

Informative Note

The CNMC approves the Circular regulating the right of access and connection to transmission and distribution networks

25th January 2021

The Circular aims to streamline permitting, ensure equality and non-discrimination of operators and optimise the use of transmission and distribution networks

1. Circular 1/2021: main effects on the regulatory framework

The increase in requests for access and connection linked to new renewable energy projects has saturated transmission and distribution nodes. Access and connection regulations have been incapable of fully organising this situation, due to a scattered, parsimonious and deficient regulation.

Law 24/2013, of 26 December, on the Electricity Sector ("**LSE**") undertook the regulation of access and connection rights, although it delayed the effectiveness of article 33 of the LSE until the CNMC and the Spanish Government approved a Circular and a Royal Decree regulating access and connection to transmission and distribution networks.

Royal Decree-Law 23/2020, of 23rd June, approving energy and other measures for economic recovery ("**RD-Law 23/2020**") introduced a moratorium on new access and connection requests. The first transitory provision of RD-Law 23/2020 provided that no new applications for access permits for electricity production plants would be accepted by network operators until the approval by the Government and the National Markets and Competition Commission ("**CNMC**"), respectively, of the royal decree and the regulatory circular implementing article 33 of the LSE.

On 30th December 2020, Royal Decree 1183/2020 of 29th December on access and connection to electricity transmission and distribution networks ("**RD on access and connection**") was published in the Official State Gazette.

On 22 January, Circular 1/2021, of 20th January, of the National Commission for Markets and Competition, which establishes the methodology and conditions for access and connection to the transmission and distribution networks of electricity production facilities (the "**Circular**"), was published in the Official State Gazette. The Circular regulates the procedure for granting access and connection permits. It applies to generators, system operators and system operators. The Circular does not apply to consumers or distributors.



Approval of the Circular by the CNMC does not automatically mean that new access and connection applications will be accepted for processing. Admission to process new access and connection requests is conditional upon network operators publishing on their web platforms the information relating to available access capacity values, based on the detailed specifications which, where appropriate, are approved by the CNMC in accordance with the provisions of article 13 of the Circular.

Grid system operators shall have detailed information available on their website on the available capacities at the nodes of their grids with a voltage above 1 kV. This information will allow producers to know the most saturated nodes and to make a correct assessment of their access and connection requests. This information must be updated monthly.

The sole transitory provision of the Circular establishes that the CNMC Resolutions approving the aforementioned detailed specifications will set a period of no less than three months from the entry into force of the RD on access and connection (this RD entered into force on 31st December 2020), within which transmission and distribution system operators will comply with the obligations to publish information on the values of access capacity (a) available; (b) occupied; and (c) corresponding to requests pending resolution.

Once the platforms have been adapted, applications for new access and connection rights must comply with the provisions on tenders in Chapter V of the Access and Connection Royal Decree. The RD on access and connection prevents the system operator from granting access capacity in the month in which it is released if the node complies with the requirements for the tendering of its capacity (art. 18.2 RD on access and connection).

2. Access and connection procedure

The main aspects introduced by Circular 1/2021 in the access and connection process are as follows:

i. **Joint application for access and connection.** Article 3 regulates the joint processing of access and connection permits in a single procedure. The procedure will be carried out electronically and the transmission or distribution system operators must make available on their website an application form for access and connection permits.¹

The application must at least contain:

- a. Identification of the applicant and contact details.

¹ Article 4 of the Circular also regulates a procedure for power generators with an installed capacity not exceeding 15 kW. The abbreviated procedure for the granting of permits will be governed by the same principles as the general procedure, although the time limits will be halved.



- b. Copy of the receipt certifying that the financial guarantee has been properly deposited;
- c. Environmental documentation. In the case of a project subject to environmental assessment, evidence of the submission by the developer to the substantive body of the request for scoping of the ordinary environmental impact assessment or of the request for the initiation of the simplified environmental impact assessment, respectively, if the developer has already submitted such requests; and
- d. Preliminary project of the electricity generation facility that will contain, at least: identification of the facility and type of technology, UTM coordinates, node or section of line or position to which it intends to connect, single-line diagrams, description of the storage elements, contracted power foreseen for auxiliary services or for consumption (in the case of self-consumption with surpluses) and estimated budget.

ii. **Application analysis**. The grid system operator, once the application has been accepted for processing, must assess the existence of access capacity in accordance with the criteria set out in Annex I of the Circular. This Annex stipulates that a specific study must be carried out at the connection point for which access is requested to determine the access capacity. This study shall be valid for 12 months from its completion.

