

DOCKETED

Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	229893
Document Title:	J Aron & Company LLC Comments on CA RPS long-term contracting requirements
Description:	N/A
Filer:	System
Organization:	J. Aron & Company LLC
Submitter Role:	Public
Submission Date:	10/1/2019 1:46:09 PM
Docketed Date:	10/1/2019

*Comment Received From: J. Aron & Company LLC
Submitted On: 10/1/2019
Docket Number: 16-RPS-03*

J Aron & Company LLC Comments on CA RPS long-term contracting requirements

Additional submitted attachment is included below.

Comments of J. Aron & Company LLC

Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities

Docket # 16-RPS-03

J. Aron & Company LLC (J. Aron) appreciates the opportunity to provide comments to the California Energy Commission as it implements the requirement for long-term procurement under the California Renewables Portfolio Standard (RPS) for Local Publicly Owned Utilities (POUs). J. Aron is a market maker in the commodity trading markets, and enters into both physical and financial commodity transactions, including physical and financial power transactions. J. Aron has Market Based Rate authority from the FERC to buy and sell power at market based rates. In the renewable sector, J. Aron participates in renewable energy transactions as a long-term hedge provider or off-taker to renewable projects and as a supplier of renewable energy to customers seeking to procure renewable energy.

Our primary recommendation is that the Commission should allow sufficient flexibility for POUs to assign renewable Power Purchase Agreements (PPAs) to other California Load Serving Entities (LSEs) or commercial or financial counterparties, without jeopardizing the eligibility of the PPA to satisfy the RPS's Long-Term contracting requirement (LTR). This objective aligns with the changing landscape of energy procurement in California, where a party that initially executes a long-term PPA may subsequently wish to assign it to another entity. California's RPS is noteworthy for its prioritization of bundled procurement of energy and renewable energy credits (RECs), and as a driver for facilitating new renewable projects. SB 350 formally added the requirement for California's LSEs to ensure that at least 65 percent of each LSE's RPS target is met through deliveries from long-term contracts with eligible renewable energy resources.

While long-term contracts have been a key requirement for financing new renewable projects, the formal incorporation of this requirement in the RPS beginning January 1, 2021, coincides with a changing market landscape for entities that serve load and/or can serve as counterparties for long-term PPAs in California. In addition to contracting with POUs, IOUs, CCAs and retail suppliers, renewable project developers are also frequently entering into PPAs with corporate buyers and financial institutions to secure financing. Assignment of a PPA from one entity to another, as long as the original term of the PPA is not reduced to less than 10 years, should not preclude the PPA from continuing to qualify as a long-term contract

The staff paper discusses three separate topics (1) Long-Term Procurement Implementation Options, (2) Proposed Characterization of Long-Term Procurement and (3) Early Compliance with the Long-Term Procurement Requirement. Our comments are limited to the second topic. To calculate the duration of an amended contract, staff proposes the following principles:

1. If a short-term contract (less than 10 years) is amended by a term of fewer than 10 years, the duration of the contract will be measured from the short-term contract delivery start date to the short-term contract delivery end date.

2. If a short-term contract is amended by a term of at least 10 years, procurement from the short-term contract will be considered long-term from the date that the amendment is effective, because long-term planning stability is provided with the effective date of the amendment.
3. If a contract with a term of at least 10 years is amended by a term of any length, procurement from that contract will continue to be characterized as long-term.

J. Aron supports these principles. The staff paper seeks comments on several questions, responses to which are included below.

1. **Can certain amendments to short-term contracts, in which the duration of the amendment is also short-term in nature but the entire amended term has a duration of at least 10 years, provide long-term planning stability? Explain.**

The principal benefit of long-term procurement under the RPS is to help enable financing for new renewable projects. A second possible rationale for requiring long-term contracts could be to help the IRP process for the buyer. Between these two objectives, from our perspective, the first is more significant in ensuring that California continues to meet its increasing RPS targets. From this perspective, if a contract that was originally long-term is amended or assigned for any length in a way that preserves the original economic terms for the seller, it should continue to be considered as a long-term contract.

In contrast, if a contract was originally short term (e.g., 7 years), it is unlikely that it would have been the basis for financing a new project in the first instance. Instead, it is more likely that the contract would have been executed with the owner of an existing project. If such a contract is then amended to add another 5 years, the new contract would have no bearing on the financing of the renewable project. Nevertheless, if the objective of the LTR is to ensure planning certainty for the buyer or to satisfy an IRP requirement, the amended contract could still provide that certainty.

