March 27, 2014

Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: TURN Comments on Draft Resolution E-4649

Dear Energy Division Tariff Unit,

The Utility Reform Network (TURN) submits the following comments on Draft Resolution E-4649 ("Draft Resolution") issued on March 7, 2014. TURN opposes the Draft Resolution and urges the Commission not to approve it as drafted.

The Draft Resolution would approve three proposed Purchase and Sale Agreements (PSAs) for the procurement of unbundled Renewable Energy Credits (RECs) from a range of unspecified sources throughout the Western grid. In an extensive protest, TURN explained why these contracts should be rejected. The Draft Resolution practically ignores TURN's concerns and simply denies the protest without adequate explanation. Moreover, the Draft Resolution ignores or contradicts explicit relevant guidance contained in past Commission decisions. The lack of attention paid to the issues presented by TURN, and the lack of consistency with recently-adopted Decisions, raises serious concerns about the Commission's review process.

If approved without modification, the Draft Resolution would open new RPS program loopholes, eviscerate carefully crafted program requirements, severely undermine confidence in the relevance of Commission-approved procurement plans, and harm ratepayer interests. As written the Draft Resolution fails to enforce three key objectives of the program:

(1) the need to ensure that IOUs procure least-cost best-fit renewable products that provide superior ratepayer value.

(2) the requirement that a contract must be 10 years in duration to be eligible for compliance banking.

(3) the requirement that IOUs comply with the restrictions in approved RPS procurement plans.

If the Commission does not act to modify the Draft Resolution, it will seriously erode the legitimacy of the procurement process and raise new questions about the extent to which it intends to rely on its own precedents.

I. THE DRAFT RESOLUTION IGNORES PAST COMMISSION CONSIDERATION OF LONG-TERM CONTRACT REQUIREMENTS AND FAILS TO ADDRESS PG&E'S BLATANT EFFORT TO CIRCUMVENT THE STATUTORY BANKING RESTRICTIONS

As explained in TURN's protest, SBx2 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.[1] PG&E's active attempts to eliminate this restriction in the Legislature were unsuccessful. In submitting these three Advice Letters, PG&E attempts to accomplish the result 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. PG&E chose to negotiate contracts with trivial deliveries in years 2 through 10 in a blatant attempt to circumvent the statutory 10-year banking limitation. PG&E never informed the Commission, in any prior RPS procurement plan submissions, that this front-loaded structure would be pursued in the course of solicitations and bilateral negotiations. Indeed, this new contract structure was proposed by PG&E (rather than the sellers) for the sole intent of allowing the RECs offered under a one-year contract to be bankable.

If approved, the Draft Resolution would encourage all retail sellers to circumvent the 10-year contract requirement for bankability by constructing contracts for both bundled energy and unbundled RECs that provide practically all deliveries in year 1 with as little as a single MWh being conveyed annually in years 2-10. Allowing this type of structure to receive the same treatment as a *bona fide* 10-year contract represents an absurd and illogical result that is not endorsed by any previous Commission decision. The Commission should not modify the existing rules through a staff-drafted Resolution issued in response to a contract submission.

Past Commission decisions do not support the treatment authorized by the Draft Resolution. In D.07-05-028, the Commission adopted requirements for minimum quantities of long-term contracts required pursuant to previous §399.14(b)(2). Nowhere in that Decision did the Commission authorize arrangements for frontloaded short-term deliveries to qualify as "long-term" contracts that satisfy the 10-year duration requirement. Had a party in that proceeding proposed to satisfy a 10-year requirement in

[1] TURN protest, pages 4-5. Pub. Util. Code §399.13(a)(4)(B).

the fashion requested by PG&E in the Advice Letters, the issue would have been heavily contested by TURN and other parties.

In D.12-06-038, the Commission established rules regarding the use of short-term and long-term contracts for RPS compliance and emphasized the fact that "SB 2 (1X) already incorporates two significant disincentives to the excessive use of short-term contracts."[2] In comments on the PD, TURN expressed concerns about the potential for "illusory" long-term contracts that allow front-loaded delivery and effectively serve as short-term agreements.[3] The Commission declined to take specific immediate action in response to TURN's concerns about "illusory" long-term contracts because "TURN/CUE provides no evidence that 'illusory' long term contracts have been or will be a problem in RPS procurement."[4] Only a year after the issuance of this Decision, PG&E executed the exact 'illusory' long-term contracts foreseen by TURN.

D.12-06-038 also rejected PG&E's proposal to "count as long term contracts those contracts that are less than 10 years in duration but that reflect a 'long term contractual relationship.'[5] Despite having a similar structure rejected in D.12-06-038, the Draft Resolution fails to recognize that PG&E is effectively resubmitting a similar proposal via Advice Letter in the hopes of avoiding scrutiny.

