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CUTS TO RENEWABLE ENERGIES UNDER RD 1565/2010, RD 1614/2010 AND RDL 14/2010

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The Spanish Government has recently enacted two new Royal Decrees (RD) introducing material changes to the special regime for the production of electricity: **RD 1565/2010**, regulating and amending certain aspects related to the activity of generating electricity under the special regime, **RD 1614/2010**, regulating and amending certain aspects related to the activity of generating electricity using wind and thermoelectric solar technologies and **Royal decree law 14/2010**, establishing emergency measures for correction of deficit of electricity tariff.

RD 1565/2010 amends the main regulations establishing the special regime: RD 661/2007, regulating the activity of generation of electricity under the special regime, and RD 1578/2008, related to the remuneration for photovoltaic (PV) solar electricity generation by facilities established after the deadline for observance of the remuneration of RD 661/2007. It also amends RD 1110/2007, which approved the unified Regulation on measurement points of the electricity system and established specific economic regimes (remunerated as provided under RD 661/2007) both for experimental onshore wind generation facilities (up to 160 MW) and for innovative thermoelectric solar facilities (up to 80 MW awarded by tender).

It is, to say the least, shocking to witness the regulation of the same industry by two different decrees so close in time. The fact that RD 1614/2010 arises from an agreement between the Government and the sectors concerned does not justify the double regulation and does a disservice to the achievement of the continuously cited principles of transparency and legal certainty.

The newly adopted rules amend (downwardly and unequally) the system of remuneration of the production of electricity using PV solar, wind and thermoelectric technologies under the special regime. They also implement a mandatory electronic filing which, although intend to facilitate the processing of administrative procedures, in fact they establish new restrictions on access to the special regime.

This document does not analyze all policy changes, but only those measures involving cuts or restrictions on access to the special regime of production of electricity using renewable technologies. The following are the main features of the new remuneration scheme for each technology, and the amendments common to all. We also attach as an annex to this paper a table summarizing such amendments.

1. Amendments common to all technologies

New equipment. In order to benefit from the special regime, it is a condition that the main equipments of the facility are new.

Limitation of hours eligible for remuneration. With the purpose of rationalizing the future development of thermoelectric solar, wind energy and PV solar technologies and limiting their cost to the system, restrictions are placed on the annual operating hours eligible for bonus or bonus equivalent for future facilities (reference equivalent hours).

For wind power, the new RD limits to 2,589 hours a year the payment of bonus, but only in years when the national average exceeds 2,350 hours. If this limit is not exceeded, no limitation

shall apply to the number of reference equivalent hours.

Operators exceeding the annual limits of equivalent hours must return overpayments of bonus or bonus equivalent within up to three months after so required by the National Energy Commission, which for these purposes will issue a circular detailing the methodology of calculation of hours and the applicable settlement procedure.

Substantial modification of the facility. The concept of "substantial modification" is redefined, regulating which equipments must be replaced for each type of technology (e.g. at least the generator and blades for wind generators, and the "main equipment" determined by the Ministry of Industry, Tourism and Trade for other technologies) and excluding the criteria of the value of the investment as "substantial modification" (up to now it was required a minimum investment of 50% of the cost of a new plant). The substantial modification marks a new date of commissioning and correspondingly, a new remuneration for the facility.

Requests for permission for a substantial modification of a facility filed before the entry into force of the new rules may be considered and resolved under the regulations in force at the time of filing the application, but only if the owner of the facility has a purchase agreement signed with a manufacturer or supplier of equipment for the acquisition of such equipment for an amount equivalent to at least 50% of the value of all project equipment. In this case, the owner of the facility must report that fact to the competent authority within two months after the entry into force of the RD, along with filing the relevant supporting documentation. Otherwise, he will be deemed as waiving this right and the authorization of a substantial modification will be governed by the new regulations.

Enrolment with a control centre and mandatory telemetry. All facilities which individually or jointly (if they be-

long to the same group of facilities) have a capacity exceeding 10 MW (or 1 MW for the electricity systems of the islands and territories outside the Spanish mainland) must enrol with a generation control centre, which will act as interface with the system operator. The installation and maintenance costs of such control centres shall be borne by the special regime generators enrolled with them.

