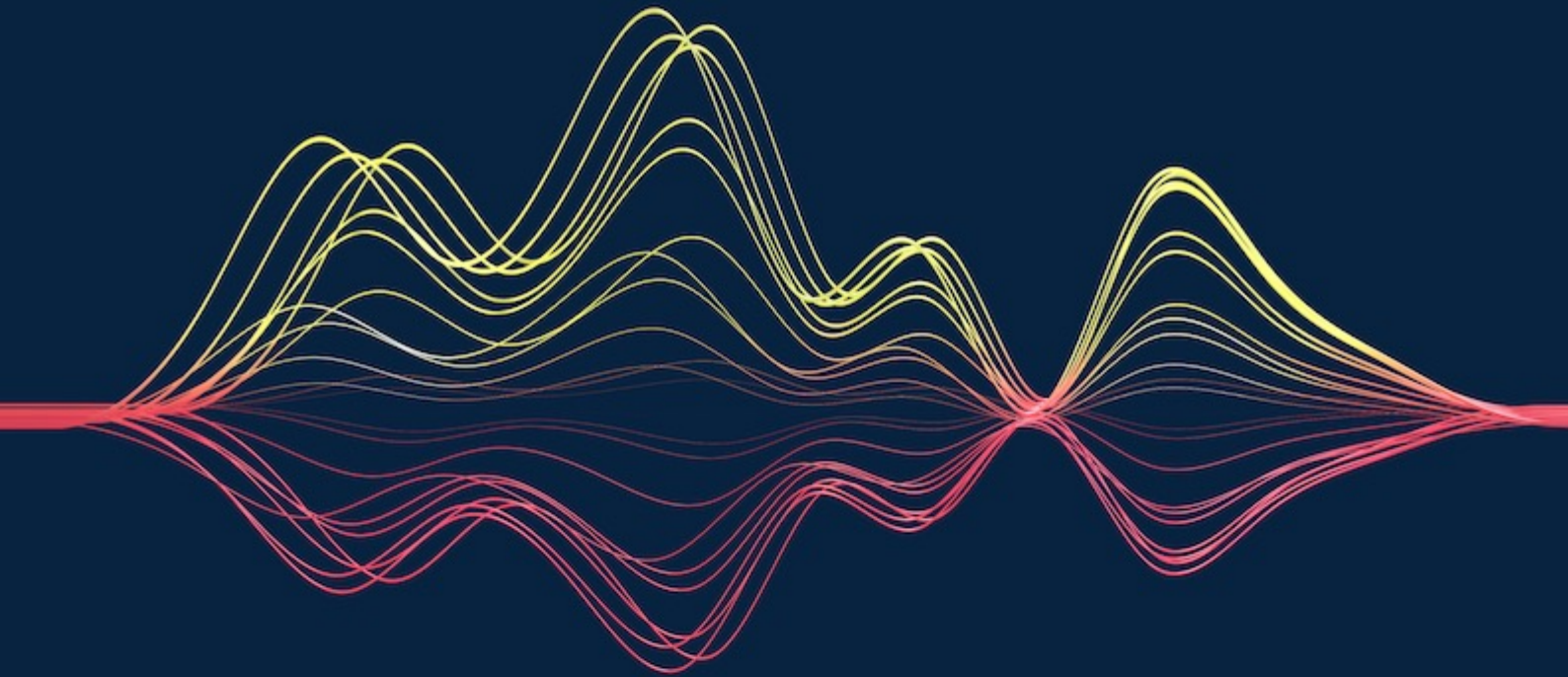


COLOMBIA

Corporate Power Purchase Agreements





Colombia

Last modified 16 December 2020

PPA structures and parties involved

To what extent are corporate PPAs presently deployed and what sort of structure do they take?

A CPPA could be sold to a corporate buyer via a utility company or through a self-generation scheme.

CPPA via a utility company takes the form of a Financial PPA in the sense that not physical delivery is required (a volume imbalance implies that the generator could buy the difference at the wholesale energy market).

CPPA via a self-generation scheme takes the form of a Physical PPA.

Financial PPAs between a corporate user and a generator are allowed by regulation and they can be negotiated over-the-counter or through the exchange market organized by the Colombian Stock Exchange (so called, DERIVEX). However, they are not commonly used because of additional regulatory costs that makes the deal not appealing in mostly all cases.

Do the country's regulators allow corporate owners to purchase (1) directly from a facility, or (2) from a choice of suppliers?

There are no restrictions for long-term CPPAs executed between participants of the Wholesale Energy Market (namely generators and retailing companies). However, there are restrictions for a generator to sell CPPA to large scale users, as only a retailing company can enter into a CPPA with a large-scale user.

Other than the generator and the off-taker, are any third parties commonly party to the PPA structure (e.g. a utility or other market agent)?

Not normally; sometimes guarantors are involved.

Is a generator permitted to sell electricity directly to an end user? If so, do they require a licence or other form of authorization?

No, pursuant to Law 143 of 1994 and regulation issued by the Colombian Energy Regulator, it is forbidden for a generator to sell energy to an end consumer. Although only retailing companies are entitled to sell energy to an end consumer, vertical integration between generation and retailing activities is permitted. As mentioned before, only under a self-generation scheme could an Independent Power Producer sell energy to an end consumer and no license or other form of authorization is required.

Challenges

What are some of the technical, political, financial or regulatory challenges to corporations adopting green energy in the short/medium term in your country and how have these challenges been overcome (or how can they be overcome)?

Social issues with ethnic communities

As a multicultural country, Colombian natural resources used to produce clean energy are almost always around or in the territory of ethnic communities (i.e. wind in La Guajira, hydroelectric projects in Antioquia). Before undertaking any activity of exploration or exploitation of natural resources, which are on the lands of these peoples, a prior consultation (*consulta previa*) should be carried out with the affected community to guarantee their effective participation, through a scenario aimed at guaranteeing their fundamental rights. This process might take longer than expected and without its achievement it is impossible to obtain the permits and licenses required for the project. Projects which have successfully achieved this process have hired NGOs, and private agencies to advise them on the process.

Environmental issues

As a rule, the use of exploitation of renewable natural resources requires the prior granting of a permit, authorization or concession by the competent environmental authority. In certain parts of Colombia, environmental entities take a lot of time to analyze and issue environmental licenses. It is important to file license and permits papers as soon as feasible in order to avoid delays.

Interconnection procedure

Domestic law enables vertical integration between generation, distribution and retailing activities. Thus, the grid owner might have an incentive to obstruct access. Additionally, grid technical conditions might impose an additional challenge for the interconnection of a new renewable generation unit because in such cases the regulator might require a prior investment from the grid owner to update or expand the grid before authorizing the interconnection.

Regulatory changes

Are there any anticipated regulatory changes which will alter the regulatory landscape for corporate green energy and corporate PPAs?

The Ministry of Energy has recently launched a Mission of energy transformation and modernization of the electricity industry: roadmap for the energy of the future. The Mission has already recommended to the Ministry to enable CPPAs directly negotiated and executed between a corporate buyer and an Independent Power Producer.

In December 2020 the Ministry of Energy will launch the roadmap and will establish if such recommendation will be included in the regulatory agenda for 2020.

Incentives and benefits

What is the corporate appetite for green energy, including any political or financial incentives available to corporates to adopt green energy?

In 2014 the Colombian Congress enacted Law 1715 to promote unconventional renewable energies. This law sets forth tax, regulatory and practical benefits for renewable energy investors in Colombia. See [Subsidies](#) for more information.

In 2019 the Congress enacted Law 1955/19 (so-called The National Development Plan 2018-2022), which commands retailing companies to purchase 8-10% of the energy provided to final users from renewable energy.

In line with this goal, in October 2019 the Ministry of Mines and Energy conducted an auction to award long-term power purchase agreements to renewable energy generators and to retailing companies as power purchasers. However, it is not yet foreseeable if the Colombian Government will organize a new renewable energy auction in the short term.

Finally, both legislation and government have identified that renewable energies could also be implemented in non-interconnected zones, in order to provide electricity by replacing diesel electricity generation. The National Development Plan also states that the FENOGE and public-private partnership initiatives will attract private investment for energy efficiency.

What are the key local advantages of the corporate PPA model which can benefit our clients?

- State, private and public-private partnerships may generate, transmit, distribute and trade electricity without requiring a concession.

- There are no legal restrictions for long-term PPAs executed between participants of the Wholesale Energy Market (namely generators and retailing companies).
- Contract law concept of hardship can be disapply contractually by parties.
- The activity of selling energy in the wholesale market does not require a license but all generators must be registered before a Public Register administered by the Superintendence of Public Utilities.
- Law 1819 of 2016 created the carbon tax in Colombia. Furthermore, Decree 926 of 2017 created the carbon neutrality mechanism and pursuant to that regulation, a renewable energy project qualifies as an initiative eligible for selling carbon reduction credits.
- There are no legal restrictions for long-term CPPAs under a self-generation scheme where the IPP is the owner of the assets. When using RSE under a self-generation scheme, surplus energy can be negotiated as energy credits. The Law also provides for the establishment of a Management Fund, which may finance all or part of the RSE projects for residential sectors at levels 1, 2, and 3.
- Law 1715 of 2014 includes tax benefits as explained in [Subsidies](#).

What subsidies are applicable to the generation and sale of renewable energy?

No subsidies are applicable to the generation and sale of renewable energy.

Law 1715 of 2014 covers the support schemes for renewable energy projects which include the following tax benefits:

- income deduction for a period 15 years on 50% of the investment made;
- VAT exclusion;
- exemption from payment of customs tariff duties; and
- accelerated depreciation of assets.

It also allows the release of surplus energy into the network for all self-generators.

Finally, the General Regime of the Tax Statute includes the following tax benefits:

- discount for investments in control, conservation and improvement of the environment;
- VAT exclusion on imports of environmental control systems, monitoring systems and environmental programs;
- income exemption from the sale of energy generated from renewable energy projects; and
- VAT exclusion on the sale of electricity and provision of public energy service.

Does your country implement a national support scheme with tradable green certificates (such as guarantees of origins)?

Colombia does not have a RECs system nor regulations regarding the issuance of RECs. Companies issuing RECs are often registered with the International I-REC Standard. The International REC Standard has authorized and accredited ECSIM to become Local Issuer of I-REC certificates in Colombia.

However, Law 1819 of 2016 created the carbon tax in Colombia. Furthermore, Decree 926 of 2017 created the carbon neutrality mechanism and pursuant to that regulation, a renewable energy project qualifies as an initiative eligible for selling carbon reduction credits.

Trading of RECs in Colombia is not regulated and therefore issuers and buyers agree the conditions of trading without the State's intervention.

Typical PPA terms and risk allocation

To the extent corporate PPAs are deployed, how are prices, terms and risks affected?

Topic	Details
Do prices tend to be floating or fixed?	Fixed.
What term is typically agreed for the PPAs?	CPPAs are typically agreed for 2 years. However, current development of renewable energy projects in Colombia has led to the execution of long-term agreement (approximately 15 years).
Are the PPAs take-or-pay or limited volume?	Take-or-pay.
Are there any other typical risks?	Transmission or Interconnection Risk: CPPAs usually indicate that the generator party bears the risk of connecting the facility with the grid and transmitting power to the nearest substation. Normally the generator to bear all or a significant portion thereof.

To the extent corporate PPAs are deployed, in whose favour will the risks typically be balanced?

A CPPA could be sold to a corporate buyer via a utility company or through a self-generation scheme.

Type of risk	Details
Volume risk	CPPA via utility company: Offtaker. CPPA through a self-generation scheme: Generator
Change in law	Offtaker
Increase / reduction of benefits	Generator
Market liberalisation (if applicable)	Not applicable
Credit risk	Offtaker
Imbalance power risk	CPPA via utility company: Offtaker CPPA through a self-generation scheme: Generator
Production profile risk	CPPA via utility company: Offtaker CPPA through a self-generation scheme: Generator

Balancing

Does your country operate a balancing responsibility scheme?

Yes.

If your country operates a balancing responsibility scheme, who is the balancing authority and do the generator and offtaker typically undertake balancing themselves?

The authority in charge of balancing the system in the day-ahead spot market is the system operator XM S.A. E.S.P., pursuant to Resolution 24 of 1995 (The Wholesale Energy Market Code). All generators are responsible for primary reserve and shall contribute with AGC services and it becomes a regulatory cost for such units that are incapable to adjust output in response to change in load. Besides AGC there is no other regulation in place imposing Balancing Responsible Party obligation.

Significant transactions

What significant transactions/deals have taken place in the last 12-18 months?

- EPM S.A. E.S.P announced in March 20 that it won the auction bidding for the “CaribeMar” portion of assets formerly belonging to the utility company “Electricaribe”. This transaction has not closed yet but it is expecting to be closed before the end of this year. This deal has been the largest energy sector transaction of the year, the most important in the history of EPM.
- Enerpereira S.A. E.S.P. won the auction for “CaribeSol” equivalent to the other portion of the assets belonging to Electricaribe. DLA advised Enerpereira in this auction and it is suitable for publication.
- Brookfield sold to Northland Power the utility company Empresa de Energía de Boyacá (known as EBSA) at USD\$1,05 billions.
- EDP Renewables (EDPR) a global leader in the renewable energy sector and one of the world’s largest wind energy producers, has secured two 15-year Power Purchase Agreements (PPA) at the recent renewable auction organised by the Colombian Government (2019).
- Trina Solar sold to TPG three solar projects of 100MW each. These projects are in stage of construction and were awarded long term PPAs at the recent renewable energy auction. These projects were part of a larger transaction involving assets in Europe and Latin America.

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