

Corporate power purchase agreements in Dutch electricity market

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In recent years, an important global trend has been the rapidly increasing number of large industrial and corporate energy consumers and buyers wanting to purchase renewable electricity directly from renewable electricity producers on the basis of long-term corporate power purchase agreements (PPAs) entered into directly between the purchaser and the renewable electricity producer.

Background

Driven by their sustainability goals and desire to influence electricity purchase costs through long-term contracts and the lobby of influential organisations, such as Greenpeace, large corporates have deviated from the traditional electricity market model in which electricity is purchased on the wholesale market through a licensed energy supplier or utility company (on the basis of a so-called 'utility' PPA or a 'green' electricity supply contract).⁽¹⁾ Instead, these corporate buyers want to purchase directly from the renewable electricity source. Unsurprisingly – because of their high electricity demand – notable early adopters of this trend include large technology and internet companies, such as Microsoft, Google, Facebook, Apple and Amazon. However, dozens of other household names, such as IKEA and Walmart, are following in their footsteps by, for example, joining the so-called 'RE100' initiative.⁽²⁾ Renewable electricity producers find that long-term corporate PPAs, which ensure them that all or a significant part of the produced electricity will be sold, can be a decisive factor in whether their projects can be financed.

Dutch market

Although this movement started in the United States, corporate PPAs have found their way to Europe and have also emerged as a trend in the Dutch energy market, especially in the context of the so-called 'energy transition' initiated by the government and the [Energy Accord](#) signed by the government and market players.⁽³⁾ For example, in September 2015 Dutch utility company Eneco opened its largest onshore wind farm in Delfzijl Noord. Google will purchase the total output of 175 gigawatt hours (GWh) for 10 years for the benefit of its new data centre in Eemshaven. Further, on October 14 2016, AkzoNobel, DSM, Google and Philips [announced](#) that they had formed a consortium to purchase jointly renewable energy directly from renewable energy producers in the Netherlands, starting with the purchase of 350 GWh of electricity produced by Windpark Krammer. On January 17 2017 the same consortium announced that it will also purchase all electricity produced by [Windpark Bouwdokken](#), which will be operational in 2018. Other market players are also investigating the possibilities for corporate PPAs on the Dutch market.

Considerations for negotiating Dutch corporate PPAs

In order for such corporate PPAs to be feasible and successful in the Netherlands, they must consider the Dutch electricity market's specific regulatory framework and administrative procedures. From this regulatory perspective, the following topics may, among others, be

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highlighted as areas that require particular consideration when negotiating a Dutch corporate PPA.

Purpose of corporate PPA

In general, two types of corporate PPA can be distinguished. Under a financial (or synthetic) corporate PPA, the buyer purchases electricity and the associated guarantees of origin (GVOs), but the electricity is not intended for the buyer's consumption. Instead, the buyer resells the electricity and retains the GVOs for the purpose of booking them against its own electricity consumption (thus 'making it green') or trading them on the GVO market. This trading of GVOs separate from the electricity is possible in the Netherlands for parties with a trade account issued by CertiQ, the Dutch authority that grants GVOs. The second type of corporate PPA is the physical corporate PPA, which is entered into by buyers – typically corporates with a high electricity demand, such as data centres and industrial customers – which aim to offtake and use the purchased electricity (and associated GVOs) themselves. Because these buyers do not generate renewable energy and a direct line to a renewable power plant is often impossible for practical and technical reasons (eg, location and balancing), the physical corporate PPA creates a 'virtual direct line' between the production facility and the customer.

Structure of corporate PPA and setting delivery point

As mentioned above, corporate PPAs are typically long-term agreements pursuant to which electricity is sold and purchased against a fixed price or price mechanism. In Dutch case law and legal literature, electricity is generally not seen as a material object, but is nonetheless viewed as a transferable good. This means that the corporate PPA must:

- comply with the provisions on purchase agreements in Book 7 of the Dutch Civil Code (Sections 7:9 and 7:47); and
- provide for the delivery of the electricity in accordance with Sections 3:84 and 3:95 of the Dutch Civil Code.

