



Corporate Power Purchase Agreements (PPAs)

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Speaker



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Based in Bucharest, Varinia has twenty years' international experience and her practice focuses on the electricity, oil & gas and mineral resources sectors.

Varinia is a market leader in the renewables sector in Romania, advising on some of the largest and most innovative energy deals in the market in recent years. She also advises on all aspects of electricity power generation and climate change sector, particularly in the renewables sector, including decarbonization and climate risk, energy regulatory, licensing and compliance, energy M&A / finance / disputes, ESG projects, energy storage, EVs, hydrogen and e-Mobility, offshore and onshore wind projects, EPC projects, joint-ventures etc. She has extensive expertise on petroleum and mining concessions, development of mature oil and gas assets in Romania, farm-out agreements, M&A financing transactions, tax, procurement, environment, disputes and competition related to the energy and oil and gas business.

Varinia has advised more than half of the active license holders on the market, as well as successfully advising the largest onshore M&A deals in the market.

Varinia also contributed to the set up and development of key industry associations such as the Romanian Petroleum Exploration and Production Companies Association, where she serves as a board member.



Varinia Radu

'Leading Individual in Energy and Natural Resources'

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'Market leader in Energy and Infrastructure, Project development and M&A'

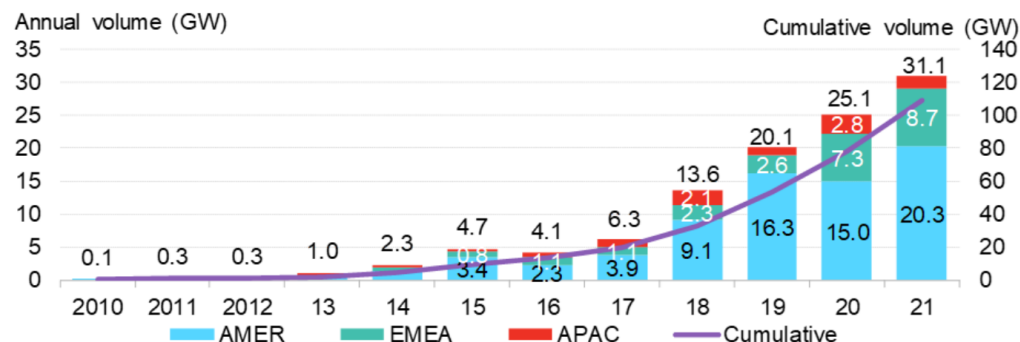
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Corporate PPAs: an introduction

- Long-term contract (normally upwards of 10 years) under which an energy generator agrees to sell power directly to a corporate consumer
- Structured in such a way to offer financial certainty – pre-agreed fixed price per kWh
- Helping to remove barriers to financing and bring more renewable energy to grid

A growing trend: global corporate PPA volumes by region



Global corporate PPA volumes, 2010-2021. Onsite PPAs excluded. APAC volume is an estimate. Pre-reform PPAs in Mexico and sleeved PPAs in Australia are excluded. Capacity is in MW DC (Source: BloombergNEF).

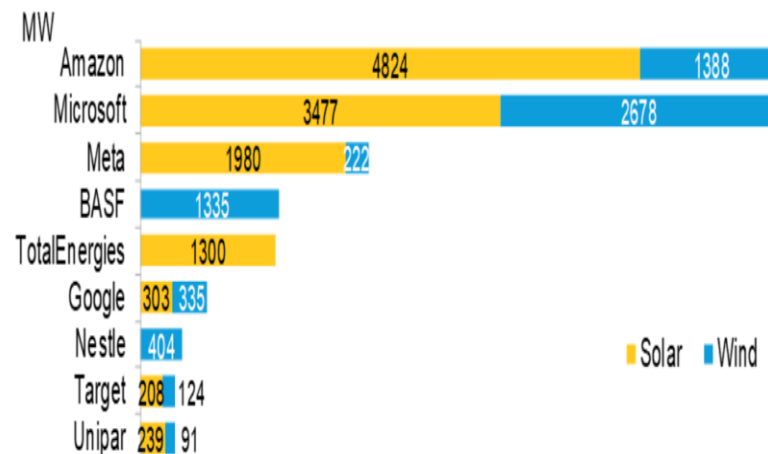
Note: data up to Jan 2022. APAC volume is an estimate. Onsite PPAs excluded.
Source: BloombergNEF via GWEC (BloombergNEF: Corporate clean energy purchases topped 30 GW in 2021 ([renewableenergyworld.com](https://www.renewableenergyworld.com)))

