

## ROYAL DECREE PROPOSAL ON ACCESS AND CONNECTION TO THE SPANISH ELECTRICITY TRANSPORTATION AND DISTRIBUTION GRID

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On 17 July 2020, the Spanish Ministry of Ecological Transition and Demographic Challenge issued the Draft Royal Decree on Access and Connection to the Electricity Transportation and Distribution Grid (the “RD Proposal”) for a 12-day public consultation period to obtain additional input from interested persons or entities.

The RD Proposal reviews the regulatory framework for access and connection to the electricity grid. Its primary purpose is to establish the criteria for applying, processing and obtaining permits for access and connection to the transportation and distribution grid under, and in accordance with, the development of Article 33 of Law 24/2013 on the Electricity Sector (the “LSE”). This will affect producers, consumers and storage facility owners, as well as the owners and system operators of the transportation and distribution grid.

**"The CNMC must approve any necessary regulatory provisions for the development and implementation of Article 33 of the LSE."**

Under the eighth and final provision of Royal Decree Law 23/2020, approving measures in the energy sector and others for economic recovery (“RD-Law 23/2020”), the Government and the National Commission of Markets and Competition (“CNMC”) must approve (within each of their competencies, and no later than three-months after the entry into force of RD-Law 23/2020) any necessary regulatory provisions for the development and implementation of Article 33 of the LSE.

The scope of this article is limited to the analysis of the main aspects of the RD Proposal that affect the procedures for accessing and connecting to the network.

## 1. GENERAL CRITERIA FOR THE PROCEDURE FOR ACCESS AND CONNECTION TO THE NETWORK

### 1.1. General criteria: time priority

- Applications for access and connection permits will be [considered and] granted in the order that they are received – this is the “general criteria”. For this purpose, the relevant date will be the date the application was submitted to the system operator;

- If the application submitted requires any correction, the submission date will be the date when all required documentation and information has been duly submitted to the system operator; and
- If two applications have the same date, priority shall be established based on the submission of a receipt certifying that the required economic guarantees have been correctly deposited, such a receipt is to be issued by the competent body for the issue of the authorisation for the installation.

## 1.2. Exceptions: Public tenders for access capacity in certain nodes of the transportation grid for the integration of renewables

- The RD Proposal introduces new tenders for access capacity in specified nodes of the transportation grid for new facilities which either (i) generate electric power using mostly renewable primary energy or (ii) store electricity;
- The detail of these tenders will be set out by means of a ministerial order, which will establish the deadline for the start of energy export from the generation facility owned by the successful bidder, as well as the daily penalties for not exporting energy. Said penalties will be established in the ministerial order, but may not be less than 25% of the estimated energy that the generation facility would have produced; and
- The RD Proposal limits the use of public tenders to specific nodes which are not considered of just transition and fulfil some of the following characteristics:
  - New nodes introduced by means of a new planning process for the electricity transportation grid or by means of the modification of specific aspects of the current plan;
  - Nodes where the access capacity released is equal to or greater than 100 MW, as a result of the relevant provisions of Article 1 of RD-Law 23/2020<sup>1</sup>; and
  - Nodes where new capacity equal to or greater than 100 MW emerges due to regulatory changes in the criteria for calculating the access capacity, or due to improvements in the transportation and distribution grid.

**"There are exceptions for applications for the modification of access and connection permits in respect of existing installations which hybridise by incorporating electricity generation modules using primary renewable energy sources."**

## 1.3. Exceptions: hybridisation of existing facilities

The time priority criteria set forth in Article 7 do not apply to applications for the modification of access and connection permits in respect of existing installations which hybridise by incorporating electricity generation modules using primary renewable energy sources or by incorporating storage facilities. These installations may export the energy produced using the same connection point and the access capacity already granted, provided that compliance with the requirements of Article 27 of the RD Proposal are evident to the system operator, as follows:

- Compliance with the technical criteria for access and connection established in the applicable regulations and those established in the corresponding CNMC Circular;

- Said modifications do not imply any increase in the access capacity granted, in accordance with the criteria of the fourteenth additional provision of Royal Decree 1955/2000 of 1 December;
- Compliance with the relevant technical requirements;
- The operator already has a valid access and connection permit for at least one of the modules comprising the facility;
- The installed capacity of each of the technologies that comprise the hybridisation may not be less than 40% of the access capacity granted, or requested, as the case may be;
- Compliance with metering requirements that will be established to allow for separate measurement of the generated energy (which could be subject to a specific remuneration regime); and
- Compliance with the connection requirements of Regulation (EU) 2016/631 of 14 April 2016 and its other related regulations.

