

Ana Cremades, Belén Wert and Sol Sepúlveda

Analysis of the energy measures contained in Royal Decree-law 8/2023

On 28 December 2023, the Official State Gazette (BOE) published Royal Decree-law 8/2023, of 27 December, which adopts measures to address the economic and social consequences arising from the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of drought (“**RDL 8/2023**”).

The purpose of this Legal Briefing is to analyse the main energy measures contained in RDL 8/2023.

1. Administrative milestones for the development of renewable generation facilities

i) Extension of the deadline to obtain the administrative construction authorisation (“ACA”) to 49 months

This is an exceptional extension of the deadlines established in Royal Decree-law 23/2020, of 23 June, approving energy and other measures for economic reactivation (“**RDL 23/2020**”) applicable to all generation facilities that obtained access and connection permits between 1 January 2018 and 28 December 2023.

ii) Possibility of requesting an extension of up to 8 years to obtain the definitive operational permit (“DOP”)

Exceptionally, generation facilities that obtained access and connection permits between 1 January 2018 and 28 December 2023, and which have an ACA, may request an extension of the deadline to comply with the administrative milestone of obtaining the DOP.

The request must be made within a period of no more than 3 months from the entry into force of RDL 8/2023 or from the date of obtaining the ACA, whichever is later, and must contain the content provided for in the regulation¹.

The resolution to extend the deadline must be issued within a period of no more than six months and must expressly state the cut-off date by which the facility must have the DOP.

Once the deadline extension has been granted, it will not be possible for the competent body to grant the provisional or definitive operational permit, or the prior or definitive registration in the administrative registry of electricity production facilities before the start of the six-month period committed to in the extension request submitted, which will be included in the deadline extension resolution itself.

iii) Extension of up to 9 years of the administrative milestones for pumped-storage and offshore wind power facilities

In the case of pumped-storage hydroelectric power generation facilities and offshore wind farms, it will be possible for the promoter to request an extension of the deadlines established in Article 1.1 of RDL 23/2020, without the total period of validity of the permits, without obtaining the DOP, exceeding 9

¹ The request shall contain at a minimum (i) the six-month period of the calendar year in which the facility will obtain the operational permit and (ii) the commitment to expressly accept the impossibility of obtaining the provisional or definitive operational permit or the prior or definitive registration in the administrative register of electricity production facilities before the start of the six-month period established in the previous section.

years. Consequently, the exception provided for in the original wording of the regulation for pumped-storage hydraulic technology has been extended by a further two years, and offshore wind technology has been included in the exception².

iv) Compliance with the fifth administrative milestone in the case of access and connection permits granted in unconstructed substation positions

It is specified that, in those cases in which the transmission and distribution grid managers have not obtained the DOP for the positions of the transmission or distribution substation to which the generation facilities are connected, the facilities will be considered to have met the fifth administrative milestone with the accreditation before the grid manager, in due time and form, of having obtained the provisional operational permit for tests, provided that the said permit covers both the generation facilities and the evacuation infrastructure up to at least the last 100 metres to the transmission or distribution substation at which its connection point is located.

2. Access and connection to transmission and distribution grids

Royal Decree 1183/2020, of 29 December, on access and connection to electricity transmission and distribution grids (“**RD 1183/2020**”) is amended as follows:

i) Capacity reserve for self-consumption

RDL 8/2023 provides for the release of 10% of the total available capacity in the transmission grid nodes that is reserved for access tenders at the time of the entry into force of RDL 8/2023 or that is reserved for tenders in the future, to be granted to new electricity generation facilities that use renewable primary energy sources and that meet the following conditions³: (i) they must be associated with a self-consumption system, and (ii) the quotient between the contracted power in the P1 period and the installed generation power must be at least 0.5.

ii) Access and connection permits for demand facilities

Relevant new features have been introduced regarding access and connection to the grid for demand facilities:

- » In generation positions of the transmission grid that previously had access and connection permits for generation facilities, an access permit may be requested for demand facilities under the self-consumption regime⁴ on the condition that access for demand may only be granted for a capacity not exceeding 50% of the access capacity of the generation facility⁵.
- » The requirement to convene “demand tenders” to award the access capacity available for demand in transmission grid nodes with voltage above 220 kV in the event that the requests are greater than the existing capacity.