Corporate PPAs: an introduction

In 2021, corporations bought a record 31.1 GW of clean power worldwide through long-term Power Purchase Agreements (PPAs).

Large technology companies are taking a lead in this dynamic market, according to a BNEF report published at the end of January.

The 31.1 GW from 2021 marked a 24% increase on the previous record set in 2020 of 25.1 GW.

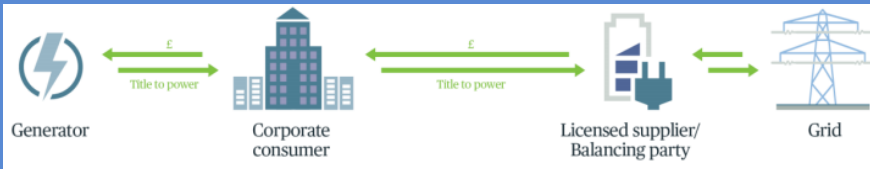


Top corporate buyers of clean energy in 2021, Onsite PPAs included. Data is based on publicly available information (Source: BloombergNEF).

Typical structure of a corporate PPA

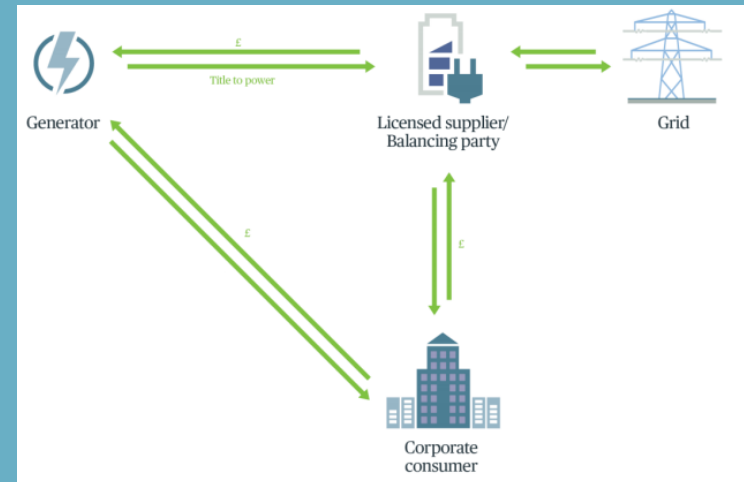
Sleeved / Physical PPA

- Licensed supplier conveys power via the grid to be sold to the corporate consumer
- Corporate consumer “tops up” shortfalls in renewable generation when this doesn’t meet demand
- Can be within one agreement or two back-to-back agreements



Virtual / Synthetic PPA

- No power is physically traded
- Derivative contract structure, i.e. a hedge or swap
- Generator sells power to a supplier under a standard contract and also enters into an agreement with the Offtaker for a fixed price for the renewable electricity



Private wire PPAs have a slightly different structure – unlike physical PPAs, power will normally be sold directly from the generator’s facility to the offtaker, without notionally being passed through the grid

