

New regulation on access and connection to the energy transmission and distribution networks

5th January 2021

In the light of Royal Decree 1183/2020 of 29th December on access and connection to the electricity transmission and distribution networks, with the intention of adapting to EU requirements and facing up to the new reality of the sector.

1. Introduction

Access and connection to electrical networks is a fundamental element for the development of any energy project. Until now, its regulation was sparse and dispersed in various regulations such as Law 54/1997, of 27th November, on the Electricity Sector ("**LSE 1997**"), Royal Decree 1955/2000, of 1st December, which regulates transmission, distribution and marketing activities, supply and authorisation procedures for electrical energy installations ("**RD 1955/2000**") and Royal Decree 413/2014, of 6th June, which regulates the production of electrical energy from renewable energy sources, cogeneration and waste ("**RD 413/2014**").

This regulation was deficient because (i) it did not regulate essential procedural issues such as the priority between applications, the effects of their correction or the calculation of deadlines; (ii) it provided for the figure of the single interlocutor of the node, as a processor of applications in the transmission network, without attributing it a clear status of rights and obligations; and (iii) it did not offer solutions for hybridisation, modification of installations or for energy storage installations.

The incomplete regulation of this crucial project approval process has led to a great deal of litigation in recent years. The National Securities Market Commission ("**CNMC**") and, to a lesser extent, the competent energy bodies of the Autonomous Communities have been forced to integrate the important gaps in our legislation by resolving access and connection disputes, respectively.

Article 33 of Law 24/2013, of 26th December, on the Electricity Sector ("**LSE**") lays down the basis for the access and connection framework to replace that derived from the LSE 1997. However, this provision could not be applied because the Eleventh Transitional Provision of the LSE deferred its applicability until the Government of the Nation developed its tenth paragraph and established criteria for the granting of access and connection permits. The growing interest

in the implementation of renewable installations and the ambitious commitments to penetrate these technologies made it necessary to approve these criteria.

In this context, on 30th December 2020, Royal Decree 1183/2020 of 29th December on access and connection to the electricity transmission and distribution networks ("**Access and Connection Royal Decree**") was published in the Official State Gazette. The regulation presents certain novelties with respect to the version submitted for public consultation on 17th July 2020.

The standard improves the governance of access and connection procedures. The RD on access and connection provides legal certainty to the energy legal framework and contributes to the orderly deployment of renewable energies. The RD on access and connection will be supplemented by the CNMC's access and connection circular, which was submitted for public consultation on 25th September 2020 and whose final content will soon be published. When this happens and the conditions set out in the RD on access and connection, to which we will refer later, are met, network operators will be able to admit new applications for access and connection to the network in accordance with the first transitional provision of Royal Decree Law 23/2020, of 23rd June, which approves measures in the field of energy and other areas for economic recovery.

2. The access and connection procedure

2.1. General aspects

The Royal Decree establishes principles and criteria for the application, processing and resolution of access and connection procedures. These are the general aspects governing the procedure:

- (i) **Joint processing:** Article 5.2 of the RD on access and connection establishes that the processing of the access and connection permit shall be joint.
- (ii) **Electronic processing:** Article 5.3 of the RD on access and connection provides that network operators shall have web platforms for processing these procedures. These platforms will make it possible to find out the capacity of the network. The web platform must be available within 3 months of the entry into force of the RD on access and connection and until it is, no new applications will be accepted (Transitional provision eight). The network capacity functionality must be available within the period established by the CNMC.
- (iii) **Single contact:** the operator of the network where the permits are being applied for acts as the single point of contact for the applicant or the natural or legal person representing him.



This means that the single point of contact for the new procedures will no longer exist. However, those appointed before the entry into force of the RD on access and connection will continue to exercise this function under the terms of the first transitional provision which introduces, as a novelty, the obligation to make the appropriate notifications to the IUN within 5 days of their receipt.

- (iv) **Accessible capacity:** Applications for access permits and connection to the transmission grid may only be made on existing substations or included in the transmission grid development plan in force and, within these, on existing or planned positions, while applications for access permits and connection to the distribution grid may only be made on existing installations or included in the investment plans of the distribution companies approved by the General State Administration.
- (v) **Guarantees and costs for the handling of the procedure:** the initiation of the procedure for electricity generation facilities is conditional upon proof of adequate provision of the financial guarantee in accordance with Article 23.

