

Negotiating and Documenting Corporate PPAs

July 29 - 30, 2021 | Digital Access

THURSDAY JULY 29, 2021

**Pacific Time*

8:15-8:30 PST **Introduction and Opening Remarks by Lead Instructor**

Bill Holmes, *Partner*, K&L GATES LLP

8:30-9:25 **Session 1: Understanding Today's Corporate Renewable Market**

The market for corporate renewables has rapidly evolved. Corporate buyers and renewable energy suppliers are getting more experience under their belt. Robust conversations are taking place on addressing existing challenges and identifying solutions. To get you tapped into this fast moving and dynamic environment, this opening session will bring everyone up to speed on today's corporate renewable energy market.

- Why buyers are doing deals—their motivations, goals and evolving strategies
- The latest renewable energy sourcing strategies—and the challenges that accompany them
- Renewable energy options in the market today: Physical PPAs, virtual PPAs, green tariffs, aggregation (e.g., virtual net metering)
 - How do these options meet buyers' objectives?
 - How are they being used?
 - What are their benefits and challenges?
 - What are their risks?
 - How do the economics work?
 - What changes in the market can be expected going forward, especially in a post-COVID world?

Moderator:

Bill Holmes, *Partner*, K&L GATES LLP

Panelists:

Adrian Anderson, *Senior Director*, MICROSOFT

John King, *Vice President, Commercial Execution*, INVENERGY

Danny Splettstosser, *Vice President, Origination & Investor Relations, Americas*, RES AMERICA DEVELOPMENTS, INC.

9:25-9:40 *Live Q&A*

9:40-9:45 *Break*

9:45-10:45 **Session 2: Overview: The Evolution of Corporate PPA Structures**

Over the last decade, corporate buyers and renewable energy suppliers have developed a variety of innovative structures to enable corporations to purchase renewable energy. This session will provide an

overview of the types of agreements that are commonly used to facilitate corporate renewable energy procurement.

- Background: Utility Monopolies and Exclusive Service Territories
- REC Agreements
- Green Tariffs 1.0
- Green Tariffs 2.0
- On-site solar PPAs
- Physical PPAs (including direct access)
- Community Solar PPAs
- Virtual PPAs (VPPAs/contracts for differences)
- Portfolio Aggregation PPAs
- Block Delivery PPAs

Bill Holmes, *Partner*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

10:45-11:00 *Live Q&A*

11:00-11:05 *Break*

11:05-11:50 **Session 3: Focus on Virtual Power Purchase Agreements (VPPAs)**

Although corporations continue to use a range of tools to procure renewable energy, the virtual power purchase agreement (VPPA) has emerged as one of the most common structures used to procure renewable energy. This session will explore how modern VPPAs are structured and how developers and purchasers are balancing emerging market risks related to transmission congestion and recent severe weather trends.

- How energy market settlements work in relation to VPPA settlement
- Contract for Differences and Fixed v. Floating Prices
- Replacement RECs vs. Project RECs
- What is basis risk?
- Managing developer's basis risk while incentivizing generation of RECs
- Managing Day Ahead LMP vs. Real Time LMP differences risk to the developer while incentivizing generation of RECs
- Cap and collar mechanisms to manage financial risks
- Emerging contractual mechanisms from Winter Storm Uri

Kenneth Gish, *Of Counsel*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

11:50-12:05 *Live Q&A*

12:05-12:35 *Lunch*

12:35-1:30 **Session 4: On Site Solar Corporate PPAs**

Some corporations purchase renewable energy by contracting to install solar facilities at their operations (aka "behind the meter" or BTM). On Site facilities may be rooftop mounted, ground mounted, carport mounted, or some combination thereof. The corporation's objectives may include visible installation of solar equipment, cost savings, and the ability to claim the use of renewable energy. This session will explore issues commonly encountered in corporate on-site solar.

