
Measures to promote renewable energy

Legal flash

June 25, 2020

On June 24, 2020, Royal Decree-Law 23/2020, of June 23, approving measures on energy and other areas to relaunch the economy ("[RDL 23/2020](#)"), was published in the Official Gazette of the Spanish State.



Main features

RDL 23/2020, implementing regulatory measures to establish an attractive and solid framework for investment and to drive economic recovery and implement renewable energy, presents important developments for companies with interests in the energy sector:

- It establishes **milestones to maintain the access and connection rights**, which involve obtaining different administrative authorizations.
- It defines cases of modification of **renewable energy facilities**, both for establishing the need of new authorizations, and for the maintenance of the rights of access and connection.
- It foresees launching **new auctions** based on the energy produced.
- It introduces **new elements**, such as storage, aggregators, and renewable energy communities.



Access and connection innovations

Administrative milestones in the access and connection process

A new regulation is introduced on the conditions to maintain access and connection to transmission and distribution grids, based on the technical viability and maturity of the projects, depending on the compliance with the successive milestones required for their authorization and execution. Three groups of access permits are distinguished, each setting out the corresponding milestones:

- **Group 1:** Access permits granted between the entry into force of Spanish Act 24/2013, of December 26, 2013, on the Electricity Sector, and December 31, 2017:
 1. Application for prior administrative authorization is submitted and admitted: 3 months.
 2. Favorable environmental impact statement is obtained: 18 months.
 3. Prior administrative authorization is obtained: 21 months.
 4. Administrative construction authorization is obtained: 24 months.
 5. Final administrative operating authorization is obtained: 5 years.

- Access permits granted between January 1, 2018, and the entry into force of RDL 23/2020 (**Group 2**), and those granted after that date (**Group 3**)¹:
 1. Application for prior administrative authorization is submitted and admitted: 6 months.
 2. Favorable environmental impact statement is obtained: 22 months.
 3. Prior administrative authorization is obtained: 25 months.
 4. Administrative construction authorization is obtained: 28 months.
 5. Final administrative operating authorization is obtained: 5 years.

Failure to prove to the grid manager that those milestones have been fulfilled will entail the automatic expiry of the permits (access or, as applicable, access and connection) and the immediate execution of the guarantees issued for processing the access application, although the guarantees will not be executed if a favorable environmental impact statement

¹ The same steps and terms are established for these two groups of permits, although the periods for Group 2 will run from the entry into force of RDL 23/2020 and, in the case of Group 3, from the date the access permit is obtained.



is not issued. The same result is foreseen if the connection permit is not applied for within the established 6-month deadline.

Group 1, 2 and 3 access permit (or, as applicable, access and connection permit) holders may withdraw their applications or permits within three months of RDL 23/2020 coming into effect, in which case the guarantees placed will be returned to them.

Moratorium on applications for new access permits

Since the entry into force of RDL 23/2020, a moratorium is established on new access permits, with exceptions (access and connection permits to ensure a fair transition, self-consumption plants connected to distribution, and consumer access permits), until the royal decree and regulatory circular developing the regulatory framework of access and connection are approved. Therefore, grid managers will not admit new applications on the access capacity that may exist when RDL 23/2020 comes into effect or that may be released subsequently.

However, it is foreseen the admission of those applications already sent to the competent administration to process the authorizations and that include the access permit guarantee deposit receipt when RDL 23/2020 comes into effect.

Criteria for a generation facility to be considered unchanged for the purposes of access and connection permits

A facility is considered unchanged for the purposes of access and connection permits if none of the following characteristics are modified:

- **Geographic location:** The geometric center of the initially and finally proposed generation facilities (not considering evacuation infrastructures) must not differ by more than 10 km.
- **Access capacity:** Access capacity cannot be increased by over 5% of the access capacity applied for or granted in the original access permit.
- **Generation technology:** The technology will be considered unchanged if the synchronous or asynchronous nature of the facility is maintained. The criterion for facilities falling within the scope of Royal Decree 413/2014, of June 6, will be that they must belong to the same group provided in article 2 of that royal decree.

