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On behalf of the Coalition of California Utility Employees

October 30, 2013

TRANSMITTED VIA E-MAIL

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Protest of PG&E Advice Letters 4299-E, 4300-E and 4301-E

Dear Energy Division Tariff Unit,

On October 10, 2013, Pacific Gas & Electric (PG&E) filed Advice Letter (AL) No. 4299-E, 4300-E and 4301-E. These ALs seek approval of three contracts for the total purchase of 991,000 unbundled Renewable Energy Credits (RECs) in year 1 and 11,500 unbundled RECs in each of the following 9 years.¹

The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CCUE) submit this consolidated protest. We oppose all three contracts and urge the Commission to reject these three Advice Letters in their entirety. Our opposition is based on the following concerns:

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¹ AL 4299-E seeks approval of a contract with Sterling Planet for 455,000 RECs in year 1 and 5,000 RECs in each of the following 9 years. AL 4300-E seeks approval of a contract with Iberdrola for 136,000 RECs in year 1 and 1,500 RECs in each of the following 9 years. AL 4301 -E seeks approval of a contract with NextEra for 400,000 RECs in year 1 and 5,000 RECs in each of the following 9 years.

- The contracts provide inferior value to other offers considered and rejected by PG&E in the 2012 RPS RFO. Despite this fact, PG&E actively solicited bilateral offers from Iberdrola and NextEra in what amounts to a one-off, hand-picked procurement of Category 3 products that fail to provide ratepayer value by comparison to bundled product alternatives.
- PG&E has no need for Category 3 products during the 2011-2013, 2014-2016 or 2017-2020 compliance periods and should not be procuring unbundled RECs for the sole purpose of building an RPS compliance bank.
- The front-loaded delivery schedules, with 90% of total procurement quantities delivered in the first year and the remaining volumes spread through years 2 through 10, represent a blatant and unreasonable attempt to evade the statutory restriction on banking products associated with contracts less than 10 years in duration. Given the significant RPS policy and program implications, it would be inappropriate to make any determinations regarding the reasonableness of this novel transaction structure through the Advice Letter process.

As members of PG&E's Procurement Review Group, we expressed strong opposition to this type of transaction. Despite vocal opposition to the Sterling Planet offer, PG&E chose to execute that contract along with two similar contracts. We are now forced to bring these concerns to the Commission in this protest.

I. THE THREE CONTRACTS PROVIDE INFERIOR VALUE TO OFFERS RECEIVED BY PG&E IN ITS 2012 RPS RFO

PG&E seeks approval of these three contracts based on the proposition that the pricing "compared favorably to Portfolio Content Category Three offers received through the 2012 RPS solicitation."² Although PG&E does not provide any additional information about the number of comparable bids submitted in the RPS solicitation in the public version, this information is provided in the confidential Independent Evaluator Report.³ PG&E also does not suggest that, based on the application of the Portfolio Adjusted Value (PAV) methodology, these contracts compare favorably to bundled RPS products offered in the 2012 solicitation.

² AL 4299-E, page 12; AL 4300-E, page 12; AL 4301-E, page 12.

³ See PG&E 2012 Renewable Power Solicitation, Independent Evaluator Report (CONFIDENTIAL), page A-50.

We have reviewed the PAV scores assigned to the three contracts and cannot reconcile PG&E's adjustments with the material provided to its PRG members at the time when offers were ranked and the shortlist was compiled.⁴ Some insight into the relevant PAV adjustments made by PG&E to these three offers can be found in the confidential analysis performed by the Independent Evaluator.⁵ We also note that these scores do not compare favorably to bids from bundled products offering far greater compliance value than Category 3 unbundled RECs.

PG&E should be required to justify any Category 3 procurement on the basis that it offers superior value to Category 1 and 2 options. It is not reasonable to allow any utility to simply compare Category 3 offers against other Category 3 products. This approach provides no insight into whether Category 3 products are economically preferable to Category 1 or Category 2 products. Utilities should be required to make a more compelling showing for Category 3 product transactions in light of the highly competitive pricing for, and abundant supply of, Category 1 products.

PG&E has not successfully demonstrated that these products are reasonably priced. The Commission should reject the three Advice Letters on this basis.

II. PG&E HAS NO IDENTIFIED NEED FOR CATEGORY 3 PRODUCTS IN THE 2011-2013 AND 2014-2016 COMPLIANCE PERIODS AND SHOULD NOT BE PROCURING UNBUNDLED RECS SOLELY FOR THE PURPOSE OF BUILDING AN RPS COMPLIANCE BANK

PG&E asserts that these transactions are intended to increase the volumes of surplus banked procurement that can be applied to future RPS compliance obligations.⁶ Since PG&E faces practically no near-term risk of noncompliance, purchasing unbundled RECs from existing facilities via short-term agreements is not a reasonable and cost-effective strategy for mitigating against the risk of post-2020 shortfalls.

The Commission is currently poised to adopt a decision that rejects this particular rationale. The pending Proposed Decision (PD) of ALJ DeAngelis regarding 2013 RPS procurement plans addresses PG&E's request to procure Category 2 and 3 products for the same purposes elucidated in the three Advice Letters. The PD finds that

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⁴ We could not understand how the PAVs shown in Confidential Appendix 1 to all three Advice Letters for the Category 3 products are correlated with the pricing and ranking information shown in Confidential Appendix B.