² As in the previous wording, no express limit has been placed on the extension of the deadline for each of the intermediate administrative milestones.

³ The above will not apply to those nodes in which capacity has already been released under the provisions of Article 8.1 of Royal Decree-law 6/2022, of 29 March, which adopts urgent measures within the framework of the National Plan in response to the economic and social consequences of the war in Ukraine.

These conditions will also cease to apply two years after the entry into force of RDL 8/2023. From that time onwards, the capacity that has not been granted under these conditions will again be reserved for access tenders if these have not been held at that node and, if they have been held, this non-awarded capacity will be available for the granting of access under the general criterion.

⁴ It is intended that self-consumption will be carried out with the generation facility that already has access and connection permits in the grid position to be shared, analogously to what was already provided for in Article 6.7 of RD 1183/2020 for generation facilities that connect to existing consumption positions.

⁵ This percentage may be amended by resolution of the Secretary of State for Energy once the National Commission for Markets and Competition approves the circular that establishes the criteria for the evaluation of access capacity for demand facilities and, where appropriate, the detailed technical specifications necessary for its development.

The criteria, conditions for participation and procedure for demand tenders will be governed by Ministerial Order, although this regulation must contain, at a minimum, temporary criteria relating to the date on which consumption of the demand facility begins, commitments to make consumption and demand management more flexible, improvement of energy efficiency, socio-economic, environmental and territorial impact, production chains, technical and economic solvency of the project and the promoters, criteria relating to the volume of investment and criteria relating to the greenhouse gas emissions averted by the project for which the demand access capacity has been requested.

- » The requirement to provide guarantees for an amount equivalent to €40/kW for the processing of access and connection procedures for demand facilities, with the amount being reduced to €20/kW in the case of storage facilities. Exceptions are made for demand facilities whose connection point has a voltage of less than 36 kV.

The financial guarantee will be cancelled when the applicant formalises the access contract for a contracted capacity in the P1 period of at least 50% of the access capacity granted⁶.

These guarantees will be required for applications submitted from 28 December 2023, although a transitional regime is planned for those access and connection permits granted before the entry into force of RDL 8/2023 and which have not yet formalised an access contract for a contracted capacity in the P1 period of at least 50% of the access capacity granted. The new law expressly provides that they will have a period of six months to present the guarantees to the competent body, and an additional period of six months to send the grid system manager the receipt certifying that the guarantee has been correctly deposited.

- » The automatic expiry of access and connection permits for the supply of demand facilities whose connection point is at a voltage equal to or greater than 36 kV is expressly regulated when the holders of these permits have not entered into an access contract within a period of 5 years for a contracted capacity in the P1 period of at least 50% of the access capacity granted; this contract must be maintained for at least 3 years for this or a higher capacity⁷. In any event, access and connection permits shall only expire in respect of that part of the capacity granted for which an access contract has not been concluded or for which the required minimum duration has not been maintained⁸.

iii) Access capacity tenders for generation facilities

Finally, regarding access and connection for generation facilities, the criteria for determining the specific nodes of the transmission grid where access capacity tenders may be convened have been amended and it is specified that, within the socio-economic and environmental criteria of the tender, additional points will be awarded to those projects that have a favourable environmental impact statement and do not have access and connection permits.

⁶ The following details of the facility must be included on the guarantee receipt: name and location of the consumption, CNAE code of the consumption and requested capacity of the consumption for its identification.

The amendment of the guarantees presented, at any time before the access contract, if this amendment means that the facility cannot be considered the same for the purposes of access and connection, will entail the automatic loss of the access and/or connection permits granted or requested. The demand facility shall be considered not to be the same if its geometric centre is displaced by a distance of more than 10 km.