The developer must submit a copy of the receipt certifying that the financial guarantee has been deposited with the body responsible for granting authorisation for the installation. The guarantee receipt must indicate the technology of the installation, the name, location and installed capacity of the project. The promoter must request the competent substantive body to decide whether the guarantee has been properly constituted. The Administration must give its opinion within three months of the date of submission of the request. Once the period has elapsed without a pronouncement, it will be understood that this is negative. The amount of the financial guarantee is maintained at an amount equivalent to forty euros per kilowatt installed.

The fourth transitory provision states that to make the application, the guarantees must be constituted after the entry into force of the RD on access and connection and in the terms envisaged in art. 23 (that is, with administrative confirmation). For this reason, it is foreseen that guarantees constituted before the entry into force of the RD on access and connection will not be considered valid for processing an access and connection permit for a new installation.

The rejection or inadmissibility of the application for access and connection permits will result in the return of the guarantee. The Administration will only return 80% of the guarantee constituted when the inadmissibility is since the application has been presented on a node without access capacity on the date of constitution of the guarantees.



The expiry of the access and connection permits will entail the execution of the guarantee, with the exceptions established in RDL 23/2020 and the rest of the regulations.

In addition, the owner of the installation must pay, by way of access and connection studies, the amounts established by the respective ministerial orders referred to in the regulations on remuneration for the transmission and distribution of energy.

- (vi) **Time priority:** As a rule, access and connection requests will be ordered according to a time criterion. The determining date will be the date of submission of the request to the network operator. Articles 20 and 27 exclude tendering for access capacity and cases of hybridisation of installations from this general rule.

In the case of the correction of applications, the relevant date will be that on which all the documentation and information required is correctly presented. Article 7.3 indicates that if the date and time of admission of two applications coincide, priority will be given to the one that proves the existence of the oldest receipt proving the adequate deposit of the financial guarantees.

- (vii) **Reasons for non-admission:** Article 8 of the RD on access and connection establishes the reasons for non-admission of the application: (a) not having accredited the presentation to the competent body of the required financial guarantee and that this body has ruled on its adequacy, for which reason the provision of the guarantee and application for adequacy shall become the first milestone of any new application; (b) the granting of access to the node is subject to a specific procedure regulated by the Government; (c) failure to provide the documentation required in the RD on access and connection or in the CNMC Circular; or (d) having requested access and connection at nodes where the capacity to be granted is nil according to the information recorded on the managers' platforms. Non-admission will allow the guarantees to be recovered within a period of three months, unless they are not admitted due to lack of capacity in which case 80% will be returned unless it is proved that on the day the guarantee is constituted, on the web platform of the corresponding network manager, at 8 o'clock in the morning, the existence of grantable capacity was recorded.

Otherwise, refusals must comply with the reasons established by the CNMC in its Circular Letter and must be justified. When they are not directly or indirectly attributable to the applicant, the latter may request the return of the guarantee within a maximum period of three months.



2.2. Milestones

These are the fundamental milestones of the procedure:

1. The promoter of the production facility shall submit the application with the content determined in the Access and Connection Circular approved by the CNMC (art. 10.1).
2. The system operator must reply within a maximum of twenty days from the submission (Art. 10.2). Failure by the system operator to reply will result in the application being accepted, unless there are grounds for non-acceptance as set out in Article 8 (Art. 10.3). If the system operator requests that the application be corrected, the request must unequivocally specify all the deficiencies or errors found in the application. The regulation provides that in no case shall the request for rectification require the provision of additional content not required by the regulations. The system operator may make a maximum of two requests for rectification of an application (art. 10.4). Failure to remedy the situation will result in the application being rejected (Art. 10.5).
3. Where an acceptability report is required, the operator of the system where access is requested must request such a report from the upstream system operator within a maximum of ten days from the date the request has been accepted (Art. 11.2).

The maximum deadline for the upstream system operator to send the acceptability report to the requesting operator is the same as for the pre-proposal submission, in accordance with Article 13 (Art. 11.4).

