



## STAFF PAPER

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## IFRS® Interpretations Committee meeting

Project	Economic Benefits from Use of a Windfarm (IFRS 16)	
Paper topic	Comment letters on tentative agenda decision	
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## Introduction

1. In June 2021, the IFRS Interpretations Committee (Committee) published a [tentative agenda decision](#) in response to a submission about the definition of a lease. The submitter asked whether, applying paragraph B9(a) of IFRS 16 *Leases*, an electricity retailer (customer) has the right to obtain substantially all the economic benefits from use of a windfarm throughout the term of an agreement with a windfarm generator (supplier).
2. In the fact pattern described in the submission:
  - (a) the customer and supplier are registered participants in an electricity market, in which customers and suppliers are unable to enter into contracts directly with each other for the purchase and sale of electricity. Instead, customers and suppliers make such purchases and sales via the market's electricity grid, the spot price for which is set by the market operator.
  - (b) the customer enters into an agreement with the supplier. The agreement:
    - (i) swaps the spot price per megawatt of electricity the windfarm supplies to the grid during the 20-year term of the agreement for a fixed price per megawatt, and is settled net in cash. In effect, the supplier receives a fixed price per megawatt for the electricity it supplies to the grid during the period of the agreement and the customer settles with the supplier the

difference between that fixed price and the spot prices per megawatt for that volume of electricity.

- (ii) transfers to the customer all renewable energy credits that accrue from use of the windfarm.

3. The Committee observed that, in the fact pattern described in the submission, the economic benefits from use of the windfarm include the electricity it produces (as its primary output) and the renewable energy credits (as a by-product or other economic benefit from use of the windfarm).
4. The agreement results in the customer settling with the supplier the difference between the fixed price and the spot prices per megawatt of electricity the windfarm supplies to the grid throughout the 20-year term of the agreement. That agreement, however, gives rise to neither the right nor the obligation for the customer to obtain any of the electricity the windfarm produces and supplies to the grid. Although the customer has the right to obtain the renewable energy credits (which represent a portion of the economic benefits from use of the windfarm), the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm because it has no right to obtain any of the electricity the windfarm produces throughout the period of the agreement.
5. The Committee therefore concluded that, in the fact pattern described in the submission, the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm. Consequently, the contract does not contain a lease.
6. Based on its analysis, the Committee concluded that the principles and requirements in IFRS Standards provide an adequate basis for a customer that enters into an agreement as described in the submission to determine whether it has the right to obtain substantially all the economic benefits from use of an identified asset. Consequently, the Committee tentatively decided not to add a standard-setting project to the work plan.
7. The objectives of this paper are to:
  - (a) analyse comments on the tentative agenda decision (paragraphs 9–36); and

- (b) ask the Committee whether it agrees with our recommendation to finalise the agenda decision (paragraph 37).
8. Appendix A to this paper contains the proposed wording of the agenda decision.

### Comment letter summary

9. We received 11 comment letters by the comment deadline. All comments received, including any late comment letters, are available on our [website](#).<sup>1</sup> This agenda paper includes analysis of only the comment letters received by the comment deadline, which are reproduced in Agenda Paper 3A.
10. Eight respondents (the Consejo Mexicano de Normas de Información Financiera, Deloitte, the Group of Latin American Accounting Standard Setters, the Accounting Standards Board of the Institute of Chartered Accountants of India, the Malaysian Accounting Standards Board, most members of the International Organization of Securities Commissions Committee 1 (IOSCO), the Saudi Organization for Chartered and Professional Accountants (SOCPA) and Universidad Loyola Andalucía) agree with the Committee's analysis and observations in the tentative agenda decision. Nonetheless:
- (a) Deloitte suggests referring to the August 2005 Agenda Decision [Meaning of delivery \(IFRS 9 Financial Instruments\)](#) (August 2005 Agenda Decision).
  - (b) IOSCO suggests the agenda decision highlight additional questions the customer would have to consider in accounting for the agreement.
  - (c) SOCPA says the agreement gives rise to a derivative financial instrument.
  - (d) Universidad Loyola Andalucía comments on the supplier's accounting for the agreement.
11. David Hardidge and EY do not express a view on the Committee's technical analysis and observations. David Hardidge suggests clarifications to the wording of the

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<sup>1</sup> At the date of posting this agenda paper, there was one late comment letter.

tentative agenda decision and has observations about Illustrative Example 9 accompanying IFRS 16. EY suggests clarifying the accounting for the agreement.

