

Royal Decree-Law 9/2013, of 12 July, on the adoption of urgent measures to guarantee the financial stability of the electricity system. Measures affecting production facilities using renewable energy, cogeneration and waste

On 12 July 2013, the Government passed Royal Decree-Law 9/2013, of 12 July, on the adoption of urgent measures to guarantee the financial stability of the electricity system (published in the Official State Gazette on 13 July 2013), and which entered into force on 15 July 2013 ("RDL 9/2013").

The purpose of this Royal Decree-Law is to adopt a series of measures to ensure the sustainability of the electricity system, affecting mainly the transport and distribution activities and the electricity production facilities that use renewable energy sources (known as special regime facilities).

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I. New legal and remuneration system

RDL 9/2013 empowers the Government to approve a new legal and financial regime for existing electricity production facilities using renewable energy sources, cogeneration and waste, which takes the form of an amendment of Article 30 of Law 54/1997, of 27 November, on the Electricity Sector ("LSE"), on the "Rights and obligations of special regime producers".

First of all, this amendment entails a new version of paragraph 4 of said article, which points to the possibility for special regime facilities to receive additional remuneration apart from the sale price of energy on the market. This additional remuneration will, if necessary, cover the investment costs that an efficient, well-managed company does not recover on the market. The specific remuneration, which will be established in regulations to be implemented at a later date, will be calculated on the basis of the following criteria:

- In the case of a standard facility, the following factors will be considered throughout its regulatory lifetime (i) standard income from the sale of energy generated valued at production market price, (ii) standard operating costs, and (iii) the standard value of the initial investment.
- Under no circumstances will costs or investments determined by administrative rules or acts that do not apply throughout Spanish territory be taken into account.
- Only those costs and investments that correspond exclusively to the electricity production activity will be taken into account.
- It will not exceed the minimum level necessary to cover the costs that allow the facilities to compete on equal terms with the rest of technologies on the market and that makes it possible to obtain a reasonable profitability in relation to the standard facility applicable in each case (although, as an exception, the remuneration regime may also include an incentive for investment and execution within a certain timeframe when the installation of the same represents a significant cost reduction in insular and extra-peninsular systems). In this regard, the reasonable profitability will be set, as a project profitability, which will be based, before tax, on the average yield of Spanish 10-year sovereign bonds on the secondary market, applying the appropriate differential.

The above notwithstanding, for those facilities that, on the date of entry into force of RDL 9/2013 (15 July 2013), were entitled to a premium-based financial regime, this reasonable profitability will be based, before tax, on the average yield of Spanish 10-year sovereign bonds on the secondary market for the ten years prior to the entry into force of the Royal-Decree Law, plus 300 basis points.

- These parameters may be reviewed every 6 years.

Meanwhile, a new paragraph 9 is added to Article 30 of the LSE, which creates the Registry for the specific remuneration regime, in which all production facilities using renewable energy sources, cogeneration and waste opting for the specific remuneration regime will have to be registered and which will include the remuneration parameters applicable to said facilities. The organisation of said Registry, as well as the procedures and effects of registration and cancellation, will be established in the corresponding regulations.

II. Derogation of regulations and transitional regime

RDL 9/2013 expressly derogates (i) Article 4 of Royal-Decree Law 6/2009, of 30 April, on the adoption of certain measures in the energy sector and approved the bono social discount rate (which created the Registry for the pre-assignment of remuneration), (ii) Royal Decree 661/2007, of 25 May, on the regulation of the activity of special regime electricity production, and (iii) Royal Decree 1578/2008, of 26 September, on remuneration of the activity of electricity production by means of solar photovoltaic technology for facilities that postdate the deadline for maintenance of remuneration in Royal Decree 661/2007, of 25 May, for said technology.

Despite establishing that the new remuneration framework, to be approved by the Government, will be effective as of the entry into force of this Royal Decree-Law, the above provisions will apply on a transitional basis until the approval of the new legal and financial regime for production based on renewable energy sources, cogeneration and waste with a premium-based financial regime, with the exception of the efficiency bonus and the reactive energy bonus.

Remuneration received in this manner under the transitional regime will be considered settlement on account and, subsequently, once the regulatory provisions necessary to apply the new financial regime have been approved, it will be adjusted correspondingly in line with the credit rights or payment obligations resulting from the application of this new methodology, effective as of the entry into force of RDL 9/2013 (15 July 2013).

III. Conclusion

RDL 9/2013 has derogated the financial regime applicable to special regime electricity generation facilities until now, establishing new criteria under which a generation facility can, during its regulatory lifetime, receive additional remuneration on top of the price at which it sells energy on the market. While the specific remuneration for each facility will have to be set by the Government in the regulation that implements this new Royal Decree-Law, the new system will apply as of the date of entry into force of RDL 9/2013, with the remuneration received until said implementation– by virtue of the transitional application of Royal Decree 661/2007 – being on account of the settlement resulting from the application of the new methodology. This means that each facility will have to undergo the corresponding adjustment of the resulting credit rights or payment obligations.

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