## 1.4. Exceptions: preference for facilities with expired permits or renounced permits

Within one month from the entry in force of the RD Proposal and of the Circular approved by the CNMC in relation to the article 33 of the LSE, generation facility owners who, as a result of the provisions of section a) of the eighth transitional provision of the LSE and of article 1 of RD-Law 23/2020, have renounced their access permits or whose permits have expired, may apply for a new access and connection permit at that node and for the same facility, if they fulfil the following criteria:

- Obtaining a favourable environmental impact statement “declaración de impacto ambiental”;
- The new permit request is for the same facility which was the subject of the expired permit in accordance with the criteria established in the fourteenth additional provision and Annex II of Royal Decree 1955/2000 of 1 December (“Annex II”). In such cases, the criteria for geographical location<sup>2</sup> in Annex II won’t be applied, but the new application must specify, where appropriate, the new location, and must meet all the other criteria provided for in Annex II; and
- Provision of new guarantees in the sum of 250 €/kW and submission of an application in accordance with the provisions set forth in the RD Proposal once it becomes an approved royal decree.

## 2. GENERAL ACCESS AND CONNECTION PROCEDURE

- The RD Proposal establishes a single procedure for obtaining access and connection permits to the transportation and distribution grid, in which the system operator acts as the contact throughout the procedure, regardless of whether the operator is the owner of the grid in which these permits are requested.



THE SYSTEM OPERATOR SHALL, WITHIN 20 DAYS OF RECEIVING AN APPLICATION, REQUEST FURTHER INFORMATION OR CLARIFICATION IF REQUIRED.

## 2.1 Application

- The access and connection procedure shall be initiated by the submission of the application in the terms and with the content established by the CNMC; and
- The system operator shall, within 20 days of receiving an application, request further information or clarification if required. In the absence of such a request within the time specified, the application shall be considered as having been accepted, unless the applicant has failed to evidence the deposit of the required guarantees. Within 20 days from any request from the system operator, the applicant shall submit the information requested. Failure to reply in the time and/or manner required will render the application invalid.

## 2.2 Evaluation of the application

- Once the application has been accepted, the system operator shall assess the existence of access capacity in accordance with the criteria established for that purpose by the CNMC; and
- In cases in which the granting of the access permit in a connection point of the grid may affect the upstream transportation or distribution grid, the RD Proposal foresees the possibility, for the system operator to request an acceptability report within a period of two weeks from the operator of the upstream network. Such report shall be issued within one month of the system operator's request; and
- Upon completion of the assessment, the system operator shall notify the applicant of the grant of a permit (for the full or partial capacity requested) or the rejection of the application.

## 2.3. Prior proposals

- The RD Proposal introduces an obligation on the system operator to notify an applicant, after verification of access capacity and the feasibility of the connection, whether prior applications or permits have been made or granted requesting grid access at the same connection point. The system operator must also provide, at minimum<sup>3</sup>, information on the potential impact of such prior connections on access to the grid; and

**"The system operator must also provide, at minimum, information on the potential impact of such prior connections on access to the grid."**

- The time limits for the notification of the prior proposal to the applicant by the system operator are 10, 30 and 40 days for installations connected to the distribution grid at a voltage of less than 1 kV, between 1 kV and 36 kV, and equal to or greater than 36 kV, respectively. For installations connected to the transportation grid, the time limit is sixty days<sup>4</sup>.

## 2.4. Acceptance by the applicant of the prior proposal

- If the applicant wishes to accept the system operator's proposal, it must notify the system operator within 30 days of receipt of the proposal. Failure to respond within that period shall be considered as a non-acceptance of the proposed point of connection or proposal; and
- Within the same period, the applicant may request a review of specific aspects of the technical and/or economic conditions, which shall be answered by the system operator within a period not exceeding half of the period foreseen for the issue of the prior proposal.

## 2.5 Issuance of access and connection permits

- The notification by the system operator of the access and connection permits to the applicant shall be made within 15 days from the notification by the applicant of the acceptance.