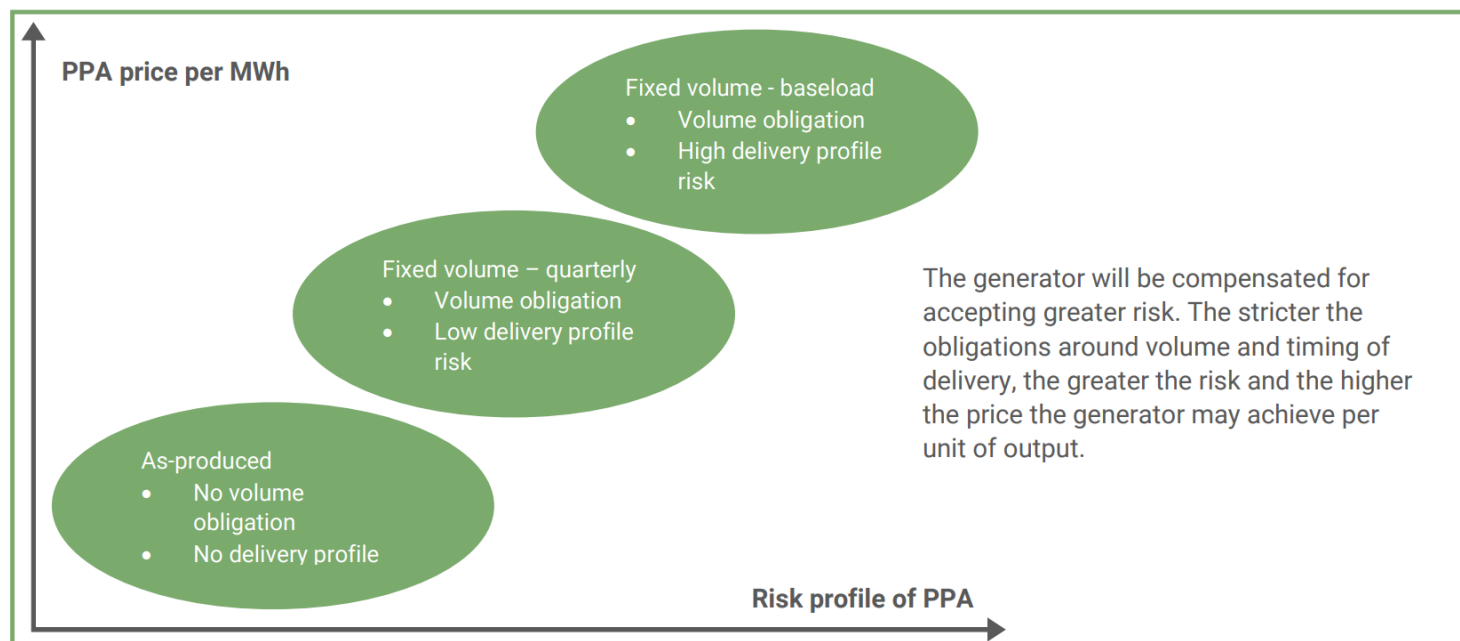
Baseload vs. Pay as produced

Baseload

- Offtaker is contracted to buy a constant volume of energy for every hour over a set period
- Monthly or annually
- Volume is guaranteed by the Generator, which bears the risk

Pay as Produced

- Fixed price for all or a certain proportion of the volume of energy produced
- Risk split between Generator and Offtaker
- Generator will be responsible for any over or under-production



Contract forms

- *Form used (i.e. standard or bespoke) dependent on contracting parties*
- *EFET terms: <https://efet.org/standardisation/cppa/>*
- *Multinational tech giants (Amazon, Google, Microsoft) prescribe their own form*
- *Hedge agreements such as those governed by an ISDA form contract are also standardised and are comparatively simple to document*

Key terms: Development, Performance and Volume Risk

- **Development risk:** will the project be constructed/commissioned on a timely basis, or at all?
- Developers will want to ensure that any hard date for construction/commissioning includes an appropriate buffer and will extend for forces beyond the developer's control
- **Performance risk:** will the project perform as expected?
- Minimum level of mechanical availability / warranted power curve (wind) / performance ratio (solar)
- **Volume risk:** should the developer commit to a minimum volume over a reasonable period of time (1/2 years?)
- Lenders will be aligned with developers on ensuring that such requirements do not shift too much risk to the project

