

Royal Decree-Law 23/2020 on measures for the promotion of renewable energies and other energy business models for the reactivation of the economy and the fulfilment of climate objectives

On the same day that the EU's environment ministers discussed the contribution of environmental and climate policies to economic recovery and recognised the value of the European Green Deal, the Spanish Council of Ministers approved Royal Decree-Law 23/2020 of 23 June, approving measures in the field of energy and other areas for economic recovery ("RDL").

The RDL **amends** the following provisions:

Rule	Provisions
Royal Decree 1955/2000 regulating the activities of transmission, distribution, marketing, supply and authorisation procedures for electricity plants	article 115; paragraph 1 of article 125; paragraph 2 of article 127; paragraph 1 of article 131; paragraph 4 of article 131; first subparagraph of article 144; and paragraph 1 of article 146
Law 24/2013 on the Electricity Sector	paragraph 13.b) of article 3; paragraph 10 of article 14; paragraph 1 of article 49; paragraph 1 of article 53; first subparagraph of paragraph 2 of article 53; and paragraph 1 of article 54
Law 18/2014 on the approval of urgent measures for growth, competitiveness and efficiency	articles 69, 70, 71, 72; paragraphs 1 and 3 of article 73; paragraph 1 of article 74; subparagraphs 1. a), 2. a) 3. a) and 3. e) of article 79; article 83; paragraph 1 of article 84; and article 86
Law 21/2013 on Environmental Assessment	paragraphs 2, 4 and 5 of article 34; and paragraphs 2, 8 and 9 of article 47
Law 66/1997 on Fiscal, Administrative and Social Order Measures	article 79
Law 14/2011 on Science, Technology and Innovation	paragraph 3 of the eleventh additional provision

In addition, it **adds** the following provisions to existing provisions:

Rule	Provisions
Royal Decree 1955/2000 regulating the activities of transmission, distribution, marketing, supply and authorisation procedures for electricity plants	fourteenth additional provision; and annex II
Law 24/2013 on the Electricity Sector	new point n) in article 13.3; paragraph 7 bis to article 14; paragraph d) in paragraph 4 of article 4; three subparagraphs h), i) and j) to paragraph 1 of article 6; paragraph 12 to article 33; a subparagraph to paragraph 3 of article 53; additional provision twenty-three; and an annex
Law 21/2013 on Environmental Assessment	paragraphs 2, 3, 4 and 5 of article 43
Law 27/2014 on Corporate Tax	new sixteenth additional provision (with effect for investments made in the year 2020)

And finally, it **deletes** paragraph b) of Article 131.2 of Royal Decree 1955/2000, which regulates the activities of transmission, distribution, marketing, supply and authorisation procedures for electrical energy plants (the "**RD 1955/2000**").

This is a highly expected regulatory text among the different stakeholders in the Spanish energy sector. The RDL anticipates the announced new regulation of access and connection to the grid, includes a new auction mechanism based on the "pay-as-bid" system, contemplates new business models (aggregated demand management, storage, hybridisation and citizen energy communities) and establishes measures to promote energy efficiency.

1. Access to transmission and distribution grids

The right of third party access to the transmission and distribution grids is one of the guiding principles of the liberalisation of the electricity market, as recognised by the Spanish sectoral legislation and the EU acquis. However, at present, there is a high number of requests for access to the grid and a great deal of conflict before the CNMC's regulatory chamber, which requires a regulatory framework that allows this situation to be regulated.

Validity of access and connection permits

In this context, the RDL contains provisions on the access and connection permits to the grid already granted, and those to be granted after the entry into force of this RDL, with the essential objective

of ensuring that these rights are associated with the "*technical viability*" and "*soundness of the projects*". Thus, the RDL has essentially established the following:

- Different "scenarios" are foreseen (expiry –with the possibility of execution of the economic guarantees presented–, continuation of the processing –meeting the milestones and deadlines set– or waiver of the permits, with return of guarantees) depending on when the permits are granted, either (i) before the entry into force of the Law on the Electricity Sector 24/2013 ("**Electricity Sector Act**"); (ii) from the entry into force of Electricity Sector Act and until 31 December 2017; (iii) from 1 January 2018 and until the entry into force of the RDL (i.e. 25 June 2020); and (iv) after the entry into force of the RDL:
 - *Plants with permits granted prior to the entry into force of Electricity Sector Act:* No administrative milestones are established, and the eighth transitional provision of *Electricity Sector Act*, which determines its expiry if no operating permit has been obtained for the associated generation plant within two months from the end of the initial or extended state of alarm declared by Royal Decree 463/2020, which declares the state of alarm for the management of the health crisis situation caused by COVID-19, or five years from obtaining the right of access and connection at a point in the grid, whichever is longer, must be applied.
 - *If access permission was obtained between 28 December 2013 and 31 December 2017, inclusive:*
 - 1. Application submitted and accepted for prior administrative approval: 3 months.
 - 2. Obtaining a favourable environmental impact statement: 18 months.
 - 3. Obtaining prior administrative authorisation: 21 months.
 - 4. Obtaining the administrative construction permit: 24 months.
 - 5. Obtaining the final administrative operating permit: 5 years.
 - *If access permission was obtained after 31 December 2017 and before the entry into force of the RDL:*
 - 1. Application submitted and accepted for prior administrative approval: 6 months.
 - 2. Obtaining the favourable environmental impact statement: 22 months.
 - 3. Obtaining prior administrative authorisation: 25 months.
 - 4. Obtaining the administrative construction permit: 28 months.
 - 5. Obtaining the final administrative operating permit: 5 years.

