) Form And Content.

(i) All policies or binders with respect to insurance maintained by Seller shall:

(A) waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and

(B) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.

10.11 Access to Financial Information.

The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller’s financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

(a) Complete financial statements and notes to financial statements; and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

10.12 Governing Law.

This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

10.13 General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.14 Severability.

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.15 Counterparts.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to

deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event]

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:

(i) if after the Commercial Operation Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity (as may be adjusted pursuant to Sections 3.1(e)(ii) or 3.9(d)) to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project (“Force Majeure Project Failure”); provided that:

(A) if the Project may be capable of resuming normal production, then Seller shall be entitled to an additional period of time (not to exceed six (6) months) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure Project Failure has occurred, Seller presents Buyer with a plan for mitigation of the effect of the Force Majeure which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, and Seller diligently pursues such mitigation plan throughout said additional period; or

(B) if the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster, upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer’s report, at no cost to Buyer.

(ii) if prior to the Construction Start Date or Commercial Operation Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or place the Project into Commercial Operation by either of the Guaranteed Milestones, after applicable extensions or cure periods have run, as set forth in

Sections 3.9(c)(iii) and (iv) (in either case a “Force Majeure Development Failure”); provided that in the event of a Force Majeure caused by a catastrophic natural disaster, upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer’s report, at no cost to Buyer.

(b) Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then for a period of two (2) years from the date on which Buyer Notifies Seller of such termination (“Exclusivity Period”), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller’s certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties.

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting to, be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Arbitration Initiation.

If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then the Parties shall resolve such controversy through Arbitration. The Arbitration shall be

adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in San Francisco, California, and shall be administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within one hundred and twenty (120) days of service of the Referral Date.

12.4 Arbitration Process.

At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to

the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(f) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix VIII, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

[SELLER, a (include place of formation and business type)]

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company

Applicant: [Insert name and address of Applicant]

77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain Power Purchase Agreement (“PPA”), dated _____, between Beneficiary and **[insert name of Seller under the PPA]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the PPA]** under the PPA; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the PPA]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended (without an amendment hereto) for a period of one (1) year from the Expiry Date or any future Expiry Date, unless **[insert name of Seller under the PPA]** has provided replacement security acceptable to Beneficiary, or Beneficiary has returned this Letter of Credit to **[insert name of Seller under the PPA]** prior to the Expiry Date.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ [print or type name]

Title: _____

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this ____ day of _____, _____ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an [Exempt Wholesale Generator] [Qualifying Facility]. Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Energy Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX III

MILESTONES SCHEDULE

Identify Milestone	Date for Completion

[To be completed by Buyer and Seller]

APPENDIX III- Attachment A

**FORM OF MONTHLY
PROGRESS REPORT**

**Monthly Progress Report
of**

("Seller")

**provided to
Pacific Gas and Electric Company
("Buyer")**

[Submittal Date]

1 Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement by and between _____, (“Seller”) and Pacific Gas and Electric Company dated _____, (the “Agreement”).

In addition to the Remedial Action Plan requirement set forth in Section 3.9(c) of the Agreement, Seller shall review the status of each Milestone of the construction schedule (the “Schedule”) for the Units and related Project and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Units or related Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, “EPC Contractor” means the contractor responsible for engineering, procurement and construction of the Project, including Seller if acting as contractor, and including all subcontractors.

2 Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.1.1 [Insert Milestones from Appendix III, if needed]
- 2.1.2 Financing
- 2.1.3 Governmental Approvals
- 2.1.4 Site Control
- 2.1.5 Design and Engineering
- 2.1.6 Major Equipment Procurement
- 2.1.7 Construction
- 2.1.8 Interconnection
- 2.1.9 Startup Testing and Commissioning

2.2 Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Project since the previous report (provide details in subsequent sections of this report):

- 2.2.1 [Insert Milestones from Appendix III, if needed]
- 2.2.2 Financing
- 2.2.3 Governmental Approvals
- 2.2.4 Site Control
- 2.2.5 Design and Engineering
- 2.2.6 Major Equipment Procurement
- 2.2.7 Construction
- 2.2.8 Interconnection
- 2.2.9 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Project:

- 2.3.1 [Insert Milestones from Appendix III, if needed]
- 2.3.2 Financing
- 2.3.3 Governmental Approvals
- 2.3.4 Site Control
- 2.3.5 Design and Engineering
- 2.3.6 Major Equipment procurement
- 2.3.7 Construction
- 2.3.8 Interconnection
- 2.3.9 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Project (provide details in subsequent sections of this report):

- 2.4.1 Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Design and Engineering
- 2.4.6 Major Equipment procurement
- 2.4.7 Construction
- 2.4.8 Interconnection
- 2.4.9 Startup Testing and Commissioning

3 Milestones

3.1 Milestone schedule

Please list all Milestones specified in Appendix III and state the current status of each.

Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
------------------	--	---

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Milestone
- 3.2.2 Explain plans to achieve missed Milestone
- 3.2.3 Explain plans to achieve subsequent Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Milestones

4 Financing

Please provide the schedule Seller intends to follow to obtain financing for the Project. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	___ / ___ / ___ (expected / actual)
	___ / ___ / ___ (expected / actual)

5 Project Schedule

Please provide a copy of the current version of the overall Project schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals, design and engineering, procurement, construction, interconnection and testing.

6 Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Project. Indicate whether dates are expected or actual.

Agency [e.g., the lead agency as required under the California Environmental Quality Act (CEQA)]

Date of application/submission

___/___/___ (expected / actual)

Date application/submission deemed complete by agency

___/___/___ (expected / actual)

Date of initial study (if applicable)

___/___/___ (expected / actual)

Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

Date of Notice of Preparation

___/___/___ (expected / actual)

Date of Draft ND/MND/EIR

___/___/___ (expected / actual)

Date Notice of Determination filed at OPR or County Clerk

___/___/___ (expected / actual)

6.2 Federal, State, Regional, County or Local Governmental Approvals

Please describe each of the major Governmental Approvals to be obtained by Seller and the status of each:

Agency / Approval

e.g.,

California Energy Commission (CEC) /
Application for Certification (AFC)

[name] County / Conditional Use Permit (CUP) for possible delay, etc.

Status Summary

e.g., dates of application / hearing / notice / etc.

(note whether dates are anticipated or actual);
major activities (indicate whether planned, in
progress and/or completed); primary reasons

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Agencies.

7 Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Project Site (e.g., purchase, lease).

Activity	Completion Date
	/ / (expected / actual)
	/ / (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month.

Please explain in detail the site control activities that are expected to be performed during the current month.

8 Design and Engineering

8.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		/ / (expected / actual)
		/ / (expected / actual)

8.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

8.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

9 Major Equipment Procurement.

9.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

9.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

9.3 Major Equipment procurement activities expected during the current month.

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

10 Construction

10.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		___/___/___ (expected / actual)
		___/___/___ (expected / actual)

10.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

10.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

10.4 EPC Contractor Monthly Construction Progress Report.

Please attach a copy of the Monthly Construction Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

11 Interconnection

11.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		___/___/___ (expected / actual)
		___/___/___ (expected / actual)

11.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

11.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

12 Startup Testing and Commissioning

12.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		___/___/___ (expected / actual)
		___/___/___ (expected / actual)

12.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

12.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

13 Safety and Health Reports

13.1 Accidents

Please describe all Project-related accidents reported since the previous report.

13.2 Work stoppages

Please describe all Project-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Project schedule.

14 Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller's Monthly Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Units as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

FACILITY DESCRIPTION

Facility name: _____

Facility Site name: _____

Facility physical address: _____

Total number of Units at the facility (committed and not committed to Buyer)

Technology Type: _____

Substation:

The term "Site" as defined in the Agreement means the following parcel description upon which the facility is located:

The nameplate capacity of the Project is _____.

The Units utilized as generation assets as part of the Project is described below:

[INSERT MAP]

APPENDIX V

DELIVERY TERM CONTRACT QUANTITY SCHEDULE

[To be completed by Seller]

Contract Year	Contract Quantity

APPENDIX VI

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

**[To be developed by Buyer and Seller and to include Form Certification set forth in
Appendix VI Attachment A]**

APPENDIX VI - Attachment A

FORM OF CERTIFICATION

This certification (“Certification”) is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

[To be developed by Buyer and Seller]

APPENDIX VII

GEP DAMAGES CALCULATION

In accordance with the provisions in Section 3.1(e)(ii), GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated as follows:

$$[(A-B)X(C-D)]$$

Where:

A = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

B = Sum of Delivered Energy over the Performance Measurement Period, in MWh

C= Replacement Price for the Performance Measurement Period, in \$/MWh, reflecting the sum of (a) the simple average of the simple average of the Day Ahead Integrated Forward Market hourly price, as published by the CAISO, for the Existing Zone Generation Trading Hub, in which the Project resides, plus (b) \$50/MWh

D = the unweighted Contract Price specified in Section 4.1 for the Performance Measurement Period, in \$/MWh

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” shall not be less than \$20/MWh. and shall be no greater than seventy five percent (75%) of the Contract Price (in \$/MWh) set forth in Section 4.1.

APPENDIX VIII

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR START-UP AND SHUTDOWN

Prior to paralleling to or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify your designated balancing authority control center as follows:

- ┆ Call the balancing authority control center to parallel before any start-up
- ┆ Call the balancing authority control center again with parallel time after start-up.
- ┆ Call the balancing authority control center after any separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PROJECT OUTAGES

1. Submit information by posting to PG&E's Power Procurement Information Center, which is located at www.pge.com under "For My Business." After selecting "Wholesale Power" on the right side of the page, select "Electric Procurement" along the left banner. After selecting the Power Procurement Information Center icon in the middle of the page, you will be required to enter a username and password, which will be assigned to you by PG&E's Bilateral Settlements Group.
2. If the website is unavailable, implement the procedures set forth below:
 - a. **For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Daily Forecast of Available Capacity")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and [Bilat Settlements@pge.com](mailto:BilatSettlements@pge.com).
 - c. For Monthly and WECC Preschedule Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone 415.973.6222 or backup phone 415.973.4500. Also send email to DAenergy@pge.com.

- e. For Hourly Forecasts of Available Capacity, call PG&E's Hour-ahead Trading Desk at 415.973.4500 and email to RealTime@pge.com.
- f. For project outages, complete the specifics below and submit by email to DAenergy@pge.com and Bilat Settlements@pge.com
 - i. ***Email subject Field: dd/mm/yyyy - dd/mm/yyyy XYZ Company Project #2 Outage Notification***
 - ii. ***Email body:***
 - 1. ***Type of Outage: Planned Outage, Forced Outage, Prolonged Outage***
 - 2. ***Start Date and Start Time***
 - 3. ***Estimated or Actual End Date and End Time***
 - 4. ***Date and time when reported to PG&E and name(s) of PG&E contacted***
 - 5. ***Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage required by the CAISO.***

APPENDIX IX

CERTIFICATION OF THIRD PARTY AGREEMENT

[To be developed by Buyer and Seller]

APPENDIX X

RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following:
 - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CAISO and/or CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the Interconnection Point; and
 - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
 - A. Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;
 - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff;
 - C. Complying with the dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
 - D. Complying with the applicable reporting requirements, such as submitting Supply Plans to the CAISO.
3. RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

APPENDIX XI

NOTICES LIST

Name: *[Seller's Name]*, a *[include place of formation and business type]* ("Seller")

Name: Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E")

All Notices: *[Seller to complete]*

All Notices:

Delivery Address:

Delivery Address:

Street:

77 Beale Street, Mail Code N12E

City: State: Zip:

San Francisco, CA 94105-1702

Mail Address: (if different from above)

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn:

Attn: CandiceChan (CWW9@pge.com)

Director, Contract Mgmt & Settlements

Phone:

Phone: (415) 973-7780

Facsimile:

Facsimile: (415) 973-5507

DUNS:

DUNS:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn: Redacted

Manager, Bilateral Settlements

Phone:

Phone: Redacted

Facsimile:

Facsimile: Redacted

Scheduling:

Scheduling:

Attn:

Attn: Kevin F. Coffee (kfcl@pge.com)

Phone:

Phone: (415) 973-7631

Facsimile:

Facsimile: (415) 973-0400

Payments:

Payments:

Attn:

Attn: Redacted

Manager, Bilateral Settlements

Phone:

Phone: Redacted

Facsimile:

Facsimile: Redacted

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:

Phone:
Facsimile:

With additional Notices of an Event of Default to Contract Manager:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections

Attn: [Redacted]
[Redacted]

Manager, Credit Risk Management

Phone: [Redacted]
Facsimile: [Redacted]

Contract Manager:

Attn: [Redacted]
Manager, Contract Management
Phone: [Redacted]
Facsimile: [Redacted]

With additional Notices of an Event of Default to:

PG&E Law Department
Attn: Renewables Portfolio Standard attorney
Phone: (415) 973-4377
Facsimile: (415) 972-5952

APPENDIX XII

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

THIS FORM IS SUBJECT TO GOOD FAITH NEGOTIATION WITH SELLER'S FINANCING PROVIDERS.

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2 ____], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2 _____ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. **Definitions.** Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. **Consent.** Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. **Limitations on Assignment.** Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the

Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

"Permitted Transferee" means any person or entity who is reasonably acceptable to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and PG&E shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider's applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [_____], as depositary agent,

to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depository agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:

Name: _____
Address: _____

Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

If to PG&E:

Name: _____
Address: _____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the [loan agreement] and [security agreement].

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of PG&E and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

PACIFIC GAS AND ELECTRIC COMPANY
(PG&E)

By: _____
Name: _____
Title: _____

[_____] (Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[_____] **[name of Seller]**

By: _____
Name: _____
Title: _____

APPENDIX XIII
SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer, pursuant to the terms of Section 2.4(a)(iv) of the Agreement, all of the following documentation at least two (2) Business Days prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect on the Execution Date.
2. A certificate signed by an authorized officer of Seller, dated the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated the Execution Date, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.

APPENDIX XIV

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix XIV.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix XIV.

APPENDIX XIV

Attachment A

Form of Actual Availability Report

[Seller]’s Actual Availability Report

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>HE1</u>	<u>HE2</u>	<u>HE3</u>	<u>HE4</u>	<u>HE5</u>	<u>HE6</u>	<u>HE7</u>	<u>HE8</u>	<u>HE9</u>	<u>HE10</u>	<u>HE11</u>	<u>HE12</u>	<u>HE13</u>	<u>HE14</u>	<u>HE15</u>	<u>HE16</u>	<u>HE17</u>	<u>HE18</u>	<u>HE19</u>	<u>HE20</u>	<u>HE21</u>	<u>HE22</u>	<u>HE23</u>	<u>HE24</u>
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								

Date/Time of Submittal _____

(5)

Site Control Questionnaire

PV Program PPA Request for Offers

Full Legal Project Name:

Project Location:

Street Address:

City, State, Zip:

Description of land control and whether the project is consistent with local land use zoning ordinances.

- a. If you have site control, how is it exercised, e.g. ownership, leasehold interest, site option, etc. Documents demonstrating site control and ability to operate project as proposed will be required prior to contract execution.
- b. Is the project consistent with local land use zoning ordinances, including General Plans? If the project requires zoning changes or variances, describe the plan to obtain approval of the zoning changes.
- c. Describe plans to obtain project support from local land use authorities including whether the project needs any specific planning commission, city council or board or supervisor approvals.
- d. Is the project consistent with local General Plan Energy Plan Elements?
- e. Is the project consistent with the Williamson Act Contract? If not, describe how the Williamson Act Contract will be cancelled or terminated.

Provide the following information regarding the site.

- a. Include map showing site location and key project facilities.
- b. Provide at least one of the following sets of information for GIS mapping:
 - i. County Assessor's parcel number for the proposed site; or
 - ii. Coordinates and parcel size

Site Control Attestation

Participant hereby represents, warrants and covenants that:

1. Participant has site control of the site where the project is located or will be located, which is: [insert project address];
2. Participant is the entity that will execute the PPA with PG&E if PG&E enters into a PPA with the Participant as a result of the Solar PV PPA RFO;

PV Program PPA Request for Offers

3. Participant will promptly notify PG&E in writing of any changes in the status of the Participant's site control; and
4. Execution and delivery of this attestation are within Participant's powers and have been duly authorized by all necessary action.

"Site control" has the meaning set forth in section II.B of the PV PPA RFO Protocol Document dated February 2, 2011.

Very Truly Yours,

By: _____
Authorized Signature

Name: [print or type name]

Title: _____

(6)

Demonstration of Interconnection Application

PV Program PPA Request for Offers

Full Legal Project Name:

Project Location:

Street Address:

City, State, Zip:

Please provide copies of documents proving that applicable electric distribution or transmission interconnection applications have been filed.

If available at time of initial Offer submission, provide the following:

1. List the transmission/distribution point of interconnection. (i.e. switchyard or substation, with primary equipment listed; interconnecting voltages and interconnecting transmission or distribution lines; bus configuration: collector bus, ring bus, breaker and a half).
 - i. What is the approximate distance from your site to the point of interconnection?
 - ii. If applicable, is the applicable study complete?
 - iii. If applicable, provide a proposed interconnection plan including any existing or future approvals and agreements. Describe anticipated upgrades, including new distribution or transmission lines for interconnection. Please include major milestones necessary to achieve Commercial Operation.

(7)

Acknowledgement and Commitment of Site Owner

PV Program PPA Request for Offers

Full Legal Project Name (“Participant”):

Project Location:

Street Address:

City, State, Zip:

Full Legal Name of Site Owner (“Site Owner”):

Business Address of Site Owner:

Street Address:

City, State, Zip:

Subject: Acknowledgement of Site Owner Regarding Alternate Program
Availability – California Solar Initiative and Net Energy Metering
Programs

Pacific Gas and Electric Company:

[Insert Site Owner’s full legal name] owns the real property located at [Insert complete Property address][, and leases or intends to lease all or a portion of the Property to [Insert Participant’s s legal name].]

[Site Owner] avows that it is informed of and has investigated the benefits offered by, alternative government-sponsored solar generation subsidy programs such as the California Solar Initiative (“CSI”) and the Net Energy Metering (“NEM”) programs.

[Site Owner] further acknowledges that if Pacific Gas and Electric Company (“PG&E”) executes a power purchase agreement with [Participant] as part of PG&E’s 2010 PV Program PPA RFO and receives California Public Utilities Commission approval of that power purchase agreement, then [Participant] will install a solar photovoltaic electric generating facility, including solar panels and other ancillary equipment (“solar photovoltaic electric generating facility”), on a defined portion of the Property, and will exclusively sell to PG&E, pursuant to the power purchase agreement, the entire output of the solar photovoltaic electric generating facility, including all attributes related thereto.

Finally, [Site Owner] asserts that it has not participated in, nor submitted any claim for receipt of funds under, the CSI or the NEM programs for the solar photovoltaic electric generating facility, and that if PG&E selects [Participant] as part of PG&E’s 2010 PV Program PPA RFO and receives California Public Utilities Commission approval of the power purchase agreement, [Site Owner] will be precluded from participating in either the CSI or the NEM programs for the solar photovoltaic electric generating facility for the entire term of the power purchase agreement.

PV Program PPA Request for Offers

Execution of this letter agreement by [Site Owner] does not prevent [Site Owner] from participating in the CSI or NEM programs for other projects, other than the solar photovoltaic electric generating facility, including other projects on the same Property.

Very Truly Yours,

[Insert Site Owner's full legal name]

By: _____

Name: _____

Title: _____

Date: _____

(8)

Supplier Diversity Questionnaire

PV Program PPA Request for Offers

Please answer the questions below about the Participating Company (or Leading Participant in the case of a Team of Participants).

- ┆ Is Participant a certified California woman, minority or disabled veteran business enterprise (WMDVBE)?
- ┆ If so, please identify the certifying agency:
- ┆ If your company is woman, minority or service disabled veteran-owned but not certified by the CPUC or Department of General Services, does your company hold a Women’s Business Enterprise National Council (WBENC), National Minority Supplier Development Council (NMSDC) or United States Small Business Administration 8(a) certification. Please provide certification number and expiration date.
- ┆ Does Participant commit to PG&E's Supplier Diversity Program which can be found at <http://www.pge.com/b2b/purchasing/supplierdiversity/>?
- ┆ Does Participant intend to use WMDVBE suppliers in Participant's materials and services supply chain?
- ┆ Does your company have a supplier diversity program? If so, describe efforts your company has made to increase business with WMDVBE firms (i.e. does your company have a policy statement, participate in outreach activities, promote diverse firm subcontracting, publicize contract opportunities, provide certification assistance, etc.?). Please provide examples.
- ┆ If your company has a supplier diversity program, does your company mentor WMDVBE suppliers? Please provide examples.

If Participant is not a WMDVBE supplier, and if Participant intends to use WMDVBE suppliers to support its PV PPA project if its Offer is executed, then Participant shall list in the table below a plan for how the total cost of each PV PPA project proposed would be split among those WMDVBE subcontracts. Please provide a separate table for each Offer submitted, if more than one. Where applicable, Participant shall also indicate names of subcontractors that may perform those categories of work. Include all potential spend from subcontractor relationships and partnerships.

Component	Planned Spend % by Category	Supplier Names
Installation	%	
Engineering	%	
Major Equipment (modules, inverters, transformers, switchgear)	%	
Other Materials	%	
Freight, Delivery and Logistics	%	
Other (please specify below)	%	
Total Planned WMDVBE Spend as a % of Total Program Spend (%)	%	

PV Program PPA Request for Offers

- ┆ If you used the "Other" category, please define what materials and services these firms will provide.
- ┆ How much was your company's overall spend with WMDVBE firms over your total purchasing spend in the U.S. in 2010 (%)?
- ┆ Please describe in detail how you will assist PG&E in reaching its enterprise-wide diversity spend goal (WMDVBE participation) of 30% in 2011.