⁷ Both the minimum amount of capacity to be contracted and the minimum period for which the contract must be maintained shall be established by regulation by the Government. Similarly, the Government may establish exemptions to automatic expiry by regulation depending on the voltage level and power of the demand access permits.

⁸ In the case of access and connection permits granted to demand facilities before the entry into force of RDL 8/2023, the 5-year period will be calculated from the date of entry into force of RDL 8/2023

3. Hydraulic energy storage

Certain measures have been introduced to promote the hydraulic storage of energy, based on reversible pumped hydroelectric power plants, specifically:

- The Water Law has been amended to introduce hydraulic energy storage in the order of preference of water uses, in third place in the order of preference of concession uses, behind supply to the population and irrigation and agricultural uses, and before industrial uses for electricity production and other industrial uses^{9,10}.
- In line with this, reversible hydroelectric power plant concessions granted before the entry into force of RDL 8/2023 will be considered, in terms of their use, hydraulic energy storage facilities.
- In the case of the repowering of existing reversible hydroelectric plants, they may obtain a new concession for the same use and purpose, which may only be granted for a period of time sufficient to amortise the investment made and may not exceed 50 years under any circumstances.

4. Measures affecting natural gas and electricity consumers

The following measures have been extended until 30 June 2024:

- i) The prohibition on suspending the supply of electricity, natural gas and water for non-payment to consumers who are considered vulnerable, severely vulnerable or at risk of social exclusion;
- ii) The electricity social bond discount rates of 65% for vulnerable consumers, 80% for severely vulnerable consumers and 40% for low-income working households;
- iii) The temporary granting of the electricity social bond to low-income working households particularly affected by the energy crisis;
- iv) The capping of the maximum price of bottled liquefied petroleum gases (butane cylinder);
- v) The tariff of last resort for natural gas temporarily applicable to homeowners' associations;
- vi) The 15 % cap on the increase in the cost of raw materials included in the tariff of last resort for natural gas for the reviews of 1 January 2024 and 1 April 2024;
- vii) The measures for the temporary easing of electricity supply contracts provided for in Article 7 of Royal Decree-law 18/2022, of 18 October;
- viii) The measures to make natural gas supply contracts more flexible in order to protect the industrial sector from price increases, provided for in the fifth additional provision of Royal Decree-law 29/2021, of 21 December, regardless of the evolution of natural gas price indices.

5. Regulated remuneration for renewable facilities

- i) The reference values for calculating regulated revenues as of 1 January 2024 for standard facilities whose operating costs depend essentially on the price of fuel have been approved.

⁹ In the case of the hydrological plans of the demarcation of the third cycle of hydrological planning, it is provided that the use of hydraulic energy storage will have priority over industrial use for electricity production in the order of priority of uses specifically provided for in the hydrological plan of the demarcation of the third cycle of hydrological planning.

¹⁰ Regarding concession procedures for reversible hydroelectric plants initiated before the entry into force of RDL 8/2023 in which hydroelectric uses with concessions in force could be affected, the concession procedure will be backdated to the time before the project approval procedure, so that the owner can participate in it.

- ii) The methodology for updating the operating remuneration (“**RO**”) provided for in Article 5 of Royal Decree-law 6/2022, of 29 March, may define subsequent adjustment systems to compensate for deviations in revenue and cost estimates and exclude the facilities of the type determined from the application of the adjustment for deviations in the regulated market price established in Article 22 of Royal Decree 413/2024, of 6 June (“**RD 413/2014**”).
- iii) Facilities that have requested the temporary waiver of the Specific Remuneration Regime for its application as of 1 January 2024, may request the cancellation of said waiver.
- iv) For the calculation of the adjustment value for deviations in the market price for 2024, provided for in Article 22 of RD 413/2014, the weighted average value of the basket of electricity market prices for 2024 will be the minimum value between said value, and the average annual price of the daily and intraday market in 2024.
- v) In auctions to award the Renewable Energy Economic Regime (“**REER**”), non-economic award criteria of up to a maximum of 30% of the weighting have been established. These criteria include their contribution 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.