## 2.6 Actions after obtaining access and connection permits

- The RD Proposal regulates the installation owner's obligation to sign a technical access contract with the owner of the grid in which the installation is connected. For consumers, an access contract with the correspondent operator of the distribution grid shall also be formalised, which can be done jointly with the technical access contract; and
- Likewise, the RD Proposal regulates the physical connection procedure as a previous step to the energisation and commissioning of the facility.

## 3. SIMPLIFIED ACCESS AND CONNECTION PROCEDURE AND EXEMPTIONS

- The RD Proposal sets out a simplified procedure for owners of facilities with an installed capacity of less than 15 kW and for low-voltage consumers requesting a connection point of less than 15 kW. Under the simplified procedure, all deadlines are reduced by half; and
- The RD Proposal also exempts the following from obtaining access and connection permits:
  - Generation facilities owned by consumers who use all energy generated on site;
  - In the case of self-consumption with surplus, generation facilities of 15 kW or less that are located on developed land that has the provisions and services required by urban planning regulations; and
  - Consumers who meet the requirements established in Article 25.1 of Royal Decree 1048/2013, of 27 December, which establishes the methodology for calculating the remuneration of the activity of electricity distribution.

## 4. REASONS FOR INADMISSIBILITY AND REJECTION OF ACCESS AND CONNECTION PERMITS

**"Where an application is rejected for reasons not directly or indirectly attributable to the applicant, the applicant may recover the deposited guarantees."**

- The RD Proposal establishes the following causes for the inadmissibility of applications for the access and connection permits:
  - Failure to evidence the deposit of the guarantee to the competent body responsible for the issue of the authorisation of the facility;
  - Applications for connection at specific nodes which are to be awarded by means of public tenders for the integration of renewables; and
  - Failure to reply to a request for correction of a submission or for additional information within the terms and time limits specified.
- The rejection of an application will lead to the recovery of the deposited guarantees;
- The RD Proposal refers to rejection of applications on grounds established by the

CNMC; and

- Where an application is rejected for reasons not directly or indirectly attributable to the applicant, the applicant may recover the deposited guarantees.

## 5. ACCESS AND CONNECTION GUARANTEES

- To process applications for access and connection of electricity generation facilities, a receipt evidencing the deposit of a guarantee in the amount of 40 €/kW must be provided by the competent body in charge of granting the facility authorisation. However, this amount may be modified by ministerial order, and different amounts may be established depending on the capacity;
- Facilities with a capacity of 10 kW or less are exempted from the requirement to deposit these guarantees, as are generation facilities producing power intended for self-consumption;
- After obtaining access and connection permits for generation facilities connected to voltage points higher than 36 kV, the following additional guarantees will be required:
  - Payment of 10% of the value of the investment in the works required for the connection to the grid within a period not exceeding 12 months from the issue of the permit; and
  - Signing of a project commissioning agreement with the system operator within four months from the last of the following two milestones: (i) obtaining prior administrative authorisation for commissioning or (ii) payment of the 10% guarantee mentioned above<sup>5</sup>.
- In addition to the express reference to Article 23 of the RD Proposal, the following information must be indicated on the guarantee: technology, name, location of the project and installed capacity of the project;
- The RD Proposal sets out two scenarios in which the guarantees provided in connection with access and connection permits may not be enforced:



- the withdrawal of the construction of the facility is motivated by a report from a public authority preventing such construction; or
- failure to obtain the favourable environmental impact statement for reasons not attributable to the interested party;
- Those installations connected to a voltage greater than 36 kV must comply with the provisions of Additional Provision 3 of Royal Decree 15/2018, which requires that permit holders pay for any works required to be carried out by the grid owner to connect installations to the transportation or distribution grid.



**A PERMIT EXPIRES FIVE YEARS AFTER THE ISSUE OF THE PERMIT IF THE COMMISSIONING CERTIFICATE HAS NOT BEEN OBTAINED.**

## 6. EXPIRY OF PERMITS

- The RD Proposal refers to the causes of expiry of a permit set out in Article 33.8 LSE and Article 1 of RD-Law 23/2020:
  - five years after the issue of the permit if the commissioning certificate has not been obtained;
  - lack of export of energy to the grid for more than three years;
  - failure to comply with the administrative milestones set out in Article 1 of RD-Law 23/2020,

And additionally, in the following cases:

- Cancellation of the construction of the facility to which the guarantee refers;
- Lapse of the administrative authorisation procedures for the facility or failure to comply with the periods established in the mandatory authorisations; and
- Failure to provide the required financial guarantees after issue of the permit within the deadlines set out therein.

