

Main energy-related regulatory changes introduced by Royal Decree-law 8/2023

RDL 8/2023, published in the Official Journal of Spain (BOE) on 28 December, provides for important new developments in the regulation of the electricity and hydrocarbons sectors. In force the day after its publication, the Royal Decree-law was ratified by the Lower House of Parliament on 10 January.

ENERGYTEAM

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In this paper we focus exclusively on the main regulatory changes introduced by RDL 8/2023 that refer to the regulation of the electricity and hydrocarbons sectors, including the expected extension of time limits for certain administrative milestones set out in RDL 23/2020¹, the modifications in access and connection to promote self-consumption and boost demand, and the prolongation of certain measures already

adopted to counteract the economic and social consequences of the war in Ukraine.

1. Extension of milestones for the processing of renewable electricity generation facilities

RDL 8/2023 provides extensions (automatic or subject to granting) of certain milestones envisaged in RDL 23/2020², which are:

¹ Royal Decree-law 23/2020, of 23 June, approving energy-related and other measures for economic recovery.

² The deadlines for proof of completion of milestones will be computed:

- (i) From 25 June 2020 for facilities that obtained access permits before that date and after 31 December 2017.
- (ii) From the date of obtaining the access permit, if obtained after 25 June 2020 and before 29 December 2023.

a) *Automatic extension of the milestone for obtaining the administrative authorisation for construction up to 49 months*

For those generation facilities that obtained the access permit after 31 December 2017 and before the entry into force of RDL 8/2023 (29 December 2023), the deadline for obtaining the administrative authorisation for construction is set at 49 months.

b) *Possibility of extending the milestone for obtaining the definitive operating authorisation up to a maximum of 8 years*

For those generation facilities that have obtained the access permit after 31 December 2017 and before the entry into force of RDL 8/2023 (29 December 2023), their owners are allowed to apply to the body responsible for granting the construction permit to extend the total period for obtaining the definitive operating authorisation, without this period exceeding 8 years.

The application to extend this milestone must:

- Be carried out (i) before 29 March 2024 if the administrative authorisation for construction was obtained before the entry into force of RDL 8/2023, or (ii) within 3 months of obtaining the administrative authorisation for construction, if obtained after the entry into force of RDL 8/2023.
- Specify the six-month period of the calendar year in which the facility is

expected to obtain the definitive operating authorisation and the commitment of its owner to expressly accept the impossibility of obtaining, prior to the start of said six-month period, the provisional or definitive operating authorisation, or the prior or definitive registration in the administrative register of electricity production facilities.

- Be decided by the competent body within 6 months, silence thereof being deemed a rejection.

c) *Completion of the administrative milestone for obtaining the definitive operating authorisation by means of the provisional authorisation*

For those generation facilities that (i) are connected to transmission or distribution substation positions for which the grid operators have not obtained the definitive operating authorisation, and (ii) have obtained the access permit after 31 December 2017, it is possible to demonstrate completion of the administrative milestone for obtaining the definitive operating authorisation by proving to the grid operator, in the prescribed manner and within the prescribed time limit, that the provisional operating authorisation for testing has been obtained.

The above provided that the provisional operating authorisation for testing covers both the generation facilities and the evacuation infrastructure up to at least the last 100 metres to the transmission or distribution substation where its connection point is located.

d) *Possibility of extending the milestone for obtaining the definitive operating authorisation for pumped-storage and offshore wind farms*

RDL 23/2020 is amended to allow holders of access permits granted for pumped-storage hydro and offshore wind power generation facilities to request the extension of all the time limits for meeting the milestones laid down in Article 1(1) thereof, provided that the total period of validity of the access permits without the definitive operating authorisation exceeds 9 years.

2. Freed grid capacity for self-consumption at nodes reserved for capacity tenders

Article 20(5) of RD 1183/2020³ already established the possibility for the State Secretariat for Energy to invite tenders for access capacity over certain nodes.

RDL 8/2023 provides that in the nodes where such tenders have been or are decided, 10% of the available capacity reserved for tendering after the royal Decree-law's entry into force or in the future will be freed.

The freed capacity may be allocated both to facilities that directly access the transmission grid and to those that access the distribution grid and require an acceptability report from the transmission grid operator. For such allocation to be carried out, in accordance with the general criterion of temporal priority

for the organisation of access and connection permits regulated in Article 7 of RD 1183/2020, the:

- Facilities must be associated to self-consumption modalities.
- Quotient between the contracted power in period P1 and the installed generation power must be at least 0.5.

This freed capacity shall not apply to nodes where capacity has already been freed in accordance with Article 8(1) of RDL 6/2022⁴.