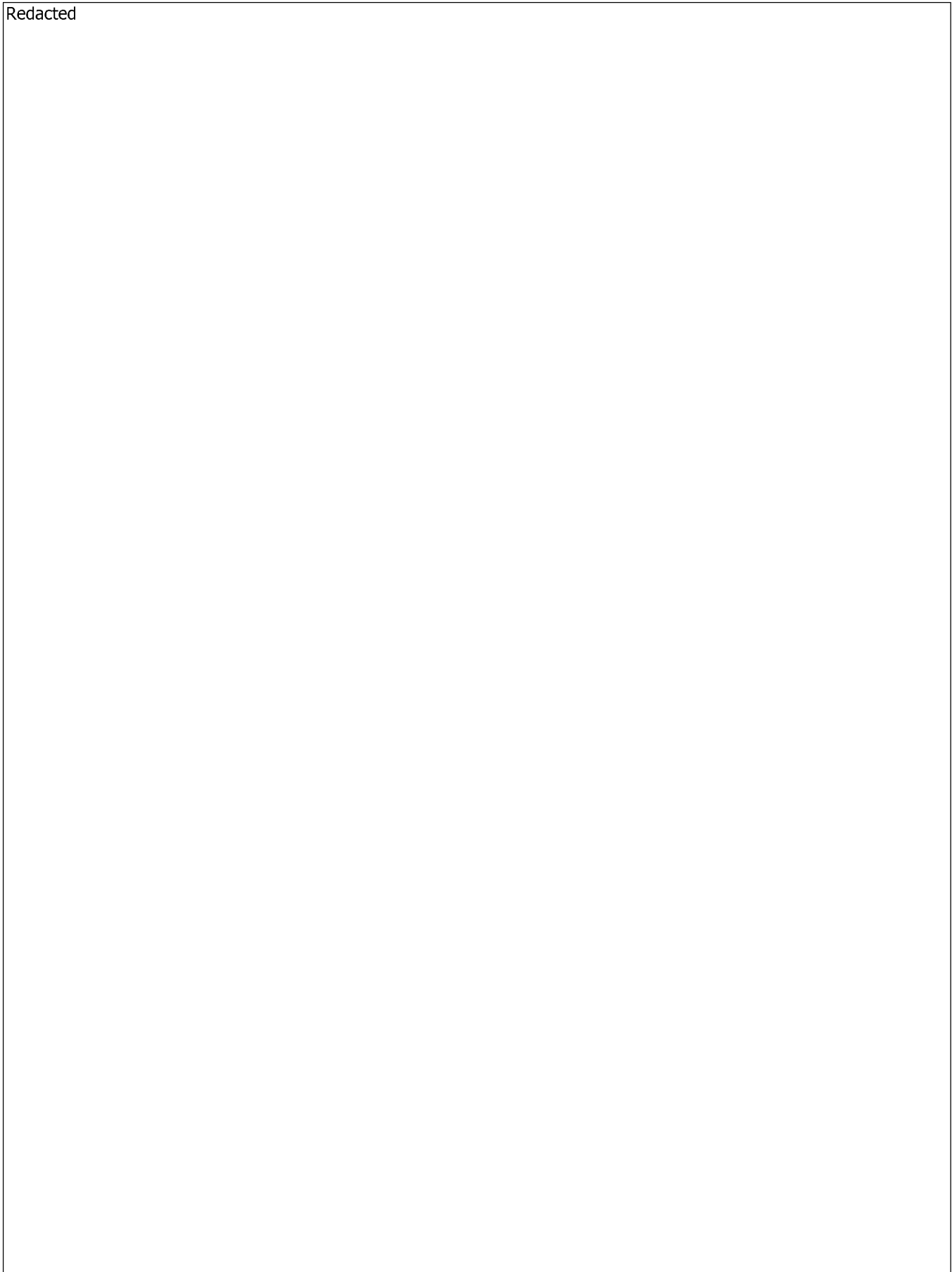
Appendix B

UOG Solicitation Information

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**

Redacted

Redacted



Appendix B1

2 MW PV Pilot Project RFP Protocol for Suppliers

2 MW PV PILOT PROJECT

REQUEST FOR PROPOSAL PROTOCOL



May 5, 2009

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. INTRODUCTION.....	3
II. REQUEST FOR PROPOSAL SCHEDULE AND PROCESS	5
III. EVALUATION OF PROPOSALS.....	7



I. INTRODUCTION

A. 2 MW PV Pilot Project

OVERVIEW OF PROGRAMS

Pacific Gas and Electric Company (PG&E) proposes to initiate by January 2010, a five-year program to develop up to 500 MW of photovoltaic generation installation in its service territory. The PV Program targets development of up to 250 MW of utility-owned generation (UOG) and another 250 MW through Purchase Power Agreement (“PPA”). The program will deliver clean, renewable energy to PG&E customers and help meet the obligations under California's Renewable Portfolio Standard.

Each PV UOG project is estimated to be between 1 and 20 MW in size that will be connected to PG&E's electricity grid. The overall solar program plan consists of the following:

A 4-6 year development period, with an average expected deployment of 50-75 MW/year

Primary sites will be utility owned substation properties; secondary sites may include other properties in the vicinity of candidate substations.

The project is grid interconnected according to standard PG&E interconnection requirements for size and location of interconnection

The program is open to any commercially available PV technologies that have proven commercial operating experience in the field that will support an analysis of lifetime performance claims

Purchase orders will be based on the technologies potential to deliver levelized cost of electricity.

PG&E intends to proceed with the development of an up to 2 MW PV Pilot Project (“Project”) in 2009 with the purpose of expediting the deployment of the PV Program, demonstrate PG&E's commitment, and allow PG&E to develop and refine internal and external processes needed to develop, permit, construct and operate a PV facility while it awaits regulatory approval of the 250 MW PV Program. This Project is planned a ground mounted system located adjacent to PG&E's Vaca Dixon substation (“Project Site”) in Solano County, California, approximately 0.5 miles northwest of Highway 80 and about 27 miles southwest of Sacramento, California. The planned duration of the entire project is between 4 to 6 months from award of the contract with an operational date of no later than December 23, 2009.

Project description and specification for this Project is described in the Contract for Photovoltaic Equipment & Services Package (With Installation Option). Bidders are to prepare a proposal that utilizes the appropriate ground-mounted PV technology that will capture and produce either 1.75 MW AC or 2 MW AC for the Project Site.

B. Request for Proposal

This RFP is by invitation only to qualified suppliers (“Bidder”). Bidder, who is invited to submit a proposal (“Proposal”), qualified as a result of supplier's successful response to the Request for Information (“RFI”) issued by PG&E on March 17, 2009. Criteria for qualification were based



on supplier's experience, involvement and responsibilities in PV solar projects and the state of commercialization of those projects; financial strength; and supplier diversity position or its commitment to the utilization of diverse suppliers among others.

Bidders are to follow directions and submit the required documentations as directed in this RFP. PG&E will evaluate the proposals based on Bidder's compliance to requirements and completeness of information, and the proposal that meet the evaluation criteria as established in Section III, Evaluation Process.

PG&E will evaluate the proposals and will select the top two Bidders, whose proposal received the highest evaluated scores, for interview.

Each Participant is solely responsible for all its expenses related to its proposal or any other expenses incurred in connection with this RFP. PG&E agrees, and requires that each Bidder agree, to act in good faith in its performance of obligations under this RFP and, in each case in which PG&E's or Bidder's consent or agreement is required or requested hereunder, such consent or agreement shall not be unreasonably withheld or delayed.

PG&E RESERVES THE RIGHT TO WITHDRAW THIS RFP AT ANY TIME BEFORE OR AFTER THE PROPOSAL DUE DATE, OR TO REJECT ANY OR ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP FOR WHATEVER REASON, INCLUDING PG&E BUDGETARY LIMITATIONS. PG&E WILL NOT BE LIABLE, BY REASON OF SUCH WITHDRAWAL OR REJECTION, TO ANY BIDDER SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP.

C. No Guarantee of Offer or Agreement

PG&E welcomes Proposals under this RFP and anticipates executing an agreement. However, submittal of Proposal by Bidder does not constitute an obligation on PG&E to execute any Agreement as a consequence of this RFP. PG&E reserves the right to reject any or all proposal in whole or in part, and to accept other than the lowest priced proposal, as well as to award the work in whole or in part to one or more Bidders, or to not award a contract at all.

Under no circumstances shall PG&E be contractually bound by the terms of any Bidder's Proposal until all the terms of the conditions precedent set forth in the fully-executed Agreement have been satisfied or waived upon mutual agreement of PG&E and Bidder to the Agreement. Bidder will be required to have an authorized officer of Bidder execute the "Acknowledgment, Authorization and Release Agreement", which requires that the Bidder agree to be bound by the terms of the RFP and to make specified representations and warranties to PG&E. This form is attached in RFX tab under the document type, Commercial and Administrative. This form shall be submitted with the hardcopy of the Proposal as required in Section II.B.6.

D. RFP Communications between PG&E and Bidder

This RFP will be conducted using the PowerAdvocate Sourcing Intelligence ("PowerAdvocate") for this sourcing event. All communications including but not limited to RFP documents, information, announcements, and amendments will be posted in PowerAdvocate; likewise,



questions or comments between PG&E and Bidder will utilize PowerAdvocate's Messaging. Proposal and requested documents and information shall be provided by Bidder in PowerAdvocate.

During the bid process, Jocelyn Quintana of PG&E Strategic Sourcing Department shall be the Bidder's sole point of contact or a designated PG&E Representative assigned to assist her. Bidder shall not contact any other PG&E employee or consultants for questions regarding the Project during the bidding period. Failure to comply with this requirement may result in disqualification.

For questions or matters of general interest raised by any Bidder during Q&A period, PG&E will issue an answer after the closing of the Q&A period. PG&E may, in its sole discretion, decline to respond to any e-mail or other inquiry outside of PowerAdvocate, and will have no liability or responsibility to any Bidder for failing to do so. PG&E will hold a mandatory pre-bid meeting at the Project Site and on the date and time as stated in Section II.A, Solicitation Schedule, below. This will provide Bidder further opportunity to ask questions.

II. REQUEST FOR PROPOSAL SCHEDULE AND PROCESS

A. Solicitation Schedule

The table below summarizes the estimated RFP schedule. Further detail of the RFP participation process is provided below.

PG&E Solicitation Schedule (Pacific Daylight Time)

DATE	EVENT
April 23, 2009	Bidder may register online at PowerAdvocate
May 5, 2009 @ 12 PM	PG&E issues RFP
May 12, 2009 @ 9 AM	Mandatory Pre-bid Meeting at PG&E's Vacaville Service [located at 158 Peabody Road Vacaville, CA] and the Project Site adjacent to Vaca-Dixon Substation [Map to be provided at the meeting]
May 15, 2009 @ 12 PM.	Deadline for Participants to submit questions
May 18, 2009	PG&E issues answers
May 26, 2009 @ 2 PM	Deadline to submit RFP
May 27, 2009	Deadline to receive hardcopy of the RFP
May 26 – June 1, 2009	PG&E will evaluate proposals
June 1, 2009	PG&E sends invitation to the top two Bidder(s) whose proposal merits a follow-up interview
June 3, 2009	PG&E to conduct interview(s)
June 4, 2009	PG&E selects preferred Bidder
June 4 – 30, 2009	PG&E and Preferred Bidder negotiate and execute Agreements [subject to approval by VP, Power Generation
June 12, 2009	Kick-off Meeting with preferred Bidder



The RFP schedule is subject to change at PG&E's sole discretion at any time. PG&E will endeavor to notify Bidder of any schedule change. Notification will be issued through PowerAdvocate Messaging.

B. Events in Solicitation Schedule

1. Online Registration. Bidder will receive an email invitation to participate in the RFP. Link to PowerAdvocate will be provided via the email to each Bidder. Bidder need to register to receive timely announcements and updates about this RFP. On-line registration and submittal of proposal is required
2. PG&E issues the RFP. At the designated day and time specified in PowerAdvocate for this RFP, Bidder will have access to the bid package.
3. Mandatory Pre-bid Meeting. PG&E will hold a pre-bid meeting as stated in Section II.A, Solicitation Schedule in the table above. Proposal will not be accepted from Bidder who chooses not to attend this meeting.
4. Questions and Answers. PG&E will compile and issue answers to questions asked during the pre-bid meeting and those sent via PowerAdvocate Messaging to the Event Coordinator by the date and time specified in the Section II.A, Solicitation Schedule above.
5. Amendments to RFP. PG&E reserves the right to amend this RFP up to the award date. Bidder will be requested to acknowledge receipt of all amendments. Amendments may include, but are not limited to, technical specifications, contract terms and conditions, and pricing instructions.
6. RFP Submittal Deadline. Bidder's proposal must be entered in PowerAdvocate by the Event Close date as stated in Section II.A, Solicitation Schedule. All questions and information requested in the RFP must be answered, requested information provided and required documents uploaded in PowerAdvocate. Bidder shall also submit one (1) hardcopy of the proposal. The copy shall be bound and shall be sent by overnight mail to:

PG&E
Strategic Sourcing Bid Receipt Desk, Mail Code N5D
245 Market Street, Room 541 A
San Francisco, CA 94105
Attention: Jocelyn Quintana

It is Bidder's sole responsibility to ensure that its Proposal is received by PG&E at the designated address by the specified date.

6. PG&E Selects Bidder for Interview. PG&E intends to conduct interview with the top two Bidders whose proposal received the highest evaluated scores. PG&E may request Bidder to furnish additional information, as is necessary in the opinion of PG&E, to clarify the Bidder's Proposal or to assure that the Bidder's



technical competence, business organization and financial resources are adequate to successfully perform the Project.

7. Negotiate and Execute Agreement. PG&E and preferred Bidder will negotiate and finalize agreement. In the course of negotiation, if the parties cannot agree on the terms of the Agreement, and PG&E reserves the right to cease negotiation with Bidder and to select an alternate Bidder. The final contract will use PG&E's contract format including but not limited to the Specification; Bidder's standard form contract will not be accepted.

Should PG&E and preferred Bidder come into an agreement, the resulting contract of this RFP to the preferred Bidder is non-exclusive:

THE PARTIES AGREE THAT THIS CONTRACT DOES NOT ESTABLISH AN EXCLUSIVE CONTRACT BETWEEN PG&E AND CONSULTANT NOR CONSTITUTE A COMMITMENT BY PG&E, WHETHER EXPRESSED OR IMPLIED, TO CONTRACT WITH CONSULTANT TO PERFORM OR SUPPLY ANY WORK; NOR IS THERE ANY GUARANTEE AS TO VOLUME OF WORK OR THE DURATION OF THIS CONTRACT. PG&E EXPRESSLY RESERVES ALL ITS RIGHTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE RIGHT TO UTILIZE OTHERS TO PERFORM OR SUPPLY WORK OF THE TYPE CONTEMPLATED BY THE CONTRACT; THE RIGHT TO REQUEST PROPOSALS FROM OTHERS WITH OR WITHOUT REQUESTING PROPOSAL(S) FROM CONSULTANT FOR WORK OF THE TYPE CONTEMPLATED BY THE CONTRACT AND THE UNRESTRICTED RIGHT BY PG&E TO BID OR PERFORM ANY SUCH WORK.

By responding to this RFP, Bidder agrees to be bound by all terms, conditions and other provisions of this RFP and any changes or supplements to it that may be issued by PG&E.

Proposals become the property of PG&E upon submission, and will be retained by PG&E in the document record for this RFP. Bidders are cautioned to clearly label all proprietary data as such. PG&E agrees to exercise reasonable efforts to protect all information received, provided it is expressly understood and by submitting such information thus agreed to by Bidder, that PG&E shall not be liable in the event that such information is disclosed.

III. EVALUATION OF PROPOSAL

PG&E will base its evaluation of Proposals upon the information contained in the submitted information in PowerAdvocate. This evaluation will consider pricing, technology and performance of major equipment, ability to meet schedule, conformance with PG&E's contractual terms and conditions, supplier diversity, and completeness,



quality and responsiveness of the Bidder's proposal. Each of these primary criteria is discussed below:

A. Pricing means the lump-sum, fixed-price basis to engineer, provide turnkey equipment supply including handling and delivery costs, install (option), start-up and commission, and warranty costs to construct, operate and maintain a 1.75 or 2 MW PV facility appropriate for the Project Site in accordance with the terms and conditions of the attached Contract. Evaluation will include the price/kWh. In its application to the CPUC seeking approval of the 250 MW PV program, PG&E has proposed capital cost caps and made various assumptions about energy production for the turnkey PV systems. The caps are presented in Table 4-1 of the testimony, which can be found at https://www.pge.com/regulation/PV-Program-PGE/Testimony/PGE/2009/PV-Program-PGE_Test_PGE_20090224-01.pdf

The PV System Contract cost (the subject of this RFP) is indicated on Line 1 of Table 4-1. The 2 MW pilot project cost estimate was based on year 2010 costs on Line 1, i.e., \$3605 / kW DC in 2009 dollars. PG&E used a 0.82 AC to DC conversion factor, so the cost cap equals \$4396 / kW AC (2009 dollars). The AC rating of the system should be based on the average of projected AC power flows at the interconnection metering point during the top 100 hours of maximum system AC power output, in the first year of operation, using thirty (30) year average NREL data for the Vaca Dixon project site. The top one hundred (100) hours are not necessarily consecutive. The annual energy production forecasts should be developed from commercially proven software. Bidder shall provide all input data and software specifications so that PG&E can model system performance and obtain the same energy production values as the bidder. This same model will then be used in determining whether the PV system satisfies annual system performance guarantees over the term of the system performance contract. The system performance contract will be based on the projected annual energy production values supplied by the bidder. PG&E will calculate a lifetime estimated energy production value for twenty five (25) years of system operation supplied by the bidder. Energy production for years two through twenty five will be discounted to present value using an annual discount rate of 8.7%. The system performance contract will compare actual energy production against expected performance for each year of the contract. The expected performance will be calculated by the system performance model for the actual hourly ambient conditions at the project site (i.e., insolation, wind speed, temperature). Bidder pricing will be evaluated based on the cost of lifetime (25 year) discounted annual energy production for all bids satisfying the plant AC rating and cost cap.

B. Major Equipment Performance means the ability of Bidder to furnish the technology that best fits the site and the technology's ability for maximum production capacity with minimal O&M and/or replacement costs during the life of the project (25 years).

C. Ability To Meet Schedule means the ability to provide design, fabrication and delivery of turnkey equipment supply, and install (option) that will meet the start-up and commissioning of the Project by December 14, 2009.

D. Conformance With PG&E's Non-price Terms and Conditions means the degree to which the Bidder accepts PG&E's Contract terms and conditions. PG&E reserves the right to



specify additional or different non-price terms and conditions from those set forth in the attached Contract for any reason including, but not limited to, the specific characteristics of the generation unit.

E. Supplier Diversity encompasses PG&E's commitment to seek maximum practicable opportunities to use Women, Minority, and Disabled Veteran-Owned Business Enterprises (WMDVBEs) in the performance of its contracts. Bidder will be evaluated on how to carry out PG&E's policy to the fullest extent possible and consistent with the efficient performance of the contract in the award of subcontract.

F. Completeness, Quality and Responsiveness of Proposal means the degree that Bidder follows the requirements of the RFP including, but not limited to, the requested documents, the organization and format of its proposal.

G. Safety means the safety record of the installer. Safety is of paramount importance to PG&E.

H. Other Factors based on the information provided by Bidder in response to the RFP demonstrating that Bidder is the appropriate candidate to complete the Project.



Appendix B2

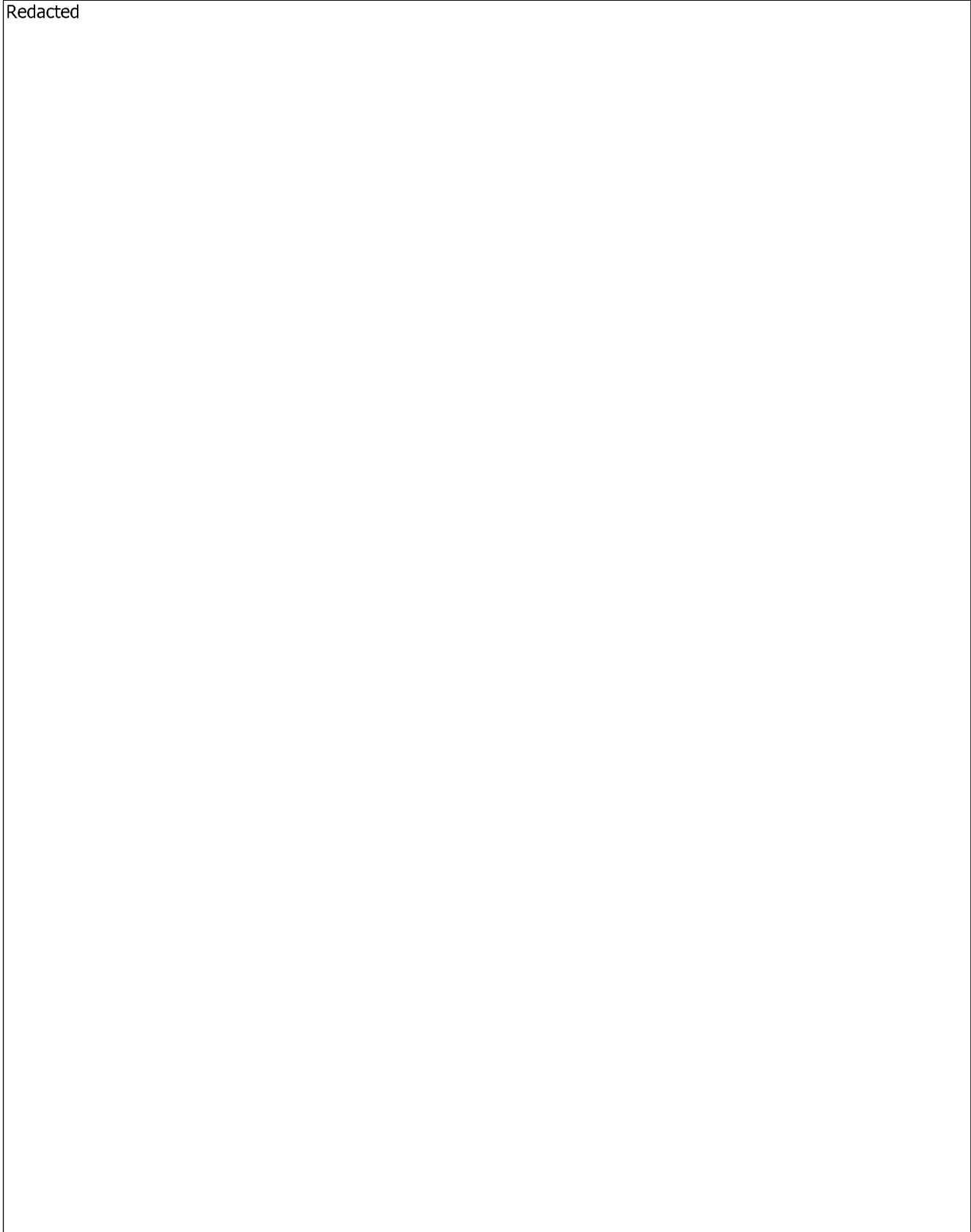
2MW PV Pilot Program Evaluation Protocol

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted





**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted

Appendix B3

250 MW PV Program EPC RFP Protocol for Suppliers



EPC Supplier for 250 MW Utility- Owned Photovoltaic Program

Request For Proposal

PROTOCOL

October 06, 2010

EPC RFP for 250 MW PV Program

Table of Contents

Section	Page
I. <u>Program Introduction and Solicitation</u>	1
A. Introduction	
B. RFP Communication	
C. Contracting Strategy	
D. Year-One Project Sites	
II. <u>RFP Process</u>	5
A. Solicitation Schedule	
B. RFP Process Milestones	
C. RFP Participation	
D. Disclaimers for Rejecting or Terminating RFP	
E. How to Respond to RFP Using PowerAdvocate	
F. Information Submitted	
III. <u>Evaluation of Proposal</u>	10

EPC RFP for 250 MW PV Program

I. Program Introduction and Solicitation

A. Introduction

Pacific Gas and Electric Company (“PG&E”) plans to develop 250 MW of solar photovoltaic (“PV”) utility-owned generation (“UOG”) starting in late 2010. Approximately 50 MW per year will be developed over five years (the “Program”). This program will help PG&E meet its obligations under the California Renewable Portfolio Standard and was approved by California Public Utilities Commission (“CPUC”) by Decision 10-04-052 on April 22, 2010.