If approved as written, the Draft Resolution will effectively eliminate the 10-year contracting requirement and replace it with an invitation for retail sellers to game the rules with short-term contracts that masquerade as longer-term agreements. TURN urges the Commission to modify the Draft Resolution to reject these contracts and clarify that efforts to construct new loopholes will not be tolerated or encouraged. 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. If the Commission wishes to reconsider the long-term contract definition in light of this new contracting structure, the text of D.12-06-038 should be understood to require the resolution of any disputes via a Commission decision.

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

Despite the fact that PG&E received a single unbundled REC bid in its RFO, the Draft Resolution finds that the pricing of these bilateral contracts should be deemed reasonable based on a review of broker quotes and other executed unbundled REC contracts.[6] The Draft Resolution further accepts PG&E's claim that "the value of a REC-only PSA is not

[2] D.12-06-038, page 37.
[3] Reply Comments of TURN/CUE on the PD of ALJ Simon Setting Compliance Rules for the RPS Program, R.11-05-005, May 21, 2012, pages 4-5.
[4] D.12-06-038, page 37, footnote 53.
[5] D.12-06-038, page 40, footnote 56.
[6] Draft Resolution, pages 11-12.

directly comparable to bundled agreements because the sole attribute of the PSA is a REC used for RPS compliance and it does not include the procurement of electric energy."[7] Indeed, the Draft Resolution proposes to make no findings "regarding the value reasonableness of the three REC PSAs."[8]

The analysis of price reasonableness and value in the Draft Resolution should be modified. There is no basis for concluding that it is impossible to compare the net value of various types of products. PG&E calculates Portfolio Adjusted Value scores for bundled energy bids that are intended to reflect the net cost to ratepayers. To the extent that bundled renewable energy product bids offer net benefits (*i.e.* are superior to conventional resources), the procurement of unbundled RECs cannot be understood to offer lower cost or higher value to ratepayers. As explained in TURN's protest, the Portfolio Adjusted Value scores for the three PSAs do not compare favorably to bids from bundled products offering far greater compliance value than Category 3 unbundled RECs. It is therefore contrary to ratepayer interests to allow PG&E to execute the PSAs.

When evaluating bids received in the same solicitation, 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. Allowing any utility to limit its evaluation to Category 3 offers provides no insight into whether a Category 3 product is economically preferable to the alternatives. TURN believes that 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, many of which are currently offering superior value to conventional (non-renewable) supply options.

The Commission should not allow any IOU to procure unbundled RECs up to the portfolio content limits without having to demonstrate that this strategy provides superior value to ratepayers. TURN believes that PG&E has not successfully demonstrated that these products are reasonably priced and urges the Commission to reject the three Advice Letters on this basis.

III. THE COMMISSION EXPLICITLY REJECTED PG&E'S PROPOSAL TO PROCURE CATEGORY 3 PRODUCTS FOR THE PURPOSE OF BUILDING AN RPS COMPLIANCE BANK

PG&E asserts that the PSAs are intended to increase the volumes of surplus banked procurement that can be applied to future RPS compliance obligations.[9] The Draft Resolution agrees with this rationale and finds it reasonable for PG&E to use these

[7] Draft Resolution, page 11
[8] Draft Resolution, page 12
[9] AL 4299-E, pages 5-6; AL 4300-E, pages 5-6; AL 4301-E, pages 5-6.

contracts to add to its banked surplus in order to assist with post-2020 RPS compliance.[10] This finding contradicts the explicit guidance provided in D.13-11-024.

In that Decision, the Commission specifically rejected this exact proposal by PG&E and explained

> We find that, 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.[11]

The Draft Resolution does not even mention D.13-11-024 despite the fact that TURN raised this exact issue, and quoted from the Proposed Decision, in its original protest. Instead, the Draft Resolution embraces the exact rationale that was emphatically rejected in D.13-11-024. It is incomprehensible that the Commission would adopt directly contrary findings only months after issuing a final formal decision rejecting an identical request.

Approval of the Draft Resolution would impermissibly modify D.13-11-024 and, importantly, would send a signal to utilities that Commission decisions will not be enforced. If the Commission does not intend to evaluate procurement transactions based on the most recently approved procurement decisions, this fact should be made clear so intervenors no longer waste their time participating in these proceedings.

Sincerely,

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[10] Draft Resolution, page 11.
[11] D.13-11-024, pages 43-44.

cc: Commissioner Michael Peevey, President
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Paul Douglas, Jason Simon, Lewis Bickoff – CPUC Energy Division
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R.11-05-005 service list