⁵ AL 4299-E, PG&E 2012 Renewable Power Solicitation, Independent Evaluator Report (CONFIDENTIAL), page A-69.

⁶ AL 4299-E, pages 5-6; AL 4300-E, pages 5-6; AL 4301-E, pages 5-6.

given the lack of quantitative analysis by PG&E, the absence of a clear procurement goal for this additional procurement, and because the forecasted amount of bank that PG&E expects to accumulate from Compliance Period 2014-2016 and Compliance Period 2017-2020 appears substantial, it is not reasonable at this time to accept PG&E's proposal to procure RECs beyond its stated 1,500 GWh solicitation goal plus procurement from other smaller Commission-authorized programs....Accordingly, in the final 2013 RPS Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, PG&E is not authorized to include procurement for Portfolio Content Category 2 and 3 RPS products to build and maintain an "adequate" bank.⁷

If the Commission adopts the PD as drafted, PG&E's primary rationale for approval of the three Advice Letters would directly conflict with the text of the Decision. We support the PD and urge the Commission to reject the three Advice Letters on the grounds that it is not reasonable for PG&E to engage in substantial volumes of short-term Category 2 and 3 procurement solely to increase its banked surplus.

III. THESE CONTRACTS ARE FUNCTIONALLY SHORT-TERM AGREEMENTS DESIGNED TO CIRCUMVENT THE STATUTORY BANKING RESTRICTIONS

The recent legislation enacting the 33% RPS program (SBx2, Simitian, 2011), included specific and explicit restrictions relating to the ability of retail sellers to bank quantities associated with contracts of less than 10 years in duration. As a result, Public Utilities Code §399.13(a)(4)(B) was modified to include the following language:

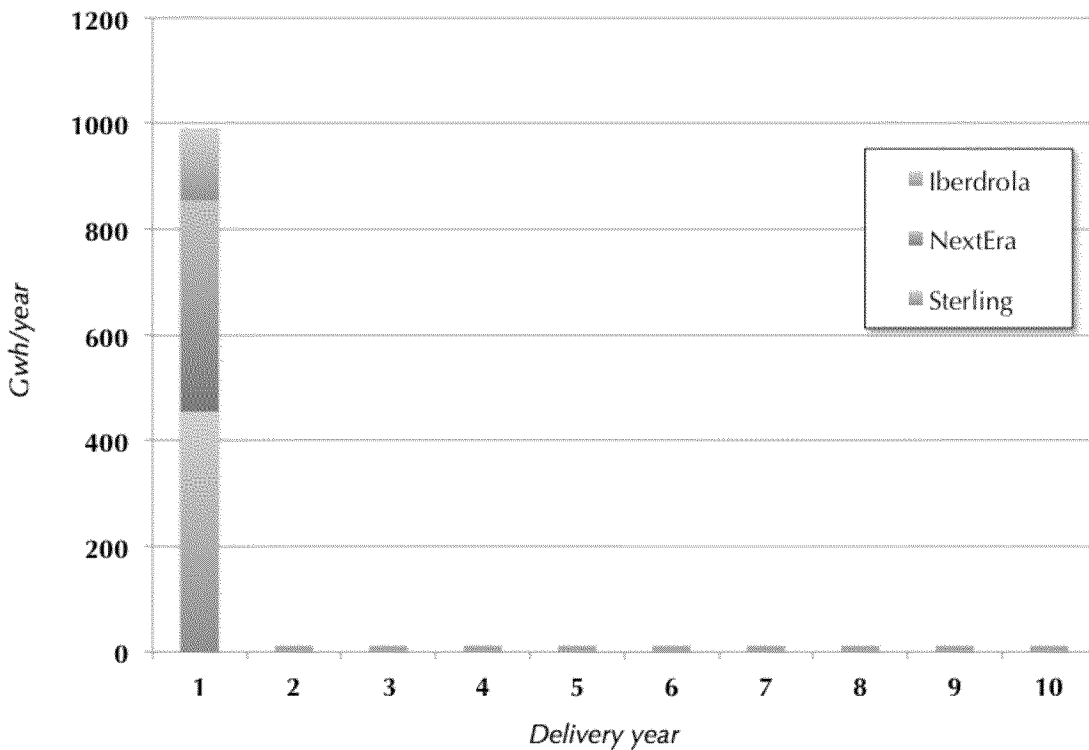
In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration.

During the consideration of SBx2, PG&E actively lobbied the Legislature to modify or remove these specific restrictions. PG&E submitted a letter to the Senate Energy Committee opposing the passage of SBx2 unless three major changes were made to the bill. The top item on PG&E's list, titled "remove the restrictive banking provisions", urged eliminating or modifying proposed

⁷ Proposed Decision of ALJ DeAngelis Conditionally Accepting 2013 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan and On-Year Supplement, R.11-05-005, mailed October 15, 2013, page 44.

§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
The Utility Reform Network

Marc D. Joseph
Coalition of California Utility Employees

cc: Commissioner Michael Peevey, President
Commissioner Michel Florio
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