Likewise, it is established that the capacity freeing measures for self-consumption regulated in both RDL 8/2023 and RDL 6/2022 will cease to apply on 29 December 2025, with the capacity that has not been awarded within this period being reserved again for tendering. In the event that an access capacity tender has been held on that node, the capacity not awarded will be available for the award of access following the general criterion of temporal priority without any restrictions other than those applicable to the general or simplified award procedure.

In any case, failure to prove to the grid operator, in the prescribed manner and within the prescribed time limit, fulfilment of (i) the requirements related to being in a modality of self-consumption and contracted power indicated above, and (ii) those requirements that are applicable, where appropriate, according to Article 8(1) of RDL 6/2022, will result in the

³ Royal Decree 1183/2020, of 29 December, on access and connection to electricity transmission and distribution grids.

⁴ Royal Decree-law 6/2022, of 29 March, adopting urgent measures within the framework of the National Response Plan to the economic and social consequences of the war in Ukraine.

automatic expiry of the generation plant's access and connection permits.

3. Measures related to the regulation of access and connection permits for electricity demand

RDL 8/2023 amends RD 1183/2020 in such a way as to establish a new regulation for applications for access and connection permits for electricity demand. In particular:

- a) *A limitation is introduced in Article 6 whereby the demand access permit may not be granted for a capacity greater than 50 % of the access capacity of the generation facility for those demand access applications for self-consumption with connection in generation positions of the transmission grid that previously have generation access permits.*

This percentage may be modified by decision of the State Secretariat for Energy when the Spanish Competition and Markets Authority ("CNMC") approves the circular (rules instrument) establishing the criteria for assessing the access capacity of demand facilities and the detailed technical specifications for implementation.

- b) *The requirements established in Article 18(2) for the holding of access capacity tenders in certain transmission grid nodes for the integration of renewables are modified.*
- c) *Article 19 is amended so that, among the socio-economic and environmental*

criteria applicable to access capacity tenders, additional points will be awarded to those projects that have an environmental impact statement but not access and connection permits.

- d) *New articles 20 bis, ter and quater are introduced, which establish the possibility for the State Secretariat for Energy to call tenders for access capacity at certain nodes of the transmission grid for electricity demand facilities. The criteria, conditions and details of the procedure to be applied to these tenders will be determined by resolution of the Ministry for Ecological Transition and the Demographic Challenge.*
- e) *Through the introduction of new Articles 23 bis and 26(5), from 28 December 2023, applicants for access and connection to transmission and distribution grids for electricity demand facilities whose connection point is less than 36 kV must prove to the competent regional energy body, prior to applying for access and connection to the grid, that they have provided a financial guarantee for an amount equivalent to €40/kW requested or €20/kW requested in the case of storage facilities.*

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The purpose of the guarantee shall be the supply of a specific consumption. In this sense, it shall be cancelled when the applicant enters into an access contract for a contracted capacity in period P1 of at least 50% of the access capacity granted. This contract (i) must be concluded within 5 years of obtaining the relevant access permit, and (ii) must be held for at least 3 years for this or a higher capacity,

otherwise the access and connection permit will automatically expire.

The modification of the guarantees at any time prior to the access contract will result in the loss of the requested access and connection permits if this modification means that the installation cannot be considered the same, as long as the geometrical centre of the demand installation has been modified by more than 10 km.

The expiry of the access and connection permits shall entail the forfeiture of the guarantees given for this purpose.

Likewise, in accordance with the third and fourth transitory provisions of RDL 8/2023, access and connection permits granted before its entry into force (29 December 2023) for demand facilities whose connection point is at a voltage equal to or higher than 36 kV and which have not yet formalised the aforementioned access contract, will be subject to the same application of the new Articles 23 bis and 26(5) of RD 1183/2020. In this sense:

- From the entry into force of RDL 8/2023, operators will have (i) a period of 6 months to submit the appropriate guarantees to the competent regional body, and (ii) an additional period of 6 months to send the grid system operator the receipt certifying that the guarantee has been correctly deposited with that body.
- Operators will also have a period of 5 years (until 29 December 2028) to enter into an access contract for a

contracted capacity in period P1 of at least 50 % of the granted access capacity, which must be held for at least 3 years for that or a higher capacity.

- Failure to comply with these requirements by the deadline will result in the expiry of the access and connection permits for demand facilities.

4. Prolongation and extension of measures taken to counter the economic and social consequences of the Ukrainian war

RDL 8/2023 includes among its novelties the extension of some measures adopted during the last 3 years to counteract the economic and social consequences of the Ukrainian war, and with it “the situation of the energy markets and the uncertainty, volatility and price levels that still persist”.

