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**Comments of J Aron & Company LLC on Proposed Modification to
POU RPS Enforcement Procedures**

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 to or off-taker for renewable projects and as a supplier of renewable energy to customers seeking to procure renewable energy.

Consistent with our earlier comments¹ on the Commission staff's implementation proposal, we continue to believe that the Commission should allow sufficient flexibility (within statutory limitations) for a POU to assign renewable Power Purchase Agreements (PPAs) to another POU or to commercial or financial counterparties, without jeopardizing the eligibility of the PPA to satisfy the RPS's long-term contracting requirement (LTR).

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 appeared to be consistent with this approach. However, the most recent language appears to be slightly more restrictive. We would like to offer suggestions in specific sections of the proposed amendments for the Commission's consideration that we think will allow further clarity in one instance and flexibility consistent with the intent of the long term contracting requirement in the other.

Section 3202(a)(2)(B)

This section addresses how amendments or modifications on a PCCO contract (i.e., contracts executed prior to Jun 1, 2010) are treated with respect of RPS requirements including long-term contracting. The Initial Statement of Reasons (ISOR) addressing this paragraph states the following (with emphasis added):

¹ [J. Aron & Company LLC Comments on CA RPS long-term contracting requirements](#), Oct 1, 2019 and [J. Aron & Company LLC Comments on CA RPS long-term contracting requirement](#) Jan 21, 2020.

Section 3202 (a)(2)(B) – This subparagraph was modified to clarify that procurement that is additional from a contract amended after June 1, 2010 must be classified into a portfolio content category and as long-term or short-term and follow the portfolio balance requirements and long-term procurement requirement. This modification is necessary to avoid ambiguity. This subparagraph was also modified to update the language used to reference section 3202 (a)(2)(C) for consistency.

If, as part of the public comments received on the 45-day language Express Terms, the CEC determines that additional modifications are needed to this subparagraph to further clarify the eligibility of contract amendments or modifications made after June 1, 2010, that revise the contracting parties' **financial arrangements**, modifications to the regulations will be proposed in 15-day language Express Terms.

While we agree with the ISOR that this section helps address potential ambiguities, we are concerned that the proposed language does not address a potential ambiguity that can still persist with respect to PCCO contracts, i.e., what happens if a PCCO contract is included in a “sleeving arrangement” where a third party is inserted between the renewable project and the POU but no other changes are made to the contracts consistent with statutory limitations (i.e., expected quantities of generation, nameplate capacity and renewable energy facility remain unchanged) along with the seller's commercial terms and the original term of the contract. We would like to offer the following language for the Commission's consideration that we think can address this ambiguity.

Suggested edit to Section 3202(a)(2)(B)

If contract amendments, **sleeving arrangements** or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as provided in section 3202 (a)(2)(C), or substitute a different eligible renewable energy resource, only the MWhs or resources procured prior to June 1, 2010, shall count in full toward the RPS procurement targets. The remaining procurement that is additional due to the amendment must be classified into a portfolio content category and as long-term or short-term and follow the portfolio balance requirements and long term procurement requirement in accordance with sections 3204 (c) and (d).section 3204 (c).

Section 3204(d)(2)(H)(5)

The December 17, 2020 version of pre-rulemaking amendments would have allowed the assignment of a long-term contract with less than 10 years remaining to continue to count as long-term if it was included in an assignment regardless of whether third-parties (e.g., a corporate buyer or a financial institution) were involved in the assignment. The most recent language from May 7, 2020 is more restrictive and only addresses an assignment of a long-term contract from one POU to another POU. We would suggest two potential edits for the Commission's consideration.

We would suggest adding a reference to third parties as highlighted below that will help address scenarios where a financial institution or corporate buyer executes the original long-term PPA and subsequently assigns it to a POU.

Assignments of long-term contracts, whereby a retail seller, **third party** or POU assigns the remaining portion of its procurement obligations under a long-term contract to a second POU, shall be treated as part of the original long-term contract, provided the assignment maintains the commitment by the retail seller, **third party** or first POU to procure the same type and quantity electricity products from the RPS-certified facility for the remaining duration of the original contract.

We would also suggest the following additional language to address the possibility where a long-term contract becomes a part of a sleeving arrangement but otherwise preserves all other aspects of the original contract.

Long-term contracts subject to sleeving arrangements shall be treated as part of the original long-term contract, provided the sleeving arrangement maintains the commitment by POU to procure the same type and quantity of electricity products from the RPS-certified facility for such remaining duration of the original contract.

Consistent with these comments, we would suggest adding a new definition for the term “sleeving arrangement” to section 3201 of the proposed regulations as follows:

(xx) **“Sleeving arrangement”** means, with respect to any existing contract for procurement from an eligible renewable energy resource, the addition of a third party between the retail seller or POU and its contractual counterparty, whereby the new third party procures electricity products from the contractual counterparty and delivers those same electricity products to that same retail seller or POU.

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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