## 7. HYBRIDISATION OF FACILITIES

- In accordance with the provisions of RD-Law 23/2020, the RD Proposal introduces (i) a procedure for the modification of access and connection permits in the case of hybridisation of electricity generation facilities with granted permits; and (ii) application of the general access procedure in the case of hybridisation of facilities which have not yet been granted permits;
- In the first scenario, operators of existing installations may request the modification of permits from the system operator without the need to apply for a new permit and therefore without the application of time priority. The capacity granted may not be increased as a result of hybridisation and the installed capacity for each of the technologies making up the hybridisation may not be less than 40% of the access capacity granted in the access permit or requested;
- Facilities included under the specific remuneration regime must have metering equipment that allows for separate measurement and remuneration. The time periods applied to obtain permits for hybridisation of existing installations shall be those of the simplified procedure and the guarantees shall be reduced by 50%; and
- In the second scenario, applications must be submitted to the general application procedure (rather than the simplified procedure) with the following modifications:
  - the amount to be covered by the guarantees required for granting access shall be reduced by 50%; and
  - if there is an application in progress, an update may be made, starting from the original application date for the purposes of time priority, provided that the generation facility can be considered the same in accordance with Provision Fourteen of Royal Decree 1955/2000.

## 8. REVOCATION OF THE SOLE SPOKESMAN OF THE NODE AND THE COORDINATED APPLICATIONS

- On the date the RD Proposal becomes a royal decree and enters into force, the following obligations are revoked:
  - the obligation to appoint a sole spokesman of the node “Interlocutor único de nudo” (the “IUN”) in those positions where there is no previous IUN; and
  - the obligation to submit joint and coordinated requests if several generators share a connection point to the transportation grid.
- In cases in which IUNs exist, the obligation to present the requests for access and connection through the IUN in a maximum period of three days from its reception is maintained, obeying the time priority of the requests; and
- Finally, it is established that disputes between applicants for access and connection and their relationship with the IUN will be treated as access disputes.

**"Under no circumstances may administrative authorisation be granted for an export line without the prior submission of the line sharing agreement."**

## 9. SHARED USE OF EXPORT INFRASTRUCTURE

- The RD Proposal establishes an amendment to Royal Decree 1955/2000 by adding a new paragraph to Article 123. Its purpose is to allow the administrative authorisation of the export line of an energy generation facility only where there is a binding agreement for the shared use of the export infrastructure. This agreement must be signed by all the operators of the facilities holding permits at the relevant connection point to the transportation or distribution grid; and



- Under no circumstances may administrative authorisation be granted for an export line without the prior submission of the above-mentioned line sharing agreement.

## 10. RECOGNITION OF THE COMPETENCIES OF THE CNMC

- Finally, the powers of the CNMC to approve (by Circular) the methodology and conditions of access and connection are recognised. These include:
  - the content of the applications and permits;
  - the economic criteria;
  - the criteria to determine the influence of one grid on another and the technical criteria for the viability of the connection and evaluation of the existing access capacity at each node;
  - the grounds for the rejection of permits; and
  - the content of the technical access agreement.

**[1]** Article 1 of RD-Law 23/2020 establishes a series of administrative milestones, which compliance must be evidenced before the system operator within the specified deadlines. Failure to comply with these administrative milestones in due time and form will imply the automatic expiry of the access permits and, where appropriate, of the access and connection permits granted, with the only exceptions foreseen in said article.

**[2]** Geographical location. The geographical location of the generation facilities shall be considered unchanged when the geometrical centre of the generation facilities initially and finally proposed, without considering the evacuation infrastructures, does not differ by more than 10,000 metres”.

**[3]** Pursuant to article 12 of the RD Project, the previous proposal must include (i) the proposed access capacity; (ii) technical parameters, at least voltage, location and short-circuit power; (iii) conditions and technical requirements of the evacuation lines; and (iv) technical specifications and financial budget of the works to connect to the grid.

**[4]** If the analysis of the application for access and connection requires an acceptability report from the system operator, the maximum periods referred to above shall be increased by the deadline for issuing the acceptability report.

**[5]** These additional guarantees are reflected in the second and third paragraphs of the third additional provision of Royal Decree Law 15/2018 of 5 October on urgent measures for energy transition and consumer protection.

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