4. If the node has capacity, the application will be accepted, and the system operator must notify the prior proposal in accordance with Article 12. The content of the pre-proposal will be determined by the CNMC, but the Government of the Nation has established the essential content to be followed by the Commission. The pre-proposal shall contain:
 - a. The proposed access capacity.
 - b. The technical parameters that technically characterise the point of connection, including at least voltage and location.
 - c. The maximum design short-circuit power, for the calculation of the protective switchgear, and the minimum short-circuit power, for the calculation of the permitted voltage variations at the point of connection.
 - d. Those situations in which, in accordance with the provisions of article 33.2 of Law 24/2013, of 26th December, the subject's right of access to the proposed connection point may be temporarily restricted, those that may arise from operating conditions or network maintenance and development needs.



- e. The conditions and technical requirements of the evacuation lines or input connection to the substation to which it is connected.
- f. A technical specification of the work required to connect to the network.
- g. Proposals relating to electricity generation installations must provide information on other installations with accesses granted at the same node or position whenever the prior agreement with their respective owners for the shared use of evacuation installations may condition the effectiveness of access to the network.

The financial budget drawn up by the network operator will be sent together with the technical proposal.

The capacity granted may be less than that requested if the network does not have sufficient capacity (Art. 11.7). The application will be rejected if the reasons set out in Article 9 are met. The maximum period for the system operator to inform the applicant of the result of the assessment of its application will depend on the type of installation (Article 13).

- a. The deadline will be five days when a supply of up to 15 kW is requested where no new network extension is required and fifteen days in other cases for installations whose connection point to the distribution network is below 1 kV;
 - b. The deadline will be thirty days for installations with a connection point to the distribution network at a voltage equal to or higher than 1 kV and less than 36 kV;
 - c. The deadline shall be 40 days for installations which have a connection point to the distribution network at a voltage equal to or greater than 36 kV;
 - d. The deadline shall be 60 days for installations which have a connection point to the transmission grid.
5. The maximum period for the applicant to inform the network operator whether or not it accepts the proposed connection point, and the technical and economic conditions is 30 days. Failure to reply will be considered as a non-acceptance (Art. 14).

In the event of disagreement with the technical or economic solution, or both, the applicant may notify the operator within that period and request a review of specific aspects of the technical or economic conditions at the connection point under analysis and must comply with any requests for additional documentation that may be made by the system operator within a maximum period of ten days. The system operator must respond to the request for review within no more than 15 days.



The review of a previous proposal shall suspend the deadlines for procedures relating to other requests for access and connection where those procedures may be affected by the outcome of the review (Article 10.8). This suspension shall last until the applicant decides whether to accept the proposed revision or, if he does not expressly decide, until the end of the period established for the acceptance of the proposal.

6. Upon receipt of the network operator's response to the request for review, the applicant must reply with its acceptance within 30 days. Failure to provide such a response within the time limit shall be deemed to constitute non-acceptance of the proposed point or solution.
7. The deadline for the operator to notify the interested party of the issue of access and connection permits shall be twenty days from the date on which the system operator is notified of the applicant's acceptance of the point of connection, the technical conditions for access and connection and the economic conditions for connection or, where applicable, for generation or demand installations at voltage points equal to or less than 36 kV, from the date on which the agreement on payment for the infrastructure to be developed by the system operator is signed, in accordance with the regulations in force. The content of the permits will be that established in the CNMC Circular (art. 20).
8. The deadline for signing the technical contract for access to the network will be five months from the date of obtaining the administrative authorisations provided for in Law 24/2013, of 26th December (art. 21).
9. Access and connection permits will expire:
 - 1) Five years after its granting if the administrative operating authorisation has not been obtained. This period will be seven years for hydraulic pumping technology projects;
 - 2) The calculation for those projects that obtained the access permit between 28th December 2013 and before the entry into force of Royal Decree Law 23/2020, of 23rd June, starts from the date of entry into force of Royal Decree Law 23/2020, of 23rd June;
 - 3) Three years after the cessation of the discharge of facilities built and in service when the cessation is due to causes attributable to the owner of the facility other than closure;
 - 4) For non-compliance with the administrative milestones established in Article 1 of Royal Decree Law 23/2020, of 23rd June, within the periods established in Royal Decree Law 23/2020, of 23rd June;



- 5) For failure to make payments for actions carried out on the transmission or distribution networks after obtaining access and connection permits for electricity generation facilities at voltage points exceeding 36 kV.

Chapter IV of the RD on access and connection identifies (i) the installations that will be exempt from obtaining access and connection permits and (ii) provides for those that will be subject to the shortened procedure.

