

Informa Connect

Academy

# Power Purchase Agreements

LIVE ONLINE TRAINING

1- 9 February 2024 | 7 - 10 May 2024



Live Digital

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# Course Information

## Live Online Training

February 2024

Part 1

1 Feb

Part 2

2 Feb

Part 3

8 Feb

Part 4

9 Feb

2pm - 6pm AEDT

May 2024

Part 1

7 May

Part 2

8 May

Part 3

9 May

Part 4

10 May

2pm - 6pm AEST

## Key Learning Objectives

- Understand how the global energy market has and continues to evolve
- Learn that bankability is perhaps not as straightforward as it first appears
- Know some of the key generator issues that must be considered
- Become familiar with some of the key risk factors that underpin PPAs
- Grasp the technicalities of dealing with a default situation
- Become aware of 'curtailment' and what its ramifications are
- Gain knowledge of the operation of assignment provisions
- Grasp the key challenges involved with balancing an energy system
- Understand the mechanics of LNG SPAs
- Become familiar with the concept of Force Majeure and understand why it is so very important to PPAs
- Acquire a working knowledge of dispute resolution mechanisms and the key elements of international commercial arbitration.

## Who Will Benefit

Individuals seeking to understand the mechanics of a PPA will benefit from the Power Purchase Agreement training course

- Commercial decision makers
- Legal departments
- Contracts personnel
- Project personnel



# Course Information

## About the Course

The world is changing and the need for electricity continues to grow as power generation markets continue to evolve and demand continues (in many parts of the world) to outstrip available supply – although still a major source, the role of fossil fuels is beginning to diminish as focus starts to shift towards other alternative ‘cleaner’ forms of energy (renewables) such as wind, solar, tidal or hydro. As power generation infrastructure continues to grow through the investment of both governments and private organisations, the central enabling mechanism is the Power Purchase Agreement (PPA). This is the contract that enables entities such as utilities to contract with privately owned power generation projects and to purchase electricity from them (oftakers).

Constructing power generation facilities and supporting infrastructure is an expensive business – hence the PPA will provide a modicum of certainty to principal participants as to the execution of the EPC contract, the repayment of debt, the amount of resource provided and the longevity of supply.

The Power Purchase Agreements course has been specifically tailored to explore this complex contractual area. This Power Purchase Agreement training programme also immerses delegates within a problem solving, open discussion forum experience in order to maximise take away added value and to gain knowledge and insights that are immediately valuable and useful.

## Meet Your Course Director



### Christopher Lennon

Director, Stone Falcon Corporate and Legal Consulting Ltd

Christopher Lennon is the Director of Stone Falcon Corporate and Legal Consulting Ltd – a company that works internationally based in Scotland, UK. Chris has 30 years’ experience within the oil, gas and power industry, specialising in contractual issues, commercial negotiation and dispute resolution.

He is empanelled as both an Arbitrator and a Mediator at the Asian International Arbitration Centre (AIAC); has the Freedom of the City of London; is a Fellow of the Chartered Institute of Arbitrators and a member of the Association of International Petroleum Negotiators. He holds an MBA and LLB from the University of Aberdeen, as well as the Chartered Institute of Arbitrators DiplCarb. He has over 20 years teaching experience within the field of international contracts and commercial negotiation – teaching and consulting around the world to a diverse clientele. He is currently under contract to write his second business book - commercial negotiation with Routledge/ Taylor and Francis – to be published next year.



*“The course was an eye opener and it gave me a broad view of how power projects are executed”*

**Energy Management Engineer,  
Meralco**

*“Trainer and programme help me understand basic mechanism of projects in power & energy sectors, the differences across markets as well as different attendees’ perspectives”*

**Project Manager, Juwi Shizen Energy**

*“Conducive group size, Good mix of participants, Trainer is very knowledgeable”*

**Business Development Manager,  
Keppel Fels Limited**



# Course Outline

## THE EVOLUTION OF THE GLOBAL ENERGY MARKET

- The traditional sources – fossil fuels and the greenhouse gas debate
- Nuclear energy – a poisoned chalice?

**Case studies** – *Chernobyl, 3 Mile Island, Fukushima*

- US shale oil and gas – the global ramifications
- LNG – it's time still to come? Development of the LNG global market
- Renewables – drive for carbon reductions – solar, hydro, wind and tidal power sources examined

**Case study:** *A comparison between Solar 1 and the Crescent Dune facility*

- The rise of the 'spot market' and the 'Merchant' power plant

## KEY PPA CONSIDERATIONS

- 'Bankability' – an issue in flux
- Choice of technology – what type of power generation to be utilised/contracted with?
- Sources of financing
- No standard PPA – wide range of contractual differences in price mechanism – i.e. fixed price, 'range' (floor/ceiling), floating index based, etc.
- A 'Contract for Difference' (CFD) explained
- Term – long/short – ramifications of each
- Who is the offtaker – wholesale/retail (utility vs. distributed (i.e. private))
- Feed in tariff costs (FIT)
- The 'Effective Date'
- Agreed volume of supply and capacity
- 'Synchronisation' between lifespan of PPA and repayment of funding
- Environmental considerations

