

Emergency analysis of new measures in electricity production

29th June 2020

Regarding Royal Decree-Law 23/2020 of 23rd June approving measures in the field of energy and other areas for economic recovery

On 25 June 2020, [Royal Decree Law 23/2020](#) of 23 June entered into force, approving measures in the field of energy and other areas for economic recovery ("**RDL 23/2020**").

Among other issues, RDL 23/2020 introduces important innovations in the regulation of electricity generation facilities:

- i. **Stopping new access requests.** The First Transitional Provision (TP 1) suspends the processing of new access permit applications in relation to existing capacity and capacity that may be generated by withdrawal or expiry. This suspension does not affect those applications submitted that have already provided financial guarantees for the processing of access permits before 25th June.

This stoppage is transitory. Its effects are projected from the entry into force of RDL 23/2020 (i.e. June 25th 2020) until the approval by the Government and the National Commission for Markets and Competition, respectively, of the royal decree and regulatory circular implementing Article 33 of Law 24/2013 of December 26th 2010, on the Electricity Sector ("**LSE**"). The eighth Final Provision orders the Government and the National Commission for Markets and Competition to approve the necessary regulatory provisions within a maximum period of three months from the entry into force of this Royal Decree-Law.

The stoppage does not affect (a) to the procedures for granting evacuation access capacity provided for in additional provision twenty-two of the LSE for the granting of access and connection permits to ensure a fair transition (i.e., access permits in network nodes affected by the closure of coal or thermonuclear thermal energy facilities specified in the Annex to RDL 23/2020); (b) to the access and connection of production plants intended for self-consumption that are connected to the electricity distribution network; (c) to the granting of access permits to electricity consumers.

New expiry dates for access and connection permits granted after 27th December 2013. RDL 23/2020 (article 1) regulates the expiry periods of access and connection permits granted from 27th December 2013 (those granted before 27th December 2013 are subject to the general rule of the 8th transitional provision of the LSE, i.e. they will expire two months after the end of the state of alarm).



Promoters must comply with the following temporary milestones to avoid the expiry of the permit application. If the installations are exempt from obtaining any of the procedures, this circumstance must be accredited in writing by the competent body:

If access permission was obtained between December 28th 2013, and December 31st 2017, inclusive:

1. Application submitted and accepted for prior administrative approval: 3 months.
2. Obtaining the 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 31st December 2017:

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 milestones will be counted from the entry into force of RDL 23/2020 or from its concession in case they are granted after the entry into force of RDL 23/2020. In addition, access permit holders must apply for the connection permit within a maximum period of 6 months from the entry into force of RDL 23/2020.

The expiry will bring about the automatic execution of the guarantees, except when, for reasons not attributable to the developer, a favourable environmental impact statement is not produced, when this is mandatory. A **moratorium of three months** is also granted so that the promoters can renounce the access and connection permits or, if applicable, the application submitted without having to face the execution of the guarantee.

ii. **Modification of the procedure for authorising installations provided for in RD 1955/2000.** Article 3 of RDL 23/2020 incorporates several developments in the authorization regime:

- a) A list of modifications to the basic project already authorised, the execution of which does not prevent the procedure from continuing without obtaining a new administrative authorisation prior to the construction permit, is established with the new Article 115(2).

- b) The new Article 115.3 establishes a regime of non-substantial modifications to existing projects (in development of Article 53.2 LSE) that are subject only to an operating permit. These *minor modifications* to generation facilities do not require a new administrative and construction permit before obtaining the operating permit.
 - c) The amendment to articles 125 and 144 increases from 20 to 30 days the processing of public information for preliminary projects and applications for public utility of specific goods and rights.
 - d) Articles 127.2 and 131.1 are amended to incorporate mechanisms for expediting procedures through rules of presumed conformity with the preliminary project (prior administrative authorization phase) and with the execution project (construction authorization phase). The Administrations, bodies and public service or general interest service companies will have a period of thirty days to provide their conformity or to argue in relation to the preliminary project or project. If they do not do so within the period granted, it will be understood that they agree.
- iii. **Regulation of the concept "same installation" for the purposes of access and connection permits.** Article 3. Nine of RDL 23/2020 incorporates a new Additional Provision (AP 14a) and a new annex to RD 1955/2000.
- Its purpose is to regulate when a change or modification in the installation is considered admissible, for the purpose of maintaining the access and connection permit granted. **Non-compliance with the requirements established in the new Annex II** of RD 1955/2000 (generation technology, access capacity - limit of 5% - and location - 10 km from the geometric centre of the facility originally proposed), will require **a new request for access and connection to be made.**
- iv. **Creation of new market subjects.** Article 4 of RDL 23/2020 creates the concepts of owner of storage facilities, independent aggregators and renewable energy communities. The latter figure partially transposes Directive 2019/944/EU to strengthen self-consumption strategies by incorporating into national law the figure of energy communities that allow individuals, SMEs and local administrations to collaborate in the development of local renewable energy projects.
- v. RDL 23/2020 incorporates other relevant measures. Among the most important are the following:
- a. The establishment, in its Second Transitional Provision, of a **moratorium** (until 28th February 2021) **on compliance with obligations to contribute to the National Energy Efficiency Fund;**

- b. The promotion of **hybridisation** - the access to the same point of the network of installations using different generation technologies whenever this is technically possible - by allowing, in Article 4, the authorisation of installations with an installed power greater than the access and connection power granted, provided that the evacuation limits are respected in the operation of the plant, optimising the use of renewable resources.
- c. The attribution of powers to the State for the authorization of infrastructures linked to the recharging stations of electric vehicles with a power superior to 250 kW that exceed an autonomous community. In addition, the Government is empowered to exempt from the system of prior and construction authorisations not only small production facilities, but also certain electrical facilities whose purpose is research and technological development.

In short, this is a measure-rule with a very considerable impact expected in the field of energy law and which will therefore be the subject of more detailed analysis in the near future. However, it is in the interest of any operator in the sector to identify the most relevant new developments from day one because their effect is immediate and will significantly condition the development of many projects.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to attend to all the questions that may arise on this aspect or in relation to the COVID-19.

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