Exempts are (a) consumer generation installations in the form of self-consumption without surplus, (b) installations with surplus with a potential equal to or less than 15 kW that are located on developed land and (c) consumers that meet the requirements of Article 25.1 of Royal Decree 1048/2013 (new network extension installations required to meet new supplies or extension of existing ones of up to 100 kW in low voltage and 250 kW in high voltage, on developed land).

The abbreviated procedure will follow the same procedures as the ordinary one, although the deadlines will be halved. The procedure will be open to (a) producers with an installed power of not more than 15 kW; (b) low-voltage consumers requesting a new connection point with a power of not more than 15 kW; and (c) low-voltage consumers requesting an extension of power over an existing supply with a final power of not more than 15 kW.

3. Bids for access capacity

Chapter V of the RD on access and connection regulates the so-called capacity tenders. By order of the head of the Ministry for Ecological Transition and Demographic Challenge, following a report by the Government's Delegate Commission for Economic Affairs, capacity tenders may be called for access at a specific node of the transmission grid for new electricity generation facilities using renewable primary energy sources and for storage facilities.

Chapter V excludes fair transition nodes from these tenders. The nodes whose capacity may be granted by tender (when the availability, release or outcrop of capacity at the nodes, as appropriate in each case, is equal to or greater than 100 megawatts in the case of nodes located in the mainland electricity system, or equal to and greater than 50 megawatts MW in nodes located in non-peninsular territories) shall be as follows (Article 18.2):

- (i) New nodes that are introduced through a new planning process for the electricity transmission grid or through the modification of specific aspects of the existing plan (Group 1) when the number of access requests presented during the planning process at nodes that have an electricity connection with the new planned node or at the



electricity lines that join these nodes to each other has been greater than five times the threshold of the released access capacity referred to above.

(ii) Nodes at which access capacity is released because of the provisions of article 1 of Royal Decree Law 23/2020, of 23rd June, or for other reasons (Group 2) or new capacity emerges because of regulatory changes in the calculation criteria for actions to improve the transmission and distribution networks (Group 3) when any of the following circumstances occur:

- a. The number of access requests during the two years preceding the release or outflow of capacity has been more than three times the threshold of released access capacity referred to above;
- b. The number of access requests during the two years preceding the release or outcrop of capacity at nodes of the transmission system which are electrically connected to the node at which the capacity is released has been higher than five times the threshold of released access capacity referred to in paragraph 3 of this Article;
- c. Other tenders have been held at that hub where the capacity of the applications submitted has been more than three times the access capacity tendered for that hub;
- d. The number of applications for access submitted in tenders for capacity at nodes of the electricity transmission network connected to the node at which the capacity is released has been more than three times the access capacity invited in tenders for those nodes.

In any case, for the call for tenders, the availability must be equal to or greater than 100 MW, in the case of nodes located in the mainland electricity system, or equal to and greater than 50 MW, in nodes located in non-peninsular territories (art. 18.3).

In accordance with Article 19, the asset to be auctioned shall be the electricity access capacity expressed in MW and the participants must be interested in building storage facilities or generation facilities using renewable primary energy sources.

The criteria applied to the competition will be temporary (priority will be given to those who begin the injection into the network first) and technical (priority will be given to projects which can maximise the volume of energy from renewable sources which can be integrated). In any case, priority will be given to projects which can contribute to the regularity or quality of supply, or to



the sustainability and economic efficiency of the electricity system. They may also incorporate criteria that prioritise projects in the R&D&I phase up to a maximum of 30 megawatts per node.

Participants must provide a guarantee to the Caja General de Depósitos (General Deposits Fund) for an amount equivalent to the penalty for delays in energy injection, which will be calculated by applying the best futures prices collected by the Iberian Market Operator for that period, as established in the order.

The period of non-compliance used for the calculation of these guarantees will be that between the date to which the successful bidder has committed itself and the maximum period for accrediting the obtaining of the definitive administrative operating authorisation, without the expiry of the access and connection permits, as established in Article 1 of Royal Decree 23/2020, of 23rd December.