The network operator must assess the feasibility of the requested connection according to the criteria in Annex II of the Circular. This Annex provides that the viability of the connection will be determined by compliance with the technical and safety conditions applicable to the electrical coupling of the installation.

When a request for access and connection is deemed to have an influence on a network other than that to which access is sought according to the criteria set out in Annex III, the operator of the network to which access is requested shall consult the operator of the network to which it is connected, who shall issue an acceptability report clearly specifying whether or not there is sufficient access capacity, according to the criteria set out in Annex I.

iii. **Communication of the request analysis result**. The manager will communicate the acceptance or refusal (total or partial) of the requested access and connection. Permission may only be refused for lack of access capacity or unfeasibility and must always be justified.

The refusal of the point requested by the producer for the installation referred to in the application must (i) specify whether the refusal is for access or connection reasons, (ii) be accompanied by a justification, the length and specificity of which shall be related to



the size of the installation, containing the data, references and calculations considered to adequately support the reasons for the refusal, (iii) possible alternative proposals, (iv) the reasons for the refusal, (v) the reasons for the refusal and (vii) the reasons for the refusal; and (viii) possible alternative proposals, or explicit mention of the non-existence thereof, at the requested point or at another nearby network point for which there is access capacity and connection viability, provided that the criteria for considering the installation to be the same for the purposes of the access and connection permits requested are met. The acceptance of the requested point referred to in the application must include both the existence of network access capacity and the feasibility of connection to the network, as well as the corresponding technical conditions of access and economic conditions such as the budget and, where appropriate, the indication of existing compensation agreements. At this point, it should be noted that discrepancies in relation to compensation agreements are subject to the connection dispute regime.

iv. **Acceptance of the conditions proposed in the outcome of the analysis of the application by the producer.**

v. **Issuance of access and connection permits.** The network operator must issue the permits jointly. Article 7² of the Circular sets out the content of these permits.

In the event of the entry of new applicants, the technical and economic conditions of the connection may be modified within 6 months. After this period, the conditions shall be considered definitive.

Permits may only be revoked due to the modification of any of the characteristics, because of which the installation cannot be considered the same, in accordance with the provisions of Royal Decree 1955/2000, or due to non-compliance with the technical or economic conditions.

vi. **Access and connection disputes.** Disputes arising at any stage of the access and connection procedure may be subject to conflict.

A dispute may be filed even if the result of the analysis of the application issued by the grid system operator was favourable, but there is disagreement, for example, on the economic conditions, the budget, or the compensation agreements.

The deadline for lodging a dispute remains one month from the moment the applicant becomes aware of the fact that the dispute has arisen.

² Permits shall contain: (i) identification of the economic guarantees established before the corresponding Administration related to the project to which the permit is granted, (ii) identification of the electricity generation facility, including the technology and access capacity for which the permit is granted, (iii) in the case of hybridisation, identification of the different technologies of the corresponding electricity generation modules, (iv) precise identification of the definitive connection point including denomination and UTM coordinates, (v) technical and economic conditions linked to the connection. They may not be more restrictive or demanding than those communicated when analysing the application. The economic conditions may not be more onerous than those communicated when analysing the application. Notwithstanding the foregoing, in the case of new applicants, these conditions may be modified within 6 months of the issuing of the permits upwards by a maximum of 20 %. After this period, the conditions shall be considered final, (vi) date of issue of the permits and (vii) expiry of the permits.



The CNMC will be the competent body to resolve disputes over access permits to the transmission and distribution networks, as well as refusals by the transmission system operator and the distribution system operator. The CNMC will also be competent to hear disputes arising from the granting or refusal of permits to connect to transmission or distribution facilities under the jurisdiction of the General State Administration. The deadline for a decision will be two months, which may be extended to two additional months if additional information is required in addition to the application, or if the applicant so states.

Any discrepancies that may arise in relation to the granting or refusal of the connection permit to grids whose authorisation falls within the competence of the Autonomous Community shall be resolved by the competent body of the corresponding Autonomous Community.

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