

OVER THE COUNTER SALE OF RENEWABLE POWER: SECURING STABLE PRICES ON THE LONG TERM

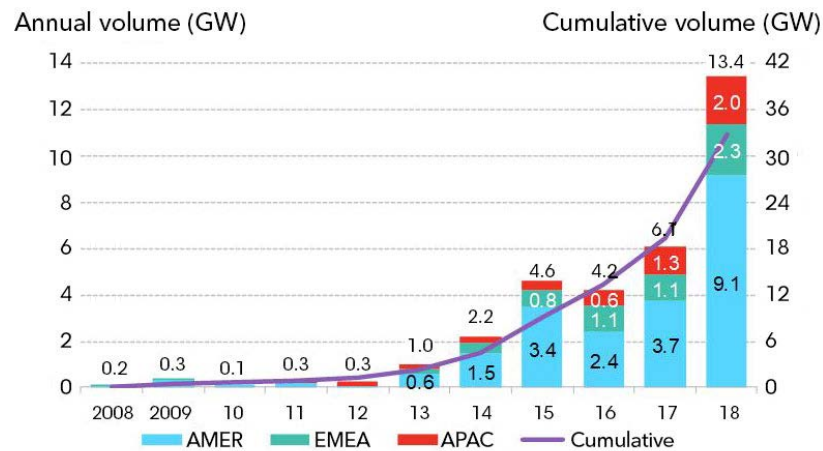
French perspectives

19 June 2019

1. INTRODUCTION

OTC SALES OF RENEWABLE ELECTRICITY IN THE WORLD

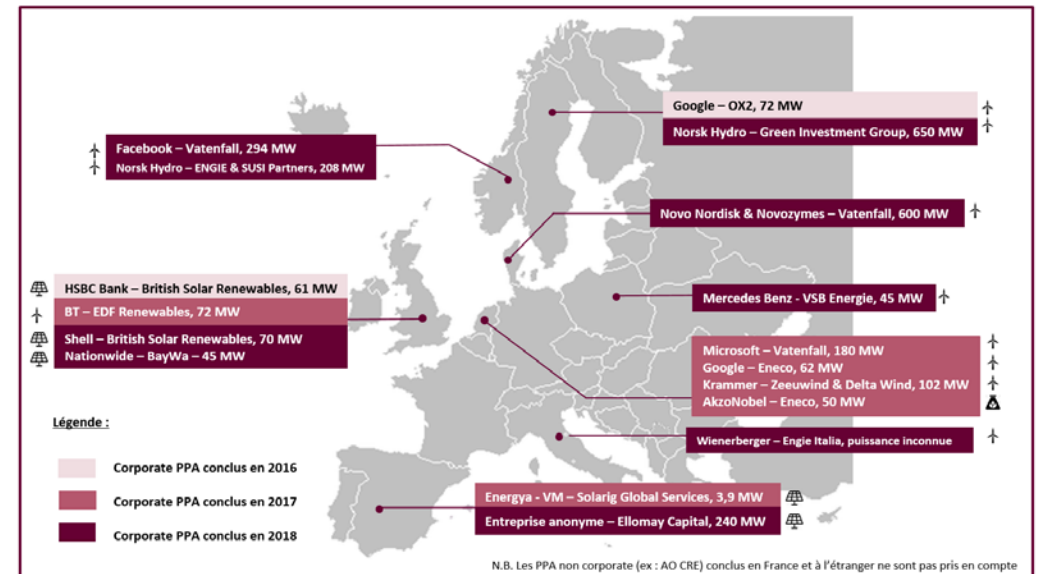
Figure 1: Global corporate PPA volumes



Source: BloombergNEF.

- Rapid increase in recent years:
 - 13.4 GW were purchased worldwide in 2018, compared to 5.4 GW throughout 2017
 - Member companies of the RE100 group will buy 100 GW of new solar and wind power capacity from corporate PPA by 2030

Principaux corporate PPA conclus en Europe depuis 2016



N.B. Les PPA non corporate (ex : AO CRE) conclus en France et à l'étranger ne sont pas pris en compte

Source : Analyse Sia Partners

- Renewable Corporate PPAs have so far been concluded mainly in the United States and Northern Europe
- Historically, in France, several nuclear power purchase agreements were concluded during the construction of the French nuclear park and of hydro-power plants

WHY IS THE TOPIC EMERGING IN FRANCE?

