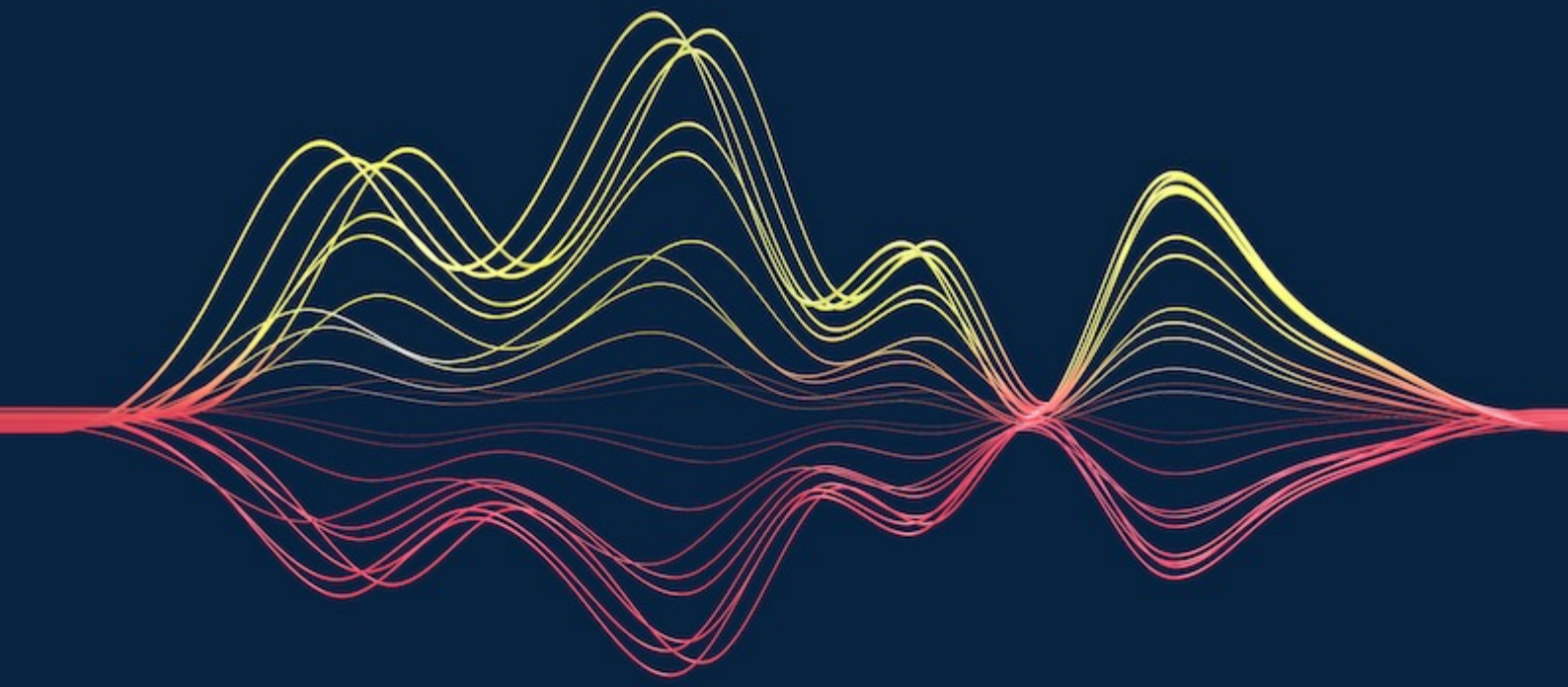
UNITED STATES

Corporate Power Purchase Agreements



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PPA structures and parties involved

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

Many private companies in the United States have altered the way they procure power significantly in the last decade. Traditionally, power was obtained by corporate buyers from the local utility without consideration of the sources of such power. Public commitments to use renewable or "green" energy have driven a movement toward the direct procurement by commercial and industrial companies of renewable energy from independent power producers in the wholesale market. Such commitments came first from tech companies but have spread across many sectors, from retailers to industrial manufacturers. In 2020, the Renewable Energy Buyers Alliance reports that 10.63 GWs of corporate deals were announced in the US up from 1.53 GWs in 2016. The EPA's Green Power Partnership, a voluntary program, now sets minimum usage for its members from 7% to 50%. Commitments to go 100% renewable or even carbon negative have become more common - the RE100 reports that 79 of its 260 members are in the United States.[1]

Multiple options are available to a corporate offtaker looking to achieve its green power goals.

Renewable Energy Credits

Historically, corporate buyers have purchased and retired Renewable Energy Credits or RECs separate from power procurement to demonstrate the reduction of carbon emissions. This strategy is still being employed. The NREL reports about 197,000 customers procured about 68.7 million MWh of unbundled RECs in 2019.

Self-Supply

Another option for corporate and industrial buyers to gain access to renewable energy is through the ownership of on-site generation. This is not achievable at every location since only certain places in the US are suitable for solar or wind, for example. This approach also depends upon the buyer having sufficient space and a facility that can support on-site generation.

Traditional PPA with an Independent Power Producer

A Traditional PPA involves the direct purchase of energy from a generation project and the physical delivery of energy from such project. The buyer takes title to the power at the delivery point. This requires the ability to physically interconnect either directly or through the local transmission grid. Generation equipment may be installed on-site, including wind turbines or rooftop or ground-mounted solar facilities. The transaction usually includes the purchase of RECs along with the energy. Under existing regulations, physical transactions directly with wholesale producers are not permitted in all locations.