If a facility is not considered unchanged, a new access and connection application must be filed to obtain new permits.

If there are modifications but the facilities can be considered the same, the holders must update the application or, as applicable, the granted access and connection permits, to adapt



them to the characteristics of the modified facility. That will not involve amending the grant date of those permits, which will remain the same as the granted permit.

Measures for the orderly development and promotion of renewable energy

- **Some processes of the authorization procedure are simplified** (e.g., with regard to portable facilities, removing obstacles to their commissioning) and some processing periods are modified.

These rules will apply to all facilities the processing of which began after RDL 23/2020 came into effect, and in cases where, although the application had been submitted, the public information and request for reports from affected administrations, bodies, and companies had not been initiated on that date.

- RDL 23/2020 regulates cases where a facility is modified **without requiring modification of authorizations already obtained** while the projects are being developed (non-substantial modifications), as long as it is verified that requirements related, among other matters, to (i) their environmental impact, (ii) urban planning compatibility and extension of the occupied surface area, (iii) the capacity to be installed, (iv) the generation technology and safety conditions of main and associated facilities, and (v) impacts on other easements or facilities under operation; have been met.

These criteria are independent from the assessment on whether a facility can be considered unchanged for the purposes of access and connection permits, which will be governed by the criteria explained in the previous section.

New remuneration framework: upcoming renewable energy auctions

As an alternative to the specific remuneration regime, the Spanish Government is authorized to develop a **new remuneration framework** based on recognizing a long-term fixed price for energy, which will be granted under **competitive procedures** geared towards cost efficiency.

RDL 23/2020 establishes the keys to the new renewable energy auctions mechanism:

- **Auctioned product:** electricity, installed capacity, or a combination of the two.
- **Variable on which to bid:** at remuneration price of that energy (euros per kW/h).



- **Distinctive criteria:** In the framework of those competitive procedures, distinctions can be made on technical characteristics, size, manageability levels, location criteria, technological maturity and others that guarantee a transition towards a decarbonized economy.

Specific measures are also foreseen to ensure that renewable energy communities can compete to access the new remuneration framework on a level footing with other participants. Moreover, exemptions from the competitive procedure are established for small-scale facilities and demonstration projects (in these cases, the result of the competitive procedures can be used as a reference for remuneration).

Storage, independent aggregators and renewable energy communities

The following are incorporated in the electricity system as new subjects:

- **Storage facility owners:** subjects whose facilities perform an activity seeking to defer the final use of the electricity produced to a point in time after it is generated, or to convert electricity into another form of storable energy to be subsequently reconverted and used.

The Spanish government is authorized to develop regulations for storage facility owners to participate (either directly or through the independent aggregator) in the production market and demand management services, and to decide the remuneration they will receive for participating in that market.

- **Independent aggregators:** subjects that have no relation with client's supplier, but combine multiple consumptions or electricity generated by consumers, producers or storage facilities, to be subsequently sold or bought in the electricity production market.
- **Renewable energy communities:** independent legal entities comprising private members (individuals and SMEs) or local authorities (municipalities) that, without seeking any financial gain, provide environmental, economic, or social benefits to their members or the local zones where they operate.

Charging stations of electric vehicles

- RDL 23/2020 classifies electric vehicle charging stations as electrical infrastructures, defining those with a capacity greater than 250 kW as **high-capacity charging infrastructures**.



- It subjects the development of high-capacity charging infrastructures to the same authorization **requirements** established in the sector regulations for electricity generation facilities.
- It authorizes the competent public administrations to exempt some non-substantial modifications of high-capacity recharging infrastructures from the prior administrative authorization and construction authorization.
- It acknowledges the **public interest** of the high-capacity charging infrastructures.
- Local entities are authorized to allocate 7% of the surplus for 2019, as provided under the Spanish Local Tax Authorities Regulation Act, to developing recharging infrastructures for electric vehicles bought to provide public services of waste collection, disposal, and processing, civil protection, fire prevention, and passenger transport.

