

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

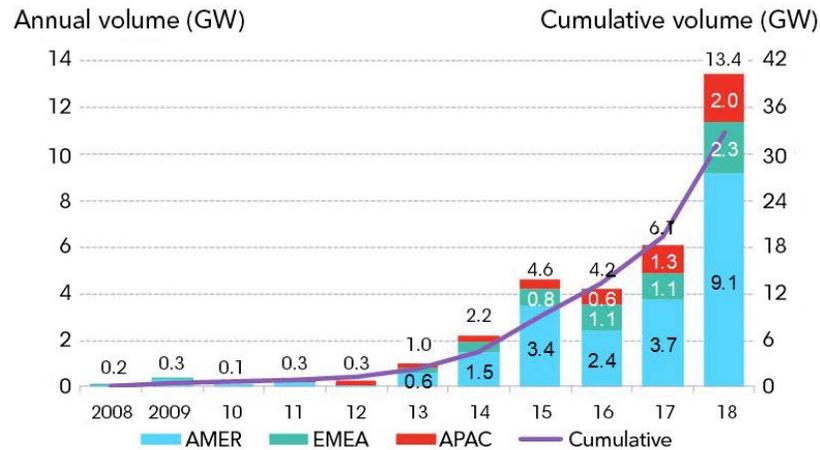
French perspectives

19 June 2019

1. INTRODUCTION

OTC SALES OF RENEWABLE ELECTRICITY IN THE WORLD

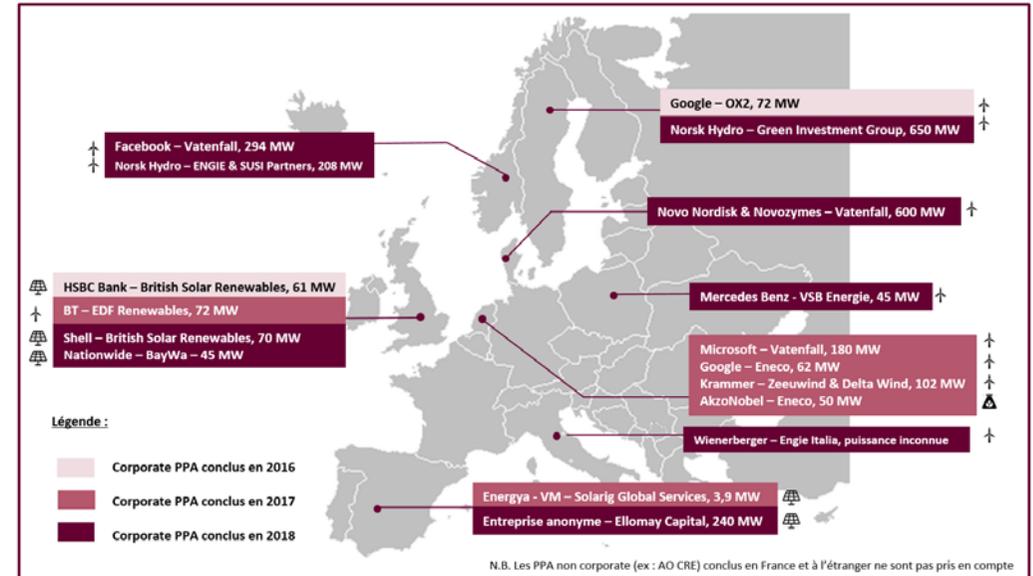
Figure 1: Global corporate PPA volumes



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



- 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)

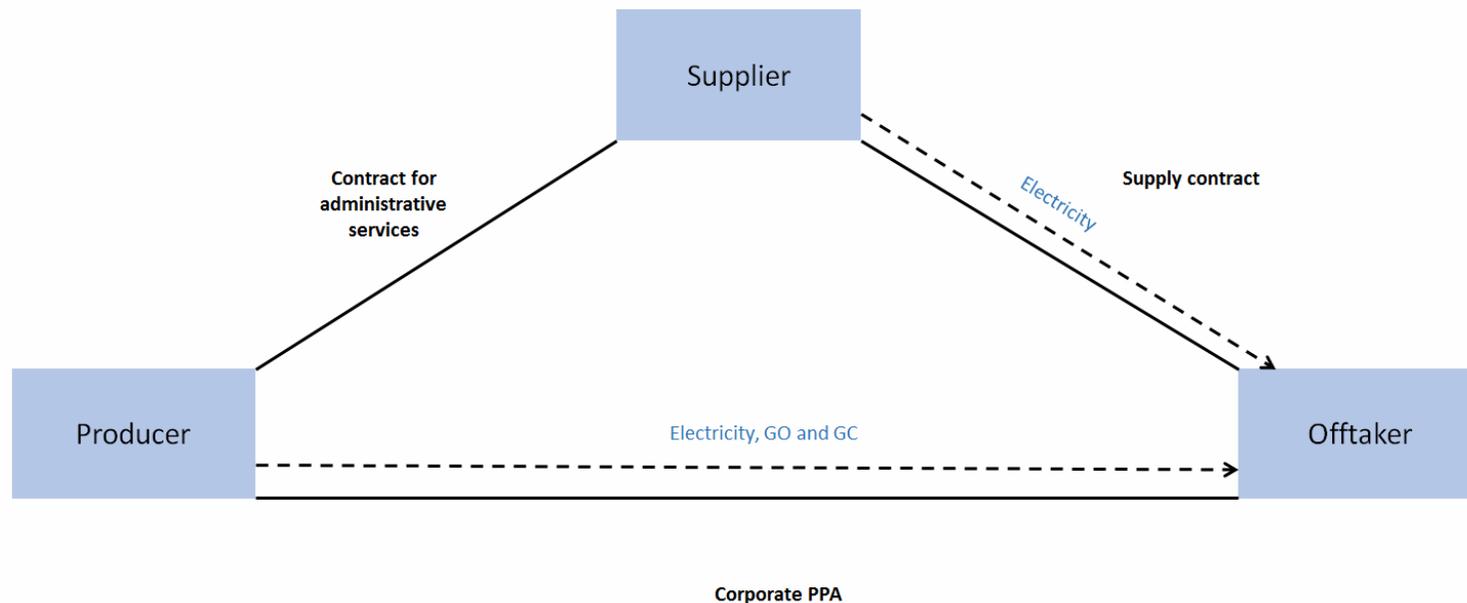
- End consumers' point of view:
 - Uncertainty on market prices: (i) high variation of prices and (ii) *ARENH* reform to come
 - Lack of guarantees of origin available on the market

