

## KEY ELEMENTS OF THE NEW SPANISH ROYAL DECREE ON ACCESS AND CONNECTION TO THE ELECTRICITY TRANSMISSION AND DISTRIBUTION GRIDS

Spanish Royal Decree 1183/2020, of 29 December, on access and connection to the electricity transmission and distribution grids ("**RD 1183**") entered into force on 31 December 2020. Pending approval of the circular on access and connection by the Spanish and Markets and Competition Commission (the "**CNMC**"), RD 1183 establishes a new, simpler and more transparent framework for access and connection to the electrical grids, in the context of rising demand for power plants to be granted access to the grids, spurred on by state commitments to combating climate change.

RD 1183 also brings the definitive entry into force of Article 33 of the Electricity Sector Act (seven years after its approval), although the moratorium on new access permits for power plants has still not been lifted.

Given RD 1183's length, we will focus on analysing its most relevant elements.

### WHAT ARE THE BASICS OF THE NEW ACCESS AND CONNECTION PERMIT?

The main change is that there are no longer separate permits for access and for connection.

From now on, a single access and connection application will be submitted to a single authority (the manager of the grid to which the connection is being requested), which will act as the intermediary with the other interested parties (such as the owner of the grid or manager of the upstream grid) and will grant a single access and connection permit if the application is successful.

#### Key points

- The former access and connection permits have been merged into one, with a single procedure.
- The general rule of ordering access and connection applications based on their date and time has been established, except in the case of access capacity subject to a call for tender and just transition nodes.
- The role of the administrative body responsible for the granting of the permit in the access procedure has been expanded; it must now issue an express decision on the adequacy of guarantees.
- The moratorium on access for power plants will remain in place until the data on each node's available capacity is published on the grid managers' platforms.
- The updating of access for the hybridisation of power plants is regulated.
- The concept of node-specific single intermediary has been done away with, except where it has already been designated.
- The concept of installed capacity at solar PV plants has been amended.
- The owners of transmission infrastructure at the same connection point are required to reach an agreement on shared use.

## **WHO HAS TO APPLY FOR THE ACCESS AND CONNECTION PERMIT?**

All owners of facilities that wish to connect to the transmission or distribution grids must apply for the access and connection permit, whether they are generation, transmission, distribution, consumption or storage facilities; the latter will be subject to the access and connection regime for power plants when they can feed power into the grid.

Microgeneration installations that fall under the no-surplus self-supply model ("*la modalidad de autoconsumo sin excedentes*") will be exempt from obtaining the permit, along with those that fall under the surplus self-supply model ("*la modalidad de autoconsumo con excedentes*"), have a capacity of no more than 15 kW and are located on developed land with the facilities and services required by land development legislation.

Those microgeneration installations that extend the grid to establish new supplies or increase existing supplies and have a capacity of up to 100 kW for low voltage and 250 kW for high voltage will also be exempt, provided that they are located on developed land that – as a priority over the need for a power supply – has the facilities and services required by land development legislation.

## **IN WHAT ORDER WILL ACCESS APPLICATIONS BE PROCESSED?**

Permits will be granted on a first come, first served basis, except when access capacity tenders are organised, or in the case of just transition nodes.

The date and time of submission of the permit application to the manager of the relevant grid will determine the first come, first served order of priority, provided that the application is submitted with all the required documentation and information.

When two applications are submitted at the same date and time, priority will be given to the first applicant to send the administration responsible for authorising the facility (the "competent administration") both the copy of the slip confirming the correct deposit of the financial guarantees and the copy of the request (completed, including all necessary information) for an express decision on the adequacy of the guarantees.

Except in the case of individuals, applicants must present their applications digitally. Consequently, we will have to wait until we know how the online platform ultimately established by the CNMC will be configured to learn whether the digital record of applications will identify only the date, hour and minute of submission, or also the second and tenth of a second. Depending on the degree of precision established, the tiebreaker criteria described above may be more or less relevant.

Similarly, in the case of individuals, we will have to see the record system that the grid manager in question ultimately uses to learn whether only the hour and minute of submission will be recorded, or whether it will also record smaller units, in the event that the tiebreaker criteria comes into play. It should be noted that the submission of an access and connection application by an individual at the offices of Spain's national postal service (*Correos*) does not count as submission to the grid manager until the grid manager receives it.