PG&E will be providing fully prepared and permitted sites on which Engineering, Procurement and Construction (“EPC”) contractors will install and commission the PV power plants. PG&E is conducting two bids for this program: EPC services and Modules-only supply. With the EPC Request for Proposal (“RFP”), Bidders are being asked to provide turnkey solutions for three project sites, but are also asked to consider other options such as if the Modules are provided by PG&E directly or by other Suppliers. These different contract structures are described in greater detail below.

Other general characteristics of the Program are:

- ffi Sites will be in PG&E’s service territory, mostly in the southwestern San Joaquin Valley.
- ffi The solar arrays will be mounted on flat, graded land and PG&E will provide suitable site access roads
- ffi Projects will typically be 10- 20 MW in size
- ffi PG&E expects to install and commission 50 MW/year
- ffi The Program is open to any commercially viable PV technology (i.e. Those that have significant field operating experience with proven reliability and durability).
- ffi PG&E will be responsible for all grid interconnection costs and work, including generation tie lines, and substation and network upgrades.
- ffi Contract awards will be based on PG&E’s assessment of the Bidder’s ability to deliver competitive pricing, performance, reliability and to meet PG&E’s goals described in greater detail below.
- ffi Failure to complete a project on schedule may lead to a disallowance of program megawatts.

PG&E may award multi-year, multi-project Agreements to successful Bidders from the RFPs. Award and assignment of Agreements will be based on PG&E’s ongoing needs throughout the implementation of this Program.

B. RFP Communication

This RFP will be conducted using the PowerAdvocate Sourcing Intelligence platform (“PowerAdvocate”). All communications including, but not limited to, RFP documents, information, announcements, and amendments will be posted in PowerAdvocate; likewise, questions or comments between PG&E and Bidder will utilize PowerAdvocate’s

EPC RFP for 250 MW PV Program

messaging tool (“Messaging”). Requested documents and information shall be provided by Bidder through PowerAdvocate. Additionally, Bidder will acquire the necessary documents to submit a proposal through this same web site. For example, this Protocol was acquired from Tab #1, “Download RFP”, of PowerAdvocate. To obtain a copy of General Conditions and the technical Specifications, Bidder shall simply select the other documents from the same web page and download them to Bidder’s computer.

All communications between PG&E and Bidder will be in English. All of Bidder submittals (e.g., questions, uploads, drawings, etc.) in response to the RFP shall be in English.

PG&E Strategic Sourcing Department shall be the Bidder’s sole point of contact during the RFP process. Bidder shall not contact other PG&E employees or consultants for information regarding the Project during the RFP period. Failure to comply with this requirement may result in disqualification.

For questions or matters of general interest raised by any Bidder during the Q&A period, PG&E will issue an answer during or shortly after the closing of the Q&A period. PG&E may, in its sole discretion, decline to respond to any e-mail or other inquiry outside of PowerAdvocate Messaging, and will have no liability or responsibility to any Bidder for failing to do so.

C. Contracting Strategy

PG&E is requesting proposals for EPC solutions through this RFP. PG&E is also requesting proposals from suppliers to sell solar PV Modules-only to PG&E through a separate Module RFP. Based on the proposals received, PG&E will consider three product solutions to achieve our program objectives of optimizing value and reliability for our customers. This structure creates many potential award scenarios that fall into the product solutions outlined below. These can include awards to EPC suppliers only or awards to both EPC and Module-only suppliers. As an example of the many potential award scenarios, PG&E will award both Master Services Agreements (“MSA”) to the selected EPC vendors along with awards for the Year 1 project sites to each or a subset of the MSA awardees. In contrast, it is possible that a 5-year award for modules could be made as a result of the Module RFP process. With these proposal possibilities, PG&E also acknowledges that a sufficiently attractive proposal in one RFP can have significant impacts on the evaluation process of the other RFP.

Bidders are directed to consider three product solutions:

1. “Bundled”: Full turnkey solution for the Engineering, Procurement, and Construction of a Project site or sites. EPC Contractor would perform all services and deliver all materials and equipment (including Modules) necessary to perform the work according to the Specification. This solution is the result of an award to one or several EPC suppliers.

EPC RFP for 250 MW PV Program

2. “Unbundled”: PG&E will furnish the module(s) and assume all risk associated with delivery and module performance. The EPC Supplier would perform all other areas of scope with the exception of procuring the Modules to include installing the modules procured by PG&E. This solution includes awards to EPC supplier(s) and to Module Supplier(s).

3. “Rebundled”: EPC Contractor performs the same work as with the Bundled scenario except that the EPC Contractor would take assignment of the PG&E contract for separately procured Modules. Afterwards, the EPC Contractor shall manage the work in a manner identical to the industry-standard EPC model. In this sense, the Rebundled approach is identical to the Bundled approach as an end-state for Project execution. This solution includes awards to EPC supplier(s) and to Module Supplier(s).

Bidders are asked to pay particular attention to these definitions when filling in the Pricing datasheets on the PowerAdvocate platform.

The basic structure of the EPC pricing questions is summarized below (Illustrative table only –Use the online datasheet to submit actual proposals):

Pricing Scenario	Schindler 1	Schindler 2	Stroud
Bundled	Price A	Price B	Price C
Unbundled	A – (Modules Price)	B – (Modules Price)	C – (Modules Price)
Rebundled	A * (Generic with 10% Efficiency)	B * (Generic with 10% Efficiency)	C * (Generic with 10% Efficiency)
	A * (Generic with 15% Efficiency)	B * (Generic with 15% Efficiency)	C * (Generic with 15% Efficiency)
	A * (Generic with 20% Efficiency)	B * (Generic with 20% Efficiency)	C * (Generic with 20% Efficiency)

The Bundled pricing is the most straight-forward and shall include relevant taxes. Bidding Team can reference the California State Board of Equalization website (<http://www.boe.ca.gov/cgi-bin/rates.cgi>) for Sales and Use Tax rates as of April 1, 2010. The Unbundled proposals shall not include the price of Modules as this scenario assumes that PG&E will furnish the Modules. Finally, for the Rebundled scenario, the PowerAdvocate datasheets request the Bidder to make assumptions about the Module efficiencies. PG&E acknowledges that the final Balance of Plant cost is a function of the performance efficiency of the Modules. Therefore, any Rebundling decisions could potentially have significant impacts on the overall plant design and its corresponding price. To balance this uncertainty, as Bidders propose their own Module technology, PG&E is asking Bidders to consider what the impact on the total price would be if Bidder ultimately installs a different type of Module. PG&E intends to take this information and extrapolate the information against other bids to identify the best overall proposal. If PG&E determines that a rebundled bid is attractive, PG&E will ask the EPC bidder to confirm the estimated bid prices, and the EPC bidder’s willingness to work with PG&E’s preferred module supplier.

EPC RFP for 250 MW PV Program

PG&E intends to award EPC Service Agreements to multiple Bidders. If awarded, these Suppliers would operate within an alliance framework for the Program. PG&E will release RFPs to the alliance EPC Supplier(s) for subsequent program sites when it has sufficient details on the sites. PG&E expects that this arrangement will result in continuous improvements in costs and schedules for the execution of future projects.

In addition to the multiple EPC contracts, PG&E may award Module contracts to more than one Bidder. The specific role(s) of the Module Supplier(s) within the long-term alliance framework will vary with the capabilities of the successful EPC Bidders. However, the Module Suppliers will be expected to work with PG&E and the EPC Suppliers to support the construction schedule. To minimize total project risks and complexity, the development of final Agreements will be coordinated between the successful parties so as to collaboratively define the division of responsibilities, particularly for each project site’s construction phase.

PG&E recognizes that new or existing partnerships, and other relationships between Bidders, may be required to satisfy the Program’s goals. PG&E also recognizes the general market practice of subcontracting for specific items such as balance of system equipment, site engineering, and electrical installation. Such relationships are encouraged so long as they do not absolve the successful Bidder(s) from accepting responsibility for the contracted scope of work.

D. Year-One Project Sites

Complete details of the scope of work being procured are to be found in the Specification, which is available in the same location as this protocol, Tab #1 “Download RFP” of the PowerAdvocate web site.

For Year-One of the five-year Program, PG&E has selected three projects sites which are located in California’s San Joaquin Valley. The project sites are:

- Schindler I: This approximate 158 acre site is designated to accommodate a 15 MW PV facility. It is located [Redacted]
 [Redac] The center of the field is approximately located at: [Redacted]
 [Redacted]
- Schindler II: This site is approximately 160 acres. This project site is designated to accommodate a 15 MW PV facility. It is located [Redacted]
 [Redacted] The center of the field is approximately located at: Latitude: [Redacted]
- Stroud: This 200 acres site is designated to accommodate a 20 MW PV facility. It is located [Redacted]
 [Reda] The center of the field is approximately located at: [Redacted]
 [Redacted]

EPC RFP for 250 MW PV Program**II. RFP Process****A. Solicitation Schedule**

The table below summarizes the estimated RFP schedule. Further detail of each event in the schedule is provided in the RFP Process Milestones, Section II.B, below. The RFP schedule is subject to change at PG&E's sole discretion at any time. PG&E will notify Bidder of any schedule change.

The expected schedule for this RFP process is (Pacific Time):

■ October 6, 2010	PG&E issues RFP. Question & Answer Period Opens.
■ October 12, 2010, 12:00 PM	Company Financials Due.*
■ October 15, 2010, 9:00 AM	Supplier Diversity Web-Based Seminar
■ October 18, 2010, 12:00 PM	Bidder Question Period Closes
■ October 26, 2010	PG&E Issue Answers to Questions
■ November 8, 2010, 12:00 PM	RFP Closes
■ November 17, 2010	Bidder Interviews
■ November 29, 2010	Announce Preferred Bidders
■ December 24, 2010	Award contract(s)

* Although audited financials were already submitted as part of the RFI process, Bidders shall submit updates within seven days of RFP release. This interim deadline is intended to support the constrained schedule above.

B. RFP Process Milestones

The milestones below provide details of the events described in the Solicitation Schedule above.

1. PG&E issues the RFP. Bidder will have access to the bid event at the designated day and time specified in PowerAdvocate for this RFP. Instruction on how to respond to the RFP using PowerAdvocate is provided below in Section II.E, How to Respond to RFP Using PowerAdvocate, of this Protocol. A quick start guide on using PowerAdvocate is also provided in Tab #1, "Download RFP". In addition, Bidder may contact PowerAdvocate Support at (857) 453-5800 for questions on how to use PowerAdvocate.

EPC RFP for 250 MW PV Program

However, questions related to the requirements of this RFP are to be communicated via Messaging during the Q&A period described below under Section II.B.2.

2. Questions and Answers (Q&A). Bidder will have the opportunity to ask questions relating to the RFP during the Q&A period. Q&A between PG&E and Bidder will be communicated via Messaging. Questions asked through other forms of communication will not be answered.

PG&E will compile all RFP-related questions received from all Bidders in one document and will issue answers to these questions. PG&E may issue answers throughout the Q&A period. Besides Messaging, interim and final Q&A documents will be available in Tab #1, Download RFP”.

3. Amendments to RFP. PG&E may amend RFP to clarify instructions or requirements, and/or to modify or ask additional information as necessary to improve implementation of this RFP. Amendments to this RFP may be in the form of revision to this Protocol, instructions, requirements or questions in PowerAdvocate, and will be communicated via Messaging. Amendments will also be available in Tab #1, Download RFP under document type, “Amendment”. PG&E reserves the right to amend this RFP during the Bidders response period.
4. RFP Submittal Deadline. Bidder’s proposal must be submitted through PowerAdvocate by the event close date/time and shall include, without limitation, answers to questions, and information and documents requested by the RFP. The entire proposal shall be submitted via PowerAdvocate. Failure to follow instructions including the use of file naming convention may be cause for disqualification.
5. PG&E Selects Bidder for Interview. Upon review of the Bidder’s Proposal, PG&E intends to conduct interview with the top Bidders whose proposals received the highest evaluated scores. Prior to the interview, PG&E may request Bidder to furnish additional information, as is necessary in the opinion of PG&E, to clarify the Bidder’s Proposal. Response to this request shall be submitted to PG&E prior to the interview.

Key personnel of the Bidder or Bidding Team for the implementation of PG&E’s Program and decision maker or executive sponsor of the Bidder or Bidding Team identified in the Tab #4, Technical Data, are expected to be present for the interview. Interview will be held at PG&E’s corporate headquarters in San Francisco. Bidder must be available for interview on 72-hours notice. Each Bidder is solely responsible for all its expenses, including travel costs, incurred in connection with this interview.

6. Negotiate and Execute Agreement. PG&E intends to award Master Service Agreement (“Agreement”) with multiple Bidders. PG&E will contact preferred Bidder for negotiation of Agreement. In the course of negotiation, if the parties cannot agree on the terms of the Agreement, PG&E reserves the right to cease negotiation with Bidder and to select an alternate Bidder. The final Agreement will use PG&E’s contract format including, but not limited to, the Technical Specification and PG&E’s standard Terms and Conditions. Bidder’s standard form contract will not be accepted.

EPC RFP for 250 MW PV Program**C. RFP Participation & Credit Risk Obligation**

This RFP is by invitation only to qualified Bidders. Bidders invited to submit a proposal were qualified as a result of supplier's successful response to the Request for Information ("RFI") issued by PG&E on January 25th, 2010.

Bidders are to follow directions and submit the required information and documents as directed in this RFP within the specified solicitation schedule. The completeness and clarity of Bidder's Proposal is critical and is part of the criteria being evaluated. Bidder's submitted information in this RFP should be an accurate reflection of the Bidder's capabilities, offerings, and services. Bidder must be able to substantiate any data provided in this RFP. If the Bidder provides inaccurate information in this RFP process, PG&E may choose to disqualify the Bidder. The criteria by which each Bidder will be evaluated on are further described in Section III, Evaluation of Proposal, of this Protocol.

Bidder's Proposal must remain valid for a period of not less than one hundred and twenty (120) days from the Proposal submission due date. PG&E agrees, and requires that each Bidder agree, to act in good faith in its performance of obligations under this RFP, and in each case in which PG&E's or Bidder's consent or agreement is required or requested hereunder, such consent or agreement shall not be unreasonably withheld or delayed.

Unless specifically noted by the Bidder during the RFP process, PG&E may award Bidder portions of the scope as proposed.

Due to the large and multi-year nature of the Program, PG&E has set a minimum requirement for the financial security of the participating Suppliers. Specifically, PG&E is requesting that all Bidders post a Letter of Credit (or equivalent instrument) for an amount equal to 10% of the Contract Work Authorization ("CWA") price.

D. Disclaimers for Rejecting or Terminating RFP

PG&E RESERVES THE RIGHT TO WITHDRAW THIS RFP AT ANY TIME BEFORE OR AFTER THE PROPOSAL DUE DATE, OR TO REJECT ANY OR ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP FOR WHATEVER REASON, INCLUDING PG&E BUDGETARY LIMITATIONS. PG&E WILL NOT BE LIABLE, BY REASON OF SUCH WITHDRAWAL OR REJECTION, TO ANY SUPPLIER SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP.

Should PG&E and preferred Bidder come into an agreement, the resulting contract from this RFP to the preferred Bidder is non-exclusive:

THE PARTIES AGREE THAT THIS CONTRACT DOES NOT ESTABLISH AN EXCLUSIVE CONTRACT BETWEEN PG&E AND CONTRACTOR NOR CONSTITUTE A COMMITMENT BY PG&E, WHETHER EXPRESSED OR IMPLIED, TO CONTRACT WITH CONTRACTOR TO PERFORM OR SUPPLY ANY WORK; NOR IS THERE ANY GUARANTEE AS TO VOLUME OF WORK OR THE

EPC RFP for 250 MW PV Program

DURATION OF THIS CONTRACT. PG&E EXPRESSLY RESERVES ALL ITS RIGHTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE RIGHT TO UTILIZE OTHERS TO PERFORM OR SUPPLY WORK OF THE TYPE CONTEMPLATED BY THE CONTRACT; THE RIGHT TO REQUEST PROPOSALS FROM OTHERS WITH OR WITHOUT REQUESTING PROPOSAL(S) FROM SUPPLIER FOR WORK OF THE TYPE CONTEMPLATED BY THE CONTRACT AND THE UNRESTRICTED RIGHT BY PG&E TO BID OR PERFORM ANY SUCH WORK.

By responding to this RFP, Bidder agrees to be bound by all terms, conditions and other provisions of this RFP and any changes or supplements to it that may be issued by PG&E.

E. How to Respond to RFP Using PowerAdvocate

Bidder must answer questions and provide information using the PowerAdvocate Sourcing Intelligence platform as directed by PG&E. Bidders are to follow directions and submit the required documentations in PowerAdvocate as directed in this RFP. Bidder may enter and revise information; and upload, delete and re-upload requested documents, anytime during the bid event up until the RFP submittal deadline. It is recommended that Bidder upload the requested document well before the deadline. Documents uploaded after the deadline will not be considered.

The RFP is organized into five web “Tabs”:

Tab #1, “Download RFP,” is the one used by PG&E to provide information such as this RFP Protocol, PowerAdvocate Quick Start Primer, RFP amendments, specification, and all other relevant documents issued for the purpose of this RFP. Attachment provided by PG&E via Messaging can also be found in this tab.

Tab #2, “Upload Proposal,” is the tab that Bidder shall use to upload all relevant documentation such as technical specifications, one-line drawings, warranty terms, and others as requested in the RFP. Bidder shall follow the instruction for each document requested by uploading each file in either the commercial, technical, or pricing-related document type using the “file naming” instructions in the datasheet. A checklist of requested uploads are also provide in Tab #1, “Download RFP”, for Bidder’s ease-of-use. Documents may not be considered if instructions are not followed.

Tab #3, “Commercial Data” contains datasheets that Bidders must fully complete to the best of their ability. The EPC Commercial tab is further divided into sub tabs of additional datasheets. For each datasheet Bidder must provide answers and information. Certain questions will direct Bidder to upload additional information. Instruction to upload document in a specific document type and specified file naming convention must be followed. Please ensure that the requested commercial data are uploaded in the document type, Commercial and Administrative, as directed.

Tab #4, “Technical Data” contains datasheets that resemble the Commercial tab, but that ask different questions. The requirements for completing the Commercial datasheets

EPC RFP for 250 MW PV Program

also holds true for the Technical datasheets. Bidder must fully complete the EPC Technical Questions tab. Certain questions will direct Bidder to upload additional information. Please ensure that the requested technical data are uploaded as directed in the document type, Technical Information.

Tab #5, "Pricing Data," contains datasheets that resemble the Commercial and Technical tabs, but that ask different questions. The requirements for completing the Commercial and Technical datasheets also holds true for the Pricing datasheets. Bidder must complete the EPC Pricing Questions tab. For each potential project site, Bidder should complete the corresponding Project datasheet with the project-specific information requested. Certain questions will direct Bidder to upload additional information. Please ensure that the requested pricing data are uploaded in the document type, Pricing, as directed.

To further elaborate on the Contracting Strategy described above in Section I.C, Bidder may leverage several options in the course of proposing solutions to PG&E. PG&E acknowledges that some of these options may have technical and pricing impacts. For example, with the Bundled scenario, Bidder has the choice to include an optional tracker system for the Modules. Additionally, for the Rebundling scenario, PG&E acknowledges that there may be impacts to the detailed design for the balance of plant components. Regardless of these permutations, PG&E expects Bidder to propose the best single proposal for each project site. If these proposals are sufficiently competitive, then PG&E will investigate the proposal permutations at a later point in the proposal solicitation process.

For Technical and Pricing datasheets, particular attention should be given to questions and information requested in regards to type of current, alternating (AC) or direct (DC).

Bidder responses can be provided and updated up until the RFP deadline. Thereafter, the RFP will be closed, and Bidder will be unable to make further revisions. PG&E will not accept any other form of response to the RFP except those submitted through PowerAdvocate.

F. Information Submitted by Bidder

1. **Proprietary Data.** Documents and data submitted for this RFP become the property of PG&E upon submission, and will be retained by PG&E in the document record for this RFP. Bidder is cautioned to clearly label all proprietary data as such. PG&E agrees to exercise reasonable efforts to protect all information received, provided it is expressly understood and by submitting such information thus agreed to by Bidder and Bidding Team, that PG&E shall not be liable in the event that such information is disclosed.
2. **Supplemental and Additional Information.** PG&E may request that Bidder or Bidding Team furnish additional information, after the RFP due date, as is necessary in the opinion of PG&E, to clarify the Bidder's or the Bidding Team's information or to

EPC RFP for 250 MW PV Program

assure that the Bidder's of the Bidding Team's technical competence and business organization qualifies to participate in the RFP.

3. Proposal Preparation Cost. Notwithstanding the outcome of this RFP, PG&E shall not be liable for any preparation costs incurred by Bidder or Bidding Team in responding to this RFP.