12. Origin Energy disagrees with the Committee’s technical analysis and observations in the tentative agenda decision.
13. Further details about the matters raised by respondents, together with our analysis, are presented below.

### **Staff analysis**

14. We have separately analysed comments related to:
  - (a) the scope of the agenda decision (paragraphs 15–27);
  - (b) whether the customer has the right to obtain the economic benefits from use (paragraphs 28–35); and
  - (c) other comments (paragraph 36).

### ***Scope of the agenda decision***

#### *Respondents’ comments*

15. Respondents who comment on the scope of the agenda decision either agree with—or do not express a view on—the Committee’s analysis of the question asked in the submission.
16. IOSCO suggests that, in addition to discussing the specific question asked (about the application of paragraph B9(a) of IFRS 16), the agenda decision highlight additional questions that would be important when accounting for the agreement and that the customer would have to consider both before and after answering the specific question in the submission. In particular, IOSCO suggests that the agenda decision highlight the following questions:
  - (a) whether, applying IFRS 10 *Consolidated Financial Statements*, the customer is required to consolidate the windfarm:

First, we note that the electricity retailer would be required to perform an analysis of whether it is required to consolidate the windfarm in accordance with IFRS 10, *Consolidated Financial Statements*. In particular we note that the fact pattern states that the retailer was involved in the determination of the purpose and design of the windfarm and the windfarm's activities are largely, if not completely, predetermined. Additionally, we note that the contract between the retailer and the windfarm gives the retailer exposure to variability in returns. We note this analysis is relevant when the retailer prepares consolidated financial statements, because if the retailer is required to consolidate the windfarm that would obviate the question of whether a lease exists with respect to the retailer's consolidated financial statements.

- (b) whether the customer has the right to direct the use of the windfarm (paragraph B9(b) of IFRS 16):

Next (assuming the retailer does not consolidate the windfarm or for purposes of preparing separate financial statements), we believe a final agenda decision should address both criteria in paragraph B9 of IFRS 16. ... Further, we believe an opportunity exists to assist readers in making the determination required by subparagraph B9(b). Specifically, we believe reference could be made to the January 2020 final agenda decision, *Definition of a Lease—Decision-making Rights*, which discussed an analysis of that criterion when many, but not all, decisions about how and for what purpose an asset is used are predetermined.

- (c) how the customer accounts for the agreement, including the renewable energy credits from use of the windfarm:

Finally, we note that upon concluding that the retailer is not required to consolidate the windfarm (or is preparing separate financial statements) nor that the contract contains a lease (including an explanation as to the application of both criteria in paragraph B9 of IFRS 16), any final agenda decision should

provide considerations for the potential accounting for the contract. Specifically, the electricity retailer would need to consider whether it would be required to account for the contract as a derivative (including application of exemptions to derivative accounting) and potentially as a cash flow hedge in accordance with IFRS 9, *Financial Instruments*, and if not what accounting guidance would apply. Further, the retailer would need to consider how to account for the renewable energy credits received.

17. SOCPA says the agreement gives rise to a derivative financial instrument and EY suggests that the Committee clarify the accounting for the agreement, for example by clarifying that the agreement is (or is in-substance) a contract for differences in fixed and spot prices.
18. Universidad Loyola Andalucía comments on the supplier's (rather than the customer's) accounting, saying the supplier would classify the agreement as a finance lease.
19. Deloitte suggests referring to the August 2005 Agenda Decision because the fact pattern described in that Agenda Decision is so similar to the one described in this submission. Deloitte says adding a reference to that Agenda Decision will be useful for preparers so that they consider both the requirements in IFRS 16 and IFRS 9 when dealing with such transactions. In contrast, Origin Energy says the August 2005 Agenda Decision—which discusses the 'own use' scope exemption in paragraph 2.4 of IFRS 9—is irrelevant to this submission, which asks about the definition of a lease requirements in IFRS 16.