Regarding the procedure (Article 20), it is established that the system operator may not grant access capacity by applying the criterion of temporary priority for available capacity or that it is released for any of the reasons set out in Article 18.2 in the month in which it is released. In these cases, the system operator shall reject the new applications and suspend the procedures in progress, which shall be notified to the applicants. Applicants who have had the processing of their application suspended may withdraw and request a full refund of the guarantees.

The system operator will inform the Ministry on the first working day of each month of the nodes that meet the requirements of Article 18.2 of the RD on access and connection and whether they meet the requirements for holding a tender. If the report does not show that the node complies with the requirements set for holding a tender, the cause of inadmissibility will cease to apply, and the suspension will be lifted. If the report shows that the conditions for holding the tender have been met, the State Secretary for Energy will have two months to decide on the holding of the tender by means of a ministerial order if it deems it appropriate. If it does not do so, it will be understood that the competition is not to be held.

All this implies that, once the milestones set out in Royal Decree-Law 23/2020 are met, the system operator will reject new applications at that node and will suspend the access procedures to which the temporary priority criterion is applied, and the Ministry will have a period of two months to decide on the holding of an auction at certain nodes that meet the requirements of Article 18.2 and 3 of the RD on access and connection.



4. Hybridisation

Articles 27 and 28 of the RD on access and connection regulate the hybridisation of electricity generation facilities. Hybridisation can be carried out (i) by incorporating electricity generation modules that use renewable primary energy sources and (ii) by incorporating storage facilities. Operators must update their access and connection permits with the network operator. To do so, they must prove that:

- (i) It complies with the technical criteria for access and connection set out in the corresponding regulations in force, and with those established for this purpose by the National Commission for Markets and Competition in the corresponding circular.
- (ii) It does not involve increasing the access capacity granted by such an amount that the installation cannot be considered the same, in accordance with the provisions of the fourteenth additional provision of Royal Decree 1955/2000, of 1 December.
- (iii) It complies with the applicable technical requirements.
- (iv) The owner of the installation already has a valid access and connection permit for at least one of the electricity generation modules that make up the installation.
- (v) Under no circumstances may the installed capacity of the technology for which the access and connection permits have been granted be less than 40% of the access capacity granted in the access permit.
- (vi) It complies, where applicable, with the measurement requirements defined in paragraph 5 of this article.
- (vii) The new electricity generation modules that are incorporated into the installation comply with the connection requirements established in Regulation (EU) 2016/631, of 14th April 2016, as well as in the regulations that serve to develop or implement it.

The updating of the access and connection permission shall be governed by the shortened procedure and shall not be subject to the principle of temporary priority. Installations must pay 50% of the guarantee set out in Article 23.



5. Access and connection conflicts

Article 29 of the RD on access and connection regulates access and connection conflicts.

The resolution of connection conflicts is attributed to the CNMC when the competence to authorise the installation lies with the General State Administration and to the competent bodies of the autonomous communities when the competence is regional. In the latter case, the resolution of the conflicts will have a mandatory report from the CNMC which will be binding as regards the economic conditions and the temporary conditions relating to the execution schedules of the installations of the network operators.

6. Regulatory change

- a) The RD on access and connection modifies various rules of regulatory status and introduces provisions that facilitate the application of the new regulatory framework, for example, regarding the calculation of time limits (Second Additional Provision) or rules applicable to procedures in progress (First to Fifth Transitional Provisions).
- b) Among these, the modification of RD 1955/2000 operated by the Second Final Provision is noteworthy, consisting of the inclusion of provisions on the updating of access permits. Thus, new features are included regarding the constitution of guarantees linked to the updating of permits (adapting this regime to that provided for in article 23 of the RD on access and connection), the incorporation of a time limit of 10 years for the purpose of verifying modifications to geographical location and the obligation for operators who share evacuation lines to present a document accrediting the existence of a binding agreement for the shared use of the lines.

The third final provision modifies the second paragraph of Article 3 of RD 413/2014 to define what is meant by installed power. According to the new wording it will be the lesser of:

- a) The sum of the maximum unitary powers of the photovoltaic modules that make up this installation, measured under standard conditions in accordance with the corresponding UNE standard.
- b) The maximum power of the inverter or, where appropriate, the sum of the powers of the inverters that make up this installation.

In the same way, RD 413/2014 is modified regarding the regulation of hybrid installations.

You can consult Royal Decree 1183/2020, of 29th December, on access and connection to the electricity transmission and distribution networks, at [this link](#).



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