Of these, the following are worth mentioning:

- The support mechanism to guarantee the competitiveness of the electro-intensive industry contained in Article 1 of RDL 6/2022 is extended until 30 June 2024, providing for the allocation of a credit in the budget section of the Ministry for Ecological Transition and the Demographic Challenge (MITERD) in the Spanish Government Budget Act that is passed to compensate for the reduction in revenue in the Electricity System as a result of this measure.
- The measures for the flexibility of electricity and natural gas supply contracts contained, respectively, in Article 7 of

RDL 18/2022⁵ and the third additional provision of RDL 6/2022 are maintained until 30 June 2024. Likewise, to compensate for the reductions in revenues of the Electricity and Gas Systems as a result of these measures, the corresponding MITERD budget allocation is provided for in the Spanish Government Budget Act to be passed.

- The provisions relating to (i) the application of the discount percentages of the electricity social energy tariff provided for in Article 1(1) of RDL 23/2021⁶, (ii) the temporary application of the electricity social energy tariff to low-income working households particularly affected by the energy crisis, provided for in Article 10 of RDL 18/2022, and (iii) the guarantee of water and energy supply to final consumers provided for in Article 4 of RDL 8/2021⁷ are extended until 30 June 2024.
- The limitation on the maximum selling price of bottled liquefied petroleum gases provided for in Article 19 of RDL 11/2022⁸ is extended; this limitation will be applicable to the price revisions approved in January 2024 and March 2024 as provided for in Order IET/389/2015⁹, and its impact will be recovered in the following revisions through its inclusion in the unit mismatch parameter envisaged in the calculation methodology established in the aforementioned Order.
- The sixth additional provision of RDL 6/2022 is amended to extend the limitation of 15% of the increase in the cost of the raw material included in the regulated rate for natural gas for the revisions of January 2024 and April 2024.
- The regulated rate for natural gas temporarily applicable to homeowners' associations is extended until 30 June 2024, in

⁵ Royal Decree-law 18/2022, of 18 October, approving measures to reinforce the protection of energy consumers and to contribute to the reduction of natural gas consumption in application of the "Plan + seguridad para tu energía (+SE)" plan, as well as measures regarding the remuneration of public sector staff and the protection of temporary agricultural workers affected by the drought.

⁶ Royal Decree-law 23/2021, of 26 October, on urgent energy measures to protect consumers and introduce transparency in the wholesale and retail electricity and natural gas markets.

⁷ Royal Decree-law 8/2021, of 4 May, adopting urgent health, social and jurisdictional measures to be applied after the expiry of the state of alarm declared by Royal Decree 926/2020, of 25 October, declaring a state of alarm to contain the spread of infections caused by SARS-CoV-2.

⁸ Royal Decree-law 11/2022, of 25 June, adopting and extending certain measures to respond to the economic and social consequences of the war in Ukraine, to address situations of social and economic vulnerability, and for the economic and social recovery of the island of La Palma.

⁹ Order IET/389/2015, of 5 March, updating the system for the automatic determination of maximum sales prices, before taxes, of bottled liquefied petroleum gases and modifying the system for the automatic determination of sales tariffs, before taxes, of liquefied petroleum gases through pipelines.

accordance with the provisions of Article 2 of RDL 18/2022.

5. Modification of the Water Act in relation to the electricity sector

The Water Act¹⁰ is amended in relation to the electricity sector in the following aspects:

- Amendment of Article 53, enabling the novation of water concessions granted to nuclear power plants so that their duration covers the period of validity of the operating and decommissioning authorisations of these plants until the appropriate decommissioning declarations are issued (without exceeding the general period of 75 years).
- Amendment of Article 60, changing the general order of preference of uses of water concessions to include hydraulic energy storage in third place and establishing its priority over other industrial uses.
- A new eighteenth additional provision is introduced, which provides that (i) concessions for reversible hydroelectric plants previously granted on the entry into force of this RDL 8/2023 will be considered, in terms of their use, as hydraulic energy storage facilities, and (ii) those cases in which repowering is sought, the holders of these concessions may obtain, once only, a new concession for the same use and purpose, and the application must be made prior to the last 15 years of the current concession (it may only be granted for a period of time sufficient to amortise the investment made, maximum 50 years).

6. Other relevant energy measures

Finally, RDL 8/2023 includes a series of additional provisions that complete the package of regulated energy measures. Thus, among other aspects:

- a) *Provisionally, the natural gas transmission system operators are authorised to (i) submit to the Directorate General for Energy Policy and Mines, within a period of four months, a non-binding proposal for the development of the hydrogen backbone infrastructure with a ten-year horizon, and (ii) act as representatives in the European Network of Network Operators for Hydrogen.*

By agreement of the Cabinet, the natural gas transmission system operators may, on a provisional basis and through horizontally separate legal entities, exercise the functions of hydrogen backbone network development within the scope of projects of common European interest.