#### *Staff analysis*

20. We agree with respondents that there are additional questions the customer would need to consider in determining the accounting for the agreement. This will be the case for many submissions that ask the Committee a specific question—the Committee will respond to the question asked but will not necessarily answer all possible questions in relation to the transaction or fact pattern. In this case, the Committee has responded to the question asked by concluding that the customer does

not have the right to obtain substantially all the economic benefits from use of the windfarm and, thus, that the agreement does not contain a lease. The Committee was not asked about the accounting for the agreement should it conclude that the agreement does not contain a lease.

21. When discussing the question submitted in June 2021, the Committee considered the breadth of the question asked. For this submission (as is typically the case), the Committee's discussion focussed only on the question submitted. There are reasons for that:
- (a) before analysing a question submitted applying IFRS Standards, the Committee obtains information to confirm that the matter has widespread effect and has, or is expected to have, a material effect on those affected. The Committee generally obtains no such information for matters or questions that might arise beyond the question submitted. In our view, it would be inappropriate—and potentially result in the Committee's process becoming less efficient and effective than it currently is—for the Committee to decide to analyse questions for which it has not obtained evidence that the matter has widespread effect and has, or is expected to have, a material effect on those affected.
  - (b) the information provided in a submission is focussed on the question asked. To analyse other questions would generally require further information about the terms and conditions of arrangements or the specific facts and circumstances of the reporting entity. For example, the information provided in this submission would be insufficient to analyse whether (i) applying IFRS 10, the customer controls the supplier; or (ii) applying paragraph B9(b) of IFRS 16, the customer has the right to direct the use of the windfarm throughout the term of the agreement.
22. We note that, in its comment letter, IOSCO is not asking the Committee to analyse other questions but, instead, to refer to those other questions in the agenda decision—such a reference would provide a reminder of questions that are potentially relevant in the fact pattern described in the agenda decision.

23. We understand the reason for IOSCO’s suggestion; however we recommend not adding a reference to those other questions in the agenda decision because:
- (a) in our view, adding a reference to those questions could be confusing without any analysis of them. Specifically, a reference to paragraph B9(b) of IFRS 16 might imply that an entity must always analyse that paragraph even when the customer does not have the right in paragraph B9(a), which is not the case. Such a reference might also imply that having the right in paragraph B9(b)—without also having the right in paragraph B9(a)—is sufficient to conclude that a contract contains a lease.<sup>2</sup>
  - (b) there is a risk that the agenda decision might inadvertently refer to only *some* of the relevant questions the reporting entity would need to consider—if that were the case, including such references would be unhelpful because their inclusion could imply that the agenda decision includes *all* the questions relevant in this particular fact pattern.
24. We note that, when discussing the proposed wording of the tentative agenda decision in June 2021, the Committee refined that wording to ensure it would be clear what the Committee discussed and concluded upon, and thus what it did not.
25. Having considered the comments, we also think it would be helpful to include references to two previous agenda decisions that discuss the agreement described in this submission:
- (a) the August 2005 Agenda Decision—referred to in comment letters—which discusses whether an entity applies the ‘own use’ scope exemption in paragraph 2.4 of IFRS 9 when the market design prevents a supplier from physically delivering its production to the counterparty of a hedge pricing contract and physical delivery is to a market operator for the spot price,

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<sup>2</sup> A contract contains a lease when, throughout the period of use, the customer has *both* the right to obtain substantially all the economic benefits from use of the identified asset (paragraph B9(a) of IFRS 16), and the right to direct the use of that asset (paragraph B9(b) of IFRS 16).

even if the supplier is protected from spot price risk by a separate contract that in effect sets a fixed price for the supplier's production; and

- (b) the March 2019 Agenda Decision [Application of the Highly Probable Requirement when a Specific Derivative is Designated as a Hedging Instrument \(IFRS 9 and IAS 39 Financial Instruments: Recognition and Measurement\)](#), which discusses the application of the highly probable requirement in a cash flow hedge relationship when the notional amount of a derivative designated as a hedging instrument (load following swap) varies depending on the outcome of the hedged item (forecast energy sales).