All facilities with installed capacity over 1 MW or less than 1 MW but forming part of a cluster of facilities with a capacity sum greater than 1 MW must submit remote measurements to the system operator in real time, individually in the first case or in aggregate, in the second.

To this end, there are is a double definition of "cluster of facilities." Cluster is defined as the set of facilities that are connected at the same point to the distribution or transport network, or have a common transformer or evacuation line. It is also defined as those facilities that have the same cadastral reference, taking into account their first 14 digits.

Breach of those obligations is sanctioned with the loss of the relevant remuneration depending on the chosen option (tariff or bonus). In case the chosen option was the sale at the regulated tariff, breach of this obligation will result on being paid the market price.

This obligation will be enforceable as of July 1, 2011, except in the case of individual facilities with capacity over 10 MW.

Procedural developments. The application for admission to the special regime and the required documentation must be submitted at least in electronic format.

2. Amendments common to the thermoelectric solar and wind technologies

Stability commitments. RD 1614/2010 contains two separate stability commitments for systems with thermoelectric solar technology and for wind power plants.

Regarding thermoelectric solar plants, the RD states that any reviews to the economic regime (tariff, bonus, etc.), including reviews to the equivalent hours, will not affect the facilities in operation and registered with the Registry of pre-allocation of remuneration. In concrete, reviews will not affect the following facilities:

a) those registered with the RAIPRE as of May 7, 2009 (date of entry into force of Royal Legislative Decree ("RLD") 6/2009); and

b) those registered with the Registry of pre-allocation of remuneration under DT 4 of RLD 6/2009 (facilities which complied with the requirements of registration at the date of entry into force of such RLD, except for the requirement of having presented a guarantee, but which subsequently filed for registration and presented such guarantee) which will register on a final basis with the RAIPRE and will commence energy sales no later than thirty-six months from the date of notification of registration of pre-allocation or before December 31, 2013, if they are facilities associated with phase 4 of the Agreement of the Council of Ministers of November 13, 2009 (they will commence the delivery of energy through the transport or distribution networks on January 1, 2013).

As noted, it has been agreed to delay the entry into operation of solar thermoelectric power plants with respect to the date specified in the programme of commissioning of the projects submitted to preregistration under RLD 6/2009.

In the case of wind power, the reference values for annual equivalent hours (2350 and 2589 hours per year) will not be subject to review during the operating life of those facilities in operation (entered in the RAIPRE on or before May 7, 2009), and of those entered in the register of pre-allocation of remuneration under DT 4 of RLD 6/2009. Unlike thermoelectric solar plants, in the case of wind generators the stability commitment is linked to the plant not being subject to a substantial change in its operational life. These facilities will not be affected by any tariff, bonus or lower or upper limit reviews either, without prejudice of the reductions envisaged by the RD 1614/2010 itself (article 5).

The shielding of the above facilities against potential reviews of their economic system within the terms of Article 44.3 of RD 661/2007 can only be understood in the context of a political and economic compromise between the Government and the industry, but its legal effectiveness is questionable. Naturally, and notwithstanding the need to comply with the principles of legal certainty and the non-retroactivity of the rules restricting rights (so threatened in the current context), nothing prevents that rules of a regulatory nature be altered by subsequent rules of equal or superior rank, altering the system of review of the economic regime of electricity production under the special regime, as well as the facilities affected by such review.

Elimination of bonus for facilities with capacity exceeding 50 MW.

Even though RD 661/2007 established a limit of 50 MW of installed capacity to benefit from the special regime, it was admitted that certain facilities with installed capacity over 50 MW and using technologies similar to those in category B (excluding hydropower) could perceive the bonus set out in Article 45.2 of RD 661/2007. The new regulations extend the facilities (in addition to hydropower plants) having no access to such bonus to thermoelectric solar and wind generators of installed capacity exceeding 50 MW.