## KEY GENERATOR ISSUES

- Size and output (capacity)
- Proven or 'unproven' technology

**Case study** – *considerations for investment*

- Metering capabilities at 'point of delivery' (POD) Expiration and renewal terms
- The question of 'fair market value'

## KEY RISK FACTORS

- Volatile tariffs/low tariffs
- Securing long term funding – The issue of 'collateral' (guarantee) (buyer to seller) – raising debt finance, the BOT model + variations (BOOT/BLT/DBOT)
- The mechanics of nonrecourse debt/loan
- Location/proximity issues (source; destination; infrastructure)
- Feedstock – security of supply – storage/transportation issues
- Difficulty in connecting to the grid (technical or commercial)

## DEALING WITH DEFAULT IN PPAs

- Risk allocation from generator to POD
- Transmission access and the cost of transmission upgrades
- Breach and misrepresentation
- 'Cross default' on site host lease agreement
- Deviation penalties
- 'Notice and Cure' provisions – attempting to avoid termination – EOT's?
- The 'Termination Purchase Price'
- Post termination obligations
- 'Step – in' rights
- Mutual indemnification towards 3rd parties (damages resulting from misrepresentation or breach)
- Consequential damages disclaimer – 'capping' of damages
- Non-default events
- Dealing with compensation provisions in the contract

## CURTAILMENT (DISPATCH BELOW MAXIMUM OUTPUT)

- Why does curtailment occur? – key reasons examined

- Renewables vs. traditional power generation
- The relationship between curtailment; degree of transmission infrastructure and excess capacity (periods of low demand)
- Ramping implications
- Question of payment if risk of interruption of supply – the need for 'partnering strategies'
- Interruptions – emergencies; grid load balancing; transmission problems (or WIP-i.e. upgrading/repair/maintenance)
- Take or pay risk – up to POD or after PO

## ASSIGNMENT AND NOVATION

- Assignment provisions – who may assign -conditions – assignee must have financial robustness and take on all (expressly drafted)
- PPA obligations (offtaker perspective) from supplier perspective might be for raising finance; selling assets; or part of divestment strategy
- Agreed methodology of assignment (i.e. in writing)
- Creation of securities

## BALANCING THE ENERGY SYSTEM

- Grid capacity/system congestion
- Frequency requirements
- Demand response
- Lack of supply/oversupply
- Transmission constraints
- Storage and infrastructure facilities/capacities
- Organisational decision making/response

## LNG SPAs

- Contractual adjustment mechanisms – the problem with the traditional 'Take-or Pay' perspective
- Portfolio SPAs – guaranteeing security of supply?

- Key issues preventing standardisation of LNG SPAs
- The 'Destination Clause' examined
- Class discussion
- Stabilisation Clauses examined
- Reopener Clauses examined
- The 10 significant impacting factors on LNG project finance and FID
- The 'Confirmation Memorandum' examined

## FORCE MAJEURE

- A comparison of how different legal systems treat FM
- Some important doctrines – foreseeability; impossibility of performance; commercial impracticality; remoteness and causality
- The duty to mitigate
- FM by implication
- The vital importance of 'drafting' a FM clause – setting the scope correctly
- *Intertrader v Lesieur*
- The *Eiusdem Generis* Rule
- Some typical FM provisions

## INTERNATIONAL COMMERCIAL ARBITRATION

- The commercial arbitral process explained
- The New York Convention – enforceability of arbitral awards
- Appointment of an arbitrator/arbitral tribunal
- Ad hoc vs. Institutional arbitrations
- The 'seat' of the arbitration
- The 'Doctrine of Separability'
- The multi-tiered 'escalation' arbitral clause
- 'Forum shopping' explained
- Interim awards – a good idea?
- Grounds for challenging an arbitral award

**Class exercise** – *examining an Arbitral Clause*

- Waiver of sovereign immunity

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## Power Purchase Agreements

Course Code	Location/ Format	Course Parts	Course Dates	Standard Price		<b>Great Savings:</b> When you book <b>4 or more</b> participants! <b>Call us</b> today on <b>+61 (2) 9080 4399</b> or email <b>training@informa.com.au</b> to take advantage of the discount offer.
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## ABOUT INFORMA CONNECT ACADEMY

**Informa Connect**

# Academy

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Speak with **Sushil Kunwar** on **+61 (2) 9080 4370** to discuss your customised learning solution, or email [inhouse@informa.com.au](mailto:inhouse@informa.com.au)



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