## **WHEN WILL THE MORATORIUM ON ACCESS FOR POWER PLANTS BE LIFTED?**

RD 1183 establishes that new access applications will be inadmissible until the available access capacity is published on grid managers' platforms. This means that the access moratorium will not be lifted when the CNMC circular on access and connection is approved, but rather when the detail specifications of these platforms are approved and they can begin to be used, in the timeframes granted by the CNMC for such purpose.

## **WHAT ARE THE PREREQUISITES FOR POWER PLANTS TO SUBMIT AN APPLICATION?**

First, access and connection applicants must have sent the competent administration a copy of the slip confirming the deposit of the required guarantee, and the same administration must have issued a decision confirming the adequacy of that guarantee (for which the administration has three months; should no reply be received in that time, the guarantee will be understood to have been rejected).

Power plants with a capacity of 15 kW or less are exempt from the requirement to provide a guarantee, as are self-supply power generation installations that are not considered "production" facilities, unless they are part of a grouping with a capacity of more than 1 MW.

Second, applicants must have already identified the data relating to the technology, name, location and installed capacity of the project.

Third, while not a prerequisite, it is worth checking (and obtaining confirmation) on the grid manager's platform whether at 8 a.m. on the day of submission of the application there was access capacity that was grantable – and not earmarked for tenders – on the node to be accessed. Otherwise, the verification that the node has no available access capacity will entail the loss of 20% of the guarantee.

## **WHAT GUARANTEE IS REQUIRED OF POWER PLANTS?**

The rule remains that the economic guarantee must amount to EUR 40/kW of installed capacity.

In truth, it does not make much sense to continue basing the guarantee on installed capacity, given that since Royal Decree-Law 23/2020 the key element for access has been access capacity. In fact, installed capacity is not even a determining factor in establishing whether or not the facility has been altered, according to Annex II of Royal Decree 1955/2000.

In the case of access for facilities under state jurisdiction, the new regime established by Royal Decree 937/2020, of 27 October, approving the Regulation on the Spanish Government Depository must be taken into account.

Special rules govern the amount of the guarantee in the case of hybridisation.

## **WILL PREFERENCE BE GIVEN TO THE OWNERS OF FACILITIES THAT HAVE ALREADY PROVIDED THE COMPETENT ADMINISTRATION WITH THE GUARANTEE DEPOSIT SLIP?**

As indicated above, providing the competent administration with a copy of the slip confirming that the owner in question has correctly deposited the financial guarantees is a tiebreaker criterion, in the case of applications submitted at the same date and time. However, RD 1183 requires such guarantees to be granted after its entry into force (i.e. after 31 December 2020), as expressly stipulated in Article 23 of RD 1183, and it should also be borne in mind that preference is in fact determined not only based on the date the deposit slip is sent, but also takes into account the submission of the application for an express decision to be issued on the adequacy of the guarantee, which is now required under Article 23 of RD 1183.

Accordingly, not only would guarantees submitted before the entry into force of RD 1183 not give any preference to the owners, but they would not be valid for the purposes of obtaining access and connection.

Guarantees granted after 31 December could give preference to the owners of facilities, provided that all other prerequisites have been met, although access cannot be applied for all the while the moratorium is in place, as in this scenario any such applications would not be admitted.

## **WHAT IS THE PURPOSE OF THE GUARANTEES?**

To ensure that the operating permit (start-up certificate) is granted for the same facilities for which the owners have already applied for and obtained an access and connection permit.

## **WILL THE GUARANTEES HAVE TO BE AMENDED IF THE FACILITIES' SPECIFICATIONS ARE ALTERED?**

The alteration of facilities' specifications before start-up must now be notified to the grid manager, for it to issue a decision on whether or not the alteration in question requires that the access application be updated, given that it is the same facility.

If the grid manager decides that the application needs amending, a request should be submitted to the competent body asking it to authorise the substitution of the deposited guarantee. After the guarantee has been substituted, the competent body may be requested to issue a decision on the adequacy of the guarantee, for the purposes of ultimately asking the grid manager to update it.

## **WHICH SCENARIOS TRIGGER THE CANCELLATION OF THE ACCESS AND CONNECTION PERMIT?**

In conjunction with the scenarios leading to the cancellation of access and connection permits under Royal Decree-Law 23/2020, the scenarios established in Article 33.8 of the Spanish Electricity Act now apply, according to which an administrative operating permit must be obtained within five years of obtaining the access and connection permit, and active facilities are not permitted to

interrupt power transmission activities for a period of three years for reasons attributable to the owner.

Access and connection permits will also be cancelled due to the failure on the part of the owners of power plants at connection points exceeding 36 kV to make the payments for works required on the transmission and distribution grids.