III. Evaluation of Proposal

The goal of the EPC RFP is to award multiple project Agreements to successful Bidders. Award and assignment of Agreements will be based on PG&E's ongoing needs, Bundled or Rebundled solutions as described in Section I.C, Contracting Strategy, throughout the implementation of this Program. To evaluate the EPC RFP, PG&E will primarily consider performance, pricing, plan to support PG&E's supplier diversity goals with Woman, Minority and Disabled Veteran Business Enterprises (WMDVBE), conformance to PG&E's stated terms and conditions, Bidder's financial stability, technical experience, subcontracting plan, and project schedule and payment milestones, and ability to meet Program schedules. Additionally, Bidder's and/or Bidding Team's submittals will be evaluated to determine their completeness, clarity, and conformance to EPC RFP instructions. If it is difficult or overly time-consuming to evaluate Bidder's and/or Bidding Team's submittals, then Bidder may be disadvantaged in the evaluation process and may be disqualified.

To evaluate the EPC bids, PG&E will consider the following elements of the proposed documents and data (in no particular order):

- A. **Company Financials** – Bidder's (i.e., counterparty) viability in terms of strength of its balance sheet (i.e., working capital, tangible net worth, return on equity and debt to equity ratio), credit worthiness (i.e., history of the organization - past and expected future financial performance to establish a credit score), and a contract amount coupled with financial instruments (e.g., Letter of Credit, bonding capacity, parent guarantee, if applicable) that PG&E determines as an appropriate level for the participation in the Program.
- B. **Company Programs** – Strength of Bidder's and/ or Bidding Team's Company Programs (e.g., Safety, Environmental, Green Supply Chain, Change Control, Risk Management, Quality Assurance and other relevant programs and procedures) and its integration into the Bidder's or Bidding Team's day to day work are factors considered in the selection process. PG&E expects our commitment to safety, environmental stewardship and quality programs to be reflected in our supply chain. As such, Bidders and Bidding Team shall demonstrate the following in their response to this RFP:
 - o Effectiveness of its safety program

EPC RFP for 250 MW PV Program

- Environmental performance (i.e., waste reduction, recycling, outreach programs, environmental compliance, and implementation of other Corporate Responsibility Programs)
 - Continuous development and application of innovative and sustainable products, services and operations in its supply chain to reduce its carbon footprint
 - Commitment to quality assurance and control program as integral part of management, production, distribution and services (e.g. engineering and construction)
- C. **Supplier Diversity** – Bidder’s demonstrated commitment to seek maximum practicable opportunities to use WMDVBEs in the performance of work. Bidder will be evaluated on the thoroughness of its program to carry out PG&E’s policy and its diversity spend to meet PG&E’s enterprise goal. Hence, Bidder or Bidding Team is asked to examine and provide direct subcontracting spend with US-based diverse firms and to investigate diverse spend at all levels of its supply chain to the fullest extent possible and consistent with the efficient performance of the contract. The PG&E Guide to the Prime Supplier Participation Program – A How-to Book for Supplier Diversity Programs is provided in Tab #1, “Download RFP” for Bidder’s use and information.
- D. **Technical Experience** – Extent and depth of project management and construction expertise within the Bidder’s or Bidding Team’s key personnel who will be part of the team that will be managing the project(s) if Bidder or Bidding Team is awarded an Agreement.
- Clearly articulated subcontracting plan and the role(s) that each team member will perform, the ability to manage multiple projects and commercial deployment and field-proven quality of proposed modules will also be evaluated.
- E. **Conformance to Technical Specification** – Bidder’s proposed materials, equipment and services meet or exceed technical requirements.
- F. **Technical Flexibility** – Assessment of EPC Suppliers ability to work with other module technologies, and any additional costs incurred to do so.
- G. **Energy Production Modeling** – Reasonableness of Bidder-defined inputs to PV Syst and lifetime discounted energy production estimate, and provision of all required files, data and information with respect to production modeling as requested.

EPC RFP for 250 MW PV Program

- H. **Ability to Meet Schedule** – Bidder’s or Bidding Team’s ability to meet Program production capacity requirements and targets, and demonstration of Bidder’s planning proficiencies.
- I. **Conformance to PG&E’s stated Terms and Conditions** – Degree to which the Bidder accepts PG&E’s Agreement’s terms and conditions including but not limited to warranties, remedies, and performance guarantees.
- J. **Pricing** – Lifetime levelized cost of energy, installed costs, operating and maintenance costs, cost of spare parts, and energy production PG&E seeks to contract for the best balance between up-front costs savings and long-term performance.
- K. **Subcontracting & Partnership Plan** – Clearly articulated subcontracting plan, effective subcontractor management processes, and clear division of responsibilities.
- L. **Other Factors** based on the information provided by Bidder in response to the RFP demonstrating that Bidder is the appropriate candidate to participate in the Program.

Appendix B4

250 MW PV Program Module RFP Protocol for Suppliers



Module Supplier for 250 MW Utility- Owned Photovoltaic Program

Request For Proposal

PROTOCOL

October 06, 2010

Module RFP for 250 MW PV Program

Table of Contents

Section	Page
I. <u>Program Introduction and Solicitation</u>	1
A. Introduction	
B. RFP Communication	
C. Contracting Strategy	
D. Year-One Project Sites	
II. <u>RFP Process</u>	5
A. Solicitation Schedule	
B. RFP Process Milestones	
C. RFP Participation	
D. Disclaimers for Rejecting or Terminating RFP	
E. How to Respond to RFP Using PowerAdvocate	
F. Information Submitted	
III. <u>Evaluation of Proposal</u>	10

Module RFP for 250 MW PV Program

I. Program Introduction and Solicitation

A. Introduction

Pacific Gas and Electric Company (“PG&E”) plans to develop 250 MW of solar photovoltaic (“PV”) utility-owned generation (“UOG”) starting in late 2010. Approximately 50 MW per year will be developed over five years (the “Program”). This program will help PG&E meet its obligations under the California Renewable Portfolio Standard and was approved by California Public Utilities Commission (“CPUC”) by Decision 10-04-052 on April 22, 2010.

PG&E will be providing fully prepared and permitted sites on which Engineering, Procurement and Construction (“EPC”) contractors will install and commission the PV power plants. PG&E is conducting two bids for this program: EPC services and Modules-only supply. With the EPC Request for Proposal (“RFP”), Bidders are being asked to provide turnkey solutions for three project sites, but are also asked to consider other options such as if the Modules are provided by PG&E directly or by other Suppliers. These different contract structures are described in greater detail below.

Other general characteristics of the Program are:

- ffi Sites will be in PG&E’s service territory, mostly in the southwestern San Joaquin Valley.
- ffi The solar arrays will be mounted on flat, graded land and PG&E will provide suitable site access roads
- ffi Projects will typically be 10- 20 MW in size
- ffi PG&E expects to install and commission 50 MW/year
- ffi The Program is open to any commercially viable PV technology (i.e. Those that have significant field operating experience with proven reliability and durability.)
- ffi PG&E will be responsible for all grid interconnection costs and work, including generation tie lines, substation and network upgrades.
- ffi Contract awards will be based on PG&E’s assessment of the Bidder’s ability to deliver competitive pricing, performance, reliability and to meet PG&E’s goals described in greater detail below.
- ffi Failure to complete a project on schedule may lead to a disallowance of program megawatts.

PG&E may award multi-year, multi-project Agreements to successful Bidders from the RFPs. Award and assignment of Agreements will be based on PG&E’s ongoing needs throughout the implementation of this Program.

B. RFP Communication

This RFP will be conducted using the PowerAdvocate Sourcing Intelligence platform (“PowerAdvocate”). All communications including, but not limited to, RFP documents, information, announcements, and amendments will be posted in PowerAdvocate; likewise, questions or comments between PG&E and Bidder will utilize PowerAdvocate’s

Module RFP for 250 MW PV Program

messaging tool (“Messaging”). Requested documents and information shall be provided by Bidder through PowerAdvocate. Additionally, Bidder will acquire the necessary documents to submit a proposal through this same web site. For example, this Protocol was acquired from Tab #1, “Download RFP”, of PowerAdvocate. To obtain a copy of General Conditions and the technical Specifications, Bidder shall simply select the other documents from the same web page and download them to Bidder’s computer.

All communications between PG&E and Bidder shall be in English. All of Bidder submittals (e.g., questions, uploads, drawings, etc.) in response to the RFP shall be in English.

PG&E Strategic Sourcing Department shall be the Bidder’s sole point of contact during the RFP process. Bidder shall not contact other PG&E employees or consultants for information regarding the Project during the RFP period. Failure to comply with this requirement may result in disqualification.

For questions or matters of general interest raised by any Bidder during the Q&A period, PG&E will issue an answer during or shortly after the closing of the Q&A period. PG&E may, in its sole discretion, decline to respond to any e-mail or other inquiry outside of PowerAdvocate Messaging, and will have no liability or responsibility to any Bidder for failing to do so.

C. Contracting Strategy

PG&E is requesting proposals for EPC solutions through this RFP. PG&E is also requesting proposals from suppliers to sell solar PV Modules-only to PG&E through a separate Module RFP. Based on the proposals received, PG&E will consider three product solutions to achieve our program objectives of optimizing value and reliability for our customers. This structure creates many potential award scenarios that fall into the product solutions outlined below. These can include awards to EPC suppliers only or awards to both EPC and Module-only suppliers. As an example of the many potential award scenarios, PG&E will award both Master Services Agreements (“MSA”) to the selected EPC vendors along with awards for the Year 1 project sites to each or a subset of the MSA awardees. In contrast, it is possible that a 5-year award for modules could be made as a result of the Module RFP process. With these proposal possibilities, PG&E also acknowledges that a sufficiently attractive proposal in one RFP can have significant impacts on the evaluation process of the other RFP.

Bidders are directed to consider three product solutions:

1. “Bundled”: Full turnkey solution for the Engineering, Procurement, and Construction of a Project site or sites. EPC Contractor would perform all services and deliver all materials and equipment (including Modules) necessary to perform the work according to the Specification. This solution is the result of an award to one or several EPC suppliers.

Module RFP for 250 MW PV Program

2. “Unbundled”: PG&E will furnish the module(s) and assume all risk associated with delivery and module performance. The EPC Supplier would perform all other areas of scope with the exception of procuring the Modules to include installing the modules procured by PG&E. This solution includes awards to EPC supplier(s) and to Module Supplier(s).

3. “Rebundled”: EPC Contractor performs the same work as with the Bundled scenario except that the EPC Contractor would take assignment of the PG&E contract for separately procured Modules. Afterwards, the EPC Contractor shall manage the work in a manner identical to the industry-standard EPC model. In this sense, the Rebundled approach is identical to the Bundled approach as an end-state for Project execution. This solution includes awards to EPC supplier(s) and to Module Supplier(s).

Bidders are asked to pay particular attention to these definitions when filling in the Pricing datasheets on the PowerAdvocate platform.

The Module RFP requests bids for forward prices (payment upon delivery) for “individual year pricing” and for “multi-year strips” of supply. Individual year pricing means PG&E may choose the bid offers for any year. The multi-year strip means PG&E must purchase the bid offer for all the years in the strip. The RFP also asks for bids for different MW volumes and for different contract cancellation notification periods.

For example, consider two illustrative bids below.

Individual Year Pricing

Volume	2010	2011	2012	2013	2014
50 MW	1.25	1.10	0.95	0.85	0.75

This bid means PG&E may purchase 50 MW at \$1.25/w in year 2010, and/or 50 MW at \$1.10/w in year 2011, and/or 50 MW at \$0.95/w in year 2012, and/or 50 MW at \$0.85/w in year 2013, and/or 50 MW at \$0.75/w in year 2014.

Multi-Year Strip Pricing, \$/W DC - STC

Volume	2010	2011	2012	2013	2014
50 MW	1.25	1.10	0.95	0.85	0.75

This bid means PG&E must purchase 50 MW at \$1.25/w in year 2010, 50 MW at \$1.10/w in year 2011, 50 MW at \$0.95/w in year 2012, 50 MW at \$0.85/w in year 2013, and 50 MW at \$0.75/w in year 2014. Bidders may choose whether to provide bid prices for any or all years for either the individual year or multi-strip bid options.

NOTE: If PG&E pursues a multi-year contract, the termination articles of the General Terms and Conditions shall still apply as defined therein, such as with deferred module procurements.

PG&E also seeks to understand how these different procurement options can be balanced with a realistic Cancellation schedule. The different periods of Cancellation notification

Module RFP for 250 MW PV Program

in the PowerAdvocate datasheets are meant to support the Bidder’s internal cost run-rate. Essentially, if greater advance notice is given, the RFP is meant to highlight how this benefits the Bidder.

PG&E intends to award EPC Service Agreements to multiple Bidders. If awarded, these Suppliers would operate within an alliance framework for the Program. PG&E will release RFPs to the alliance EPC Supplier(s) for subsequent program sites when it has sufficient details on the sites. PG&E expects that this arrangement will result in continuous improvements in costs and schedules for the execution of future projects.

In addition to the multiple EPC contracts, PG&E may award Module contracts to more than one Bidder. The specific role(s) of the Module Supplier(s) within the long-term alliance framework will vary with the capabilities of the successful EPC Bidders. However, the Module Suppliers will be expected to work with PG&E and the EPC Suppliers to support the construction schedule. To minimize total project risks and complexity, the development of final Agreements will be coordinated between the successful parties so as to collaboratively define the division of responsibilities, particularly for each project site’s construction phase.

PG&E recognizes that new or existing partnerships, and other relationships between Bidders, may be required to satisfy the Program’s goals. PG&E also recognizes the general market practice of subcontracting for specific items such as balance of system equipment, site engineering, and electrical installation. Such relationships are encouraged so long as they do not absolve the successful Bidder(s) from accepting responsibility for the contracted scope of work.

D. Year-One Project Sites

Complete details of the scope of work being procured are to be found in the Specification, which is available in the same location as this protocol, Tab #1 “Download RFP” of the PowerAdvocate web site.

For Year-One of the five-year Program, PG&E has selected three projects sites which are located in California’s San Joaquin Valley. The project sites are:

- Schindler I: This approximate 158 acre site is designated to accommodate a 15 MW PV facility. It is located [Redacted]
[Redact] The center of the field is approximately located at: [Redacted]
[Redacted]
- Schindler II: This site is approximately 160 acres. This project site is designated to accommodate a 15 MW PV facility. It is located [Redacted]
[Redacted] The center of the field is approximately located at [Redacted]

Module RFP for 250 MW PV Program

- Stroud: This 200 acres site is designated to accommodate a 20 MW PV facility. It is located [Redacted]
[Redacted] The center of the field is approximately located at: [Redacted]
[Redacted]

II. RFP Process

A. Solicitation Schedule

The table below summarizes the estimated RFP schedule. Further detail of each event in the schedule is provided in the RFP Process Milestones, Section II.B, below. The RFP schedule is subject to change at PG&E's sole discretion at any time. PG&E will notify Bidder of any schedule change.

The expected schedule for this RFP process is (Pacific Time):

- | | |
|------------------------------|--|
| ■ October 6, 2010 | PG&E issues RFP. Question & Answer Period Opens. |
| ■ October 12, 2010, 12:00 PM | Company Financials Due.* |
| ■ October 15, 2010, 9:00 AM | Supplier Diversity Web-Based Seminar |
| ■ October 18, 2010, 12:00 PM | Bidder Question Period Closes |
| ■ October 22, 2010 | PG&E Issue Answers to Questions |
| ■ November 1, 2010, 12:00 PM | RFP Closes |
| ■ November 17, 2010 | Bidder Interviews |
| ■ November 29, 2010 | Announce Preferred Bidders |
| ■ December 24, 2010 | Award contract(s) |

* Although audited financials were already submitted as part of the RFI process, Bidders shall submit updates within seven days of RFP release. This interim deadline is intended to support the constrained schedule above.

B. RFP Process Milestones

The milestones below provide details of the events described in the Solicitation Schedule above.

Module RFP for 250 MW PV Program

1. PG&E issues the RFP. Bidder will have access to the bid event at the designated day and time specified in PowerAdvocate for this RFP. Instruction on how to respond to the RFP using PowerAdvocate is provided below in Section II.E, How to Respond to RFP Using PowerAdvocate, of this Protocol. A quick start guide on using PowerAdvocate is also provided in Tab #1, “Download RFP”. In addition, Bidder may contact PowerAdvocate Support at (857) 453-5800 for questions on how to use PowerAdvocate.

However, questions related to the requirements of this RFP are to be communicated via Messaging during the Q&A period described below under Section II.B.2.

2. Questions and Answers (Q&A). Bidder will have the opportunity to ask questions relating to the RFP during the Q&A period. Q&A between PG&E and Bidder will be communicated via Messaging. Questions asked through other forms of communication will not be answered.

PG&E will compile all RFP-related questions received from all Bidders in one document and will issue answers to these questions. PG&E may issue answers throughout the Q&A period. Besides Messaging, interim and final Q&A documents will be available in Tab #1, Download RFP”.

3. Amendments to RFP. PG&E may amend RFP to clarify instructions or requirements, and/or to modify or ask additional information as necessary to improve implementation of this RFP. Amendments to this RFP may be in the form of revision to this Protocol, instructions, requirements or questions in PowerAdvocate, and will be communicated via Messaging. Amendments will also be available in Tab #1, Download RFP under document type, “Amendment”. PG&E reserves the right to amend this RFP during the Bidders response period.
4. RFP Submittal Deadline. Bidder’s proposal must be submitted through PowerAdvocate by the event close date/time and shall include, without limitation, answers to questions, and information and documents requested by the RFP. The entire proposal shall be submitted via PowerAdvocate. Failure to follow instructions including the use of file naming convention may be cause for disqualification.
5. PG&E Selects Bidder for Interview. Upon review of the Bidder’s Proposal, PG&E intends to conduct interview with the top Bidders whose proposals received the highest evaluated scores. Prior to the interview, PG&E may request Bidder to furnish additional information, as is necessary in the opinion of PG&E, to clarify the Bidder’s Proposal. Response to this request shall be submitted to PG&E prior to the interview.

Key personnel of the Bidder or Bidding Team for the implementation of PG&E’s Program and decision maker or executive sponsor of the Bidder or Bidding Team identified in the Tab #4, Technical Data, are expected to be present for the interview. Interview will be held at PG&E’s corporate headquarters in San Francisco. Bidder must be available for interview on 72-hours notice. Each Bidder is solely responsible for all its expenses, including travel costs, incurred in connection with this interview.

Module RFP for 250 MW PV Program

6. Negotiate and Execute Agreement. PG&E intends to award Master Service Agreement (“Agreement”) with multiple Bidders. PG&E will contact preferred Bidder for negotiation of Agreement. In the course of negotiation, if the parties cannot agree on the terms of the Agreement, PG&E reserves the right to cease negotiation with Bidder and to select an alternate Bidder. The final Agreement will use PG&E’s contract format including, but not limited to, the Technical Specification and PG&E’s standard Terms and Conditions. Bidder’s standard form contract will not be accepted.

C. RFP Participation & Credit Risk Obligation

This RFP is by invitation only to qualified Bidders. Bidders invited to submit a proposal were qualified as a result of supplier’s successful response to the Request for Information (“RFI”) issued by PG&E on January 25th, 2010.

Bidders are to follow directions and submit the required information and documents as directed in this RFP within the specified solicitation schedule. The completeness and clarity of Bidder’s Proposal is critical and is part of the criteria being evaluated. Bidder’s submitted information in this RFP should be an accurate reflection of the Bidder’s capabilities, offerings, and services. Bidder must be able to substantiate any data provided in this RFP. If the Bidder provides inaccurate information in this RFP process, PG&E may choose to disqualify the Bidder. The criteria by which each Bidder will be evaluated on are further described in Section III, Evaluation of Proposal, of this Protocol.

Bidder’s Proposal must remain valid for a period of not less than one hundred and twenty (120) days from the Proposal submission due date. PG&E agrees, and requires that each Bidder agree, to act in good faith in its performance of obligations under this RFP, and in each case in which PG&E’s or Bidder’s consent or agreement is required or requested hereunder, such consent or agreement shall not be unreasonably withheld or delayed.

Unless specifically noted by the Bidder during the RFP process, PG&E may award Bidder portions of the scope as proposed.

Due to the large and multi-year nature of the Program, PG&E has set a minimum requirement for the financial security of the participating Suppliers. Specifically, PG&E is requesting that all Bidders post a Letter of Credit (or equivalent instrument) for an amount equal to 10% of the Contract Work Authorization (“CWA”) price.

D. Disclaimers for Rejecting or Terminating RFP

PG&E RESERVES THE RIGHT TO WITHDRAW THIS RFP AT ANY TIME BEFORE OR AFTER THE PROPOSAL DUE DATE, OR TO REJECT ANY OR ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP FOR WHATEVER REASON, INCLUDING PG&E BUDGETARY LIMITATIONS. PG&E WILL NOT BE LIABLE, BY REASON OF SUCH WITHDRAWAL OR REJECTION, TO ANY SUPPLIER SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP.

Module RFP for 250 MW PV Program

Should PG&E and preferred Bidder come into an agreement, the resulting contract from this RFP to the preferred Bidder is non-exclusive:

THE PARTIES AGREE THAT THIS CONTRACT DOES NOT ESTABLISH AN EXCLUSIVE CONTRACT BETWEEN PG&E AND CONTRACTOR NOR CONSTITUTE A COMMITMENT BY PG&E, WHETHER EXPRESSED OR IMPLIED, TO CONTRACT WITH CONTRACTOR TO PERFORM OR SUPPLY ANY WORK; NOR IS THERE ANY GUARANTEE AS TO VOLUME OF WORK OR THE DURATION OF THIS CONTRACT. PG&E EXPRESSLY RESERVES ALL ITS RIGHTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE RIGHT TO UTILIZE OTHERS TO PERFORM OR SUPPLY WORK OF THE TYPE CONTEMPLATED BY THE CONTRACT; THE RIGHT TO REQUEST PROPOSALS FROM OTHERS WITH OR WITHOUT REQUESTING PROPOSAL(S) FROM SUPPLIER FOR WORK OF THE TYPE CONTEMPLATED BY THE CONTRACT AND THE UNRESTRICTED RIGHT BY PG&E TO BID OR PERFORM ANY SUCH WORK.

By responding to this RFP, Bidder agrees to be bound by all terms, conditions and other provisions of this RFP and any changes or supplements to it that may be issued by PG&E.