Such delivery does not take place through physical offtake; in the Netherlands, the physical transport of electricity is performed by independent grid operators and is an entirely separate activity from the supply of electricity, which is a purely contractual and administrative affair (based on the metering data). In the Dutch market, a quantity of electricity is deemed to have been supplied by a party if, under the administrative market procedures, the relevant quantity is allocated to that party. Thus, in principle, parties may agree on any delivery point (eg, at the customer's grid connection transfer point or at the production facility grid connection transfer point), as long as the rest of the contract structure allows for the allocation of the electricity to the seller under the corporate PPA. If this condition is met, it is not mandatory – as in some other EU countries – for the electricity to which the corporate PPA pertains to enter into a back-to-back agreement with a licensed supplier which will physically supply the electricity to the customer's doorstep (this arrangement is sometimes referred to as a 'sleeved' corporate PPA).

Fall-back supplier and programme responsible party

The fact that a renewable energy plant might not produce enough electricity to meet customer demands must also be considered. A customer may therefore have to enter into a separate electricity supply agreement with a 'fall-back' licensed electricity supplier for the additional required volume. In this context, it is possible in the Netherlands to register only one supplier per grid connection in the national grid connection register (CAR), which forms the basis of most regulated administrative market procedures.⁽⁴⁾ If the customer purchases electricity from both the seller under the corporate PPA and the fall-back supplier, it is likely that the fall-back supplier will have to be registered in the CAR as the supplier for the connection. This illustrates the importance of addressing the separate roles and responsibilities of the market parties involved in the corporate PPA. Another such responsibility is the so-called 'programme responsibility' of each party connected to the grid, which includes:

- submitting daily offtake and feed-in prognoses or programmes to the Dutch transmission system operator, TenneT;
- settling imbalance charges with TenneT;
- purchasing the electricity in accordance with such programmes; and
- settling the cost of purchasing electricity with the customer via its registered supplier.

Programme responsibility is always transferred to a so-called 'programme responsible party' acknowledged by TenneT. The Dutch market procedures provide for one programme responsible party for each grid connection. The parties involved will therefore have to arrange for the programme responsible party to bear programme responsibility for the entire volume consumed by the customer through its grid connection (including both the volume pursuant to the corporate PPA and the volume supplied by the fall-back supplier) and agree on a mechanism for allocating and settling imbalance charges and purchase costs.

Relationship between electricity price and SDE subsidy scheme

Aside from sustainability targets, major incentives for corporate PPAs seem to be long-term influence on the electricity prices and consequently financial stability and gain. In the Netherlands, a factor influencing these incentives is the subsidy scheme for the production of renewable energy (SDE). Under this scheme, the minister of economic affairs grants a subsidy for each kilowatt hour of generated renewable energy for the difference between the fixed cost price and the variable market price, based on the average annual APX price level (multiplied by correction factors for imbalance and profile costs). In order for the corporate PPA to be profitable, its pricing mechanism should take the SDE calculation mechanism into account.

Energy tax

Finally, in the Netherlands, parties that consume electricity pay energy tax. This tax is due in the event of energy consumption through a physical connection to the grid, but also in some other events. It is therefore advisable to check with the Tax Authority in order to avoid creating multiple taxable activities pursuant to the same corporate PPA.

*For further information on this topic please contact [Martha Brinkman](#) at *Stek Advocaten BV* by telephone (+31 20 530 52 00) or email (martha.brinkman@stek.com). The *Stek Advocaten BV* website can be accessed at www.stek.com.*

Endnotes

- (1) *The Economist*, June 10 2017, "[Big business sees the promise of clean energy](#)".
- (2) Further information is available [here](#).
- (3) The lobby and push for corporate PPAs by interest groups and influential organisations is also visible in the Netherlands. See, for example, the 2015 Climex and Accenture report "[How large energy consumers can power the Energy Transition](#)" and the October 2016 [joint report](#) of the Dutch branch of Greenpeace and Dutch organisations Consumentenbond, Natuur&Milieu and WISE regarding the level of sustainability of electricity suppliers.
- (4) New regulations are underway that allow for multiple suppliers per connection in some specific cases, such as separate customer production installations making use of the same grid connection. However, those regulations will not apply to the situation relevant for corporate PPAs. More information on this topic is available in Dutch on the Authority for Consumers and Markets [website](#).

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