## **IF ACCESS CAPACITY IS RELEASED FOR ANY REASON, CAN THIS EXCESS CAPACITY BE APPLIED FOR AT ANY TIME?**

Not in the case of power plants that wish to connect to the transmission grid.

One of the exceptions to the first come, first served order of priority for access applications is when the prerequisites for calling a tender to award the new access capacity are met.

In this regard, when access capacity is released in the transmission grid for any reason, this capacity will not be available until at least the first day of the following month, provided that the system operator has notified that the prerequisites for calling a tender with respect to such access capacity have not been met.

For an access capacity tender to be held, capacity of 100 MW (50 MW in the case of non-mainland territories) must have been released for any reason in a node of the transmission grid, and it must be preceded by very high demand for new access capacity.

If the system operator confirms that the prerequisites for a tender are met, the new access capacity cannot be granted until, within a maximum period of two months, a decision is issued by the State Secretariat for Energy on the holding of a tender with respect to such capacity. If the State Secretariat does not approve the tender with respect to all or part of the nodes in question, or does not issue a decision within the above-mentioned period, this capacity (in the relevant nodes) will be released and available to applicants, in accordance with the first come, first served order of priority.

Economic criteria will not be a determining factor in tenders relating to access capacity, i.e. the right to access the grid will not be subject to auction.

## **CAN EXISTING POWER PLANTS BE HYBRIDISED?**

Yes, provided that the hybridisation consists of the addition of new renewable or storage facilities.

In this regard, production facilities can update their access and connection permits, without losing their rights, provided that, inter alia, (i) this does not entail their current access capacity being increased by more than 5%, (ii) they can ensure that the transmitted access capacity never exceeds the permitted level, and (iii) the installed capacity of the initial technology maintains at least 40% of the access capacity granted in the access permit.

The updating of the access and connection permit will follow the general procedure, without applying the first come, first served order of priority, with the key difference being that guarantees are reduced by 50%. The truth of the matter

is that this rule does not make much sense in those cases where facilities are already in operation.

Given that it is expressly established that facilities must still be the same, with regard to the access capacity criterion (in the terms of Annex II of RD 1955/2000), it can be reasonably assumed, conversely, that geographical location, with respect to the new technology installed, will not be a requirement in order for facilities to be considered to be the same.

## **DO NODE-SPECIFIC SINGLE INTERMEDIARIES CONTINUE TO EXIST?**

Yes, for those nodes for which an intermediary had been designated before the entry into force of RD 1183, although rules are established to streamline notifications or requests received from or addressed to applicants.

This concept will no longer exist in all other cases.

## **WHAT OTHER RELEVANT FEATURES ARE INTRODUCED BY RD 1183?**

Basically, the following four:

- a) The owners of generation facilities whose installed capacity exceeds the access capacity granted in the permit are obliged to implement a monitoring system to prevent the active power that can be fed into the grid from exceeding that access capacity.
- b) The concept of installed capacity is amended in the case of solar PV plants, which will be the lower of the following two figures:
  - The sum of the peak capacity of each solar module that make up the plant, measured in standard conditions.
  - The inverter's peak capacity or, if applicable, the sum of the capacities of the plant's inverters.

This new criterion will apply to plants that have not yet obtained a definitive operating permit and, therefore, will apply to the authorisation procedures already under way.

- c) In order to be granted a prior administrative permit for the transmission infrastructure of a power plant, when there are various facilities with access and connection permits at the same connection point to the transmission or distribution substation, it will be a prerequisite to provide a document, signed by the owners of all the facilities with access and connection permits granted at the same connection point, that confirms the existence of a binding agreement for the shared use of the transmission infrastructure.
- d) With regard to the geographical location requirement in order for the facilities to be considered the same (Annex II of RD 1955/2000), any changes to location in a period of less than 10 years will be considered on a cumulative basis. Consequently, an analysis should be carried out comparing the distance between the geometrical centres of the new application and the oldest application submitted within this 10-year period.

- e) Within the first five months following the granting of the access and connection permit, the technical access agreement must be signed with the owner of the grid. The following will be exempt from entering into the technical access agreement with the distributor: consumers connected to voltages of less than 36 kV, no-surplus self-supply generation facilities, and production facilities with a capacity of no more than 15 kW that are located on developed land and have an access agreement in force for associated consumption facilities. Non-fulfilment of the five-month period is not established as a scenario triggering the cancellation of the access and connection permit.

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