E. How to Respond to RFP Using PowerAdvocate

Bidder must answer questions and provide information using the PowerAdvocate Sourcing Intelligence platform as directed by PG&E. Bidders are to follow directions and submit the required documentations in PowerAdvocate as directed in this RFP. Bidder may enter and revise information; and upload, delete and re-upload requested documents, anytime during the bid event up until the RFP submittal deadline. It is recommended that Bidder upload the requested document well before the deadline. Documents uploaded after the deadline will not be considered.

The RFP is organized into five web “Tabs”:

Tab #1, “Download RFP,” is the one used by PG&E to provide information such as this RFP Protocol, PowerAdvocate Quick Start Primer, RFP amendments, specification, and all other relevant documents issued for the purpose of this RFP. Attachment provided by PG&E via Messaging can also be found in this tab.

Tab #2, “Upload Proposal,” is the tab that Bidder shall use to upload all relevant documentation such as technical specifications, one-line drawings, warranty terms, and others as requested in the RFP. Bidder shall follow the instruction for each document requested by uploading each file in either the commercial, technical, or pricing-related document type using the “file naming” instructions in the datasheet. A checklist of requested uploads are also provide in Tab #1, “Download RFP”, for Bidder’s ease-of-use. Documents may not be considered if instructions are not followed.

Module RFP for 250 MW PV Program

Tab #3, “Commercial Data” contains datasheets that Bidders must fully complete to the best of their ability. The EPC Commercial tab is further divided into subtabs of additional datasheets. For each datasheet Bidder must provide answers and information. Certain questions will direct Bidder to upload additional information. Instruction to upload document in a specific document type and specified file naming convention must be followed. Please ensure that the requested commercial data are uploaded in the document type, Commercial and Administrative, as directed.

Tab #4, “Technical Data” contains datasheets that resemble the Commercial tab, but that ask different questions. The requirements for completing the Commercial datasheets also holds true for the Technical datasheets. Bidder must fully complete the EPC Technical Questions tab. Certain questions will direct Bidder to upload additional information. Please ensure that the requested technical data are uploaded as directed in the document type, Technical Information.

Tab #5, “Pricing Data,” contains datasheets that resemble the Commercial and Technical tabs, but that ask different questions. The requirements for completing the Commercial and Technical datasheets also holds true for the Pricing datasheets. Bidder must complete the EPC Pricing Questions tab. For each potential project site, Bidder should complete the corresponding Project datasheet with the project-specific information requested. Certain questions will direct Bidder to upload additional information. Please ensure that the requested pricing data are uploaded in the document type, Pricing, as directed.

To further elaborate on the Contracting Strategy described above in Section I.C, Bidder may leverage several options in the course of proposing solutions to PG&E. PG&E acknowledges that some of these options may have technical and pricing impacts. For example, with the Bundled scenario, Bidder has the choice to include an optional tracker system for the Modules. Additionally, for the Rebundling scenario, PG&E acknowledges that there may be impacts to the detailed design for the balance of plant components. Regardless of these permutations, PG&E expects Bidder to propose the best single proposal for each project site. If these proposals are sufficiently competitive, than PG&E will investigate the proposal permutations at a later point in the proposal solicitation process.

For Technical and Pricing datasheets, particular attention should be given to questions and information requested in regards to type of current, alternating (AC) or direct (DC).

Bidder responses can be provided and updated up until the RFP deadline. Thereafter, the RFP will be closed, and Bidder will be unable to make further revisions. PG&E will not accept any other form of response to the RFP except those submitted through PowerAdvocate.

F. Information Submitted by Bidder

Module RFP for 250 MW PV Program

1. Proprietary Data. Documents and data submitted for this RFP become the property of PG&E upon submission, and will be retained by PG&E in the document record for this RFP. Bidder is cautioned to clearly label all proprietary data as such. PG&E agrees to exercise reasonable efforts to protect all information received, provided it is expressly understood and by submitting such information thus agreed to by Bidder and Bidding Team, that PG&E shall not be liable in the event that such information is disclosed.
2. Supplemental and Additional Information. PG&E may request that Bidder or Bidding Team furnish additional information, after the RFP due date, as is necessary in the opinion of PG&E, to clarify the Bidder's or the Bidding Team's information or to assure that the Bidder's of the Bidding Team's technical competence and business organization qualifies to participate in the RFP.
3. Proposal Preparation Cost. Notwithstanding the outcome of this RFP, PG&E shall not be liable for any preparation costs incurred by Bidder or Bidding Team in responding to this RFP.

III. Evaluation of Proposal

The goal of the Module RFP is to award multi-year, multi-project Agreements to successful Bidders. Award and assignment of Agreements will be based on PG&E's ongoing needs, bundled and/or unbundled solutions as described in Section I.C, Contracting Strategy, throughout the implementation of this Program. To evaluate the Module RFP, PG&E will primarily consider module field performance, module specifications and energy production, availability of modules, pricing, plan to support PG&E's supplier diversity goals with Woman, Minority and Disabled Veteran Business Enterprises (WMDVBE), conformance to PG&E's stated terms and conditions, Bidder's financial stability, and ability to meet Program schedules. Additionally, Bidder's and/or Bidding Team's submittals will be evaluated to determine their completeness, clarity, and conformance to Module RFP instructions. If it is difficult or overly time-consuming to evaluate Bidder's and/or Bidding Team's submittals, then Bidder may be disadvantaged in the evaluation process and may be disqualified.

To evaluate the Module bids, PG&E will consider the following elements of the proposed documents and data (in no particular order):

- A. **Company Financials** – Bidder's (i.e., counterparty) viability in terms of strength of its balance sheet (i.e., working capital, tangible net worth, return on equity and debt to equity ratio), credit worthiness (i.e., history of the organization - past and expected future financial performance to establish a credit score), and a contract amount coupled with financial instruments (e.g., Letter of Credit, bonding capacity, parent guarantee, if applicable) that PG&E determines as an appropriate level for the participation in the Program.

Module RFP for 250 MW PV Program

- B. Company Programs** – Strength of Bidder’s and/ or Bidding Team’s Company Programs (e.g., Safety, Environmental, Green Supply Chain, Quality Assurance and other relevant programs and procedures) and its integration into the Bidder’s or Bidding Team’s day to day work are factors considered in the selection process. PG&E expects our commitment to safety, environmental stewardship and quality programs to be reflected in our supply chain. As such, Bidders and Bidding Team shall demonstrate the following in their response to this RFP:
- Effectiveness of its safety program
 - Environmental performance (i.e., waste reduction, recycling, outreach programs, environmental compliance, and implementation of other Corporate Responsibility Programs)
 - Continuous development and application of innovative and sustainable products, services and operations in its supply chain to reduce its carbon footprint
 - Commitment to quality assurance and control program as integral part of management, production, distribution and services (e.g. engineering and construction)
- C. Supplier Diversity** – Bidder’s demonstrated commitment to seek maximum practicable opportunities to use WMDVBEs in the performance of work. Bidder will be evaluated on the thoroughness of its program to carry out PG&E’s policy and its diversity spend to meet PG&E’s enterprise goal. Hence, Bidder or Bidding Team is asked to examine and provide direct subcontracting spend with US-based diverse firms and to investigate diverse spend at all levels of its supply chain to the fullest extent possible and consistent with the efficient performance of the contract. The PG&E Guide to the Prime Supplier Participation Program – A How-to Book for Supplier Diversity Programs is provided in Tab #1, “Download RFP” for Bidder’s use and information.
- D. Module Performance** – Field performance and degradation rate of proposed module(s), module specifications, and number of proposed module(s) that have been commercially deployed.
- E. Conformance to Technical Specification** – Bidder’s proposed materials, equipment and services meet or exceed technical requirements.
- F. Energy Production Modeling** – Reasonableness of Bidder-defined inputs to PV Syst and lifetime discounted energy production estimate, and provision of all required files, data and information with respect to production modeling as requested.

Module RFP for 250 MW PV Program

- G. **Ability to Meet Schedule** – Bidder’s or Bidding Team’s production capacity and module availability to meet Program requirements and targets.
- H. **Conformance to PG&E’s stated Terms and Conditions** – Degree to which the Bidder accepts PG&E’s Agreement’s terms and conditions including but not limited to warranties, remedies, and performance guarantees.
- I. **Pricing** – Lifetime levelized cost of energy, installed costs, operating and maintenance costs, cost of spare parts, and energy production PG&E seeks to contract for the best balance between up-front costs savings and long-term performance.
- J. **Other Factors** based on the information provided by Bidder in response to the RFP demonstrating that Bidder is the appropriate candidate to participate in the Program.

Appendix B5

250 MW PV Program Evaluation Protocol

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

Redacted



**Confidential - Protected Under Decision 06-06-066,
Decision 08-04-023 and General Order 66-C**

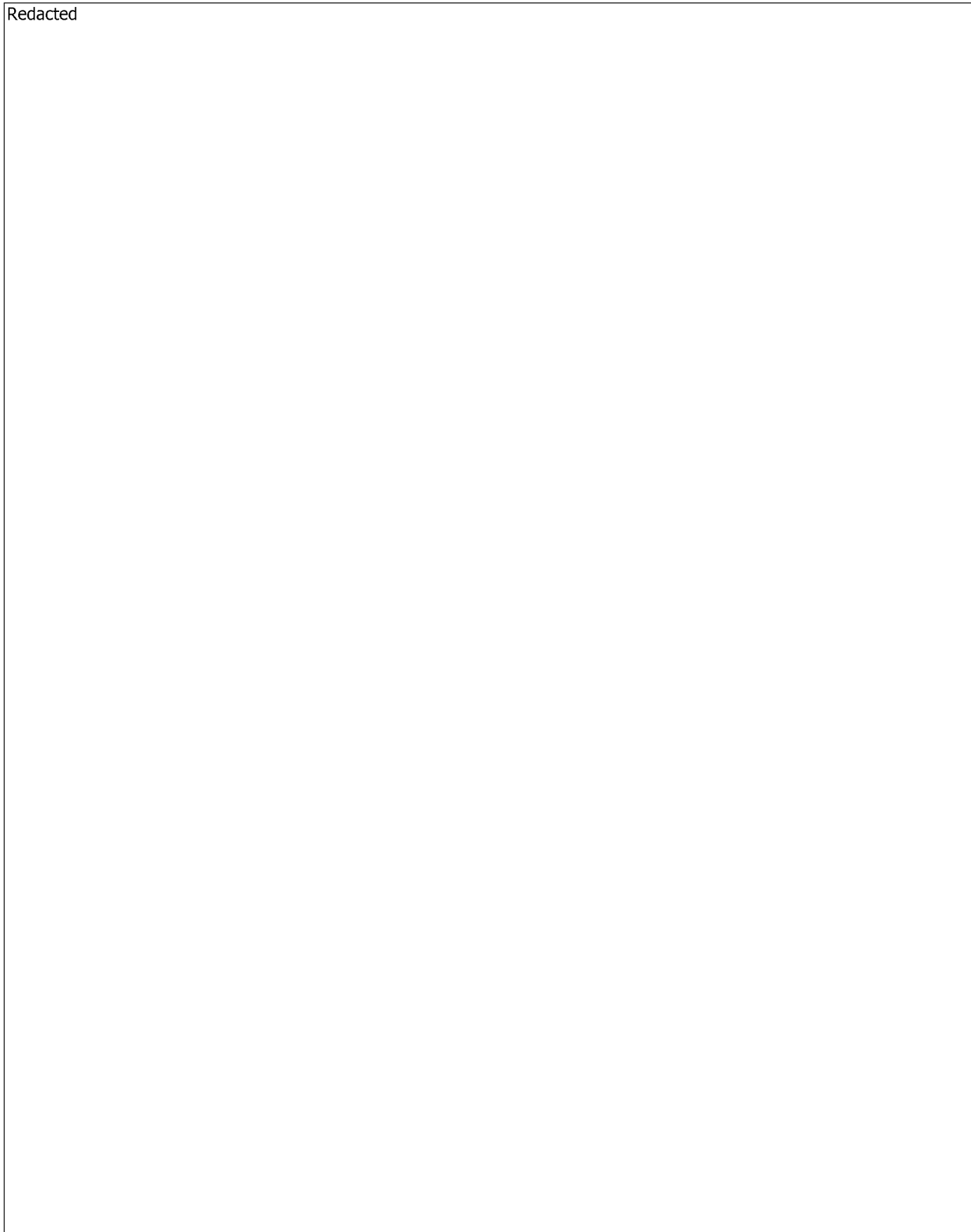
Redacted

Appendix C

Project Development Information

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**

Redacted



Redacted

Appendix D

Facility Performance Information

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**

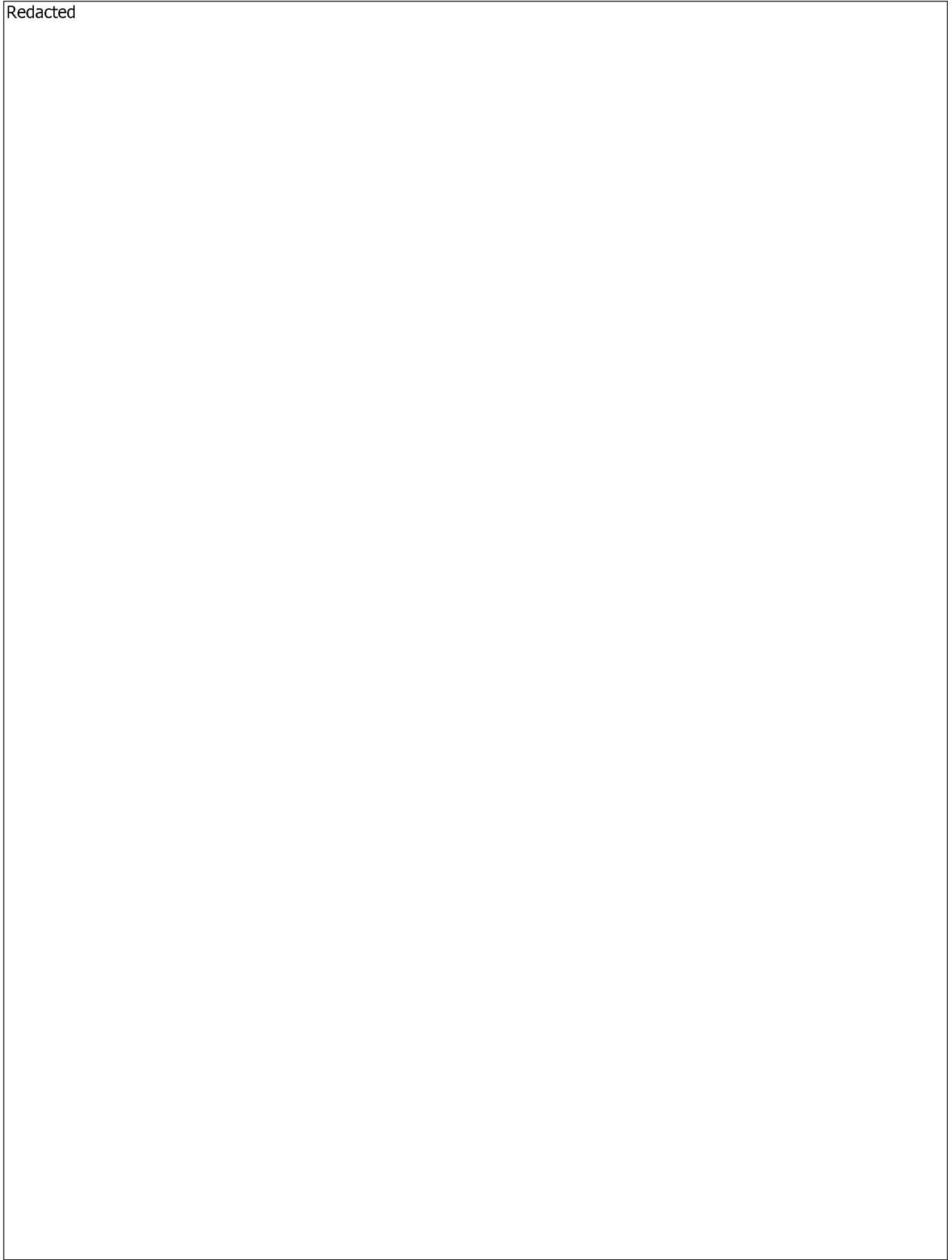
Redacted

Redacted

Redacted

Redacted

Redacted



Appendix E
Interconnection Information

APPENDIX E - INTERCONNECT INFORMATION

PG&E's Solar PV UOG projects are subject to the procedures set forth in PG&E's Wholesale Distribution Tariff ("WDT") on file with the Federal Energy Regulatory Commission ("FERC"). The Small Generator Interconnection Procedures ("SGIP") are set forth as Attachment E of the WDT, and the Large Generator Interconnection Procedures ("LGIP") are set forth as Appendix G of the WDT. The WDT can be found on the PG&E website:

<http://www.pge.com/includes/docs/pdfs/shared/customerservice/nonpgeutility/electrictransmission/tariffs/WD%20Tariff%20-%20eTariff%20Baseline%20Version.pdf>

Subject to FERC's rules and regulations, Solar PV UOG projects are subject to the same procedures as projects submitted by third parties. An Interconnection Request is submitted for each proposed project, a queue number assigned, and applicable fees paid. The PG&E Distribution Provider performed the applicable studies according to the assigned queue position and determined what interconnection facilities and distribution and network upgrades, if any, are necessary for each project.

The following chart provides a summary of the interconnection project dates and milestones for the Vaca-Dixon 2 MW pilot project and the Solar PV UOG projects currently in development:¹

¹ Under the FERC procedures, the Distribution Provider is required to maintain this information as confidential unless authorized by the interconnecting entity. As the interconnecting entity, PG&E has chosen voluntarily to disclose this information in this initial Compliance Report. PG&E maintains the right to protect the confidentiality of this information for other projects in the future.

	Vaca-Dixon Pilot Project	Five Points Solar Station	Westside Solar Station	Stroud Solar Station
Interconnection Request Submitted	7/18/2008	10/30/2009	10/30/2009	12/10/2009
Application Deemed Completed	10/2/2008	12/3/2009	12/3/2009	12/28/2009
Queue Position	Not Assigned ²	54	55	65
Type of Interconnection Request	WDT-SGIP	WDT-SGIP	WDT-SGIP	WDT-SGIP
Size (MW)	2	15	15	20
Scoping Meeting	3/2/2009	12/9/2009	12/9/2009	1/7/2010
Feasibility Study	2/23/2009	N/A per agreement	N/A per agreement	N/A per agreement
System Impact Study	5/19/2009	5/6/2010	5/6/2010	1/21/2011
Facilities Study	8/7/2009	N/A ³	N/A ²	N/A ²
Initial Requested Online Date	12/22/2009	12/1/2010	12/1/2010	6/30/2011
Updated Requested Online Date	12/22/2009 (Actual)	5/1/2011	5/1/2011	6/1/2011
Application Fee	\$1,000	\$1,000	\$1,000	\$1,000
System Impact Study Cost	\$5,000	\$15,000	\$15,000	\$15,000
Facility Study Cost	\$7,000	N/A	N/A	N/A

² No queue position was assigned because at that time no other projects in the area had submitted interconnection requests into the WDT process.

³ Customer accepted System Impact Study results as substitute for Facilities Study. Customer executed an Engineering and Procurement (E&P) agreement to implement the project to meet the online date.

Appendix F

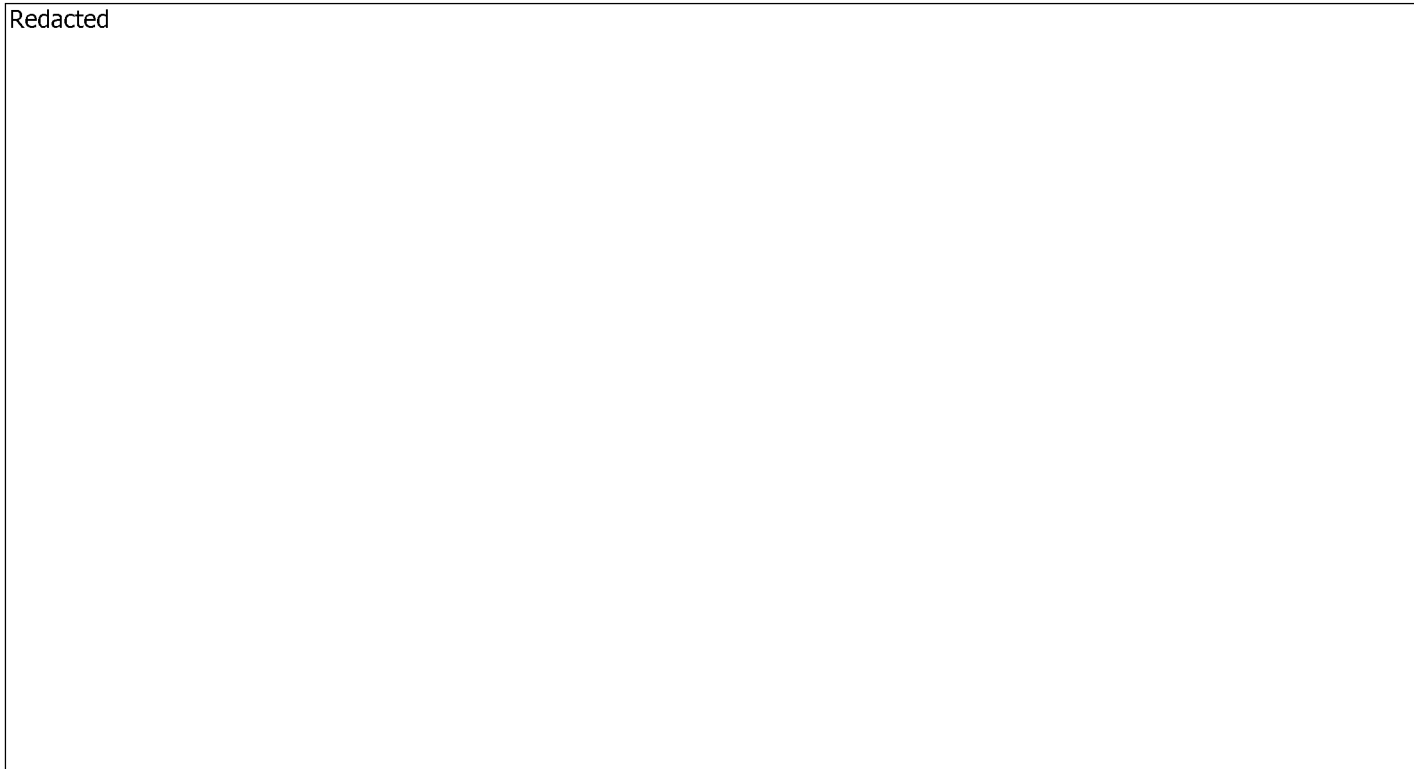
Distribution and Network Upgrades

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**

Redacted

Redacted

Redacted



Appendix G
Vaca-Dixon Information

APPENDIX G - 2 MW VACA-DIXON SOLAR STATION PILOT PROJECT

As discussed in the public Compliance Report pleading, the 2 MW Vaca-Dixon Solar Station was a pilot project and was developed prior to approval of the PG&E Solar PV UOG Program. Nonetheless, in this Appendix, PG&E has provided information responsive to Attachment A of R. E-4368 with regard to the Vaca-Dixon pilot project.