- b) *Various measures are adopted to finance the costs associated with the electricity system charges by means of:*

- The allocation to the 2024 financial year of an amount equivalent to the surplus revenue of the electricity system in relation to charges for the close of the 2022 financial year (deducting the amount transferred to the 2023 financial year), from the last provisional monthly settlement on account of that of the close of the 2023 financial year.

¹⁰ Royal Legislative Decree 1/2001, of 20 July 2001, approving the recast version of the Water Act.

- The MITERD's budget allocation in the Spanish Government Budget Act to be passed with an appropriation to finance the costs borne by the electricity system charges.
 - Enabling the possibility of allocating a percentage of the surplus of the financial year 2023 to the charges for the financial year 2024 in respect of charges, if any, arising after the closing settlement of that financial year.
- c) *The electricity system charges and capacity payments provided for in Order TED/1312/2022¹¹ are extended until those for 2024 are approved, as provided for in RD 148/2021¹².*
- d) *The deadline for issuing Limited Operational Notifications (LON) referred to in Article 2 of Order TED/724/2022¹³ is extended by eight months, in accordance with the provisions of the first transitory provision of RD 647/2020¹⁴.*
- e) *The Cabinet is empowered to modify the list of just transition nodes included in the schedule to RDL 23/2020, provided that they are transmission or distribution grid nodes where thermal or nuclear power plants that have closed or are due to close within a short period of time (including other nodes located in the same area of electrical influence) are evacuated.*
- In this respect, the La Pereda 220 kV power transmission grid node is added to the list of just transition nodes included in the schedule to RDL 23/2020.
- f) *The necessary arrangements are established for updating the operating remuneration for the first half of the year 2024 for cogeneration and waste treatment facilities, which will be calculated in such a way that, when added to the estimated operating income, it equals the estimated operating costs, as established in Article 17 of RD 413/2014¹⁵.*
- g) *The unit values applicable to obligated parties (i.e. producers, transporters, distributors, marketers and direct consumers in the market) are updated for the financing of the social energy tariff and the cost of supply of certain consumers (for example, those consumers who are severely vulnerable and are being attended to, with respect to these supplies, by the*

¹¹ Order TED/1312/2022, of 23 December, establishing the prices of the electricity system charges applicable as from 1 January 2023 and establishing various regulated costs of the electricity system for the financial year 2023.

¹² Royal Decree 148/2021, of 9 March, establishing the methodology for calculating electricity system charges.

¹³ Order TED/724/2022, of 27 July, extending the period during which electricity transmission and distribution grid managers may issue limited operational notifications in accordance with the provisions of the first transitory provision of Royal Decree 647/2020, of 7 July, and amending Schedule IV to the aforementioned Royal Decree.

¹⁴ Royal Decree 647/2020, of 7 July, regulating aspects necessary for the implementation of the grid codes for the connection of certain electrical facilities.

¹⁵ Royal Decree 413/2014, of 6 June, regulating the activity of electricity production from renewable energy sources, cogeneration and waste.

- social services of the competent general government because, based on their income, they are at risk of social exclusion).*
- h) *The CNMC is expected to carry out the necessary settlement for the adaptation of the remuneration from the subsidy payments scheme, deducting the amounts not paid by the facilities as a result of the suspension of the IVPEE (which will take place in the first settlement in which the relevant adjustments are available after the entry into force of this RDL 8/2023).*
- i) *Articles 41(1), 41(3), 42(3), 43(1) and 109(1) (b) LSH¹⁶ are amended in order for operators to curb “increasing fraudulent practices in the liquid hydrocarbons sector due to non-compliance with their sectoral obligations with respect to the Corporation of Strategic Reserves of Petroleum Products (CORES), the Information System for the Certification of Biofuels (SICBIOS) or the National Energy Efficiency Fund (FNEE), as well as tax (VAT, CIT)”.*
- j) *The wording of Article 14(7) bis LSE¹⁷ is revised to allow the incorporation of non-economic award criteria in the granting of the economic scheme for renewable energy (with a maximum of 30% of the weighting) in which other relevant aspects are taken into account, such as the contribution of renewable energy to resilience, environmental sustainability, innovation, the socio-economic impact of the projects or other factors that promote the better integration of these energy sources into the electricity system.*

¹⁶ The Hydrocarbons Sector Act 34/1998 of 7 October 1998.

¹⁷ The Electricity Sector Act 24/2013 of 26 December.