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

*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 (Commission) as the Commission 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.

As stated in our earlier comments<sup>1</sup> on the Commission staff's implementation proposal, our primary recommendation continues to be 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, Investor Owned Utilities (IOUs), Community Choice Aggregators (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 proposed pre-rulemaking amendments appear to be consistent with this approach.

Commission staff state that the primary purpose of the LTR is to provide long-term planning stability for the development of new or repowered projects. This makes sense. While the tenor of PPAs has changed over time, a long-term contract continues to be a key requirement for financing new renewable projects by providing revenue certainty that allows the developer to secure financing.

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<sup>1</sup> [J. Aron & Company LLC Comments on CA RPS long-term contracting requirements](#), Oct 1, 2019

Staff have proposed that long-term contracts be defined based on a commitment to procure electricity products for a duration of 10 continuous years. This classification of long-term contracts makes sense. At the January 10, 2020 workshop, some commenters wondered whether the proposed definitions include sufficient detail to ensure the definition meets the objectives of the LTR. As an example, if a 10-year contract includes a purchase of 100 percent of a renewable project's output in year 1 but only 10 percent of the project's output in years 2-9, only 10 percent of the project's output should qualify as a long-term purchase. The proposed definition in 3201(r) appears to be sufficient to ensure this will be the case.

Staff proposes that, other than amendments that modify duration, increase nameplate capacity or expected quantities or allocation of generation other than as specified in the original contract, or substitute a different resource or fuel source, amendments or assignments of contracts do not affect contract classification as long-term or short-term.

Staff proposes that assignments of long-term contracts that preserve the 10-year duration and contract terms for the developer support achieving the main intent of the LTR. As currently drafted, the pre-rulemaking amendments would allow a POU to assign a long-term contract to another POU and transfer the benefit under the LTR, even if the assignment period is for fewer than 10 years. J. Aron supports staff's proposal.

Staff seeks comment on the following questions:

- 1. As currently drafted, the Pre-Rulemaking Amendments do not preclude long-term contract assignments, including broad assignments that replace an original purchasing party with a new purchasing party, and allowing the assignee the benefit of a long-term contract classification for purposes of satisfying the LTR, provided the benefits of a continuous 10-year contract remain in place to the developer. Does an assignment that is tantamount to a novation support the core intent of the LTR? If yes, explain. If not, what limits on assignments should staff consider? Explain.**

As discussed in the staff proposals, the core intent of the LTR is to provide long-term planning stability for the development of new or repowered projects. Consistent with this intent, so long as the 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 (full or partial) or novation of the PPA to another buyer should not impact the PPA's status as a long-term contract.

If a contract has an initial term of 10 years and is assigned in year 3 for the remaining duration of the 10-year period, preserving the economics for the seller, it should still be considered long-term. Even if the assignment is for years 3-5 and then reverts back to the original offtaker without changing the initially agreed 10 year term and economics for the seller, the contract should still be considered long-term.

**2. What, if any, additional forms of contract amendments or assignments should staff consider specifically addressing in the Pre-Rulemaking Amendments? Explain.**

As the number of buyers in the market for renewable power increases and the market responds by presenting new, potentially beneficial opportunities to utility buyers, it may not be possible for the regulation to anticipate every type of structural amendment or assignment that might arise. Accordingly, the regulations should be flexible enough to accommodate new structures; so long as the core intent of the LTR is preserved and the project economics remain the same for the developer, assignment or novation, whether full or partial, should not jeopardize the status of a long-term PPA.

Timely guidance on the issues in this proceeding will be very helpful as entities 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](mailto:harry.singh@gs.com). Thank you for your consideration of these comments.

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