Correspondingly, the new rules envisage the automatic withdrawal of pending applications for facilities of installed capacity exceeding 50 MW which use renewable energy sources and which, given the technology they use and the requirements applicable to them, were eligible under Article 45 of RD 661/2007 but are no longer eligible under the new regulations (thermoelectric solar and wind power plants, except for offshore wind power plants). The sponsors of such facilities that at the time of entry into force of the RD had filed an application for administrative approval of their facility shall have a maximum period of two months (until January 24, 2011) to ratify the application. No ratification shall be taken as abandonment of such application. They may also request a return of the guarantee provided for by Article 124 of RD 1955/2000, precluding its foreclosure in the two months following the entry into force of RD 1565/2010.

Incentives to the withdrawal of applications. The regulator encourages the sponsors of thermoelectric solar and wind power technology facilities to withdraw their applications, and for this purpose it provides that sponsors of thermoelectric solar and wind power facilities that were listed in the Register of pre-allocation of remuneration and had chosen desist of the implementation of the facility may withdraw within three months (until March 9, 2011) precluding the foreclosure of deposited guarantees.

3. Amendments specific to each type of technology

3.1. PV solar technology

Redefinition of Type I facilities (on rooftop and facade). Facilities installed on the rooftop and facade of buildings are required to have a point of contracted power supply in such buildings, of at least 25% of the nominal power of the intended facility, during the first 25 years after the first day of the month following the record of commissioning of the facility. This is intended to rationalize the size of the facilities in

order to obtain the benefits of distributed generation, avoiding energy losses, minimizing congestion and reducing the need to invest in distribution networks. Facilities located on top of greenhouses, pools of irrigation and similar are excluded.

The new definition of Type I facilities will apply from the first call for registration in the Registry of pre-allocation of remuneration launched after the entry into force of RD 1565, which is scheduled for the third quarter of 2011 according to the timetable set out in Annex III, paragraph 2 (iii) of RD 1578/2008.

Exceptional reduction of the tariff for new PV facilities. The prices of tariffs for PV facilities are reduced by 5% for rooftop facilities of up to 20 kW, 25% for rooftop facilities of up to 2 MW and 45% for facilities on ground. The reduction is "exceptional" to the extent that only the first call for registration in the Registry of pre-allocation of remuneration, the filing period of which is initiated after November 24, 2010 (i.e. the call for registration of the third quarter of 2011 according to the timetable set out in Annex III, paragraph 2 (iii) of RD 1578/2008), will be affected. However, this reduction will not be considered for purposes of calculating the remuneration of power quotas for next year.

Elimination of the right to payment of bonus equivalent after 28 years of useful life. The remuneration of RD 661/2007 is eliminated after the 29th year of useful life of the facility, after which the facility will be paid at market price, if it is still in operation. This is one of the most conflictive issues of the reform, because even when the position of the National Energy Commission is that this limitation is consistent with the amortization period of the facility and the remuneration paid until then, a large portion of the industry considers that the retroactive application of this regulation is illegal.

Obligation to comply with operating procedures to deal with voltage gaps. While specific procedures are developed for PV facilities, those individual or joint plants with capacity exceeding 2 MW must comply with the "P.O.12.3" operating procedures, entitled "Requirements of response to voltage gaps of wind energy facilities", enacted by Resolution 4, dated October 4, 2006 of the General Energy Secretariat. Compliance with these conditions is a necessary requirement for payment of the relevant tariff or bonus. PV facilities registered on a definitive basis on RAIPRE until June 30, 2011, must adapt to the procedures before October 1, 2011. Beginning on July 1, 2011, compliance with the requirements of such operating procedures shall be required from the date of definitive registration of the facility.

Procedural developments. The application for registration of a facility or project in the Registry of pre-allocation has to be carried out for the same unit that would have been processed before the competent organ of the Autonomous Region; it is expressly forbidden to process an application for registration for a facility formed by a group of facilities that would have been handled independently by the competent body.

The application must be exclusively filed electronically, including a digital certificate. The procedure will be equally handled by electronic means.