Virtual PPA with an Independent Power Producer

Virtual PPAs or financial PPAs are based on a contract for the purchase of energy generated by a renewable project which is then physically delivered and sold into the regional wholesale market in which the renewable project is located. The project receives a variable market price from the regional market. If the contract price exceeds the market price, the corporate offtaker pays the project the difference. In this way, the power project is assured that it will sell power generated at a fixed price which supports development and financing of the project. The transaction is often in the form of a contract for differences or a fixed-for-floating swap. A Virtual PPA also

typically includes the purchase of RECs. Divorcing the transaction from the physical delivery of energy provides broader flexibility to corporate offtakers in addressing practical constraints and regulatory restrictions which can limit potential transactions.

Green Tariffs

Bundled products are offered by utilities in some locations including green power and RECs. Retail products can be market-based or linked to a specific renewable project which are sometimes called "Green Tariffs."

[1] RE100 is an association sponsored by The Climate Group that include companies making such a commitment such as Google, Bank of America and Facebook. See REI100's 2020 annual progress report online.

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

The options available to a corporate buyer vary based on the location of the corporate buyer's facility and the project and the transaction type. Independent System Operators and Regional Transmission Organizations operate regional wholesale markets in approximately two-thirds of the US. Independent power producers in these regions own and operate generation projects and sell power via the established market. Not all states take the same approach and various aspects of the wholesale or retail power market may be deregulated and competitive or regulated.

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)?

No. Independent power producers sell to traditional utilities, municipal utilities or regional cooperatives at wholesale who then engage in separate retail transactions with customers. IPPs in some markets can also engage in wholesale transactions directly to corporate buyers or to aggregators representing a group of retail customers.

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

Direct transactions are permitted in some locations. Independent power producers typically must obtain certain permits or make certain filings in connection with the generation and sale of power as well as environmental and land use considerations at the project site. Requirements may apply at both the federal and state level and vary widely by state and county.

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)?

Market Price Risk

Corporate buyers entering into a Virtual PPA face the risk that wholesale market prices for energy will decline below the contract price or strike price such that significant amounts will be payable by the corporate buyer to the generator. Virtual PPAs may include terms which require the generator to share in potential revenues or limit potential market price risk with a floor or a collar.

Counterparty Credit Risk

Many generators are today offering Virtual PPAs as to a portion of a renewable generation project such that the project will by necessity have other customers. The impact of a breach by such other customer could put the economic viability of the project in question or prompt action by the financing parties. Thus, in addition to the credit risk of the generator, each customer bears some credit risk as to the other customers of the project.

Changing Regulation

The regulation of the energy industry in the US continues to change based on high-level policy considerations such as the appropriate

level of regulation or the integration of new technologies. Frequent changes can have a negative impact on development. For example, there are certain federal incentives that benefit owners of renewable generation assets (known as Production Tax Credits or PTCs and the Investment Tax Credits or ITCs). Monetizing these existing incentives represents significant economic value which has spurred development over time. However, they are typically extended or reauthorized for a limited term of a few years such that generators are often racing the existing sunset date and development decreases as they approach.

Accounting Treatment

Virtual PPAs may result in mark-to-market or derivative accounting treatment on the books of the relevant corporate buyer.

Technology Risk

By electing to purchase power from a specific generation facility under a Virtual PPA or a traditional PPA, the reliability of supply to that corporate buyer then becomes subject to the performance of the particular technology and equipment selected and maintained by the generator.

Regulatory changes

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

With the election of a new President in the US in 2020, there is an expectation that legislation in support of the development of renewable generation projects and related technologies like energy storage may be forthcoming. This could be in the form of extended or expanded federal tax credits or policy or new legislation, directives to federal agencies or executive orders. This is in addition to the requirements and regulation of the energy industry that applies at the state level based on the location of the project.

Incentives and benefits

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

The voluntary undertaking by private companies to purchase a certain minimum amount of renewable power to satisfy its energy requirements has become widespread. Public pressure continues to mount on commercial and industrial companies to develop a strategy to limit their contribution to carbon emissions via energy usage and industrial processes.

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

The purchase of RECs bundled with renewable energy in whatever form allows corporate buyers to "claim" the use of renewable or green energy. Once claimed, the RECs are then considered "retired." On-site generation can shield corporate buyers from reliability issues on the bulk system.

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

See discussion above regarding federal tax credits. In addition, some states also have tax credits or other incentives available to support the generation or consumption of renewable power or the development and use of related technologies like energy storage.

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

Throughout the US, there are many regional electronic REC tracking systems to facilitate the creation, management, and retirement of RECs. Users establish virtual accounts to allow the receipt and transfer of RECs. The Center for Resource Solutions offers "Green-e" products which are subject to third-party verification and detailed standards as to additionality and other environmental considerations.

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 prices for traditional PPAs and a contract for differences or a fixed-for-floating swap for Virtual PPAs.
What term is typically agreed for the PPAs?	7 to 10 years.
Are the PPAs take-or-pay or limited volume?	Limited volume.
Are there any other typical risks?	Corporate buyers typically enjoy some protections against delays in construction in the form of liquidated damages and construction deadlines subject to extension for *force majeure*.

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

Type of risk	Details
Volume risk	The offtaker typically receives some compensation for a consistent and material shortfall in performance.
Change in law	Agreements vary. The generator sometimes gets some risk-sharing or other protection for changes in law.
Increase / reduction of benefits	Neither party. Incentives or benefits such as tax credits or RECs are typically allocated to a specific party and any changes impact only the designated party.
Market liberalisation (if applicable)	Not applicable.
Credit risk	Each party bears credit risk as to the other party. For this reason, credit support or creditworthiness requirements typically apply.
Imbalance power risk	Varies by transaction type and delivery point.
Production profile risk	Buyer.

Balancing

Does your country operate a balancing responsibility scheme?

Not applicable.

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

Not applicable.

Significant transactions

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

No information at present.

What transactions/deals are anticipated to come to market in the next 12-18 months?

No information at present.

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