- Generators' point of view:
 - Transformation of support mechanisms limiting attractiveness of the tariffs: in terms of (i) installed capacity, (ii) environmental criteria, and (iii) tariff level
 - 1,200 MW of the French wind farms reach the end of their purchase obligation contract in the coming years (about 500 MW/year from 2020-2021)

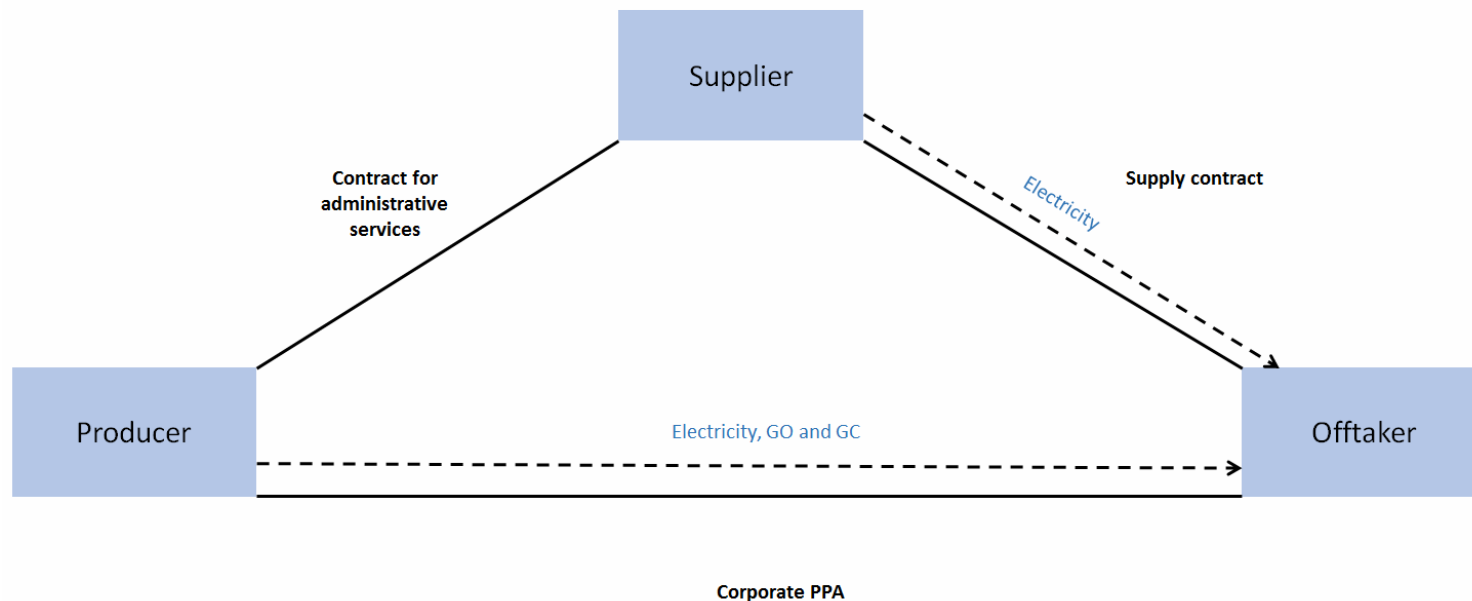
- End consumers' point of view:
 - Uncertainty on market prices: (i) high variation of prices and (ii) *ARENH* reform to come
 - Lack of guarantees of origin available on the market

CORPORATE PPAS IN FRANCE

- Corporate PPAs already concluded in France:
 - **Eurowatt / Agregio (EDF) / Metro**: volume of 25 GWh and 3-year term for a brownfield wind farm
 - **Boulangier / Voltalia**: partnership agreement providing for the conclusion of a 25-year corporate PPA for a greenfield solar power plant with a capacity of 5 MW

- Ongoing processes :
 - **Aéroports de Paris (ADP)**: call for tenders in 2018 to supply its three sites through a corporate PPA for 10% of its needs
 - **RATP**: call for tenders in 2019 to benchmark the various market players with a view to concluding a CPPA for the supply of 1.4 TWh of electricity from renewable sources
 - **Orange**: ongoing process
 - **SNCF (SNCF Energie)**: tendering process aiming at covering 20% of its consumption

CORPORATE PPA SCHEMES



Main corporate PPA schemes:

