



Accelerating PPAs in the Energy Community

Trends and Lessons from the Markets in Western Europe

November 2023



Trends and Lessons

- Corporate PPA market is still going strong, but corporate buyers and volume requirements are changing
- Credit positions of increasing mid-tier corporate demand group without wrapping (e.g. by government guarantee scheme) is increasingly an impediment to financing
- Financially settled cPPAs and onsite/ nearsite cPPAs are on increase, physically settled, grid connected cPPAs have reduced
- Structures diversify – one-side CfDs, market-following, GoO long-term agreements (e.g. Volkswagen)
- Back-to-back / indirect cPPAs generator – utility – corporate are on the increase
- Generators optimise between FiT Premium/CfD models and cPPA hedges
- Cross-border PPAs for consumption portfolio accross several member states are increasing
- Standardisation is key to unlocking mid-tier corporate demand; activities by EFET, DENA, ISDA show limits to standardisation

Trends and Lessons

- More nuanced approach to balancing costs pass-through for pay as produced and on negative price risk
- Increasing BESS co-location to optimise CM and ancillary services costs stack
- Ticking sleeving structure time bomb and an increasing demand for firming services
- Costs increase in GoOs/REGOs has changed approach to shortfall and replacement GoOs mechanisms in PPAs
- For negative price curtailment, re-dispatch, and ancillary services buyers now typically provides for replacement GoOs
- RE100 tightening of criteria and AIB – Iceland investigation demonstrate issues in GHGP Scope 2 market based accounting
- 24/7 and electrolyser PPAs
 - RED III possibility for granular certificates / alternative options
 - Real-time data provision and regulatory limitations, e.g. metering regulations or REMIT
 - Ability to move in and out of support schemes where grid CO2 levels are reached or hydrogen price is low

Our Corporate PPA as Offtaker

Overview

We are the first and only law firm anywhere globally to enter into a corporate PPA as offtaker.

In January 2022, DLA Piper signed its own virtually settled corporate PPA with NextEnergy Group, relating to the energy generated from a new build solar farm in the UK. The project will generate 13 MW of additional renewable energy that will be supplied directly to the UK's national grid and thereby to the interconnected power network supplying DLA's 15 European and UK offices that are taking part in the project.

The power generated by the solar farm will be at least equal to, but likely in excess of, the power used by these offices.

The bigger picture:

Our entry into a PPA is a major milestone in DLA Piper's journey to decarbonise and supports our commitment to halve our greenhouse gas emissions in absolute terms by 2030. As part of DLA's science-based targets, this covers reductions across the firm's entire value chain, including indirect greenhouse gas emissions from the supply chain against a 2019/2022 baseline.

More broadly, DLA's entry into its own corporate PPA is not only a commitment to continue to develop and strengthen our market-leading corporate PPA practice but also a statement of our ambition to be one of the most impactful business law firms for sustainability.

Key points to note:

The process of procuring, negotiating and finalising our own corporate PPA has bolstered and added a new perspective to the existing expertise of our corporate PPA team. We fully appreciate the internal socialisation required to ensure that a corporate PPA achieves the approval to progress to signing and, having been through the process ourselves, have experience of the many questions that your finance, procurement, tax, facilities and energy management teams may raise. We also have several materials that we found acted as a useful aide to explain the concept of a corporate PPA, as well as the benefits and potential risks of the same, internally- these include Powerpoint presentations and executive summaries. We would be happy to share the same, should they be of assistance in progressing your own internal approvals.

DLA Piper team members advising: Natasha Luther-Jones, Andreas Gunst

Some Case Studies

H&M: Portfolio of virtual PPAs

We advised **H&M** on several virtual PPAs (one in the UK, three in Spain), producing a bespoke virtual PPA template. In addition, we are currently advising the client on a suite of virtual PPAs using the same model in the US, Denmark, Sweden and Poland.

Key challenges: The consistency of risk profile for the client's contracts across Europe and the US was subject to amendments required to account for local law provisions. There were best practice obligations on the generator in respect of sourcing and supply chain issues (with a focus on MSA and ESG)

H&M's entry into these agreements is an important step towards realising the group's net zero ambitions. As with this case study, we have assisted clients in understanding the differences in approach on certain provisions between US and Europe, most notably changes in law and liability on termination.