Solicitation Information:

PG&E initially evaluated over 160 responses to a Request for Information for the pilot project. The 2 MW PV Pilot Project Request For Proposals (“Pilot RFP”) was then issued to a short list of six Engineer, Procure, Construct (“EPC”) suppliers on May 5, 2009. PG&E received responses from the following suppliers: Solon Corporation; BP Solar; First Solar; Sharp Energy Solutions; and SunPower Corporation. PG&E evaluated the submitted bids according to the Protocol included in Public Appendix B1 and Confidential Appendix B2. Based upon this evaluation, PG&E awarded an EPC agreement to one supplier for the 2 MW PV Pilot Project.

Project Development Information:

In this appendix, PG&E provides a summary of project development information for the Vaca-Dixon pilot project. The Vaca-Dixon pilot project’s approximate capital costs were \$10.7 million. The actual Operations and Maintenance (“O&M”) for the first year of operation was approximately \$83,011. Future O&M is estimated based upon an escalation of the first year’s O&M of 2.5% per year is as follows:

Year	2011	2012	2013	2014
Estimated O&M (in thousands of dollars)	\$85	\$87	\$89	\$92

These forecast O&M expenses are estimates, and actual O&M expenses are subject to vary from these forecasts.

The Vaca-Dixon pilot project was located on PG&E-owned land that contained the substation to which the project interconnected. As a result, land costs were \$0.

Facility Performance Information:

The following table provides the electrical output by month for the previous year for the Vaca-Dixon Pilot Project, which has been completed and interconnected to the grid:

	VDSS	PG&E ISO Meter
Month		MW-hr
Jan		137.653
Feb		222.007
Mar		406.457
Apr		356.255
May		457.000
Jun		467.114
Jul		477.827
Aug		461.803
Sep		423.394
Oct		331.525
Nov		308.756
Dec		139.171
Total 2010		4,188.963

Distribution and Network Upgrades:

The Vaca-Dixon pilot project interconnects at a feeder coming in from the Vaca-Dixon Substation. The following chart summarizes the interconnection facilities needed to interconnect the Vaca-Dixon pilot project. No distribution or network upgrades were needed.

	Description	Cost
Interconnection Facilities	Install poles, switch, and 125 feet of 12 kV line extension	\$28,000
	Pre-parallel inspection, meters and primary service	\$10,000

Appendix H
Public IE Report

Pacific Gas and Electric Company
Solar Photovoltaic Program – Utility-Owned Generation
2010-2011

Independent Evaluator

Final Report

March 1, 2011

Prepared by
Merrimack Energy Group, Inc.

Merrimack



.

Table of Contents

I. Introduction.....	2
II. Role of the Independent Evaluator.....	10
III. Adequacy of Outreach to Potential Sellers.....	16
IV. Fairness and Appropriateness of Evaluation and Selection Methodology.....	20
V. Administration of the Offer Evaluation Process.....	27
VI. Project Specific Contract Negotiations.....	31
VII. Conclusions and Recommendations.....	33

Confidential Appendix A

I. Introduction

A. Overview

Pacific Gas & Electric Company (“PG&E”) is required to file an annual compliance report with the Energy Division with regard to its Solar Photovoltaic Program (“Solar PV program”). The first compliance report is due on March 1, 2011. PG&E is required to include the independent evaluator (“IE”) reports regarding all solicitations conducted pursuant to this program over the reporting period with its annual compliance report. Pursuant to the requirements of the California Public Utilities Commission (“CPUC” or “Commission”), Merrimack Energy Group, Inc. (Merrimack Energy”) has been retained by PG&E to serve as IE for both the Utility-Owned Generation (“UOG”) Solar PV solicitation and the Power Purchase Agreement (“PPA”) Solar PV solicitation. Since the initial UOG solicitation has been largely completed while the PPA portion of the program is now in progress, this report will focus on the UOG solicitation.

The intent of PG&E’s Solar PV Program is to facilitate the development of 500 MW of solar PV facilities over a five year period, half of which will be owned and operated by PG&E and half of which will be owned and operated by independent power producers (“IPP”) with generation sold to PG&E pursuant to PPAs. It is required that competitive solicitations will be used to select the most cost-effective utility-owned generation projects and the most cost effective IPP PPAs. Contract awards will be based on PG&E’s assessment of the bidder’s ability to deliver competitive pricing, performance, reliability, and to meet PG&E’s goals described in the Request for Proposals Protocol.

On January 25, 2010, PG&E issued two separate Requests for Information (“RFI”); one for Module Suppliers and the other for EPC Suppliers (Engineering, Procurement and Construction). Based on review and assessment of the RFI responses, PG&E selected suppliers in each program who would be eligible to submit proposals in response to the Request for Proposal in each category. Request for Proposals were issued on October 6, 2010 and responses were due in early November, with an earlier due date for module suppliers than for EPC contractors.

Through the above process, PG&E’s UOG team has selected two Engineering, Procurement and Construction (“EPC”) contractors to design and construct ground-mounted solar photovoltaic projects on three PG&E-owned sites¹ to meet the first year requirements of 50 MW of capacity. In addition, the UOG team is in negotiations with a third EPC contractor that would be able to compete for future projects under the UOG portion of the Solar PV program.

¹ The project sites selected included: (1) Schindler 1 (now called Five Points Solar Station or Five Points), approximately a 158 acre site which is designated to accommodate a 15 MW PV facility; (2) Schindler 2 (now called Westside Solar Station or Westside), an approximate 160 acre site that is designated to accommodate a 15 MW PV facility; and (3) Stroud, a 200 acre site that can accommodate a 20 MW PV facility. The sites provided by PG&E are fully permitted and prepared sites with completed interconnection studies. PG&E is responsible for all grid interconnection costs and work, including generation tie lines, the substation and network upgrades.

This IE report is submitted in conformance to the requirements of the CPUC Decision Adopting a Solar Photovoltaic Program for Pacific Gas and Electric Company in Application 09-02-019. Given the unique nature of the UOG portion of the program,² the IE report is designed to be consistent with the requirements outlined in the CPUC's IE Report Template, subject to adjustments in requirements to reflect the unique nature of this solicitation.

B. Program Background

PG&E filed an application (Application 09-02-019) with the CPUC on February 2, 2009, seeking approval of a Photovoltaic Program (PV program) and authorization to recover the associated revenue requirements for the PV Program in rates. PG&E's program consists of the installation and operation of up to 500 MW of 1 to 20 MW PV generation facilities in PG&E's service territory over a five-year period. Up to 250 MWs of the PV program capacity will be utility-owned generation ("UOG") and PG&E will procure up to 250 MW through PPAs with IPPs. In the application, PG&E sought authorization to incur up to \$1.45 billion in capital cost for the PV program. In its application, PG&E estimated the capital costs for the 250 MW of the UOG portion of program to be \$1.45 billion. This corresponds to the average capital cost target of \$4,275/kW (DC) in constant 2009 dollars, including contingency for the entire UOG portion of the PV program.³ PG&E estimated the levelized cost of energy for the PV UOG program to be equal to \$295/MWh.

With regard to the UOG portion of the program, UOG projects would primarily be ground mounted on land owned by PG&E at or near PG&E's existing substations, although PG&E anticipates that additional land may need to be purchased and some rooftop mounted projects may also be developed. PG&E proposes to use a competitive procurement process to solicit bids for modules, bundled turnkey projects (i.e. bidder can propose to offer modules and provide EPC services) and unbundled engineering, procurement, and construction ("EPC") bids combined with PG&E procured modules for the UOG PV development.

In the application, PG&E proposed that cost recovery of the UOG portion of the PV Program would be based on Commission approved capacity price targets. If at the end of the PV Program, the actual total capital costs are at or below the average target plus a contingency, PG&E proposes that it will be allowed to recover the actual capital costs of the PV Program without any further reasonableness review, and customers would be refunded the difference. If, however, PG&E's average installed cost at the end of the UOG portion of the PV Program exceeds the average target, PG&E would be authorized

² While Southern California Edison ("SCE") has undertaken the first year solicitations for both the utility-owned generation and PPA portions of their Solar Photovoltaic program, no IE was retained for the utility-owned generation portion of the program.

³ According to Table 6-9 in the Testimony of Joseph F. O'Flanagan filed in Application 09-02-019, the first year (2010) capital cost is estimated to start at \$4,947/kW (including contingency) and declines to \$3,979/kW in 2014 in constant 2009 dollars.

to recover the actual capital costs up to the average target and file an application for recovery of amounts in excess of the average target.

C. Regulatory Decisions

On April 28, 2010, the Commission issued its Decision Adopting a Solar Photovoltaic Program for Pacific Gas & Electric Company. The Decision ordered that:

- Pacific Gas & Electric Company is authorized to recover up to \$1.45 billion in capital cost for the utility-owned generation portion of its Photovoltaic Program via cost-of-service ratemaking as follows:
 - PG&E may book the authorized revenue requirement in its utility generation balancing account;
 - PG&E shall file an advice letter within 60 days of this decision to establish a Photovoltaic Program Memorandum Account to track the difference between the estimated and actual capital costs of this program. Should the actual capital costs exceed the authorized revenue requirement adopted herein, these excess costs shall be subject to a reasonableness review;
 - At the end of the program, should actual average capital costs per kW installed fall below \$3,920/kW (DC), PG&E's shareholders are eligible to retain 10% of the difference between the actual average capital cost and \$3,920 for every kW installed under the UOG portion of the program. If PG&E elects to recover any shareholder incentives, it shall file a Tier 2 advice letter in which it demonstrates eligibility for these incentives by providing actual project capital cost data and the methodology used to calculate the incentive amounts sought;
- PG&E is authorized to recover its actual operations and maintenance costs in its General Rate Case subject to a reasonableness review;
- Within 60 days of the effective date of the decision, PG&E shall file a Tier 2 advice letter with the Energy Division specifying the PV Program implementation and administration details needed to implement the utility-owned portion of the program including:
 - Solicitation process and protocols, eligibility, and timeline for turn-key and engineering, procurement and construction projects bidding into the utility-owned generation solicitations;
 - Criteria for evaluating conforming bids in the utility-owned generation turn-key and engineering, procurement and construction solicitations;
 - Process for identifying preferred locations of utility-owned generation project development to optimize the locational value of project sites, including impacts on neighboring lands;
- PG&E shall enlist the services of an independent evaluator to oversee the solicitation process and provide an assessment of the fairness and robustness of

each of the solicitations it conducts pursuant to this program, for both utility-owned generation projects and power purchase agreement projects, and the degree to which these solicitations conform to the solicitation protocols;

- PG&E shall file annual compliance reports with the Energy Division. PG&E shall include the independent evaluator reports regarding all solicitations conducted pursuant to this program over the reporting period with its annual compliance report.

On June 21, 2010 PG&E filed AL 3691-E. In AL 3691-E, PG&E described its process, protocols, and evaluation methodology and criteria for UOG PV solicitations. In addition, PG&E included its Request for Information Protocol for both EPC Suppliers and Module Suppliers, that was issued on January 25, 2010 and the proposed Request for Proposal Protocol for EPC Suppliers and Module Suppliers. PG&E also included Merrimack Energy's IE report on the UOG solicitation process including Merrimack Energy's initial findings and comments with regard to the development and implementation of the UOG portion of the program.⁴

On October 1, 2010 the Energy Division determined that PG&E's Advice Letter AL 3691, as supplemented by AL3691-E-A, is in compliance with Decision 10-04-052 and is effective September 27 2010.

D. Procurement Protocol

PG&E proposed a 5 stage process for undertaking the UOG portion of the program. The five stages include:

1. Stage 1 – Outreach to PV developers and suppliers to ensure that the solicitation is robust and competitive;
2. Stage 2 – Request for Information designed to obtain technical, commercial, and supplier diversity information from potential bidders to assess the viability of bidders and identify potential bidders before final bid proposals are solicited in the RFP stage;
3. Stage 3 – Short List. Based on information received in the RFI and the evaluation performed by PG&E and reviewed by the IE, PG&E will select a short list of bidders for receipt of the RFP, estimated to be between 15-20 prospective bidders;

⁴ The IE report included the following findings and conclusions: (1) The two-stage solicitation process is consistent with the type of products sought by PG&E; (2) the separation of the products sought into EPC without modules, EPC with modules, and modules only will provide flexibility to optimize the products offered; (3) the protocol documents established by PG&E should lead to implementation of a process that is consistent with the objectives outlined for the procurement process, should be fair and equitable to EPC and module suppliers and should lead to competitive benefits for PG&E's customers; (4) the outreach efforts initiated by PG&E should lead to a competitive process; (5) the scorecard process and methodology results in a fair, objective, and transparent process for resources of this nature.

4. Stage 4 – Request for Proposals. After notifying eligible bidders, PG&E intends to release two RFPs – one for EPC contracts and the other for PV Modules. The EPC RFP required suppliers to bid EPC services on projects in year one on a bundled, unbundled, and rebundled basis. PG&E did not solicit multi-year bids from EPC vendors to capture future benefits for customers. The Module RFP will request bids for PV projects to be built in the first year of the five-year UOG PV program and bids for long-term module supply. The year 1 bids will be used in making the bundled vs unbundled EPC decision in year one;
5. Stage 5 – Contracting. After reviewing the short-listed bidder proposals based on the evaluation criteria, PG&E will award contracts to EPC contractors and potentially to module suppliers. PG&E will negotiate final contracts with these contractors and/or suppliers, including all necessary commercial terms and conditions.

On January 25, 2010 PG&E launched the Request for Information Protocol for both EPC Suppliers and Module Suppliers. PG&E evaluated the responses and chose a large group of eligible bidders for each category. On October 6, 2010 shortly after CPUC approval, PG&E launched its Request for Proposals for EPC and Module Suppliers. In the RFP Protocol, PG&E listed a number of requirements and preferences to inform prospective bidders of the requirements for competing in the procurement process. These are listed for each RFP Protocol below:

- Sites will be in PG&E’s service territory, mostly in the southwestern San Joaquin Valley;
- The solar arrays will be mounted on flat, graded land and PG&E will provide suitable site access roads;
- Projects will typically be 10-20 MW in size;
- PG&E expects to install and commission 50 MW/year;
- The Program will be open to any commercially viable PV technology (i.e. those that have significant field operating experience with proven reliability and durability);
- PG&E will be responsible for all grid interconnection costs and work, including generation tie lines, and substation and network upgrades;
- Contract awards will be based on PG&E’s assessment of the Bidder’s ability to deliver competitive pricing, performance, reliability and to meet PG&E’s goals;
- Failure to complete a project on schedule may lead to a disallowance of program megawatts;

- PG&E may award multi-year, multi-project Agreements to successful bidders from the RFPs.

The RFI phase of the process and the RFP phase was conducted using the Power Advocate Sourcing Intelligence platform (“PowerAdvocate”). All communications including Q&A’s, protocol documents, RFI and RFP documents, announcements, amendments, Bidder’s response to the RFI and RFP, and other communication were conducted through PowerAdvocate. The PowerAdvocate platform operated to allow only those team members responsible to review certain aspects of a proposal to have access. In this regard, members of the commercial team, for example, did not have access to pricing or technical information.

One of PG&E’s goals in implementing the program was to provide flexibility to assess potential combinations of modules and EPC arrangements to develop the most effective solutions for customers. Through the RFPs, PG&E requested proposals for EPC solutions and requested proposals from suppliers to sell solar PV modules only to PG&E through a separate module RFP. Based on the proposals received, PG&E considered three product solutions to achieve program objectives of optimizing value and reliability for its customers. This structure created many potential award scenarios that fall into the product solutions outlined below. These can include awards to EPC suppliers only or awards to both EPC and module-only suppliers. As an example of the potential award scenarios, PG&E expected to award both Master Services Agreements (“MSA”) to the selected EPC vendors along with awards for Year 1 project sites to each or a subset of MSA awardees. In contrast, it is possible that a 5 year award for modules could be made as a result of the module RFP process. With these proposal possibilities, PG&E also acknowledged that a sufficiently attractive proposal in one RFP can have significant impacts on the evaluation process of the other RFP.

Bidders were directed to consider three product solutions:

1. “Bundled Option” – Full turnkey solution for the Engineering, Procurement, and Construction of a project site or sites. An EPC contractor would perform all services and deliver all materials and equipment (including modules) necessary to perform the work according to the specifications. This solution is the result of an award to one or several EPC suppliers.
2. “Unbundled Option” – PG&E will furnish the modules and assume all risk associated with delivery and module performance. The EPC supplier would perform all other areas of scope with the exception of procuring the modules to include installing the modules procured by PG&E. This solution includes awards to EPC suppliers and to module suppliers.
3. “Rebundled Option” – The EPC contractor performs the same work as with the bundled scenario except that the EPC contractor would take assignment of the PG&E contract for separately procured modules. Afterwards, the EPC contractor would manage the work in a manner identical to the industry-standard EPC

model. In this sense, the rebundled approach is identical to the bundled approach as an end-state for project execution. This solution includes awards to EPC suppliers and module suppliers.

The RFP documents informed bidders to pay particular attention to the above definitions when filling in the pricing datasheets on the PowerAdvocate platform.

The bundled pricing option was the most straightforward and bidders should include relevant taxes. The unbundled proposals should not include the price of modules as this option assumed that PG&E would furnish the modules. For the rebundled scenario, the PowerAdvocates data sheet requested the bidder to make assumptions about the module efficiencies since the final balance of plant cost was a function of the performance efficiency of the modules. Therefore, any rebundling decisions could potentially have significant impacts on the overall plant design and its corresponding price. As a result, PG&E asked bidders to consider what the impact on total price would be if the bidder installed a different type of module. PG&E asked bidders to submit pricing based on 10% efficiency, 15% efficiency, and 20% efficiency.

If PG&E determined that a rebundled bid was attractive, PG&E would ask the EPC bidder to confirm the estimated bid prices, and EPC bidder's willingness to work with PG&E's preferred module supplier.

The year one module bids would be used to make the decision between the above three options. The long term module bids would be used to determine how much of the program's module supply would be placed under multi-year and large-volume contracts. The decision to award long-term versus annual contracts would be based on the pricing relative to PG&E's market price forecast and commitments under the program, such as obtaining benefits of economies of scale for customers and hedging future module price risk.

For projects not assigned a portion of the modules under long-term contract, PG&E would make a decision on each of the three options for individual projects annually. PG&E compared the cost of the bundled EPC bids to the combined cost of the other unbundled/rebundled bids plus the module bids received for projects in that year. To the extent that the unbundled bids do not contain similar costs and risk factors, PG&E would negotiate a rebundling charge with the EPC bidder, or add a contingency to the unbundled bids in order to create an apples-to-apples comparison.

The EPC RFP also required suppliers to bid EPC services on projects in year-one on a bundled, unbundled, and rebundled basis. PG&E did not solicit multi-year bids from EPC vendors to capture future benefits for customers. Each bidder awarded a MSA that has a term of three years with two annual renewals at PG&E's option would operate under a competitive partnership whereby they would bid for each new project site as it becomes available.

E. Issues Addressed in This Report

This report addresses Merrimack Energy's assessment and conclusions regarding the following seven issues identified in the CPUC's IE Report Template:

1. Describe the role of the IE.
2. Evaluate the fairness of the investor-owned utility's ("IOU's") bidding and selection process (i.e. quantitative and qualitative methodology used to evaluate and select offers, consistency of evaluation and selection methods with criteria specified in bid documents, etc.).
3. How did the IOU conduct outreach to bidders? Was the solicitation robust?
4. Describe the IOU's Least Cost Best Fit ("LCBF") methodology (or provide the IOU's own description). Evaluate the strengths and weaknesses of the IOU's LCBF methodology.⁵
5. Describe project specific negotiations. Highlight any areas of concern including unique terms and conditions.
6. If applicable, describe safeguards and methodologies employed by the IOU to compare affiliate bids or utility-owned generation ownership offers.
7. Do you agree with the IOU that the contract(s) merit CPUC approval? Explain.

All these issues are addressed in this report.

Due to the confidentiality of the information submitted by bidders in this process, Merrimack Energy is including project and bidder specific information in the Confidential Appendix. In addition, information associated with specific contract issues, views of the market identified by bidders during interviews and other meetings and project specific conclusions are included in the Confidential Appendix to maintain the confidentiality requirements of bidders.

⁵ The nature of this process is different than traditional PPA procurement processes and is more akin to solicitations for EPC services. As such, Merrimack Energy will describe and discuss the process undertaken by PG&E to evaluate and assess the bids for UOG options. The traditional IOU Least Cost Best Fit methodology was therefore not applicable. However, the IE will draft a description of the methodology used to evaluate and rank offers as well as the strengths and weaknesses of the methodology.

II. Description of the Role of the IE

A. Regulatory Requirements For the IE

The requirements for participation by an IE in RPS solicitations are outlined in Decisions (“D”).04-12-048 (Findings of Fact 94-95, Ordering Paragraph 28), D.06-05-039 (Finding of Fact 20, Conclusion of Law 3, Ordering Paragraph 8) of the CPUC, and D.09-06-050.

