

Energy Update

The CNMC declares that the date that determines the capacity of an installation in the transport network is that of sending the request to the sole interlocutor node. (IUN)

3rd December 2019

In relation to the Resolution of the conflict of access to the electricity network of Spain, S.A., motivated by the refusal given to a request for access (Expte. CFT/DE/056)

The Comisión Nacional de los Mercados y la Competencia (national commission of markets and competition) ("**CNMC**") has recently published a resolution dated July 25, 2019 which states that the date that determines the capacity of a facility in a node of the transmission network is the date of sending the request to the sole interlocutor node ("**IUN**").

The promoters filed an access dispute against the lack of formal response from Red Eléctrica Española (Spanish electricity network) ("**REE**") to a request for access to the transmission grid node.

REE and **IUN** did not diligently process the request:

- i) On April 24, 2018, the IUN communicated the change of its contact person to REE. The transmission system operator did not update this information.
- ii) On 24 July 2018, the promoters sent the request for access to the network to the IUN contact still posted on the REE website. However, the person mistakenly posted did not forward the request. It took the subject more than two months to indicate to the promoters that he was no longer the contact person.
- iii) Subsequent requests were made by other companies during that time period.
- iv) REE sent an e-mail to the promoters when it realised what had happened indicating that *"considering the projects in service, with access permission and with ongoing processing, the capacity in the node would be saturated"*.

The CNMC states that the lack of diligence of REE and the IUN should not affect the request of the promoters. The CNMC applies the principle of temporal priority to maintain that the request of the promoters should prevail over subsequent ones. The temporary priority derives from article 71.2 of Law 39/2015 (Resolution CFT/DE/031/18 of 6 June 2019 of the CNMC) and REE's own obligation to take into account the foreseen generation (according to Annex XV.5 of Royal Decree 413/2014, applied in transport in Resolution CFT/DE/001/17 of 21 December 2017 of the CNMC).

The CNMC identifies as determining facts for the resolution of the procedure that the requests subsequent to those of the promoters decline for lack of remedies. In this way, **the CNMC resolves**



the controversy by ordering REE to process the promoters' applications according to the capacity available on its website at the time the application was filed (in July 2018 it was 24.45 MW). Finally, CNMC urges REE to refrain from carrying out evaluation capacities by means of e-mails of no legal value.

The Resolution hardens the discourse on the IUN, following the trend marked by other pronouncements such as the one contained in the Resolution of 10 December 2018 (CFT/DE/028/18).

In view of this, the future pronouncements of the CNMC for similar cases acquire greater interest. The CNMC will shortly have to rule on files based on the principle of temporal priority in which subsequent applications meet all the requirements, unlike the Resolution under consideration, in which they had declined for lack of remedies. In them, the Commission will have to assess whether it restores the rights of the promoter harmed by the lack of diligence of the IUN and/or REE, without undermining those of third parties outside the conflict. Finally, it will be necessary to be very attentive to the possibility of extrapolating this same conclusion to the distributor that manages the acceptability procedure, from the perspective of the transport network (Annex XV section 5, of Royal Decree 413/2014).

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