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

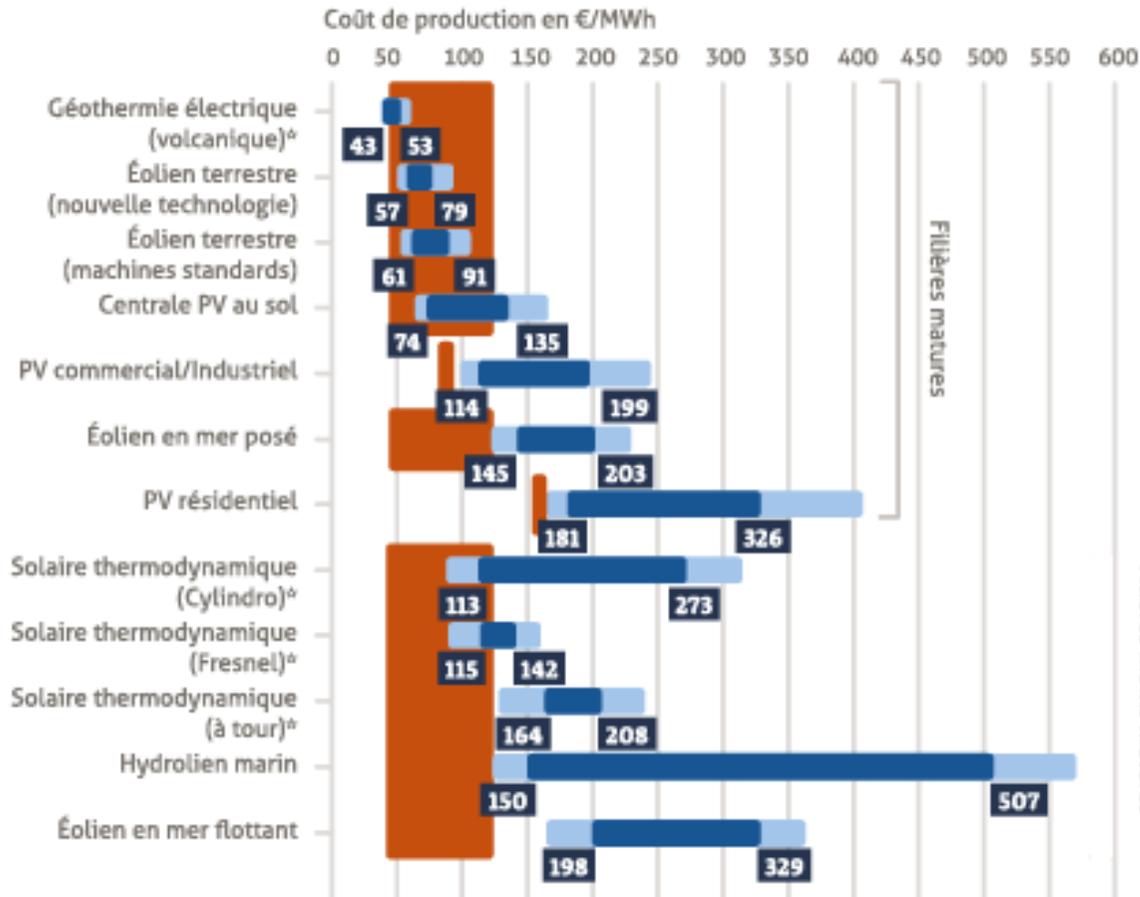
Connection to the public grid and intermediation of a supplier

- 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

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Chambers Europe 2019 – Projects & Energy Domestic & International

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Legal 500 , 2019 Edition – Energy Focus

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