- The periods indicated in the last two sections will all be counted from the date of entry into force of the RDL.
- The holders of the access and connection permits who decide to continue with the processing will have to demonstrate compliance with the successive administrative milestones established, within the established deadlines. Failure to comply with these milestones will result in the automatic expiry of the access and connection permits and, where appropriate, the execution of the economic guarantees required to apply for administrative authorisation.
- When the operators choose not to continue with the procedure, they may renounce the access and connection permits already obtained and recover the financial guarantee presented, within a period of three months from the entry into force of the RDL, proceeding to return the economic guarantees presented to process the application for access to the transmission and distribution grids.
- It establishes a moratorium for new access applications, so that, from the entry into force of the RDL (i.e. June 25, 2020) and until the approval by the Government and the CNMC of the royal decree and circular, respectively, that develop the regulations on access and connection, these permits may not be requested. These regulations must be approved by the Government and the CNMC, within the scope of their respective competences, within a maximum period of three months from the entry into force of the RDL¹.

Criteria for considering a plant to be the same for the purposes of access and connection permits

It is also necessary to highlight at this point the incorporation by the RDL of criteria for the consideration of the same generation plant for the purposes of access and connection permits requested and granted. To this end, an Annex II has been incorporated into RD 1955/2000, which establishes the elements to be evaluated for the purpose of determining the conservation or loss of the access and connection permits requested or already granted.

This **Annex II** provides for the following cases:

a) Generation technology	It will be considered that there has not been a modification in the generation technology when the synchronous or asynchronous character of the plant is maintained, or in the case of plants included in the scope of application of Royal Decree 413/2014 regulating the activity of electricity production from renewable energy sources, cogeneration and waste (the " RD 413/2014 "), if the plant belongs to the same group provided for in Article 2 of RD 413/2014.
b) Access capacity	The access capacity requested or granted may not be increased by more than 5% of the access capacity requested or granted in the

¹ Article 33 of Electricity Sector Act regulates, in general, access and connection to grids and defines the concepts of right of access, right of connection, access permit and connection permit. However, the application of the content of this article is conditional on the entry into force of its implementing regulations by the Government and the CNMC.

	<p>original access permit, access capacity being understood as that stated in the access permit or in the access request and reflecting the maximum active power that can be injected into the system.</p> <p>Access capacity shall not be considered to be maintained when it decreases with respect to that requested or granted in the access permit as a result of a reduction in installed or rated power resulting from the division of a project into two or more generation plant projects whose sum of powers is equal to the original power. This eliminates the practice of splitting the capacity granted to a previous project into two.</p>
c) Geographical location	<p>The geographical location of the generation plants shall be considered not to have been modified when the geometric centre of the generation plants initially planned and finally, without considering the evacuation infrastructures, does not differ by more than 10,000 metres.</p>

The occurrence of any of the circumstances listed in Annex II shall entail updating of the access and connection permits or, as the case may be, of the application, but shall under no circumstances lead to any change in the date of issue or application of such permits, which shall remain the same as the date of issue of the permit.

On the contrary, the concurrence of modifications to the plant that suppose the consideration that a plant is not the same will imply the necessity to make a new request of access and connection.

Specialities in the case of hybridisation and storage, for the purposes of validity of access and connection permits or requests

- The addition of energy storage elements to the plant will not change the plant technology.
- The implementation of hybridisation mechanisms will not require a new permit, provided that the criteria laid down in the standard are met (Annex II). In the case of hybridisation of plants in service or projects with access permission granted, the condition relating to the technology of the plant will only be applicable to the existing electricity generation modules or those foreseen in the access permission granted.

2. New system of renewable energy auctions ("pay-as-bid" system)

The RDL lays the foundations for the design of a new system of renewable energy auctions (in addition to the specific remuneration regime already provided for in Electricity Sector Act) that seeks to offer investors in new production plants predictability, income stability and access to financing and, at the same time, seeks to pass on to consumers the savings associated with the incorporation of renewable generation sources into the electricity system.

The government will have to develop this new remuneration system based on the long-term recognition of a fixed price for energy, which will essentially be characterised by:

- The product to be auctioned will be electrical energy, installed power or a combination of both.
- The variable on which bids will be placed will be the price of energy.
- A distinction can be made between the different generation technologies, depending on (i) their technical characteristics, (ii) size, (iii) levels of manageability, (iv) location criteria and (v) technological maturity, among other aspects.
- Mechanisms may also be put in place to address the particularities of energy communities for the purpose of competing in future auctions on an equal footing with other participants.