In D.04-12-048 (December 16, 2004), the CPUC required the use of an IE by investor-owned utilities (IOUs) in resource solicitations where there is an affiliated bidder or bidders, or where the utility proposed to build a project or where a bidder proposed to sell a project or build a project under a turnkey contract that would ultimately be owned by a utility. The CPUC generally endorsed the guidelines issued by the Federal Energy Regulatory Commission (“FERC”) for independent evaluation where an affiliate of the purchaser is a bidder in a competitive solicitation, but stated that the role of the IE would not be to make binding decisions on behalf of the utilities or administer the entire process.⁶ Instead, the IE would be consulted by the IOU, along with the Procurement Review Group (“PRG”) on the design, administration, and evaluation aspects of the Request for Proposals (“RFP”). The Decision identifies the technical expertise and experience of the IE with regard to industry contracts, quantitative evaluation methodologies, power market derivatives, and other aspects of power project development. From a process standpoint, the IOU could contract directly with the IE, in consultation with its PRG, but the IE would coordinate with the Energy Division.

In D.06-05-039 (May 25, 2006), the CPUC required each IOU to employ an IE regarding all RFPs issued pursuant to the RPS, regardless of whether there are any utility-owned or affiliate-owned projects under consideration. In addition, the CPUC directed the IE for each RFP to provide separate reports (a preliminary report with the shortlist and final reports with IOU advice letters to approve contracts) on the entire bid, solicitation, evaluation and selection process, with the reports submitted to the utility, PRG, and CPUC and made available to the public (subject to confidential treatment of protected information). The IE would also make periodic presentations regarding its findings to the utility and the utility’s PRG consistent with preserving the independence of the IE by ensuring free and unfettered communication between the IE and the CPUC’s Energy Division, and an open, fair, and transparent process that the PRG could confirm.

In D.09-06-050 issued on June 18, 2009 in Rulemaking 08-08-009, Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program,⁷ the CPUC required that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility’s PRG and its IE, including a report filed by the IE.

⁶ Decision 04-12-048 at 129-37. The FERC guidelines are set forth in Ameren Energy Generating Company, 108 FERC ¶ 61,081 (June 29, 2004).

⁷ Decision Establishing Price Benchmarks and Contract Review Processes for Short-Term and Bilateral Procurement Contracts for Compliance With the California Renewable Portfolio Standard.

In the Decision Adopting a Solar Photovoltaic Program for Pacific Gas & Electric Company April 24, 2010) in Application 09-02-019 (D.10-04-052), the CPUC ordered PG&E to enlist the services of an independent evaluator (“IE”) to oversee the solicitation process and provide an assessment of the fairness and robustness of each of its solicitations for UOG projects and the degree to which these solicitations conformed to the solicitation protocols.

B. Description of Key IE Roles

In compliance with D.10-04-052 issued April 24, 2010, PG&E selected Merrimack Energy to serve as IE for the Solar Photovoltaic Program. The objective of the role of the IE is to ensure that the solicitation process is undertaken in a fair, consistent, unbiased, and objective manner and that the best resources are selected and acquired consistent with the solicitation requirements.

As mandated by the CPUC, the oversight activities of the IE shall consist of but not be limited to:

1. Review and comment on PG&E’s competitive bid process for the solicitation;
2. Review and comment on PG&E’s solicitation outreach and adequacy of its methods for outreach;
3. Review and comment on the design of PG&E’s evaluation and selection methodology for the solicitation;
4. Provide feedback to PG&E on its implementation of the evaluation and selection methodology; and
5. During the solicitation, provide ongoing feedback as to whether PG&E is applying impartial treatment to participating bidders consistently.

In addition to these tasks, Merrimack Energy will list specific activities of the IE associated with the Solar Photovoltaic program as required in the CPUC Decision approving the program.

Merrimack Energy has participated in several tasks for the UOG portion of the Solar PV program unique to the requirements of the program, which differ from traditional utility procurement processes such as the PPA portion of the program.

In addition to the general requirements for the IE identified above, the specific activities of the IE are described below for this assignment. They include:

1. Reviewed and commented on the draft Request for Information (RFI) Protocol document and bid evaluation scorecard.⁸ Our comments focused on the design of the evaluation and selection process, evaluation criteria, and selection protocols.
2. Reviewed and commented on the draft RFP and bid evaluation scorecard for selection of the eligible EPC contractors and module suppliers. Our comments focused on the bid evaluation process, evaluation criteria, and the basis for bid selection.
3. Reviewed and commented on the Terms and Conditions and agreements required from bidders;
4. Reviewed and assessed the offers received in response to the RFI to ensure the IE and Company identified the same or reasonably consistent list of offers for the RFP stage of the process;
5. Reviewed and assessed PG&E's evaluation of the final offers received through the RFP process for purposes of selecting the bidders that would have the opportunity to provide EPC services and/or modules for the company-owned facilities. Ensure all bidders are fairly treated in the evaluation and selection process.
6. Monitored email traffic between PG&E and the bidder to ensure the process is fair and equitable via the Power Advocate platform.
7. Prepared an assessment of the overall solicitation process developed by the UOG project team for inclusion in PG&E's June 21, 2010 Advice Letter filing.
8. Monitored contract negotiations;
9. Participated in meetings with short listed bidders via telecom;
10. Prepared the IE reports for inclusion in any Advice Letter filings and also as part of PG&E's annual compliance reports with the Energy Division.

This report provides an assessment of PG&E's UOG PV procurement process from development of the RFI process through selection of the EPC contractors. It is organized based on the template provided by the CPUC's Energy Division. This report addresses Merrimack Energy's assessment and conclusions with regard to the following questions:

C. Description of IE Oversight Activities

⁸ PG&E developed detailed bid evaluation scorecards and criteria designed to serve as the basis for evaluating and scoring bids. The scorecards will be discussed in more detail in later sections of this report as well as in the Confidential Appendix.

In performing its oversight role, the IE participated in and undertook a number of activities in connection with the solicitation including providing comments on the RFI and RFP protocol documents, reviewing the offers received in response to the RFI and RFP and conducting high level evaluation of the offers, participation in meetings with short listed bidders, participation in contract negotiation sessions with bidders, monitoring communications with bidders via the Power Advocate platform (i.e. website), participate in project team meetings, review and comment on EPC contract. Merrimack Energy was retained by PG&E prior to the development of the receipt of the responses to the Request for Information. A list of the activities of the IE during the procurement process is described below.

1. Participated in Project Kick-off Meeting with the UOG Project Team

Given the unique nature of the UOG program, Merrimack Energy met with the UOG project team on March 26, 2010 shortly after being retained to serve as IE. Topics for discussion at the kick-off meeting as identified by the IE included:

- Overview of the UOG PV program including discussion of the schedule for the process, requirements listed in the Commission decision, status of RFP development, and critical path issues;
- Review and discussion of the RFI Protocols;
- Review evaluation criteria and evaluation process for the RFI and RFP;
- Outreach activities;
- Confidentiality issues;
- Status of RFP development;
- Role of the IE given that the UOG team had worked previously with an IE on only one other solicitation.

2. Submitted Comments on RFI Protocol Design

Merrimack Energy submitted initial comments on the RFI design and requirements, the evaluation criteria and scorecard developed for the bid evaluation process, and provided suggestions and recommendations. Merrimack Energy's comments were included in PG&E's June 21, 2010 Advice Letter filing.

3. Reviewed PG&E's Evaluation of the RFI Responses and Selection of Qualified Bidders

Merrimack Energy reviewed the evaluation of EPC and Module supplier responses to the RFI undertaken by PG&E relative to the scorecard developed by PG&E. Merrimack Energy also undertook an independent review of the RFI responses and ranked the respondents into tiers⁹ for determining qualified bidders. All of the respondents on

⁹ The IE developed two tiers of bidders based on review of the RFI responses. Tier 1 bidders were classified as highly rated bidders while Tier 2 included qualified bidders. Bidders not included in either tier would be classified as low probability or not qualified relative to the Tier 1 and Tier 2 bidders.

Merrimack Energy's list were also included on PG&E's list with one exception.¹⁰ As a result, Merrimack Energy was in agreement with PG&E's selection of the bidders that would qualify for the RFP stage of the process

4. Development of RFP Documents

PG&E and Merrimack Energy held several discussions associated with development of the RFP documents for both EPC and Module suppliers. Based on the RFI responses, the IE felt that PG&E should provide more details to bidders on the pricing requirements as a link to the requirements included on the PowerAdvocate platform rather than strictly rely on the data sheets included in the PowerAdvocate platform. PG&E did include a section in the RFP documents that provided such information to prospective bidders, which given the complexities of the options allowable provided sufficient details for bidders to effectively assess all pricing options. In addition, the IE was not clear how PG&E intended to evaluate the three product options (i.e. bundled, unbundled, and rebundled options) in conjunction with the cancellation option for modules to select the preferred projects. The IE suggested PG&E develop mock bids using the PowerAdvocate bid forms to test the evaluation process. PG&E prepared a detailed solar evaluation and contracting process assessment. In addition, PG&E and staff from PowerAdvocate conducted a detailed audit of the process and documents and also conducted a mock bid evaluation. PG&E and PowerAdvocate staff met with the IE to discuss the findings.

5. Reviewed and Commented on Master Agreements

The IE reviewed the Master Agreements for Modules and EPC services and provided comments to PG&E on each of the agreements.

6. Monitored Communication with Bidders

As noted, all communications between PG&E and the bidders for each RFP were done through the PowerAdvocate website. Merrimack Energy regularly checked the website to review the questions and responses to bidders, documents posted by PG&E and documents posted by prospective bidders. Merrimack Energy was given complete and open access by PG&E to all the files on the PowerAdvocate platform for each RFI and RFP, which allowed for a review of the bidder files and documents by the IE at any time during the process.

7. Conference Calls to Discuss Solicitation Status

PG&E project team members and Merrimack Energy held a number of calls and a few meetings during the process, including a project team meeting after bids were received to discuss the status of the process and identify outstanding issues.

¹⁰ Merrimack Energy identified a list of 14 potential eligible bidders, while PG&E selected a list of 20 bidders. Thirteen of the fourteen bidders included on Merrimack Energy's list as well as on PG&E's bidder list.

8. Reviewed Evaluation of Bids Received

PG&E provided the IE with its evaluation scorecard and evaluation results for each of the RFPs and promptly answered any questions from the IE regarding the evaluation. The IE also summarized the bids and evaluated sections of the bids based on the scorecards.

9. Participated in Bidder Meetings

PG&E conducted meetings with bidders who submitted proposals in each category in December 2010. The objective of the meetings included review and clarification of the bidder's proposal, discussion regarding the performance characteristics of the services offered, identify and clarify certain risk elements, the schedule for the process, contract and credit issues, and comments on the RFPs. The meetings proved to be very insightful about the project teams, their experience, project approach and view of the solar market.

10. Monitored Contract Negotiations

The IE monitored contract negotiations with the selected EPC contractors during December and January. The IE also reviewed comments of the bidders on the Master Agreements and attachments.

11. Reviewed PG&E Recommendation and Final Decision

The IE reviewed the final evaluation results and recommendations of PG&E and conducted a face-to-face meeting with PG&E project team members to discuss the final selection, contract issues, and lessons learned from the process with regard to project pricing and RFP related issues.

12. Reviewed Results of the Calculation of the Levelized Cost of Energy (LCOE) Based on a Revenue Requirements Analysis Completed by PG&E

In conformance to the requirements identified in the CPUC decision on PG&E's Solar PV program, PG&E submitted its calculations and methodology associated with its calculation of the levelized cost of energy to the IE. The analysis was based on a revenue requirements assessment for each of the projects which reflected utility ownership of each of the projects.

III. Did PG&E Do Adequate Outreach to Bidders and Was the Solicitation Robust?

A. Were the Solicitation Materials Clear and Concise to Ensure that the Information Required by the Utility to Conduct its Evaluation Was Provided by the Bidders?

The IE had the opportunity to review the Request for Proposal protocol documents and materials prior to completion and provided comments. Our comments were designed to ensure the information was consistent and clear to Bidders. Merrimack Energy had several comments. One comment of note was our view that drafts of the RFP did not adequately explain the pricing options requested of Bidders for both EPC and Module suppliers. In particular, there did not appear to be a link between the information requested in the PowerAdvocate platform and the pricing description in the RFPs. The IE also suggested PG&E prepare mock bids to test the quantitative evaluation process. PG&E did undertake a mock bid process and also discussed the IEs comments about the RFPs. PG&E made revisions to the final RFP documents to reflect lessons learned from the mock bid process as well as the suggestions of the IE. As a result of these efforts by PG&E, the IE felt the final RFP Protocol documents were clear and concise.

PG&E's UOG team did not maintain a public website which provided transparent information to interested participants. Instead, given the confidential nature of this process, PG&E's UOG team communicated with prospective bidders through the Power Advocate Platform, which included bid protocol information, forms for submitted responses to the RFI and RFP, and emails between the bidders and PG&E.

In addition, PG&E hosted a Webinar for bidders on February 19, 2010 to discuss its Supplier Diversity program and guidelines.

The IE also found that PG&E's UOG project team was particularly responsive to the needs of prospective bidders throughout the process and also responded very quickly and thoroughly to bidder questions. The performance of the team in the communication function with bidders through the PowerAdvocate platform was exemplary.

The combination of accessibility to the PowerAdvocate platform and the quick responsiveness by PG&E UOG team members to bidders' questions led to a consistent and effective process.

B. Identify Guidelines Used to Determine Whether the IOU Did Adequate Outreach. Did the IOU Do Adequate Outreach? If Not, Explain How it Was Deficient

There are several criteria generally applied for assessing the performance of the utility in its outreach and marketing activities:

- Did the utility contact a large number of prospective bidders?

- Were the utility's outreach efforts active or passive?
- Did the utility adequately market the solicitation?
- Could prospective bidders easily access information about the RFP?
- Did any prospective bidders complain about the process or access to information?

Outreach activities are important to the success of a competitive solicitation process. PG&E's maintains a large database of potential suppliers and contractors that serves as the basis for its outreach activities for the UOG portion of the Solar PV program. PG&E views outreach to potential market competitors to be a very important component of program activities. Since the UOG component of the PV program may be targeting a different group of industry participants (i.e. EPC contractors and module manufacturers/suppliers) than the PPA portion of the program (i.e. project developers), establishing a unique database of market participants has been an important activity of the UOG team.

PG&E has drawn its contact list from two major sources of information: (1) internal sources and (2) external sources. Internal sources include the supplier list for the 2 MW PV Pilot project as well as other suppliers that expressed interest in the program after the sourcing for the pilot program. External sources include major industry associations including the Solar Electric Power Association, Solar Energy Industry Association, California Solar Energy Industries Association, and European Photovoltaic Industry Association. For outreach purposes, PG&E has informed the market of the RFI through a press release issued by PG&E's External Communications Group, and through posting the bid opportunity in business-to-business and News and Events at PGE.com. PG&E began contacting external resources concerning the implementation and timing of the 250 MW UOG Solar PV program in late December 2009 and sent bid announcements to the internal and external resources after development of the procurement strategy in early January 2010.¹¹

To implement the UOG portion of the program, PG&E has elected to use the Power Advocate platform. Suppliers are required to answer questions and provide requested information directly to their specific file on the Platform. The Power Advocate platform allows PG&E to communicate with all bidders at the same time using the same general format and requirements. For example, any documents, email notices to all bidders, individual emails to specific bidders and other communication requirements are posted to the website at the same time. All communications are therefore conducted over the website without allowing access to other bidder files. Bidders are also allowed to update their files at any time prior to the RFI (and RFP) submittal deadline.

¹¹ The RFI was sent to over 100 interested parties.

The IE has been provided secure access to the files of all registered and active participants, including access to their RFI and RFP related information and any supporting information provided.

Lastly, to ensure consistency in communications with suppliers, PG&E has established specific staff contacts for communication with bidders.

C. Identify Guidelines Used to Determine Adequate Robustness of a Solicitation. Was the Solicitation Adequately Robust?

With regard to assessing whether the response to the solicitation was adequately robust, there are several criteria to consider:

- Was the response to the solicitation commensurate with the level of outreach?
- Did the solicitation encourage a significant response from a diverse group of Bidders in terms of products requested, project structure, pricing options, etc?
- Was the response large with respect to the number of proposals, megawatts (“MW”) offered and amount of megawatt-hours (“MWh”) bid?

The overall result of this outreach activity was a very robust response from bidders in the RFI stage of the process for both EPC contractors and Module suppliers. A total of 46 entities responded to the EPC RFI and 28 entities responded to the module RFI. A reasonable number of bidders submitted responses to the RFP to ensure a competitive process would exist. Respondents included both large, experienced and well-financed entities as well as a few smaller companies. Information regarding the bidders, products offered, projects bid, and pricing results is contained in the Confidential Appendix A to this IE Report. Appendix A also includes responses from bidders who did not submit a final proposal and the basis for such a decision.

In conclusion, the outstanding response of the market, particularly to the RFI, is evidence that the outreach activities of PG&E were effective. This served to create a competitive process throughout.

D. Did the IOUs Seek Adequate Feedback About the Bidding/Bid Evaluation Process From All Bidders After the Solicitation Was Complete?

While it may be premature to evaluate this issue at this time since the process was recently completed, the response of bidders during the bidder interviews after submission of responses to the RFPs provided a significant amount of feedback on the process. Confidential Appendix A provides specific responses from bidders.

E. Any Other Relevant Information or Observations

PG&E's first year UOG solicitation represented a unique and creative solicitation process which was designed to secure the lowest reasonable cost resources while enhancing supply reliability. This process was quite different from traditional PPA procurements. The two-step RFI and RFP process is more akin to procurement processes involving solicitation for EPC contractors or other large scale infrastructure or capital projects. Also, the inclusion of both EPC and Module suppliers in the process and assessment of bundled, unbundled, and rebundled options is certainly unique but applicable in this case. The IE found PG&E staff to be unbiased and fair to all bidders, whether the bidder was a well-known and successful project participant or a recent participant. All bidders had equal access to information as well as PG&E staff to seek or clarify information about their projects. PG&E was particularly responsive to bidder's questions in a timely manner. In our view, PG&E's UOG project team maintained an excellent balance between providing bidders flexibility in a new procurement process while ensuring fairness to all bidders.

IV. Fairness and Appropriateness of PG&E's UOG Bid Evaluation and Selection Methodology and Design

A. Framework and Principles for Evaluating PG&E's Methodology

This section of the report addresses the principles and framework underlying Merrimack Energy's review of PG&E's methodology for the UOG bid evaluation and selection. Key areas of inquiry by the IE and the underlying principles used by the IE to evaluate the methodology include the following:

- Were the procurement targets, products solicited, principles and objectives clearly defined in PG&E's RFI, RFP and other materials?
- Were the bid evaluation and selection process and criteria reasonably transparent such that bidders would have a reasonable indication as to how they would be evaluated and selected?
- Was PG&E's bid evaluation based on and consistent with the information requested in the RFP and the PowerAdvocate platform to be submitted by bidders in their response documents?
- Did the evaluation methodology reasonably identify the quantitative and qualitative criteria and describe how they would be used to qualify and rank offers?
- Were the bid evaluation criteria consistently applied to all offers?
- Does the price evaluation methodology allow for consistent evaluation of bids of different products, project structures and options?
- Did the bid evaluation criteria and evaluation process contain any undue or unreasonable bias that might influence project ranking and selection results or in any way favor affiliate bids?
- Was the RFP clear and concise to ensure that the information required by PG&E to conduct its evaluation was provided by project sponsors?

B. Description of PG&E's Evaluation Methodology

This section of the report provides an overall description and assessment of PG&E's evaluation methodology and criteria applicable to the 2010-2011 UOG Solar PV program.

As stated in PG&E's Advice Letter filing, the solicitation process will be comprised of two stages. In the first stage, bidders are required to respond to a Request for Information

(RFI)¹² process that involves bidders being evaluated relative to specified commercial strength, technical capability, and supplier diversity criteria. For the RFI phase, commercial strength scores are based on the vendors Dunn & Bradstreet ratings, strength of balance sheet, debt/equity ratio, bonding capability, credit terms, etc. Technical capability scores for module bids are based largely on the commercial readiness of the technology (i.e. substantial deployment history), manufacturing capacity, uncontracted manufacturing capacity available to support PG&E's program, and approved test laboratory certification of PV panels. Supplier diversity scores are based on vendors' stated commitment to achieve levels of diversity-spend on women, minority, or California disabled veteran business enterprise ("WMDVBE"). The general criteria are defined in the RFI and RFP documents.

The products solicited and requirements for responding to the RFI are listed in the RFI document, with the specific forms and data sheets for submitting the requested information contained on the PowerAdvocate platform. Based on the information received in the RFI and the evaluation performed by PG&E and reviewed by the IE, PG&E's objective is to develop short lists of 15-20 bidders as EPC and module supplier¹³ finalists, who will then be invited to participate in the RFP. A bidder could elect to provide EPC services only, modules only, or could combine EPC services with modules in the response to the RFP.

For the RFI stage of the process, PG&E issued the RFIs on January 25, 2010 and responses were received on March 31, 2010. Evaluation of the bids occurred during April with initial evaluation and selection of the short list throughout April.

In the second stage, bidders selected through the RFI process were eligible to submit a bid in response to the Request for Proposal (RFP) requirements included in the RFP document. PG&E released two RFPs – one for EPC contractors and the other for PV module suppliers on October 6, 2010.

The EPC RFP defined the procurement targets, products solicited, and objectives of the process. The EPC RFP stated that PG&E was seeking pricing for both bundled (with modules) and unbundled (without modules) proposals. The Module RFP seeks bids for PV projects to be built the first year of the five-year UOG PV program ("Year One Bids"), and bids for long-term module supply. The year-one bids will be used in making the bundled versus unbundled EPC decision in year one. The long-term supply bids will be used to determine how much of the UOG PV program's module supply should be placed under long-term/large-volume contracts. In addition, the RFP documents clearly defined the bid evaluation and selection process.

¹² The RFI approach is typical for many EPC service solicitations, large-scale capital projects, and infrastructure projects and provides a means to assess the viability of bidders, and identifies potential bidders before final bid proposals are solicited in the RFP stage. The RFI is not intended to solicit final bids to procure PV facilities.

¹³ A module supplier would typically supply the PV panels to PG&E but would not construct the actual PV facility. An Engineering, Procurement, and Construction ("EPC") contractor, on the other hand, would construct the PV facility and may supply the modules with all system components.

The EPC RFP requested that all short-listed EPC bidders submit: (1) fully “bundled” bids including both the cost to the bidder to purchase the PV modules and the work to design, procure, and construct the PV system; and/or (2) “unbundled” bids for all of the work to design, procure and construct the PV system with the PV modules being supplied by PG&E. For both the bundled and unbundled bids, PG&E provided prepared sites to build the solar PV portion of the project and identified the sites in the RFP document. PG&E indicated it would evaluate bundled and unbundled EPC bids for year-one projects. Based on these bids and the evaluation process PG&E’s objective was to award multi-year Master Service Agreements (“MSA”) to multiple winning EPC contractors.