Unlike the previous regime in which unless expressly desisted, unaccepted applications remained valid for subsequent calls, under the new rules applications must be submitted for each of the calls in which participation is desired, not being valid for a call the applications submitted to previous calls which had not obtained registration in the Registry of pre-allocation. However, in case of repeated applications to consecutive calls, applicants do not need to re-file their documentation.

When soliciting registration in the Registry of pre-allocation, operators of facilities of the Type I.1 (rooftop or facade

facilities with capacity of up to 20 kW) will not need to present the building permit of the project granted by the competent body.

There have been other developments in relation to cancelled registrations in the Registry of pre-allocation, which exceed merely procedural affairs. Previously, the capacity corresponding to projects whose registration was cancelled was incorporated as additional capacity to the calls after their cancellation, within the same type or subtype. In the new version of Annex IV of RD 1578/2008, this provision is eliminated.

These new procedural rules will apply from the first call for registration in the Registry of pre-allocation of remuneration launched after the entry into force of RD 1565, which is scheduled for the third quarter of 2011 according to the timetable set out in Annex III, paragraph 2 (iii) of RD 1578/2008.

3.2. Wind technology.

Temporary reduction of bonuses. Bonuses are reduced by 35% in the period between January 1, 2011 and December 31, 2012. This is applicable to those wind energy facilities benefitting from RD 661/2007 and to those with capacity greater than 50 MW taking advantage of the special regime. Indexation methods contemplated in article 44.1 of RD 661/2007 (referred to the CPI) are precluded.

This reduction does not affect the facilities benefitting from DT 2 of RD 661/2007, namely those covered by RD 436/2004, which obtained a definitive commissioning certificate before January 1, 2008.

As of January 1, 2013, the facilities affected by the bonus reduction will see the values of their bonuses fixed in accordance with Order ITC/3519/2009, under which access fees applicable after January 1, 2010 and the bonus rates of the special regime are reviewed. Such bonuses shall be updated according to the CPI.

In the case of wind power plants, not everything is cuts. RD 1614/2010 contemplates a special call for pre-allocation of remuneration, under a peculiar compensation regime for up to 300 MW of capacity, for wind technology facilities which had obtained commissioning before May 1, 2010 but had not been registered in the Registry of pre-allocation of remuneration under DT 4 of RLD 6/2009. This allows the regularization of certain wind generation plants that were left unregistered due to administrative issues.

It is also contemplated a call for pre-allocation of remuneration for wind energy facilities located in the Canary Islands, establishing a wind energy capacity goal of 600 MW for this Region. The economic regime of RD 661/2007 will be applicable in that case, with the characteristics concerning sale and settlement established in the new RD.

Besides, the deadline for the facilities definitely listed on the RAIPRE before January 1, 2008 to conform with PO12.3 (operating procedures for responding to voltage gaps approved by Resolution of October 4, 2006) is extended from January 1 to December 31, 2010. In the case of electricity systems located in islands and territories outside the Spanish mainland, such deadline is extended until September 30, 2011. If applicable, these facilities must provide evidence before December 31, 2010 of the technical impossibility to comply with those requirements, and any resolution of acceptance of such impossibility and any waiver of sanctions (loss of tariff or bonus) could be of a temporary nature.

3.3. Solar thermoelectric technology

Elimination of energy sales on the market for solar thermoelectric facilities during the first year of operation. Thermoelectric solar technology facilities operating under RD 661/2007 must sell their net energy at the regulated tariff during the twelve months from the date of their definitive com-

missioning certificate. If this certificate predates the entry into force of RD 1614/2010, they must sell power at the regulated tariff beginning on January 1, 2011 and must remain in this system for 12 months. In compensation, over those twelve months, the percentage of electricity generation from fuel may be raised to 15% (the same percentage that would apply if the facility would choose the option to sell at market prices plus bonus).