- Physical PPA

Direct grid connection and direct sale of power

- Sleeved PPA

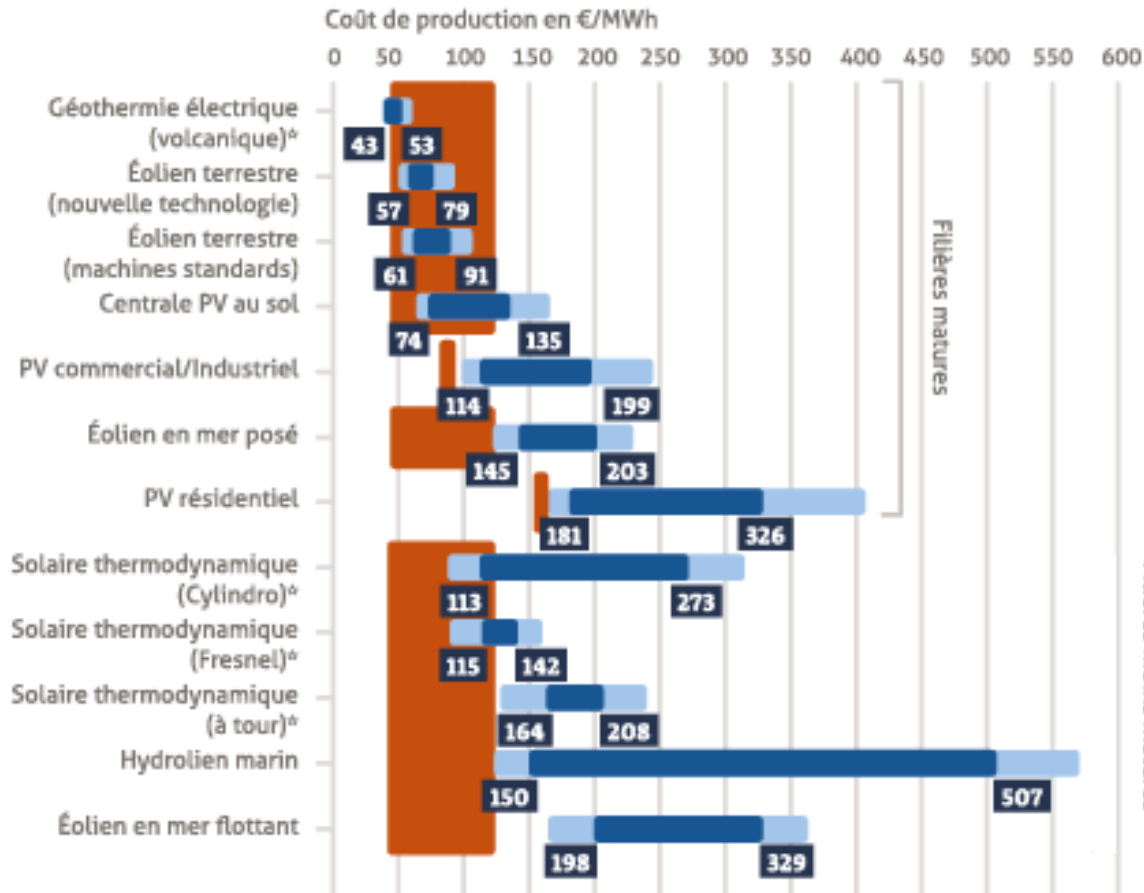
Connection to the public grid and intermediation of a supplier

- Virtual PPA

Purely financial agreement without physical delivery

2. CONTRACTUAL STRUCTURES

PRICE LEVEL



- **Free determination** of the price: the price is not regulated by law
- **Regulated Access to Historic Nuclear Energy (ARENH): regulated price**, set at €42/MWh since 2012 for nuclear electricity
- Thanks to the decrease in renewable energy costs (the cost of solar panels has decreased by 84% since 2010, wind turbines by 32%), **greenfield solar and brownfield wind energy are competitive** today (around €50/MWh)

Source : Coût des énergies renouvelables en France – ADEME 2016

TARIFF STRUCTURE AND DURATION

- The duration of the contract depends on the type of installation:
 - Greenfield projects will require long term contracts (15-20 years), whereas brownfield projects may be used to meet shorter term contract demand (2-5 years)
 - No legal issue per se, however (i) dominant position and (ii) public contract requirements must be scrutinized

- Stability of the price is compatible with variations (predictability):
 - Fixed tariff or variable tariff (with a floor price and a cap price)
 - Depending on the phases of the contract: testing, commissioning, operation
 - Index: (i) linked to the contract and (ii) possible to replace

- Guarantees of origin (GO):
 - Low value of GOs in France (trades between €0.2/MWh and €3/MWh)
 - GOs cannot be cumulated with a support mechanism: lack of available Gos
 - Interest in securing GOs prior to the emergence of a market