EFET CPPA standard

EFET has developed a CPPA standard adapted for several countries (i.e. France, Germany, Italy, Poland, Spain and Bulgaria)

In Romania, we have collaborated with EFET an extensive Guidance Notes for Individual Power Purchase Agreement for Corporates and Utilities adapted to the Romanian legal framework/ market and in situations when The Facility (electricity generation plant of the Seller) and/or the electricity consumption unit of the Buyer are located in Romania and connected to the Romanian power system

EFET CPPA standard – Romania specificities

Grid Connection Agreement

Under the Energy Law, a PPA may be concluded by a producer before obtaining a generation license but with obligation to obtain such license in term of at least 60 days **before the delivery of the electricity produced by the new energy capacity.**

Given this condition, it may be reasonable assumed that an applicant for a production license has previously secured a grid connection and has been issued with a grid connection permit and subsequently has concluded with the TSO or the local distributor (for capacities less than 50MW) a relevant grid connection agreement.

Balancing Responsible Party

In accordance with the Energy Law, all the market participants (including producers and consumers) are obliged to **assume financial responsibility for differences between the production and the quantity injected into the grid**, and to comply with the provisions of the licenses and regulations issued by ANRE.

- Each producer may choose to enter into a standard BRP contract with the transmission system operator, or enter into a contract for this purpose with a third-party Balancing Responsible Entity, which covers these imbalances on their behalf.
- In most cases, the producers and suppliers enter into agreements with a third-party Balancing Responsible Entity in order to ensure the management of imbalances.

EFET CPPA standard – Romania specificities (II)

Force Majeure

In Romania, a force majeure event may be ascertained through a certificate of force majeure issued by the Romanian Chamber of Commerce. This may prove to be efficient as a measure to limit disputes on whether a certain event falls under Force Majeure definition.

Whilst the parties' freedom of choice may be exercised in respect to extension of the Force Majeure duration (provided the effects are continuous), the market practice is that following a long-term event, the parties be entitled to terminate the agreement with no liabilities related to force majeure events.

When selecting Romanian law as governing law, parties may wish to expand the definition of Force Majeure with a more comprehensive definition of such events, to align with the local legislation.

The Romanian Civil Code defines the Force majeure as an unforeseeable, unavoidable, insurmountable and external event to the contractual circumstances, which prevents total or partial, temporary or final performance of one or more of the party(ies)' obligations.

The force majeure events are typically deemed those circumstances including, without limitation: war or war-like situation, revolution, earthquake, serious floods, embargo, pandemic situation etc, and excluding any default circumstances or any hardship events.

Designing a EFET CPPA standard in Romania

Limitation of liabilities

In Romanian law, in light of the general liability principle, any party causing a prejudice to another party is required to repair it in full, without any limit to the liability being stipulated.

A limitation of liability may be required to be prescribed under the contract, adapted to the project and calculated in accordance with the insurance cover.

Any limitation of liability clauses should be expressly accepted and acknowledged by the parties (so called “*unusual clauses*” as provided in article 1203 of the Romanian Civil Code).

Insurance

In Romania, it may be common to ask for insurance cover for the power plant already from the construction stage, and not only from the date of the electricity supply.

Change in Law

Hardship situations are provided by the Civil Code, when the performance is still possible, however it became overly excessive and it cannot be reasonably assumed that the affected party has contractually agreed to such risk. Depending on the degree of impairment of the activity, the parties may negotiate the suspension of performance of the contractual obligations during the application of the extraordinary measures or the corresponding reduction of liabilities, or termination.