26. Although it would be unusual to refer to other agenda decisions, we recommend doing so in this instance because:

- (a) the agreements discussed in those agenda decisions are the same as that described in this agenda decision. However, because the submitters asked different questions about different requirements in IFRS Standards, the description of the agreement in each agenda decision is not the same. Without including a reference, it might be difficult to identify that the three agenda decisions all discuss the same agreement.
- (b) responses in some of the comment letters indicate that stakeholders may be unaware that the Committee discussed the application of the 'own use' scope exemption and the cash flow hedging requirements in IFRS 9 to the agreement discussed in this agenda decision.

27. Appendix A to this paper includes our suggested edits to the tentative agenda decision in this respect.

***Whether the customer has the right to obtain the economic benefits from use***

28. The tentative agenda decision states:

The Committee observed that, in the fact pattern described in the request, the economic benefits from use of the windfarm include the electricity it produces (as its primary output) and the

renewable energy credits (as a by-product or other economic benefit from use of the windfarm).

The agreement results in the customer settling with the supplier the difference between the fixed price and the spot prices per megawatt of electricity the windfarm supplies to the grid throughout the 20-year term of the agreement. That agreement, however, gives rise to neither the right nor the obligation for the customer to obtain any of the electricity the windfarm produces and supplies to the grid. Although the customer has the right to obtain the renewable energy credits (which represent a portion of the economic benefits from use of the windfarm), the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm because it has no right to obtain any of the electricity the windfarm produces throughout the period of the agreement.

The Committee therefore concluded that, in the fact pattern described in the request, the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm...

### *Respondents' comments*

29. Origin Energy disagree with the Committee's analysis and observations. It says:
- (a) the customer has the right to obtain substantially all the economic benefits from use of the windfarm throughout the term of the agreement. The customer indirectly benefits from all the market cash flows of the electricity and its exposure to price risk is significant:

As the agreement does create an obligation for the customer to pay a fixed rate for all electricity produced by the windfarm and the right to the market cash flows from the electricity generated. We believe this meets the definition under IFRS 16:B21, while the customer does not receive physical delivery of the electricity, it does indirectly benefit from all of the market cash flows of the electricity. By paying a fixed rate per megawatt to the supplier,

the customer has exclusive rights to benefit from all outputs from the asset, through the cash flows generated from electricity delivered to the pool and the by-product of renewable energy credits physically delivered from the windfarm (as described in this fact pattern). ...the economic price exposure that is transferred to the customer is significant...

- (b) the substance of the agreement, in the light of the market structure, should be considered in determining the accounting for the agreement:

While we appreciate the Committee's comments on clarifying the wording of the tentative agenda decision to not specifically reference the market as a 'gross pool electricity market', we believe this is still relevant in the context of discussion as the Committee's decision was largely on the contract not being physically delivered and settled net cash. In our opinion, this is much more a function from the design of the market and the subsequent form of the contract in the fact pattern, as opposed to having any bearing on whether the customer has obtained substantially all of the economic benefits. ...

The Committee noted 'That agreement, however, gives rise to neither the right nor the obligation for the customer to obtain any of the electricity the windfarm produces and supplies to the grid.' We believe this is because the transaction is being considered based on the market design as opposed to the substance of the agreement.

- (c) the substance of power purchase agreements in a gross pool electricity market is economically the same as that of power purchase agreements in a net pool electricity market:

The rights and obligations for the buyer under a PPA in a gross pool electricity market and net pool electricity market are economically the same other than as affected by market construct. If PPAs entered into in a gross pool electricity market do not transfer substantially all the economic benefits due to the market design of the market operator acting as an agent, the

same conclusion should apply in a net pool electricity market given the transaction is economically the same...