THE EXELTIUM AGREEMENT

- Exeltium consortium: electricity purchasing group composed of around 30 "electro-intensive" companies (Total, Solvay, Arcelor Mittal...)
- 25-year take-or-pay contract signed with EDF in 2008 to purchase 311 TWh of nuclear electricity
- Price:
 - €4 billion advance ("*avance en tête*")
 - Indexed proportional price representing the operating costs of EDF's nuclear park: the price is competitive when compared to the ARENH price (€42/MW)

OTHER CLAUSES AND RISKS (1)

- **Volume/profile risk:** 2 types of contracts
 - Pay as produced: the offtaker buys all the electricity produced or pays the producer a penalty. The offtaker closely controls the production of electricity;
 - Guaranteed volume: the producer guarantees a volume of electricity production, and compensates the difference in the event of production lower than the guaranteed level.

- Implications of the “pay as produced” scheme:
 - Information obligation
 - Audit of the operation of the installation / approval of O&M contractor
 - Penalties in case of inefficient operation

OTHER CLAUSES AND RISKS (2)

- **Counterparty risk:**

- Guarantees: (i) contractual or (ii) financial
- Insolvency: limitation of the possibility to terminate the contract and/or claim damages

- **Risk of change in the contract environment:**

- Hardship: possibility for a court to modify the contract?
- Legal: change in law
- Transfer of the contract – change of control
- Revision clause

3. PERSPECTIVES

HOW TO SUPPORT THE USE OF CPPA ?

- **Combination with a contract for difference?**
 - Pros : price competitiveness
 - Cons :
 - GO can not be cumulated with a support mechanism
 - The price is not stable for the offtaker
 - The project would remain subject to the restrictive requirements of support mechanisms

- **Support to end-consumers benefitting from GOs?**
 - Tax advantage to the benefit of end-consumers for buying GOs (ex: USA)

PERSPECTIVES

- Lack of feedback on the performance of CPPAs

- State support?
 - Tax scheme for the Exeltium contract
 - Similar scheme for CPPAs?

- Importance of market practice and standardization

GIDE IN A NUTSHELL

A multi-specialist law firm with a leading position in all fields of business law

Gide is the first international law firm of French origin. Our international practice groups connect our various offices and allow our lawyers to combine **their perfect knowledge of local legal systems and markets with the skills and resources of an international law firm**, be it in advisory, transactional or litigation capacity.



- Banking and finance
- Competition & International Trade
- Compliance & Corporate Investigations
- Dispute Resolution
- Employment Law
- Insurance, Industrial Risk & Transport
- Intellectual Property, Telecommunications, Media & Technology
- Mergers & Acquisitions / Corporate
- Projects (Finance & Infrastructure)
- Public Law, Energy & Environment
- Real Estate Transactions & Financing
- Restructuring
- Tax

OUR DISTINCTIONS

A leading position in Energy in France, Europe and Africa

“Well-regarded department with strong activity locally and in Africa. Represents states, sponsors and lenders. Regularly appointed on projects in a variety of sectors including defence, water, transport infrastructure and renewable energy. Expertise includes BOT projects, PPPs and project financing, with additional experience in contractual and regulatory matters. Also skilled in energy-related disputes, advising several market-leading energy producers.”

Chambers Europe 2019 – Projects & Energy Domestic & International

Gide Loyrette Nouel A.A.R.P.I. advises on several of Africa's largest traditional power, LNG and oil, hydropower and renewables projects, representing sponsors, investors and state entities. The practice is notably assisting [...] EDF on the development of six EPR nuclear reactors in India. The firm houses leading regulatory expertise in Michel Guénaire, who acts for several of France's main energy operators, frequently handling strategic regulatory disputes. He is notably representing electricity grid operator Enedis in facing claims concerning feed-in tariffs from around 130 solar power producers.

Legal 500 , 2019 Edition – Energy Focus

« Gide is clearly a leading firm but despite its top position, it is not complacent, ’ said the judges, who were impressed with the firm’s targeted developments of new offices in emerging markets. ‘It has a clearly stated long term strategy with a focus not only on client service but also staff development and well-being.’ »

The Lawyer European Awards 2018



YOUR CONTACTS



Pierre-Adrien Lienhardt

Avocat au Barreau de Paris

Gide Loyrette Nouel

☎ 01 40 75 99 72

✉ pierre-adrien.lienhardt@gide.com