- Structure Overview
- Importance of RECs to renewable energy claims
- SREC Markets and REC Arbitrage
- Roll of the Investment Tax Credit (ITC)
- Site Control: Lease or PPA
- Installation: Design Approval
- Dealing with a Master Lessor
- O&M
- Performance Guarantees (Availability and Output)
- Combination with Storage
- Credit Support
- Insurance

Jared Friedman, *Vice President, Global Energy*, PROLOGIS

Bill Holmes, *Partner*, K&L GATES LLP

1:30-1:45 *Live Q&A*

1:45-1:50 *Break*

1:50-2:40 **Session 5: Important Corporate Protections to Consider When Negotiating a Corporate PPA**

Corporations typically procure renewable energy to advance publicly stated goals, such as using renewable energy for 100% of load or achieving carbon neutrality objectives. Renewable energy procurement is also part of a corporation's broader sustainability efforts. Not surprisingly, corporations want to avoid situations in which they are unable to claim they are using renewable energy or find they have become involved with developers or facilities that are experiencing problems that may tarnish the corporation's reputation. This session will explore how corporations have addressed such issues, both contractually and with respect to internal controls

- The concept of Additionality
- The critical importance of renewable energy credits(RECs) to renewable energy claims
- Reputational matters related to environmental disclosures and other reputational concerns
- Protecting the corporation's Green Claims
- Restricting Assignments of the Procurement Agreement to Buyer Competitors
- Standards of Conduct

Teresa Hill, *Partner*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

2:40-2:55 *Live Q&A/Day 1 Wrap Up*

2:55-3:55 *Virtual Networking*

**Pacific Time*

- 8:00 – 8:45 **Session 6: Translating the US VPPA into a European VPPA**
There are active corporate PPA markets in Europe, both within and outside the EU (i.e., the UK post-Brexit). Local law specifics are important to take into account; however, certain core commercial terms can be retained when translating a US PPA form for use in Europe. This session will discuss similarities and differences between VPPA structures and documentation in the EU vs. US.
- EU vs. US market structure differences
 - US Scheduling Entities vs. EU BRPs
 - Key terms to negotiate in the EU compared to the US
- James Douglass**, *Partner*, K&L GATES LLP LONDON
Tariq A. Fedda, *Counsel*, K&L GATES LLP
Kai Zhang, *Special Counsel*, K&L GATES LLP
- 8:45-9:00 *Live Q&A*
- 9:00-9:05 *Break*
- 9:05-9:55 **Session 7: Market Outlook 2021 - Identifying, Assessing, Allocating and Managing Risks**
This session will take a fresh look at emerging market trends and structures from an economic, market driven perspective. We will survey lessons learned, what is developing in different ISOs, and what is to come.
- Lessons in off-take structures from ERCOT Winter Storm Uri
 - Rising demand and LMPs in WECC
 - What is left in PJM?
 - How to value energy storage and navigate its risks and rewards
- Moderator:
Lana Le Hir, *Senior Associate*, K&L GATES LLP
- Panelists:
Adrian Anderson, *Senior Director*, MICROSOFT
Tim Belden, *Principal*, ENERGY GPS LLC
- 9:55-10:10 *Live Q&A*
- 10:10-10:15 *Break*
- 10:15-11:05 **Session 8: How to Incorporate Environmental and Social Justice Concerns into your PPAs**
Due to recent world events, developers and corporate buyers a-like are incorporating environmental and social justice requirements into the development of renewable projects and associated PPAs. This panel will feature an experienced developer, major corporate buyer, and a third party consultant who are all actively working to advance ESJ consciousness in the development and procurement of renewable energy. We will break down what all the acronyms mean and explore how corporations can

ensure their purchases of renewable energy are supporting environmentally and socially conscious concerns.

- What is the difference between Environmental and Social Justice (ESJ), and Environmental, Social, Governance (ESG)?
- What ESJ trends are we seeing in the renewables market place?
- Incorporating ESJ metrics in your RFP process and project selection
- How do you compare ESJ projects “apples to apples”?
- Emerging metrics systems for measuring and tracking ESJ over time?
- What are lessons learned from implementing ESJ into your projects?
- How does incorporating ESJ into your VPPA affect financing?

Moderators:

Teresa Hill, *Partner*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

Panelists:

Danielle Decatur, *Director of Datacenter Environmental Sustainability*, MICROSOFT

Yuri Horwitz, *Chief Executive Officer*, SOL SYSTEMS

Zach Starsia, *Director of Accounts*, LEVELTEN ENERGY

11:05-11:20 *Live Q&A*

11:20-11:25 *Break*

11:25-12:20 **Session 9: Renewable Developers’ Perspectives—Understanding their Needs and Constraints**
When building relationships and negotiating deals with renewable energy developers, it is extremely useful to bring a good understanding of their needs and constraints to the table. To help you get into the mind of developers and appreciate what drives their behavior, this session will discuss what corporate renewable deals look like through their eyes.