Measures fostering energy efficiency

RDL 23/2020 amends the **national energy efficiency obligations system**, under which gas and electricity marketing companies, wholesale petroleum products operators, and wholesale liquefied petroleum gas operators (hereinafter **parties subject to the obligations system**) will be assigned an annual national energy saving quota, called **savings obligations**:

- This system will span from the entry into force of Royal Decree-Law 8/2014, of July 4, through December 31, 2030.
- To ensure fulfillment of the annual energy saving obligations, parties subject to it must pay the National Energy Efficiency Fund an annual financial fee that is now calculated differently to how it had been since 2014, to make the results more stable.

Support measures for facilities whose operating costs essentially depend on fuel prices

For facilities whose operating costs essentially depend on fuel prices:

- The operation remuneration value applicable during the State of Emergency will be calculated according to the following parameters:
 - (i) the remuneration parameters in force on the date RDL 23/2020 was approved will be considered, with the exception of the electricity market price and the CO2 emissions rights price values, which will be estimated for the State of Emergency period;
 - (ii) the operation remuneration calculated in this way can never be lower than the remuneration value established in Order TED/171/2020.



- The values of the number of equivalent hours of minimum operation and the operation threshold applicable for this type of facility in 2020 are reduced by 50%.

Amendment to the Spanish Environmental Assessment Act

- RDL 23/2020 amends Act 21/2013, of December 9, on environmental assessment (hereinafter “EAA”), to give the environmental assessment procedure **greater dynamism and legal certainty**.
- It also expedites the procedure to **determine the scope of the environmental impact assessment** by amending section 34 of the EAA.

The environmental authority is required to issue the scope document even when all the requested reports have not been sent by the affected Administrations, although the promoter and the decision-making body will be made aware of the missing requested reports. A validity period of two (2) years is also incorporated for the scope document. That period will run from the date after the promoter is notified until the environmental impact study is submitted to the decision-making body.

- RDL 23/2020 regulates the system for **extending the validity of the environmental impact statements**.
- Thus, promoters may once again ask to extend the validity of the environmental impact statement before the original term elapses. The environmental authority must resolve on the extension request within 3 months of the request and, before reaching a decision, it may collect reports from the affected public administrations, which must issue their answers within 30 days, extendable by 15 days. During that time, the period for the environmental authority to rule is suspended. If the environmental authority does not issue a final resolution within that period, the extension request will be considered denied.
- Article 47 of the EAA is amended to align the **simplified environmental assessment procedure** with the ordinary environmental assessment procedure.

RDL 23/2020 envisages that, on issuing the environmental impact report, the environmental authority may rule that, owing to the lack of evidence, it cannot issue a resolution drawing on the project’s possible adverse effects on the environment. In that case, the procedure will end and no further action will be taken.

With regard to extending the environmental report, the period for a resolution is 30 days, with administrative silence now having a rejecting effect.



Entry into force and ratification procedure of RDL 23/ 2020

- **Entry into force:** RDL 23/2010 came into force on June 25, 2020.
- **Ratification procedure:** As the new measures described have been approved in a Royal Decree-Law, which is an interim rule approved by the Spanish Government in a situation of extraordinary and urgent need, requires to be ratified by Spain's Congress of Deputies. Within 30 days of being enacted, the Congress of Deputies must decide whether it will ratify RDL 23/2020, in which case it would no longer be a provisional regulation, but would be fully integrated into the Spanish legal system, or it will repeal it, in which case its effects would be immediately terminated and it would be eliminated from the legal system, although any effects arising during the time it was in force would not be reversed.
- **Processing as a draft bill:** During that same time period, the Congress of Deputies could resolve to process the ratified RDL 23/2020 as a draft bill, which would then be processed through the urgent procedure, allowing amendments in the final text.

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