ROMANIA - CPPA

- Austrian power producer **Verbund AG** will be supplying wind power to **an automotive company** under a PPA facilitated by Swiss energy trader **Axpo Holding AG**.
- is the first long-term corporate PPA for renewable energies with an industrial company in Romania.
- The automotive company will buy 70 GWh of electricity from Verbund Wind Power Romania Srl each year through 2026.
- The volume will be sourced from the 226-MW wind farm in Casimcea, near the Romanian Black Sea coast. It will be used to power the manufacturer's local factories.
- Axpo and Verbund had a similar collaboration in Romania's automotive industry three years ago, when they entered into a PPA with **carmaker Dacia** involving electricity and green certificates generated by local wind parks. Unlike the new contract, however, the tenor of that PPA was just one year

BULGARIA - CPPA

- Telecommunication service provider **A1 Bulgaria** and domestic clean energy investment group **Renalfa** have signed a long-term power purchase agreement (PPA) for solar energy
- supply A1 Bulgaria with 20 GWh of electricity per year for the next ten years
- Renalfa will also provide the **sleeving service** to A1 via its subsidiary Toki.bg.
- Sleaving is the process of transforming the pay-as-produced PV profile of the generation project into the consumption schedule of the telecom through the electricity market.
- This is the first such agreement on the Bulgarian market.

HUNGARY - CPPA

- **ID Energy Group**, a corporate group specialised in photovoltaic energy and **LAFARGE Cement Hungary** signed the first ground-mounted corporate PPA of 26 megawatt-peaks (MWp) solar PV capacity, being the first to be successfully concluded in the country.
- ID Energy Group will be developing, building and operating the project located on and around the premises of LAFARGE's factory in Királyegyháza. LAFARGE will purchase the generated energy at a fixed price for 15 years. This PPA will help with the company's target to become one of the main suppliers of clean energy for industrial clients in Hungary and Southeast Europe.

CZECH REPUBLIC - CPPA

- In July 2021, a large corporate PPA was signed under which **ŠKO-ENERGO** (ŠKO-ENERGO is joint-venture of ŠKODA AUTO/VW (67% share), EG.D, a.s. (formerly E.ON) (21% share) and ČEZ ESCO (12% share)), should be supplied by green energy from a wind farm to be developed by a local developer, **Ambient Energy** . It is first larger “corporate PPA” project publicly announced in the Czech renewable energy sector. The reported contract value exceeds CZK 1 billion.
- Under the contract, Škoda will receive a 20-year fixation on the cost of electricity.
- Ambient Energy group will use four new wind power plants in the Opava region, with a total output of nine MW. The entire park, which is to supply electricity from 2022, should be built by the energy developer, Micronix.

POLAND - VPPA

- In February 2021 **ACCIONA** has signed a five-year Virtual Power Purchase Agreement (VPPA) with multinational automotive manufacturer **Brembo** to partially offset the energy needs of its production plants in Poland and contribute to Brembo's path towards its decarbonization and sustainability programs.
- ACCIONA will inject 100,000 MWh of green power a year into the grid and provide the associated Guarantees of Origin to Brembo Poland. The electricity will come from ACCIONA's 63MW Krobia I windfarm in Wielkopolskie.
- With more than 10.7GW of renewable generation assets, ACCIONA is the world's greenest electricity utility, according to the New Energy Top 100 Green Utilities and analysis criteria for the Dow Jones Sustainability Index.

ROMANIA – VPPA

- **Axpo**'s innovative seven-year deal with **CEZ**'s Fântânele-Cogealac-Gradina onshore wind farm, the company's largest PPA in the region to date, signed in 2021.
- The PPA covers more than 4 terawatt hours (TWh) of electricity production. Under the PPA, Axpo hedges approximately 50% of CEZ's combined installed capacity of 600 megawatts (MW) from the three wind farms owned and managed by a Macquarie Asset Management long-term infrastructure fund. The plants are located in Dobrogea, close to the Black Sea in Romania.

Thank you!

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Questions & Answers



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