- What are developers’ views of how corporate and developer relationships have been evolving?
- What do they see as the most productive/efficient way for corporates and developers to work together?
- What are the key pieces that must be met to make a deal work for developers?
- How does renewable financing drive developers’ needs and constraints?
- How is creditworthiness affecting opportunities for mid-cap companies?
- What flexibility do they have in offering different project options and deal structures?
- Where do they see opportunities for win-win project structures that corporates may not have thought about?

Moderators:

Bill Holmes, *Partner*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

Panelists:

Melissa Peterson, *Vice President, Origination & Power Marketing, Onshore*, ORSTED ONSHORE NORTH AMERICA, LLC

Kelly Snyder, *Senior Director of Origination for the US & Canada*, EDPR

Barrett Stambler, *Partner*, CREATIVE RENEWABLE SOLUTIONS, LLC

12:20-12:35 *Live Q&A*

12:35-1:05 *Lunch*

1:05-1:50 **Session 10: Lessons from the Frontline: What Corporates Have Learned About Renewable Procurement**

As more and more corporates gain experience in the corporate renewable market and marshalling the support of internal stakeholder, there is a lot of learning going on in the industry. What can be learned from someone who's been on the frontline? During this session, a corporate buyer who's been leading the charge will share their experience, talk about the lessons they have learned and pass on valuable tips for others.

- The stakeholders involved in the process
- What they looked for in assessing opportunities and how did they ultimately choose the right deal for them?
- What worried the CFO—and how they came prepared to talk to him or her and what questions they needed to answer
- What were the anxieties the organization dealt with throughout the procurement process?
- The challenges they faced and how they overcome them
- Were there significant reporting or accounting issues and how were they dealt with?
- What were the key takeaways—what worked and what didn't work

Moderators:

Kenneth Gish, *Of Counsel*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

Panelists:

Aaron Binkley, *Director of Sustainability*, DIGITAL REALTY

Erin Decker, *Director, Cleantech Client Management*, SCHNEIDER ELECTRIC

Ryan Spicer, *Sustainability Sr. Manager*, PEPSICO

1:50-2:05 *Live Q&A*

2:05-2:10 *Break*

2:10-3:00 **Session 11: Developing and Executing Your Corporate Renewable Energy Procurement Strategy**

Whether you are just beginning your renewable energy procurement journey, or trying to optimize and reach your renewable energy goals, this session is for you. We will outline the crucial steps in defining your renewable energy strategy balancing costs, marketing strategy, and how to effectively execute on your strategy. Defining the goal your company is trying to achieve—100% renewables, zero carbon, sustainability, additionality, locality, pricing stability? Defining the goal your company is trying to achieve—100% renewables, zero carbon, sustainability, additionality, locality, pricing stability?

- Making sure that your renewable transaction achieves your goal
- How many corporate resources are you willing to put in to achieve your goal—time, peoplepower, investment?
- What are the tradeoffs? e.g., trading savings for less risks
- What governs what you can say? Federal Trade Commission (FTC) Green Marketing Guide, Green-e standards, press releases, etc. Best practices in reporting
- The steps in executing on your strategy

- Building your team and achieving internal alignment--making the case to the accounting department, legal department, treasury, CFO, CEO and other internal stakeholders
- What could be helpful tools to run better PPA negotiations?
- Are you looking at ESG and EJ goals and what plans do you have to incorporate these requirements into your next PPAs?

Erin Craig, *Vice President, Customer Solutions and Innovation*, 3DEGREES

Teresa Hill, *Partner*, K&L GATES LLP

3:00-3:15 *Live Q&A*

3:15-3:25 *Break*

3:25-4:00 **Session 12: Interactive Course Recap and Expert Roundtable**

This Interactive Live Zoom Session at the class conclusion allows you to get your most pressing questions answered. In this session, instructors will review the course topics and hold a roundtable discussion and Q/A session.

Adrian Anderson, *Senior Director*, MICROSOFT

Erin Decker, *Director, Cleantech Client Management*, SCHNEIDER ELECTRIC

Teresa Hill, *Partner*, K&L GATES LLP

Bill Holmes, *Partner*, K&L GATES LLP

Lana Le Hir, *Senior Associate*, K&L GATES LLP

Melissa Peterson, *Vice President, Origination & Power Marketing, Onshore*, ORSTED ONSHORE NORTH AMERICA, LLC

4:00 *Master Class Adjourns*