EFET Financial and Physical PPA & CMA

Advising **EFET** on the development of the Standard financially settled and physically settled PPA and the Standard Certificates Master Agreement. They are the first standards in the market in this area and have been developed by the Legal Committee of EFET comprising all major European energy companies.

Key challenges successfully addressed included managing the input from a 100+ stakeholder group of EFET, and in the case of the CPPA REsource members, to find compromise positions and contractual options reflective of market and member requirements and drafting the standards in a way that would make them suitable for multiple governing laws and international use.

BASF Renewable and H2 Electrolyser Hybrid (Market-Coupling) PPAs

Advising **BASF** on the largest renewable energy procurement by a German company in 2021, comprising national and cross-border PPAs with Vattenfall, Engie and Orsted, including hybrid structures for quasi financially settled PPA by delivery through market-coupling from **Spain** to Germany with associated CfD and capacity cost price hedging.

Key challenges successfully addressed included structuring the longest portfolio renewable PPA concluded in Germany so far, various forms of investor and offtaker PPAs, the structuring of the offtake to be eligible for the renewable energy for hydrogen production including expected requirements under the RED II Delegated Act as well as coupled GoOs for eligibility under the German EEG exemption for hydrogen production, as well as dealing with cross-border regulatory and contractual issues for power deliveries and GoO recognition from as far as Spain.

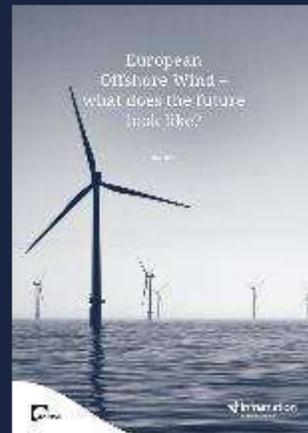
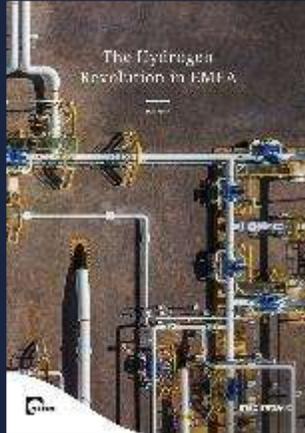
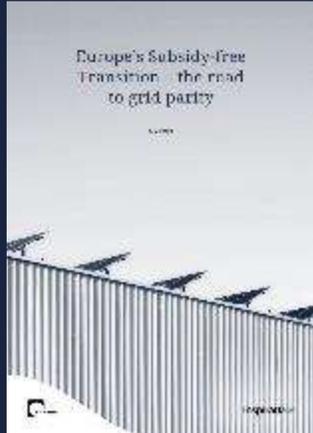
Corporate PPA insights

We set out below some examples of our Corporate PPA insights. These include thought leadership reports, podcasts, webinars and comparison guides. Our CPPA microsite may be of particular interest as it allows comparison between different jurisdictions. We will make available to you our periodic energy regulatory updates. We will also offer you a free tailored CPPA training workshop.

Corporate PPAs explained (video):



Corporate PPA global guide (microsite):



Recent market recognition



“DLA Piper has done some innovative work on PPAs, the ESG due diligence and the creation of the first VER standards – which all appear to show a level of innovation, and consequential impact, far greater than simply following their clients’ deals.”

—Judges’ commentary IJGlobal ESG Awards 2022

“DLA Piper has been providing strong expertise across decarbonisation sectors, and it’s good to see its involvement in critical mineral supply chains.”

—Judges’ commentary IJGlobal ESG Awards 2022



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“Andreas Gunst is simply an authority in the area of environmental commodities .”

— Client, Legal 500 UK 2023

“Andreas Gunst is the best energy lawyer I have ever met. His creativity, capability to explain consequences of any decision and straightforward approach is something which make him an outstanding lawyer.”

— Client, Legal 500 EMEA 2021

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