*Staff analysis*

30. We continue to agree with the Committee's observations and conclusion in the tentative agenda decision and, therefore, recommend no change to them.
31. The economic benefits from use of the windfarm include the electricity it produces (as its primary output) and the renewable energy credits (as a by-product or other economic benefit from use of the windfarm). Because the agreement conveys to the customer only the right to the renewable energy credits (and not to the electricity the windfarm produces), the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm.
32. The agreement results in the customer settling with the supplier the difference between the fixed price and the spot prices per megawatt of electricity the windfarm supplies to the grid throughout the term of the agreement. The agreement therefore exposes the customer to price risk for all the electricity the windfarm produces, but conveys neither the right nor the obligation for the customer to obtain any of the electricity the windfarm produces and supplies to the grid. The electricity produced by the windfarm is an economic benefit from its use, not the price risk that arises from the agreement to settle the difference between the fixed and spot price.
33. We note that the assessment of whether a contract contains a lease is based on an entity's *contractual* rights and obligations. Paragraph 9 of IFRS 16 states:

At inception of a contract, an entity shall assess whether the contract is, or contains, a lease. A contract is, or contains, a lease if *the contract conveys the right* to control the use of an identified asset for a period of time in exchange for consideration. [emphasis added]
34. Paragraph B9 of IFRS 16 then explains that a contract conveys the right to control the use of an identified asset for a period of time when, throughout the period of use, the customer has both the *right* to obtain substantially all the economic benefits from use of the identified asset and the *right* to direct the use of that asset. The assessment of

whether a contract contains a lease is therefore not based on what might be viewed as the ‘substance’ of the contract (should that be viewed as different from the rights and obligations the contract conveys). Rather, the assessment is based on the rights and obligations conveyed by the contract to the customer.

35. In the agreement described in the submission, the agreement conveys neither the contractual right nor the contractual obligation for the customer to obtain any of the electricity the windfarm produces and supplies to the grid. In this respect, a customer in the gross pool electricity market is contractually in a very different position from a customer in a net pool electricity market that has contracted with a supplier to purchase a specified volume of electricity for a period of time. The customer in a net pool electricity market has both a contractual right to that volume of electricity and a contractual obligation to purchase it. In contrast, the customer in a gross pool electricity market has no such contractual right or obligation. If such a customer unexpectedly requires a low volume of electricity in any period (and less electricity than is produced by the windfarm), it would adjust its consumption and purchase only the volume of electricity needed.

**Other comments**

36. The following table summarises respondents’ comments on other matters together with our analysis of those comments.

<b>Respondents’ comments</b>	<b>Staff analysis and conclusions</b>
<p><i>1. Clarifications to the wording of the tentative agenda decision</i></p> <p>David Hardidge suggests:</p> <p>(a) the Committee explains what is meant by ‘obtain any of the electricity the windfarm produces and supplies to the grid’ and whether the customer has any</p>	<p><i>We recommend no change.</i></p> <p>We recommend no change because:</p> <p>(a) in the fact pattern described in the submission, the customer has no obligation to purchase electricity from</p>

<b>Respondents’ comments</b>	<b>Staff analysis and conclusions</b>
<p>obligation to purchase electricity from the grid; and</p> <p>(b) reviewing the references to ‘right’ to determine if they should be changed to ‘right nor the obligation’.</p>	<p>the grid. In our view, this is adequately explained in the agenda decision.</p> <p>(b) the agenda decision refers to ‘right’ because the question asked relates to whether the customer has the right to obtain substantially all the economic benefits from use of the windfarm.</p>
<p><i>2. Illustrative Example 9 accompanying IFRS 16</i></p> <p>David Hardidge makes various comments about the fact patterns discussed in Illustrative Example 9 accompanying IFRS 16—that example illustrates the application of the definition of a lease requirements to a number of contracts for energy or power.</p>	<p><i>We recommend no action.</i></p> <p>In our view, the comments about the fact patterns discussed in Illustrative Example 9 are not directly relevant to the analysis of the fact pattern described in the submission.</p>
<p><i>3. Structure of the agreement</i></p> <p>Origin Energy says the Committee considered only one agreement structure. Agreements for the purchase of power could be structured in other ways.</p>	<p><i>We recommend no change.</i></p> <p>We have not analysed fact patterns beyond the fact pattern described in the submission. We suggest no further action in this respect.</p>

**Staff recommendation**

37. Based on our analysis, we recommend finalising the agenda decision, with changes to the tentative agenda decision as suggested in Appendix A to this paper. If the Committee agrees with our recommendation, we will ask the Board whether it objects

to the agenda decision at the first Board meeting at which it is practicable to present the agenda decision.