2. **What reasons (e.g., policy, factual, practical, financial, legal), if any, would support characterizing short-term amendments of short-term contracts as long-term, provided the entirety of the amended term is at least 10 years? Explain.**

See response to Q1.

3. **Should procurement from short-term assignments of contracts that were initially long-term in nature be allowed to count as long-term procurement when determining compliance with the LTR? Explain.**

If a contract has an initial term longer than 10 years and is assigned in year 3 for a term that is less than 10 years but preserves the economics for the seller, it should still be considered long-term.

As an example, assume that a corporate buyer executes a long-term PPA that helps finance construction of a new renewable project. The RPS targets do not apply to such a corporate buyer, but to its retail supplier instead. Accordingly, the corporate buyer may wish to assign certain rights and obligations under the PPA to its retail supplier, so that the retail supplier can apply deliveries of renewable energy made under the PPA towards meeting the RPS. So long as such a partial assignment does not impact the project economics from the perspective of the renewable project developer, the PPA should retain its long-term status and qualify towards satisfaction of the retail seller's LTR. Additionally, it is conceivable that during the term of the corporate buyer's long-term PPA, the corporate buyer may be served by different retail suppliers at different periods of time, necessitating a series of partial assignments. These partial assignments should not impact the underlying PPA's status as a long-term contract for purposes of the LTR, so long as the 10-year project economics are preserved from the perspective of the renewable project developer.

Similarly, as load serving responsibilities shift between IOUs, POUs, CCAs and retail suppliers, a long-term PPA that was originally executed by one entity may be subsequently assigned to another entity which now serves customers previously served by the entity that first executed the PPA. To preclude the assigned PPA from counting towards the LTR, just because it has less than 10 years remaining, and instead require a new long-term contract in its place, would be economically inefficient, ignoring the dynamic changes in California's changing energy market and imposing additional costs on California ratepayers.

- 4. Should contract modifications that do not explicitly change the stated duration of the contract, such as changes to procurement quantities, changes in price, or assignment of certain rights or obligations under the contract, affect the contract's duration for purpose of determining the long-term nature of the procurement? Explain.**

If the economics and duration of a long-term contract are preserved for the seller, we think the contract should still continue to maintain its status as a long-term contract. The flexibility on "assignment of certain rights and obligations" can be particularly helpful for separating certain products under the PPA (e.g., Resource Adequacy, which is not included in the RPS, from power and RECs, which are included in the RPS).

Similarly, if a long-term PPA is amended to adapt to market changes, that should not preclude it from continuing to qualify as a long-term contract. For example, to ensure compliance with the long-term contracting requirement, a buyer may amend a PPA to add a minimum firm delivery requirement. It would be ironic if the PPA were then precluded from qualifying as long-term, simply because it was amended in the middle of its term.

- 5. Under what circumstances should a POU's assignment of its rights and obligations under a long-term contract serve to nullify the long-term nature of the contract? Explain.**

As stated earlier, if a contract that is originally long-term is assigned by the POU to another entity, it should continue to be a long-term contract. So long as the project economics remain the same from the perspective of the renewable project developer and the seller continues to receive the same payment that served as the basis for the project financing and construction, assignment of certain rights or obligations should not impact the PPA's status as a long-term contract.

6. Do both treatment options for PCC 0 and historic carryover effectively implement both the LTR and the count-in-full provisions under PUC section 399.16? Explain.

J. Aron has no comment in response to this question.

7. What market impacts, if any, could occur if the requirements for long-term procurement under the LTR differ for POUs and retail sellers? Explain.

Ideally, POUs and other retail sellers should be treated similarly under the RPS and be subject to similar rules governing implementation of the LTR. However, that does not necessarily mean that the CEC must restrict itself to the regulations already established by the CPUC, particularly where a more flexible approach may make more sense today and better respond to the needs of POUs and the changing California market. Load serving responsibility in CA is evolving with the rapid expansion of CCAs and renewable PPAs are being executed by a range of entities, other than those that serve load. Flexibility in the assignment of previously procured long-term contracts, without a loss of their long-term status, will be helpful in achieving least-cost solutions for customers.

Finally, we believe that it is important for the CEC to provide guidance on these issues sooner rather than later, as POUs look to procure new PPAs before the expiration or scale-down of federal tax incentives.

For questions or follow-up discussion, please contact Harry Singh at (212) 357-6449, or via email at harry.singh@gs.com. Thank you for your consideration of these comments.

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