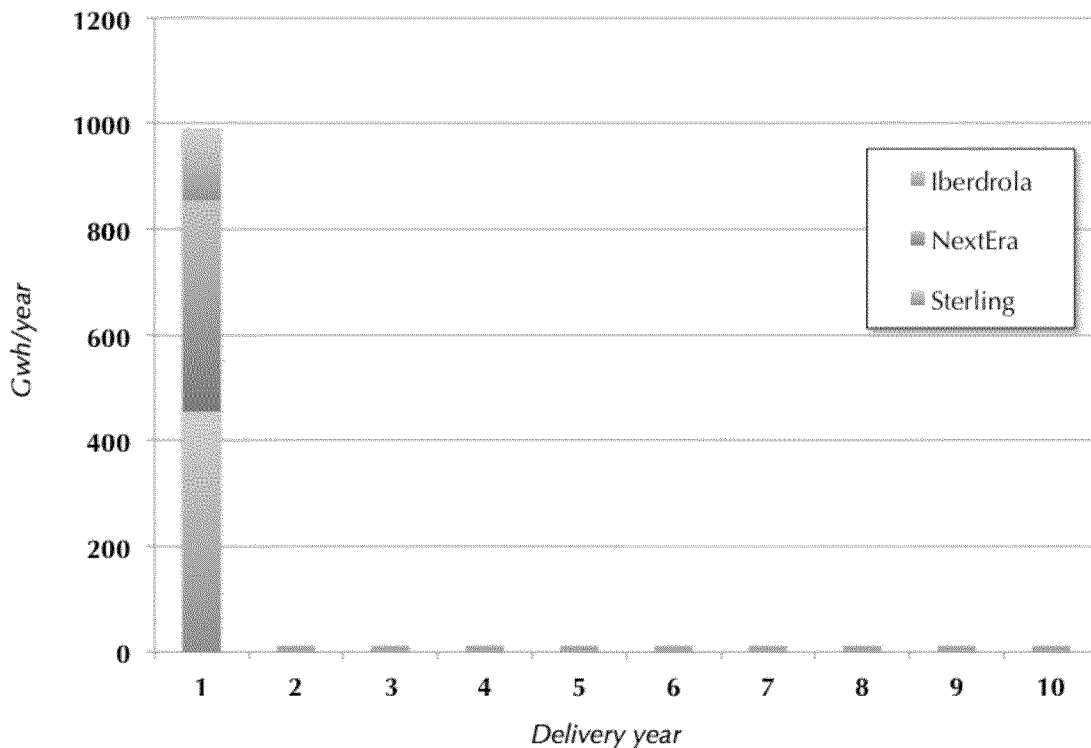


§399.13(a)(4)(B).⁸ This request was vigorously opposed by consumer, labor, environmental and renewable energy industry representatives. PG&E's efforts were unsuccessful and SBx2 was enacted, without any modification to this provision, over PG&E's express opposition.

In submitting these three Advice Letters, PG&E attempts to accomplish the very result the Legislature rejected. The Commission should not ignore the Legislature and give PG&E what it could not achieve through legislative lobbying. The proposed contracts provide 90% of total REC deliveries in the first year and spread the remaining RECs over the following nine years. The following chart illustrates the actual annual volumes proposed by PG&E for the three contracts over the 10-year contract period:



There is only one reason PG&E chose to negotiate contracts with trivial deliveries in years 2 through 10 - to evade the statutory 10-year banking limitation. PG&E did not inform the Commission, in any previously approved RPS procurement plan, that this front-loaded structure would be pursued in the course of solicitations and bilateral negotiations. Given the serious deviation from historical practice, and PG&E's clear intent to use this novel structure for the sole

⁸ PG&E letter to Senate Energy Chairman Alex Padilla, SBx1_2 - Oppose Unless Amended, February 11, 2011.

purpose of circumventing §399.13(a)(4)(B), it would be illogical and unreasonable for the Commission to grant approval to these contracts.

At a minimum, the Commission should not approve such arrangements absent a more comprehensive review of the reasonableness of this type of contract structure in R.11-05-005 or a successor proceeding dedicated to RPS program and policy issues. The consequences of approving PG&E's three Advice Letters could have significant implications for RPS compliance by utilities and other retail sellers including Community Choice Aggregators and Electric Service Providers. If the Commission explicitly or implicitly grants a waiver of the banking limitation for what is essentially a one-year procurement contract, this practice could be adopted by other utilities and retail sellers. As a result, the Commission could face the prospect that a large number of similar short-term transactions are executed for the purpose of circumventing the statutory banking limits. The Commission should not allow PG&E to create this massive loophole in the RPS compliance rules through Advice Letter filings.

On this basis alone, the Commission should not approve the three Advice Letters. To the extent that this type of contract structure deserves any additional consideration, it should occur in R.11-05-005 or a successor rulemaking.

Yours truly,

Matthew Freedman
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Marc D. Joseph
Coalition of California Utility Employees

cc: Commissioner Michael Peevey, President
Commissioner Michel Florio
Commissioner Mark Ferron
Commissioner Catherine Sandoval
Commissioner Carla Peterman
Paul Douglas, Jason Simon, Adam Schultz – CPUC Energy Division
Brian Cherry, PG&E
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