6. Measures affecting the hydrocarbon sector

- i) The definition of retail distribution of petroleum products provided for in Law 34/1998, of 7 October 1998, on the hydrocarbons sector, has been amended to state that under no circumstances is supply between retail distributors or supply from retail distributors to wholesale operators permitted.
- ii) The regime for third-party access to fixed facilities for the transport and storage of petroleum products has been amended.
- iii) It has been expressly provided that failure by wholesale operators of petroleum products to comply with sectoral obligations classified as a very serious infringement may lead to their disqualification after the corresponding procedure has been carried out.

7. Other energy measures

- i) The electricity system charges and capacity payments applicable in 2023 have been extended.
- ii) The Council of Ministers may, through an agreement, amend the list of eligible transition nodes included in the annex to RDL 23/2020, provided that these are nodes in the transmission or distribution grid where thermal or nuclear power plants that have closed or are due to close within a short period of time are evacuated. It also states that other nodes in the same area of electrical influence as the aforementioned nodes may also form part of this list of nodes for the purposes of granting access permits.
- iii) The La Pereda 220 kV transmission grid node has been added to the list of eligible transition nodes included in the annex to Royal Decree-law 23/2020, of 23 June.
- iv) The unit values to be applied to finance the social bond and the cost of supply to vulnerable consumers have been approved.
- v) Provisional managers of the hydrogen grid have been provided, establishing a provisional application regime until the definitive designation of the hydrogen grid managers under the conditions established in the applicable European regulations.

- vi) An exceptional measure has been provided concerning the granting of access and connection permits in non-peninsular systems.
- vii) The application of the support mechanism to guarantee the competitiveness of the electro-intensive industry has been extended for six months, consisting of a reduction in the electricity bill of consumers holding the electro-intensive consumer certificate of 80% of the cost corresponding to the access tolls to the electricity transmission and distribution grids applicable at any given time.

8. Measures that have ceased to have effect from 31 December 2023

i) The mechanism to reduce the excess remuneration of the electricity market caused by the high price of natural gas on international markets (“Gas Clawback”)

The measure was initially scheduled to run from 16 September 2021 to 31 March 2022, although it was subsequently extended once until 30 June 2022 and a second time until 31 December 2023.

However, since RDL 8/2023 has not provided for an extension of the measure, it can be inferred that as of 31 December 2023, the measure has lapsed.

ii) The production cost adjustment mechanism to reduce the price of electricity on the wholesale market (“Cap on the price of gas” or “Iberian Exception”)

The application of this measure was initially planned until 31 May 2023, although it was subsequently extended until 31 December 2023 following agreement with the European Commission.

However, since RDL 8/2023 has not provided for an extension of the measure, it can be understood that as of 31 December 2023, the measure has lapsed.

iii) The suspension of the Tax on the Value of Electricity Production (“IVPEE”)

Royal Decree-law 12/2021 of 24 June exempted facilities that produce electricity and contribute it to the electricity system from the IVPEE, which levies a 7% tax on the value of electricity production, during the third quarter of 2021. The suspension was successively extended until 31 December 2023.

However, under RDL 8/2023, the suspension of the IVPEE is no longer in effect, and from 1 January 2024, it will be in force under the terms specified in the regulation (i.e. it will have a rate of 3.5% until March, rising to 5.25% until June)¹¹.

¹¹ In the case of facilities with a specific remuneration regime, the National Commission for Markets and Competition, as the body in charge of settlements, will carry out the necessary settlement for the adaptation of the remuneration from the specific remuneration regime, subtracting the amounts not paid by the facilities as a result of the suspension of the IVPEE. This adjustment will take place in the first settlement in which the corresponding adjustments are available following the entry into force of RDL 8/2023.

CONTACT



Ana Cremades
Partner, Energy

acremades@perezllorca.com
T. +34 91 423 66 52

www.perezllorca.com | Barcelona | Brussels | Lisbon | London | Madrid | New York | Singapore

AVAILABLE NOW | [New Pérez-Llorca App](#)

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice.

This document was prepared on 3 January 2024 and Pérez-Llorca does not assume any commitment to update or revise its contents.