Bidders to the EPC RFP were required to submit additional commercial, technical, and pricing information including completing the required pricing forms or data sheets on the PowerAdvocate platform, exceptions to PG&E’s Terms and Conditions, supplier diversity commitment, preliminary system design and equipment specifications, forecasts of lifetime energy production, and detailed financial information.¹⁴ The RFP documents identified the higher level criteria and described in general the sub-criteria, however, the bidders did not have access to the scorecards. It is typical in the majority of the procurement processes that the higher level criteria are identified but the detailed (i.e. sub-criteria) evaluation criteria and detailed methodology are not shared with bidders.

The purpose of the module RFP was to obtain the lowest possible cost for commercially proven technologies. The RFP also enabled PG&E to determine whether EPC bids should be bundled or unbundled and determine to what degree price reductions could be obtained from larger and longer term orders. Module suppliers were requested to provide bids for:

- Multi-year contract with no obligation to purchase (guaranteed pricing only);
- Multi-year contracts with an obligation to purchase. Forward pricing was requested for individual years or for multi-year strips. Module bidders will be required to provide cancellation fees for all or a portion of the contract volumes for each year and for various notice provisions;
- The initial RFP will have a request for year-one projects only;
- Fixed prices for three volume options with individual volume amounts identified for each year.

As previously noted, PG&E’s UOG team developed a process for evaluating the responses to the RFI and RFPs. For each phase of the process, PG&E designed an evaluation scorecard that would be used to score and rank proposals submitted. While the evaluation criteria and specific weights differ by supplier (i.e. criteria for EPC suppliers and module suppliers are different to reflect the characteristics of the different products) and for the RFI and RFP phase of the process (e.g. the price criteria is applied only in the RFP phase), the overall evaluation methodology is consistent.

In that regard, the evaluation is conducted in two steps. The first step is essentially the minimum criteria evaluation. If a proposal does not meet the pre-specific minimum

¹⁴ PG&E used the time period between evaluation of the RFI responses and CPUC approval of its Advice Letter in late September to request financial information from prospective bidders.

criteria identified by PG&E in its scorecard, the proposal would be eliminated from further consideration. The minimum criteria are listed in the scorecard along with the basis for not achieving the minimum criteria. In this step, PG&E classifies offers as “Go/No Go”.¹⁵

In the second step of the evaluation, all remaining offers are scored relative to the established scorecard criteria for the particular solicitation (i.e. RFI and RFP) and product (i.e. EPC and module suppliers). The criteria developed are generally objective in nature and were developed by the UOG project team. By objective, it is meant that the criteria are well defined for each category or weight and it is generally straightforward to determine the specific score or rank for a bid based on the information provided.¹⁶

The criteria used in the evaluation of the RFI and RFP responses are separated into three to four categories (i.e. the first three for the RFI process and all four for the RFP process): (1) Technical capability criteria; (2) commercial strength criteria; (3) supplier diversity criteria; and (4) price evaluation criteria. Also, within each of the major categories are a number of sub-criteria. The higher level criteria and sub-criteria for each process are included in the Confidential Appendix A. While the higher level criteria were provided to the bidders in the supplier protocols, the sub-criteria were not made available to bidders but were used internally by the UOG team to evaluate bids. The sub-criteria, scorecards and associated evaluation results were reviewed by the IE.

The evaluation scorecard developed by the UOG project team contains a pre-determined matrix which lists the criterion and the objective requirements associated with the scores relative to each criterion. A bid could receive a score of 1 to 5 within each sub-criterion, with 1 the lowest score and 5 the highest score. The matrix contains cells which specify what is required within each sub-criterion for a bid to receive a score of 1 to 5. As noted, the matrix approach to effectively determine the score of each bid in advance is a very objective process with limited room for interpretation. In addition to the potential scores within each sub-criterion from 1 to 5, the UOG project team has also attached weights to the overall three or four high level criteria as well as the sub-criteria. The sum of the product of the scores for each criterion and the weights attached in advance will determine the total score for each bid. Bids are then ranked based on the overall score from highest to lowest.

For the price score, PG&E awards the maximum scores for the lowest cost bid and a score of 1 for the highest cost bid. The scores for the remaining bids are then allocated between the high and low based on a linear function. Although the scorecard is used to rank bids based on price and other factors, additional steps remain to determine the best value for customers. For example, decisions regarding the bundled or unbundled approach could influence overall portfolio costs for all project sites. In addition, PG&E

¹⁵ The Go/No Go criteria also differ between the EPC and module RFP. While several are the same for each RFP, a no go for EPC bids is a total price below the capital cost cap of \$4,275/kW.

¹⁶ For example, if 4 points are awarded to bidders who possess a net worth between of \$10 and \$20 million and the specific bidder has an actual net worth of \$12 million, that bidder would clearly receive 4 points in the net worth category.

calculated the levelized cost of energy for only the final selected bids based on revenue requirements analysis.

The UOG project team identified evaluators within the overall evaluation team to focus on technical, commercial, and pricing criteria. Through the PowerAdvocate platform, members of the technical team, for example, did not have access to the information used by the commercial team to ensure bias was not entered into the evaluation.

C. Evaluation of the Strengths and Weaknesses of PG&E's Methodology in This Solicitation

Strengths of Evaluation Ranking Methodology

PG&E's scorecard approach to bid evaluation with the criteria specified as objective criteria is both a very applicable and detailed process for this type of solicitation and also ensures consistency in the evaluation without the presence of bias in the process. The application of different criteria and sub-criteria specific to the product being sought ensures that the important criteria associated with each product is fully vetted. In addition, the information requested of bidders on the PowerAdvocate platform was linked to the evaluation criteria and scoring methods contained in the scorecard. This resulted in a consistent and comprehensive evaluation.

The IE also believes the two stage RFI and RFP process is effective for this type of product solicitation. A "pre-qualification" or RFI process is valuable for a process such as this where there are a range of bidders with different capabilities and expertise who are bidding on a capital intensive process. The two-stage process allows for a continued level of competition throughout the process.

The RFP document identified the procurement targets, products solicited, objectives of PG&E, pricing options and higher level criteria which provided an excellent roadmap to bidders to prepare their proposals. The amount of transparency associated with the bid evaluation and selection process and evaluation criteria was generally reasonable and consistent with similar processes.

PG&E's process also allowed bidders a significant amount of flexibility to offer creative options and also provided PG&E with the ability to optimize the combination of project sites and bids through such initiatives as bundled, unbundled or rebundled bids, and the option to cancel module orders if the market changes at a fee bid into the competitive process. However, the RFP explained the products sought and described how bids would be evaluated and decisions made to select the appropriate products.

The interaction with bidders through the PowerAdvocate platform including questions and answers, the posting of documents, and the posting of responses allowed real time access to the bidders and IE and was effective in facilitating bid submission and follow-up responses.

The IE is of the view that PG&E undertook a fair and consistent evaluation of the bids in both the RFI and RFP processes. We did not think that any bid was unreasonably excluded from the eligible short list after the RFI process and also felt that the RFP evaluation was fair and reasonable. In the RFP process, scorecards were completed immediately after the receipt of bids. However, revisions were made if substantial clarifications occurred after the RFP close date, such as with the updated pricing following supplier interviews.

PG&E also attempted to minimize bias in the evaluation by limiting information about the proposals that members of the evaluation team had access to. For example, members of the technical evaluation team did not have access to pricing information during the evaluation process. Access to such information may have biased their evaluation if they knew who the low cost bidders were. The combination of objective evaluation criteria and access to only the information required by each evaluation team member was effective in limiting any bias.

PG&E retained an experienced outside engineering firm to develop the specifications for modules.

PG&E conducted interviews and meetings with qualified short listed bidders for both modules and EPC contracts during December after evaluation of the bids. The meetings proved to be extremely valuable to PG&E to better understand the bidder's proposal, its ability to meet the proposed schedule, gain a better understanding of the performance of modules and the bidders in providing EPC services, discuss market conditions and begin an initial discussion of contract issues. The meetings also set the parameters for discussion of ways to structure project pricing to meet PG&E's requirements. Subsequent to such meetings several bidders offer revised pricing and project structures.

Weaknesses of the Evaluation and Ranking Methodology

One of the primary weaknesses associated with the RFP process was the short time allowed to bidders to submit a proposal after issuance of the RFP. The RFP was issued on October 6, 2010, immediately after CPUC approval¹⁷ and bids for modules and EPC contracts were due in early November. PG&E felt this lead time was adequate since the bidders had already responded to the RFI and PG&E remained engaged with short listed bidders through other requests for information such as financials. However, in the IE's view, the short lead time proved to be problematic for EPC bidders, who had to line up modules and members of their project team in short order to submit a proposal. Several eligible bidders identified the short lead time as a reason for not bidding or the reason for including a higher risk premium in their pricing.

While the pricing methodology used by PG&E in the development of the scores via the scorecard provided a reasonable methodology as a screening assessment, use of the

¹⁷ CPUC approval was provided on October 1, 2010 which allowed approximately 12 months to conduct the RFP, negotiate contracts and construct the three projects under a very tight schedule.

revenue requirements methodology at this stage in place of the current methodology used to determine price scores would result in a more accurate assessment.

As previously noted, PG&E applied Go/No Go criteria prior to undertaking the technical and commercial evaluation of bids. Some of these threshold criteria are not sufficiently transparent to bidders. Many solicitation processes identify the threshold or go/no go criteria so that bidders can decide if they qualify before submitting the requested information and investing in the process. In the view of the IE, a few of the threshold criteria could be identified in the RFP which would aid bidders in deciding either to structure their project teams to meet PG&E “Go” requirements or decide not to submit a proposal. The types of threshold requirements that could be described in more detail include financial strength threshold, minimum experience levels, and technology requirements.

D. Recommended Future Improvements in the Evaluation and Ranking Process

The IE has several observations regarding changes to the evaluation and ranking process based on the weaknesses identified. These include:

1. Allow 10-12 weeks for bidders to submit their proposals after issuance of the RFP. This would allow bidders more time to develop their bid pricing and line up module suppliers. Also, ideally bidders would not be subject to the risk premiums necessary within such a tight time frame allowed for the first year process;
2. The addition to the schedule to prepare bids could also allow PG&E to provide site visits to prospective bidders. Site visits are common for such processes;
3. PG&E should consider using the revenue requirements evaluation as the basis for calculating the levelized cost of energy for the bid evaluation and scoring process rather than the current methodology;
4. PG&E should consider describing in more detail in future RFPs the threshold or No Go criteria of importance to allow bidders to make a decision to bid or not based on whether they can meet the established thresholds.

E. Additional Information or Observations Regarding PG&E’s Evaluation Methodology

No additional information or observations are provided.

V. Did PG&E Fairly Administer the Evaluation Process?

A. Principles and Guidelines Used to Determine Fairness of Process

In evaluating PG&E's performance in implementing the 2010-2011 Solar PV UOG program, Merrimack Energy has applied a number of principles and factors, which incorporate those suggested by the Commission's Energy Division as well as additional principles that Merrimack Energy has used in its oversight of other competitive bidding processes. These include:

- Were all Bidders treated the same regardless of the identity of the Bidder?
- Were Bidders questions answered fairly and consistently and the answers made available to all?
- Was the economic evaluation of the bids fair and consistent?
- Were the requirements listed in the Procurement Protocol applied in the same manner to all proposals?
- Was there evidence of any undue bias regarding the evaluation and selection of different type of product, project structures, or bid sizes that cannot be reasonably explained?
- Did PG&E ask for "clarifications" in a manner that provided the bidder an unfair advantage over others?
- Did all bidders have access to the same information?

B. Description of IE Methodology Used to Evaluate Administration of PG&E's Solar PV UOG Process

As previously discussed, the IE was actively involved in all phases of the process. The IE had access to all correspondence between PG&E and the Bidders including having immediate access to copies of all bids, supporting documents, and contract mark-ups. The IE also participated in conference calls and meetings with the UOG project team to discuss the status of the process, questions raised by the IE and issues which were raised.

Based on our involvement, we conclude that PG&E reasonably followed the evaluation process outlined in the RFI and RFP documents. In addition, the evaluation was consistent and equitable across different types of products. PG&E's overall approach for this initial solicitation was to actually include more bids on the eligible "short list" to submit a proposal than originally anticipated and therefore to be more inclusive. PG&E also attempted to work with Offerors to ensure they could conform their proposals to the requirements of the RFP, if reasonably possible.

Based on our assessment of the evaluation process relative to the above criteria, it is our opinion that all bidders were treated fairly and consistently and all generally had access to the same amount and quality of information.

PG&E used the PowerAdvocates platform which ensured that all bidders had access to the same information. PG&E's approach was to copy all eligible bidders on messages that needed to go to all bidders. Not all prospective bidders or non-bidders had access to the PowerAdvocates platform as is generally the case with public websites. Although prospective bidders had to register for the website, there were no unreasonable constraints to gain access to the website. PG&E did not maintain a separate public website for the UOG portion of the program given that the program involves a different procurement approach from other processes. Also, as noted, PG&E's turnaround time to respond to bidder questions was very timely. We also observed no difference in the treatment of bidders regarding any clarification questions from bidders, correspondence and communications with bidders, and follow-up contacts. Finally, PG&E generally implemented the evaluation criteria and methodologies as outlined in the RFI and RFP.

C. Results Analysis

Identify instances where the IE and the IOU disagreed in the evaluation process

There were a few instances where the IE and PG&E had different opinions about specific issues. For example, Merrimack Energy provided comments during the drafts of the RFP document to include more information on pricing requirements and provide a more logical link to the pricing datasheets on the PowerAdvocate platform. The IE was concerned that bidders would not be able to easily complete the pricing datasheets in the PowerAdvocate platform without having some discussion about pricing requirements and options. PG&E made changes to the RFP to address the concerns raised by the IE.

The IE also raised a few issues about the EPC Master Agreement¹⁸ We did raise an issue about the level of security required and performance bond in section 7.1.2 and section 7.1.3 in the agreement. While PG&E did not revise the terms and condition in the original agreement posted on the PowerAdvocate platform, PG&E did indicate to bidders they could submit revised prices based on a mark-up of the agreement and also revised the terms and conditions for contract negotiation purposes.

Also, as noted, the IE's evaluation of the RFI responses resulted in one bidder included on the IEs list that was not included on PG&E's bid. However, after reviewing the analysis completed by PG&E and discussing the bidder, the IE agreed with PG&E's assessment.

¹⁸ The EPC Master agreement is called General Conditions Master Agreement Photovoltaic Equipment and Services.

D. Administration of the Bid Evaluation Process

PG&E followed its protocols in conducting the solicitation process. RFI responses were received as required on March 6, 2010. PG&E began to immediately evaluate and score the bids relative to the scorecard criteria. Based on the evaluation of bids, PG&E selected between 15-20 suppliers from each RFI to be eligible for the EPC RFP and the modules RFP. Bids in response to the RFP were originally due on November 1, 2010 for the module RFP and on November 8, 2010 for the EPC RFP, approximately one month after issuance. Based on the number of bids received and comments from bidders, PG&E extended the due date for bids to November 22, 2010, encouraged bidders to assess its pricing and encouraged bidders to mark-up the Master Agreement and reflect their changes in the pricing.

Initially, all bidders to the EPC RFP submitted prices that exceeded PG&E's internal cost target. In early to mid-December, PG&E conducted interviews with both module and EPC suppliers to clarify the bids and discuss opportunities for structuring the projects to meet PG&E's requirements and objectives. PG&E also undertook further evaluation of the potential bid combinations including assessing the combination of modules with the unbundled EPC cost proposals and also the rebundled options. Based on this analysis, PG&E concluded that the bundled EPC option was the most economic and reliable option.

PG&E initiated contract negotiations with three EPC contractors. During this process some of the EPC contractors reduced their price once they could firm up their project teams and module supply. As a result, the three EPC contractors offered EPC costs that were lower than the capital cost cap. PG&E evaluated the options available and proposed its recommendations to management. The recommendation involved selecting two EPC contractors for three projects. The decision was based on not only total cost but supplier diversity as well. The three projects did not represent the lowest cost combination. The lowest cost combination with the higher supplier diversity percentage would have resulted in one EPC contractor awarded all three projects. Instead, PG&E decided to limit concentration and selected another EPC for one of the three projects.

The IE has concluded that the proposal evaluation process was fairly and consistently administered with respect to all proposals. Since there were no affiliate EPC bids, issues associated with affiliate bids were not a factor in the assessment. The IE felt that the UOG project team performed their function in communicating and negotiating with bidders in an exemplary manner. The bidder interviews and meetings were very informative and had a major impact on structuring lower cost and more effective arrangements than the original proposals. The IE also is of the opinion that the selection of the two EPC contractors for the first three projects was a reasonable decision.

E. Any Other Relevant Information

One issue the IE identified was whether treatment of the three project sites offered to bidders by PG&E were treated as any other project site from an interconnection

perspective. For example, were these projects treated the same in terms of being subject to the same queuing requirements and timing for getting the studies completed. The IE asked this question on several occasions and met with a representative from PG&E's Generation Interconnection group to confirm previous responses from the UOG team. The IE was informed that PG&E's UOG team completed the same application as any other generator and submitted the application as other projects. The date in the queue reflects the date the application was submitted. It is our understanding that the application was submitted in 2009 and all required interconnection studies have been completed. As a result, we have concluded that the three PG&E project sites were treated as any other projects in the interconnection study and evaluation process.

VI. Project Specific Contract Negotiations

Contract negotiations were initiated with three EPC bidders in late December and Master Agreements were executed on February 2, 2011. The starting point for negotiations with all bidders was the contract mark-up submitted by bidders with their response to the RFP.

Several bidders raised concerns with the Master Agreement and a few eligible prospective bidders identified some contract provisions as the reason for not submitting a bid in response to the RFP.¹⁹ The major issues raised by the bidders with respect to the Agreement included:

1. Section 7.1.2 Letter of Credit required the contractor to furnish PG&E with a letter of credit in the amount specified by PG&E in its sole discretion, not to exceed 100% of the CWA price plus the contract price of PG&E's module purchase order assigned to the contractor. The letter of credit may be reduced to 10% of the CWA price at substantial completion and will continue until the end of the equipment warranty period;
2. Section 7.1.3 Performance and Payment Bond required the contractor to furnish PG&E a payment and performance bond with a penal amount of up to 100% of the CWA contract price plus the contract price of the PG&E module purchase order assigned to the contractor;
3. Article 10 Guaranteed Date;
4. Section 6.3.2 Progress Payments including the 10% retention by PG&E of CWA price;
5. Section 17.2.2 Photovoltaic Module Output Warranty;
6. Attachment 4 Liquidated Damage Schedule

The IE monitored several negotiation sessions and felt that PG&E negotiated fairly and consistently with all bidders. As previously noted, PG&E had realized based on response of bidders that several contract provisions were leading bidders to "price in" the contract risk in their bids, which potentially led to higher prices. In response, PG&E justifiably requested bidders to note their exceptions to the contract provisions and reflect the exceptions in their pricing. As a result, PG&E reduced the liquidated damage requirements, lowered the retention level associated with monthly progress payments until final acceptance of services, and revisited the warranty provisions.

¹⁹ As previously noted, PG&E extended the bid submission date to November 22, 2010. In addition, in notifying bidders of the extension of the due date, PG&E also encouraged bidders to use the next two weeks to review the RFP and to propose specific means (i.e. contract terms) to assist PG&E in meeting the project pricing goals.

Contract negotiations with two of the three final bidders proceeded smoothly and quickly with limited issues. The contract negotiation process with one other bidder was more complex and time consuming.

VII. Conclusions and Recommendations

A. Conclusions

For the reasons stated herein, Merrimack Energy concludes that the bid selection decisions by PG&E in the 2010-2011 UOG PV process were reasonable and were based on the requirements, evaluation criteria and stated preferences set forth in the RFI and RFP documents. Furthermore, the bids were selected through a competitive solicitation process with a robust response. In implementing the process, PG&E was fair and reasonable to all bidders, provided consistent and thorough information to bidders, and was unbiased in the treatment of any bidder. Furthermore, PG&E's UOG project team was very responsive to the requirements of bidders and treated all bidders equally. The bids selected represent a reasonable combination of bids for the first year of the UOG program based on project cost, supplier diversity, and bidder concentration.

Based on review of the entire procurement process and comments from several bidders there are several observations that can be gleaned from the process:

- The scheduling constraints to complete the projects by October 10, 2011 were viewed as a risk to bidders. As a result, bidders priced the risk into their bids;
- Bundled EPC bids proved to be more competitive than unbundled or rebundled options;
- The number of bids submitted in response to the RFP was less than expected, though the number submitted still led to a very competitive response;
- Given the timing for the first year of the program, it was obvious that constraints existed in securing modules for the first year of the program;
- The initial model contract was viewed to be restrictive and led to higher prices in the initial bids.

B. Recommendations

However, we recommend that in subsequent year solicitations (should PG&E solicit for additional EPC or module suppliers), PG&E consider changes to improve the procurement process, including the following:

1. Based on the first year constraints, PG&E may want to consider adding additional bidder(s) to ensure a competitive process for the EPC solicitation. While the annual Module-only RFP will ensure competitive pricing for the solar modules, additional EPC bidder(s) could improve overall results for Program Year 2;
2. Should PG&E conduct subsequent solicitation processes, allow 8-10 weeks for bidders to submit their proposals after issuance of the RFP. This would allow bidders more time to develop their bid pricing and line up module suppliers. Also, ideally bidders would not be subject to the risk premiums necessary in such a tight time frame;

3. The addition to the schedule to prepare bids could also allow PG&E to provide site visits to prospective bidders. Site visits are common for such processes;
4. PG&E should consider using the revenue requirements evaluation as the basis for calculating the levelized cost of energy for the bid evaluation and scoring process rather than the current methodology;
5. PG&E should consider describing in more detail in future RFPs the threshold or No Go criteria of importance to allow bidders to make a decision to bid or not based on whether they can meet the established thresholds.
6. Should PG&E conduct subsequent solicitation processes, PG&E should consider revising its model Master Agreement to incorporate the reasonable revisions negotiated in the final contracts.

Appendix I

Confidential Appendix A to the IE Report

**Confidential - Protected Under Decision 06-06-066 and Decision 08-04-023
And General Order 66-C**

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted