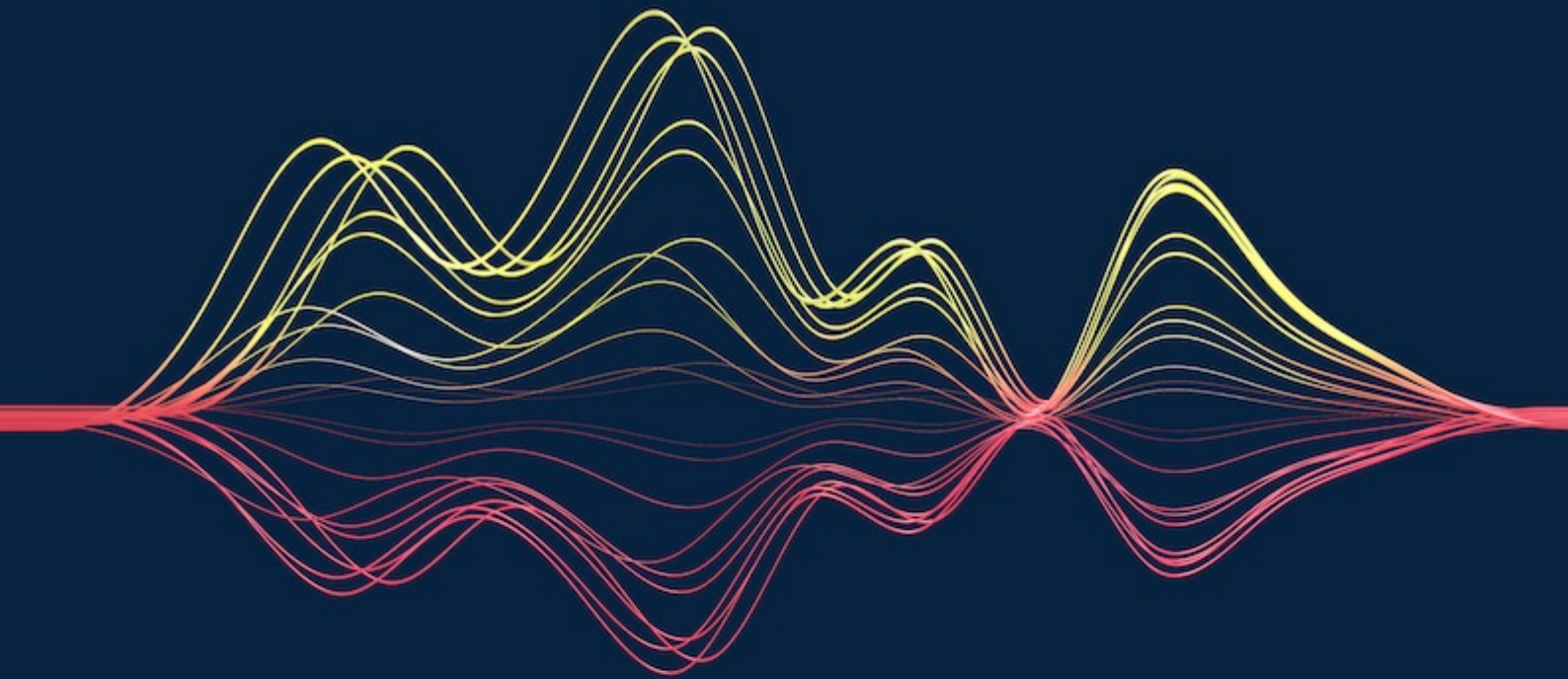


SPAIN

# Corporate Power Purchase Agreements





# Spain

*Last modified 04 October 2022*

## PPA structures and parties involved

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

In 2018 the use of PPAs began to take off in Spain. In that year some major PPAs were signed: Audax with Cox Energy (600 MW) and WElink (708 MW); Iberdola with Euskaltel (500 MW) and with Kutxabank (391 MW); and Factor Energía with ENHOL (94 MW, the longest lasting PPA in Spain – 20 years so far). In 2019 other major PPAs were: Audax with the Chinese giant Trina Solar (500 MW), and with the Norwegian company Statkraft (525 GW yearly, over 15.5 years). Since 2018, the Spanish PPA market has grown to become the major market in the EU.

According to the Electricity Sector Act (Act 24/2013), PPAs in Spain may take one of either the following forms:

- Physical PPAs. Where the corporate consumer acquires legal title over the electricity. Current options via batteries or derivatives contracts may still result expensive, so there are options to be offered to corporate consumers that can better manage this risk by firming up load requirements from a retailer via, for example, a “sleeved” Synthetic PPA.
- Financial PPAs:
  - Contracts for Differences (CfDs): prices are cleared with respect to one strike price established by the contract.
- Collar PPA: including cap-and-floor prices to constraint final prices within a given range.
- Direct PPA (self-consumption), where there is a direct on-site supply through the direct physical delivery of electricity between the producer and the corporate consumer.

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

Yes, according to the current regulations, corporate owners may purchase directly from a facility/producer (onsite) or from a supplier (offsite).

Royal Decree 244/2019, of April 5, 2019, has facilitated the process for Direct PPAs (self-consumption) lowering the taxes and tolls and simplifying the process in certain cases.

This new regulation together with the current volatility in the energy prices has led to a significant increase of Direct PPAs (self-consumption) in Spain.

### 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)?

Other than generator and offtaker, it's common for a market representation agent to be party to the PPA. It can be a supplier. In physical-offsite PPAs, the generator sells the energy to end users through a supplier that provides both the energy from the facility and the missing energy from its generation portfolio.

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

Yes. According to the Electric Sector Act, several licenses/permits are required to generate electricity, covering the project, the construction and the operation of the power plant.

However, no specific license or other form of authorization is required to sell electricity. Nevertheless, the suppliers are required to submit a communication and a responsible statement to the competent authority before the start of their activity.

## 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)?

- **Plant development risk:** time-lag between closing the PPA and Commercial Operation Date (COD) of the plant. Parties may wish to ensure that the seller and the facility/works are insured throughout the construction period (and not only after commencement of the supply period (ie following COD)).
- **Grid access congestion:** to avoid overcapacity in terms of connection permits and grid access, the Spanish government published Royal Decree 1183/2020, which creates a simpler and more transparent process, regulating, among other things, capacity auctions. However, to date no capacity auctions have been held so far and it is not clear yet how the awarding criteria will work in practice.
- **Regulatory risk:** renewable energy legislation in Spain has suffered a series of drastic changes in the recent years as a consequence of decarbonization policies, COVID-19 and volatility of prices due to the war in Ukraine. Parties may wish to limit change in law coming into effect after the date of the agreement, and to exclude those changes in law which may be foreseeable. Change in law clauses usually regulate the renegotiation of the PPA if the change in law has created a significant unbalance in the economic situation of the parties under the PPA.
- **Political risk:** COVID-19 and the war in Ukraine have already led to recent regulatory changes affecting PPAs (as further explained in section 7 below). Volatility of prices has not stopped, so more regulatory changes are foreseeable in the near future. The EU is working on a major structural reform of the electricity market, which may affect Spain with independence of the "Iberian Exceptionality" which has already implied a reduction on the energy prices as explained in section 7 below.
- **Price risk:** volatility in energy prices may result, in a long-term contract, in an unforeseen market scenario that cause a substantial imbalance of the contract. As explained in the previous paragraphs, a solution could be the introduction of specific price review clauses (eg change in law) for those extreme hardship imbalance scenarios.
- **Force majeure:** COVID-19 has increased the importance of force majeure in PPAs. After the pandemic, it has become a must to include specific provisions in the PPAs to tackle the effects of the pandemic. One of the major consequences of the pandemic is the problems that some generators are facing with delays in equipment supply. This situation has, in some cases, created a delay in achieving COD and thus, negotiations around COD long stop date and force majeure have become fierce in the recent times.

## Regulatory changes

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

In recent years, several regulations affecting PPAs have been approved:

- In December 2020, the Statute of electro-intensive consumers was approved, regulated under the Royal Decree 1106/2020, whose purpose is to "maintain and improve the competitiveness of electro-intensive industrial companies at European and international level." This Statute also develops the Royal Decree-Law 24/2020, which creates the Spanish Reserve Fund for guarantees of electro intensive entities (FERGEI). This Statute promotes long-term bilateral contracts for the supply of energy (PPAs), especially between consumers and renewable generators, by offering guarantee state coverage mechanisms. Electro-intensive consumers see PPAs as a solution to the current volatility of prices and have already indicated their intention to hold a PPA auction at the beginning of 2023.

- NECP (National Energy Climate Plan 2021-2030), approved by the government in March 2020 and submitted to the European Commission, also encourages PPAs. Measure 1.10 of the NECP foresees mechanisms to reduce the risk of these operations.
- As explained above, Royal Decree 244/2019, of April 5, 2019, regulating the administrative, technical, and economic conditions for self-consumption of electricity, has eliminated procedural and economical barriers for Direct PPAs, resulting in a significant increase of this type of contract in Spain.
- As pointed out below, Royal Decree-Law 23/2020 has added a new provision related to the specific remuneration scheme for green energy (see num. 10).
- Following the escalation of gas and electricity prices, the government approved a set of measures to mitigate the impact of this situation with the publication of Royal Decree Law 17/2021, in September 2021. One of the measures consists of a temporary mechanism to reduce the surplus remuneration of renewable energy production facilities. The Ministry of Ecological Transition and Demographic Challenge has clarified that electricity purchased through both Physical and Financial PPAs (see num. 2) is excluded from the application of the reduction mechanism, provided these are not intragroup PPAs.
- Also, following the economic impact of the war in Ukraine, the Royal Decree Law 6/2022, makes some modification of the aforementioned mechanism, and extends its application until June 30, 2022. The same rules and criteria apply with the following modifications:
  - Fixed-price bilateral contracts (PPAs) with a term longer than a year, are not subject to the reduction.
  - Fixed-price energy contracted will only be exempted from the reduction mechanism for hedging prices below EUR67/MWh. Therefore, PPAs subscribed before the Royal Decree Law 6/2022 are subject to this mechanism for the share of the price that exceeds EUR67/MWh.
  - Intragroup PPAs, between the generator and trader, are subjected partially to the reduction mechanism. For these PPAs, the hedging price used in the reduction calculation will correspond to the price passed on to the end consumers by the traders.
- The reduction mechanism has been recently extended until December 31, 2022 by virtue of Royal Decree Law 11/2022.
- Royal Decree Law 6/2022 has also amended remuneration parameters under the specific remuneration scheme (*régimen retributivo específico*, Royal Decree 413/2014) for the current semi regulatory period (January 1, 2020 to December 31, 2022) which were set out by Order TED/171/2020 and have been amended by Royal Decree-Law 6/2022. Royal Decree Law 6/2022 creates a new regulatory semi-period from January 1, 2022 to December 31, 2022, and foresees the publication of a new order regulating the remuneration parameters for this new regulatory semi period. The order is still under approval.
- Other major amendment implemented by Royal Decree Law 6/2022 is article 22 of Royal Decree 413/2014, of June 6, so that the adjustment value for deviation from the market price for energy generated in 2023 and subsequent years is null. This measure will be implemented in 2023 to allow the generators sufficient time to consider their pricing strategies. This measure will affect the updating of remuneration parameters for the semi regulatory period between January 11, 2026, and December 31, 2028. The government will amend RD 413/2014 to adapt it to this forecast. Additionally, article 22.1 of RD 413/2014 has also been amended to provide greater certainty to generators by specifying the period to be considered for estimating the market price based on OMIP futures. This measure may have an impact on PPAs as hedging of energy prices in the derivatives market is incentivized.
- Royal Decree Law 17/2022 has introduced additional amendments to energy sector regulation (i) to the balance system as further explained below, (ii) for co-generation installations which can be now excluded from the specific remuneration scheme (*régimen retributivo específico*) and be applied the exceptional measures for limiting gas prices regulated under Royal Decree Law 10/2022.

## Incentives and benefits

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

There has been a significant increase in the appetite for PPAs in the past few years. In fact, Spain has become the largest PPA market in Europe with more than 4 GW of deals. Motivation for these contracts is varied:

- Firstly, and most importantly, it protects consumers from volatility in energy prices and provides certainty in energy costs, similar to how large corporations protect themselves from other volatile economic aspects (exchange rate and interest rate).

- Secondly, depending on the behavior of future prices, the possibility to offer any excess electricity generated by the company from its exchanges to the wholesale market when market dynamics cause prices to surge could be of interest.
- Thirdly, PPAs have become an important instrument for corporates to comply with their ESG objectives. In this regard, the negotiations in respect of ownership of Guarantees of Origin (GoOs) have gained great importance.
- Finally, in terms of project finance structures, the existence of a PPA with a robust corporate offtaker is regarded as very positive element by lenders.

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

In the last year the gap between market price and generation cost in Spain has led to the signing of PPAs with an installed power of 4 GW, with deals like the photovoltaics PPAs between Audax and Cox Energy (600 MW) and WElink (708 MW). The costs of photovoltaic energy have fallen in Spain by 81% since 2010.

New regulations approved as a result of the rise in energy prices (ie Royal Decree Law 17/2021 and Royal Decree Law 6/2022) have created a reduction in the number of PPAs closed in the recent months.

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

As a preliminary remark, please note that the current (electricity production) remuneration scheme does not provide for any feed-in tariff system.

Since 2014, the main strategy to support the production and consumption of renewable energy in Spain comprises a public auction of a certain level of installed power with the right to the Specific Remuneration Scheme. This scheme means that the relevant facilities will receive the market price plus an additional remuneration which is aimed to guarantee a "reasonable return" on the investment.

As previously indicated in section 7 above, of Royal Decree Law 6/2022 has amended the remuneration parameters applicable to the Specific Remuneration Scheme.

As mentioned above in 7, Royal Decree-Law 23/2020 has added a new provision related to the remuneration of renewable energy production facilities. According to this provision, to promote predictability and stability in income and financing of new electricity production facilities from renewable energy sources, the government will develop a new remuneration framework for the generation of electricity from such sources, based on the long-term recognition of a fixed price for energy, through competitive procedures (ie public auctions).

This new renewable economic regime (REER) was approved by the Royal Decree 960/2020. The REER is granted by means of public auctions which distinguish between different technologies and establishes the auctioning criteria based on the price per unit of electricity expressed in EUR/MWh with certain adjustments based on market participation.

The next auction of 520 MW for solar thermoelectric, biomass, distributed photovoltaic and other technologies is expected to take place in October 2022.

Additionally, the Administration may grant subsidies for the construction of energy generation infrastructures, at the central, regional and local level, and that certain tax advantages can be obtained for such constructions.

Finally, in addition to pure financial incentives, other policies that promote the development of renewable energies in Spain are the following:

- priority of access to the grid – renewable energy generators have priority over other operators to access and connect to transmission and distribution networks; and
- priority of dispatch of electricity generated in the wholesale market – under equal market conditions renewable energy generators have priority over other conventional generators to deliver their electricity in the wholesale market.

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

Guarantees of Origin (GoOs) may be issued to all generators of energy from renewable sources. GoOs can only be exported by the owners of a power plant (and when exported, the generators have to renounce to the respective support scheme). Additionally, Spanish consumers appreciate GoOs for corporate image and social responsibility reasons.

## Typical PPA terms and risk allocation

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

Topic	Details
<b>Do prices tend to be floating or fixed?</b>	<p>With regards to pricing agreements, there are several possible options: fixed prices, step prices adjusted over the term, and price indexation (sometimes with caps, floors and collar arrangements).</p> <p>Hybrid forms of these variants are possible. Given the private nature of contracts, it is difficult to generalize on commonly used pricing arrangements across the Spanish market. Corporates have however been prepared to offer higher fixed prices, which can be attractive to generators. Due to the rise in energy prices, use of market indexed prices has increased. A widely used formula is a discount on the market price.</p>
<b>What term is typically agreed for the PPAs?</b>	<p>At this time the terms of the PPAs range between eight and fifteen years although there are examples of PPAs for longer periods in Spain in recent years.</p>
<b>Are the PPAs take-or-pay or limited volume?</b>	<p>There are different kind of products. For instance, in the physical-offsite PPAs, we find:</p> <ul style="list-style-type: none"> <li>• PPA "as generated", in which the offtaker consumes all generation produced by the plant (it is the most competitive product in terms of price, but the most risky);</li> <li>• PPA "baseload", in which the renewable developer is in charge of converting the plant's gross generation into a base load (it keeps a good balance between price and risk);</li> <li>• PA "as consumed", in which the renewable developer is responsible for converting the gross generation into a curve that closely follows the customer consumption (only available to companies with a large generation portfolio).</li> </ul>
<b>Are there any other typical risks?</b>	<p>As explained above, volatility in the energy markets due to COVID-19 and the war in Ukraine have increased negotiations regarding risk allocation in respect of price, delays in COD and force majeure. PPAs are long-term agreements, and it shouldn't be affected by temporary scenarios. But the volatility of prices due to the war in Ukraine is also being noted in the futures market, which competes with PPAs. This has led to an increase in the price of PPAs, which are very sensitive to futures prices.</p>

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

Type of risk	Details
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<b>Volume risk</b>	Where a PPA is based on “as consumed” structure, the producer bears the risk (such risk is reduced with the possibility to sell the surplus to the market). Conversely, with an “as generated” PPA, the offtaker bears the risk (but this risk may be balanced through the use of a sleeving agreement with an electricity supplier which may then cover any shortfall).
<b>Change in law</b>	The PPA will usually include change in law provisions, as this will usually prevent the PPA from being frustrated in the event of a significant change in law. This clause generally applies to both parties.
<b>Increase / reduction of benefits</b>	Given the private nature of contracts, it is difficult to generalize on this across the Spanish market, but where the reduction of benefits is caused by a change in law, this may be covered by a change in law clause.
<b>Market liberalisation (if applicable)</b>	In Spain the electric market is liberalized.
<b>Credit risk</b>	Generally, in favor of the producer/seller.
<b>Imbalance power risk</b>	Balancing is performed by the system operator, Red Eléctrica de España (REE). REE organizes and coordinates a market in which power plants compete to offer the operation reserve service (secondary reserve) and also an additional tertiary reserve market. Secondary reserve is remunerated by means of market mechanisms via two concepts: availability (control band) and usage (energy). It is equivalent to the European product known as aFRR – automatic Frequency Restoration Reserves. Tertiary reserve is an optional service managed and remunerated by market mechanisms.
<b>Production profile risk</b>	The consumption profile is usually more stable than the production profile. Usually, this risk is allocated to the buyer under a cPPA and the buyer acquires any missing volume from the market. Under the cPPA, a third party may also take responsibility for providing the missing electricity to manage this risk.

## 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?

Balancing is performed by Red Eléctrica de España (REE) in accordance with Operating Procedure 1.5 (Establishment of the reserve for frequency-power regulation of July 13, 2006). REE organizes and coordinates a market in which power plants compete to offer the operation reserve service (secondary reserve) and an additional tertiary reserve market. Secondary regulation is an optional ancillary service whose purpose is to maintain the generation-demand balance, correcting automatically deviations with respect to the anticipated power exchange schedule of the “Spain” Control Block, and the system frequency deviations. Tertiary regulation is an optional ancillary service that, if subscribed to, is accompanied by the obligation to bid, and is managed and remunerated by means of market

mechanisms. Its purpose is to resolve the deviations between generation and consumption and the restoration of the secondary control band reserve used.

The seller may appoint a market representation agent, which may also be the Balancing Responsible Party, entering into a Market Representation Services Agreement.

Royal Decree Law 17/2022 has recently introduced an active demand response balancing system applicable when manual activated balancing systems are not sufficient to supply balance energy, which is assigned through an auction system.

## Significant transactions

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

- BASF/ENGIE, up to 20.7 terawatt hours
- SAUR/ENGIE, 40 MW
- TUBOS REUNIDOS/ STATKRAFT, 10 years energy production
- MERK/TOTAL, 45 MW
- PEPSI Co/ IBERDROLA, 590 MW
- DANONE/IBERDROLA, 590 MW
- ALCOA Corp/ENDESA, 906.3 MW
- Mahou San Miguel/ENDESA, 10 years energy production
- Procter & Gamble/EDP, 127.5 MW

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