AMENDMENT	AMENDING RULE	AMENDED OR AFFECTED RULE	AFFECTED FACILITIES	EFFECTIVENESS	TRANSITIONAL REGIME
Need of new equipment to benefit from the special regime	Article 1. one, RD 1565/2010	Article 3.4, RD 661/2007	All	As of November 24, 2010	
New concept of substantial modification (excluding the value of the investment, replaced by pre-decided equipment)	Article 1, paragraphs 2 and 3, RD 1565/2010	Articles 4.3 and 4 bis, RD 661/2007	All	As of November 24, 2010	Filings processed before 11-24-2010: may be considered and resolved under prior regulations if the owner of the facility has a purchase agreement signed with a supplier of equipment for the acquisition of such equipment for an amount equivalent to at least 50% of the value of all project equipment. Reporting before January 24, 2011 (DT 3 RD 1565/2010)
Specific remuneration regime determined by the Government for substantially modified facilities	Article 1, paragraph 6, RLD 14/2010.	Article 30.6 Ley 54/1997	All	As of December 25, 2010	
Mandatory enrolment with a generation control centre	Article 1, paragraphs 4 and 14, RD 1565/2010	Article 18 d) and DT 4, RD 661/2007	All (individual or joint capacity > 10 MW or > 1 MW in electricity systems of islands and territories outside the Spanish mainland)	As of July 1, 2011 (except individual facilities with capacity > 10 MW)	No sanctions (loss of tariff or bonus) applicable until 6-30-2011, except individual facilities with capacity > 10 MW (DT 4, RD 661/2007)

AMENDMENT	AMENDING RULE	AMENDED OR AFFECTED RULE	AFFECTED FACILITIES	EFFECTIVENESS	TRANSITIONAL REGIME
Mandatory submission of remote measurements to the system operator in real time	Article 1, paragraphs 4 and 14, RD 1565/2010	Article 18 d) and DT 4, RD 661/2007	All (individual or joint capacity > 1 MW)	As of July 1, 2011 (except individual facilities with capacity > 10 MW)	No sanctions (loss of tariff or bonus) applicable until 6-30-2011, except individual facilities with capacity > 10 MW (DT 4, RD 661/2007)
Mandatory electronic application	Article 1, paragraph 6 and 3, paragraph 2, RD 1565/2010	Article 19.4, RD 661/2007 and 6.2, RD 1578/2008	All	As of November 24, 2010	Photovoltaic systems: call for registration in the pre-allocation registry corresponding to the third quarter of 2011 (DT 4, RD 1565/2010 and Annex III.2, iii, RD 1578/2008)
Limitation to hours eligible for remuneration (equivalent operating hours)	Article 2, RD 1614/2010 and DA 1, RLD 14/2010		All	As of November 24, 2010 (solar thermoelectric and wind technology facilities); as of December 25, 2010 (PV facilities)	Until 12-31-2013, specific and homogeneous limits for PV facilities benefiting from the regime of RD 661/2007 (DT 2, RLD 14/2010), independently of their location.
Stability commitments (no reviews to the economic regime or to equivalent hours of operation)	Articles 2.4, 4 and 5.3, RD 1614/2010	Article 44, RD 661/2007	Facilities with thermoelectric solar and wind energy technology, in operation as of 5-7-2009 and registered in Registry of pre-allocation of remuneration under DT 4, RLD 6/2009 (thermoelectric generators until 12-13-2013).	From 11-24-2010 until the end of the installation's useful lifetime	

AMENDMENT	AMENDING RULE	AMENDED OR AFFECTED RULE	AFFECTED FACILITIES	EFFECTIVENESS	TRANSITIONAL REGIME
Mandatory sale at the regulated tariff during one year	Article 3, RD 1614/2010	Article 24, RD 661/2007	Facilities with thermoelectric solar and wind energy technology, benefitting from RD 661/2007	- As of 11-24-2010 (new facilities) - As of December 1, 2010 (facilities in operation)	Potential temporary (12 months) increase of up to 15% in the percentage of fuel-generated electricity
Elimination of bonus for facilities with capacity > 50 MW	Article 1, paragraph 11, RD 1565/2010	Article 45.2, RD 661/2007	Facilities with thermoelectric solar and wind energy technology	As of 11-24-2010	Automatic withdrawal of pending applications, except express ratification by sponsors. Return of guarantees, no foreclosure (until 1-24-2011) (DT 1 and 2, RD 1565/2010)
Temporary reduction of bonus (35%)	Article 5, RD 1614/2010	Article 44.1, RD 661/2007	Wind energy facilities benefitting from RD 661/2007 (including facilities with capacity > 50 MW)	From 1-1-2011 to 12-31-2012	From 1-1-2011 to 12-31-2012. As of 1-1-2013, remuneration fixed in accordance with Order ITC/3519/2009, plus indexation