**Question for the Committee**

Does the Committee agree with our recommendation to finalise the agenda decision as explained in paragraph 37 of this paper?

**Appendix A—proposed wording of the agenda decision**

A1. We propose the following wording for the final agenda decision (new text is underlined and deleted text is struck through).

**Economic Benefits from Use of a Windfarm (IFRS 16 Leases)**

The Committee received a request about whether, applying paragraph B9(a) of IFRS 16, an electricity retailer (customer) has the right to obtain substantially all the economic benefits from use of a windfarm throughout the term of an agreement with a windfarm generator (supplier). In the fact pattern described in the request:

- a. the customer and supplier are registered participants in an electricity market, in which customers and suppliers are unable to enter into contracts directly with each other for the purchase and sale of electricity. Instead, customers and suppliers make such purchases and sales via the market's electricity grid, the spot price for which is set by the market operator.
- b. the customer enters into an agreement with the supplier. The agreement:
  - i. swaps the spot price per megawatt of electricity the windfarm supplies to the grid during the 20-year term of the agreement for a fixed price per megawatt, and is settled net in cash. In effect, the supplier receives a fixed price per megawatt for the electricity it supplies to the grid during the period of the agreement and the customer settles with the supplier the difference between that fixed price and the spot prices per megawatt for that volume of electricity.
  - ii. transfers to the customer all renewable energy credits that accrue from use of the windfarm.

Paragraph 9 of IFRS 16 states that 'a contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration'. To control the use of an identified asset for a period of time, the customer—throughout the period of use—must have both the right to obtain substantially all the economic benefits from use of the identified asset and the right to direct the use of that asset (paragraph B9 of IFRS 16).

Paragraph B21 of IFRS 16 specifies that ‘a customer can obtain economic benefits from use of an asset directly or indirectly in many ways, such as by using, holding or sub-leasing the asset. The economic benefits from use of an asset include its primary output and by-products (including potential cash flows derived from these items), and other economic benefits from using the asset that could be realised from a commercial transaction with a third party’.

The Committee observed that, in the fact pattern described in the request, the economic benefits from use of the windfarm include the electricity it produces (as its primary output) and the renewable energy credits (as a by-product or other economic benefit from use of the windfarm).

The agreement results in the customer settling with the supplier the difference between the fixed price and the spot prices per megawatt of electricity the windfarm supplies to the grid throughout the 20-year term of the agreement. That agreement, however, ~~gives rise to~~ conveys neither the right nor the obligation for the customer to obtain any of the electricity the windfarm produces and supplies to the grid. Although the customer has the right to obtain the renewable energy credits (which represent a portion of the economic benefits from use of the windfarm), the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm because it has no right to obtain any of the electricity the windfarm produces throughout the period of the agreement.

The Committee therefore concluded that, in the fact pattern described in the request, the customer does not have the right to obtain substantially all the economic benefits from use of the windfarm. Consequently, the ~~contract~~ agreement does not contain a lease.

The Committee concluded that the principles and requirements in IFRS Standards provide an adequate basis for a customer that enters into an agreement as described in the request to determine whether it has the right to obtain substantially all the economic benefits from use of an identified asset. Consequently, the Committee {decided} not to add a standard-setting project to the work plan.

In considering the request, the Committee noted two other agenda decisions that include explanatory material related to the agreement described in this request:

- a. the Agenda Decision *Meaning of delivery (IFRS 9 Financial Instruments)* (August 2005); and
- b. the Agenda Decision *Application of the Highly Probable Requirement when a Specific Derivative is Designated as a Hedging Instrument (IFRS 9 and IAS 39 Financial Instruments: Recognition and Measurement)* (March 2019).