3. New energy business models

The process of decarbonisation of the economy and ecological transition is leading to the development of innovative business models across the EU. In this sense, the RDL introduces important regulatory innovations to the Spanish legal system related to the following "*business models*":

- Independent Aggregators.
- Citizen energy communities (or "renewable energy communities").

4. Recalculation of operating remuneration during the state of alarm for plants whose operating costs depend on the price of fuel (cogeneration, oil sludge and biomass)

For standard plants whose operating costs depend essentially on the price of fuel, the value of the operating remuneration (in Spanish: *Ro*) applicable during the period in which the state of alarm is in force shall be calculated as follows:

- The remuneration parameters in force on the date of approval of the RDL will be considered, with the exception of the values of the electricity market price and the price of the CO2 emission rights, which will be estimated for the period in which the state of alarm is in force.
- Likewise, if necessary for the correct application of the specific remuneration system, those remuneration parameters related to the above will be updated.
- The remuneration for the operation thus calculated may under no circumstances be less than the value of the remuneration established in Order TED/171/2020, of 24 February, for each facility type (in Spanish: *instalación tipo* or *IT*).

By way of exception, the values of the minimum number of equivalent operating hours and the operating threshold applicable in 2020 to standard plants affected by the above are reduced by 50% compared to the values set out in Order TED/171/2020 of 24 February.

5. Streamlining of authorisation procedures for plants.

The simplification of administrative procedures is sought by regulating, among other issues, the concept of "**non-substantial modification**" of generation plants with administrative authorisation, in which case the developer will not need to renew certain authorisations if it complies with the requirements set out in the regulation, having only to obtain the operating permit.

In this sense, modifications to generation plants that have obtained prior administrative authorisation may obtain administrative construction authorisation, without requiring a new prior administrative authorisation, when **all** the following conditions are met:

a)	The modifications are not subject to an ordinary environmental evaluation in accordance with the provisions of Article 7.1 of Law 21/2013 on Environmental Evaluation (" Environmental Assessment Act ").
b)	The land affected by the production plant after the modifications does not exceed the polygon defined in the authorised project or, if exceeded, does not require compulsory purchase and is compatible with town planning.
c)	The installed power, after modifications, <u>does not exceed by more than 10% the power defined in the original project.</u> The foregoing shall be <u>without prejudice to the implications which, where appropriate, in accordance with the provisions of the fourteenth additional provision, that excess power may have for the purposes of access and connection permits.</u>
d)	The modifications do not imply a change in the generation technology.
e)	The modifications do not alter the safety of both the main plant and its auxiliary plants that are in service.
f)	No declaration, in particular, of public utility is required to make the planned changes.
g)	The modifications do not affect other electricity production plants in service.

Likewise, and for the purposes of the provisions of Article 53.2 of Electricity Sector Act, the following are considered to be **non-substantial modifications**, **and only those that comply with the following characteristics must obtain the operating permit**, after accrediting compliance with the safety conditions of the plants and associated equipment:

a)	Not being within the scope of the Environmental Assessment Act.
b)	Not altering the basic technical characteristics (power, process or transport capacity, etc.) by more than 5% of the output of the plant.
c)	Not involving safety concerns for both the main plant and its auxiliary plants in service.

d)	That no specific declaration of public utility is required for the implementation of the planned modifications.
e)	Modifications to lines that do not result in changes to the route of the easement.
f)	Modifications of lines that, even if they cause changes in easement without modification of the route, have been made by mutual agreement with those affected, as established in Article 151 of RD 1955/2000.
g)	Modifications to lines involving the replacement of supports or conductors due to deterioration or breakage, provided that the conditions of the original project are maintained.
h)	Modification of the configuration of a substation provided that there is no variation in the number of lanes or bays.
i)	In the case of transmission or distribution plants that do not involve changes in remuneration.

6. Other measures to encourage and promote renewable technologies

The RDL also provides for the following measures, among others:

- The granting of the declaration of public utility to the electrical infrastructures associated to the high capacity recharge points (i.e. with a power higher than 250 kW) is considered.
- The use of surplus revenue is allowed to cover any mismatches and deviations between revenue and costs of the electricity system in the years 2019 and 2020. This will be established by ministerial order.
- Modifications are incorporated in order to provide environmental regulations (Environmental Assessment Law) with greater agility and legal security. Among other measures, the extension of the validity of the environmental impact statements is allowed, the procedure for determining the scope of the environmental impact study is expedited and certain aspects of the simplified environmental assessment procedure are regulated.

The RDL was published in the Official State Gazette on June 24, 2020 and came into force the following day (i.e., June 25, 2020). The measures set out above would ultimately seek to promote the development of businesses linked to renewable energies, given their importance in the process of economic recovery and growth. All this without forgetting the need to comply with the climate objectives assumed by Spain in the international, European and national spheres.

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