AMENDMENT	AMENDING RULE	AMENDED OR AFFECTED RULE	AFFECTED FACILITIES	EFFECTIVENESS	TRANSITIONAL REGIME
New definition of type I facilities: Facilities installed on rooftops and facades of buildings must be associated with a point of contracted power supply of at least 25% of the nominal power of the intended facility. Facilities installed over greenhouses, irrigation ponds and similar excluded	Article 3, paragraph 1, RD 1565/2010	Article 3.a), RD 1578/2008	PV facilities	From the call for registration in the Registry of pre-allocation of remuneration of the third quarter of 2011 (DT 4 RD 1565/2010 and Annex III.2,iii RD 1578/2008).	
Elimination of bonus after the 28th year of useful life	DF 1, RLD 14/2010	Article 36.3 (table 3), RD 661/2007	PV facilities	Applicable to facilities in operation benefiting from RD 661/2007	
Exceptional reduction of the regulated tariff: 5% (rooftop facilities ≤ 20 kW); 25% (rooftop facilities ≤ 2MW) y 45% (ground facilities)	DA 4, 1565/2010	Article 11.2, RD 1578/2008	PV facilities	Call for registration in the Registry of pre-allocation of remuneration of the third quarter of 2011 (DA 4, RD 1565/2010 and Annex III.2,iii RD 1578/2008).	This reduction will not be considered for purposes of calculating the remuneration of power quotas for next year

AMENDMENT	AMENDING RULE	AMENDED OR AFFECTED RULE	AFFECTED FACILITIES	EFFECTIVENESS	TRANSITIONAL REGIME
Obligation to comply with operating procedures to deal with voltage gaps	Article 1, paragraphs 5 and 15, RD 1565/2010	Article 18,e and DT 5 RD 661/2007	Wind generators and PV facilities (capacity > 2 MW individually or jointly)	<ul style="list-style-type: none"> - PV registered on RAIPRE until 6-30-2011: as of 10-1-2011; - PV registered on RAIPRE after 7-1-2011: since registration - Mainland wind generators registered on RAIPRE before 1-1-2008: as of 1-1-2011 - Wind generators located in islands and territories outside mainland registered on RAIPRE before 1-1-2008: as of 10-1-2011 	<ul style="list-style-type: none"> - PV: While specific procedures are developed, the operating procedures applicable to wind generators will apply (P.O.12.3 - "Requirements of response to voltage gaps of wind energy facilities", enacted by Resolution 4, dated October 4, 2006 of the General Energy Secretariat); - Mainland wind generators registered on RAIPRE before 1-1-2008: must adjust before 12-31-2010 - Wind generators located in islands and territories outside mainland registered on RAIPRE before 1-1-2008: must adjust before 9-30-2011

AMENDMENT	AMENDING RULE	AMENDED OR AFFECTED RULE	AFFECTED FACILITIES	EFFECTIVENESS	TRANSITIONAL REGIME
Obligation to file a new application for each call to registration in the Registry of pre-allocation	Article 3, paragraphs 2, 3 and 4, RD 1565/2010	Article 18,e and DT 5 RD 661/2007 Article 6, RD 1578/2008	PV facilities	Call for registration in the Registry of pre-allocation of remuneration of the third quarter of 2011 (DT 4, RD 1565/2010 and Annex III.2,iii, RD 1578/2008)	