

New year, new rules and regulations for the electricity sector

Ana I. Mendoza Losana

Senior Lecturer (Assistant Professor (Tenure Track)) of Civil Law, Universidad de Castilla-La Mancha
Knowledge Management Department, GA_P

Foreseeably, the last quarter of 2017 will see the adoption of new rules and regulations for the electricity sector, which will change the legal regime for all players involved (producers, transmission companies, distributors and consumers). This paper aims to present some of the changes that will soon be adopted, without prejudice to more in-depth analysis of such changes in the future.

1. The Climate Change and Energy Transition Act, in public consultation until 10 October

In order to fulfil the commitments made by Spain in the 2015 Paris Agreement to fight climate change and in application of the European Commission's measures included in the "Clean Energy for All Europeans" package, announced on 30 November 2016, the future Act will adopt measures around three main lines of action:

- Reduction of greenhouse gas emissions: between 80% and 95% compared to 1990 levels and 26% compared to 2005 levels.
- Energy efficiency: the Commission has proposed a 30% target for the European Union: Spain will have to define its contribution to this objective by means of the said Act.

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- Renewable energy: the Commission has proposed a production target of 27% in the European Union; once this proposal is set down in legislation, Spain will have to define its contribution to the target proposed by the Commission.

This piece of legislation is in the process of public consultation prior to drawing up the draft bill. Those interested can participate in the consultation until 10 October through the website <http://www.lccte.gob.es/#inicio>.

2. New regulations for vulnerable consumers

The Ministry of Energy, Tourism and Digital Agenda is well under way in the procedure for the passage and adoption of the Royal Decree regulating vulnerable consumers of electricity, the social energy tariff and the conditions that must be met to suspend the supply to consumers with contracted power equal to or less than 10 kW, implemented by Royal Decree Law 7/2016, of 23 December, regulating the mechanism for financing the cost of the social energy tariff and other measures to protect vulnerable consumers of electricity.

The future regulatory text will define the concepts of *vulnerable consumer* and *severely vulnerable consumer*, will quantify the social energy tariff applicable to these, and will create a new category within severely vulnerable consumers: consumers at risk of social exclusion, for whom the royal decree will include the impossibility of supply to the same being suspended. It will also set out the procedures to apply for the social energy tariff and for the regulated electricity supplier to verify compliance with the requirements to be a vulnerable consumer. In addition, the royal decree will regulate the financing of the social energy tariff and the cost of supplying to consumers at risk of social exclusion and will regulate the conditions under which the supply to consumers with a contracted power equal to or less than 10 kW may be suspended.

Simultaneously, the order implementing the aforementioned regulation is under way (Draft Order implementing the Royal Decree establishing protection measures for household consumers of electricity and regulating the concept of vulnerable consumer). The draft order sets out the conditions under which the consumers holding the supply points may apply for the social energy tariff and, in particular, the application form for the social energy tariff, the documentation proving fulfilment of the requirements, the calculation criteria of the income requirement and the mechanisms with which to verify fulfilment of the requirements laid down by the royal decree for entitlement to the social energy tariff as a vulnerable or severely vulnerable consumer.

The regulatory text has been sent to the Spanish Competition and Markets Authority to make it publicly available for objection and to carry out the oral hearing proceedings through the Electricity Advisory Council, in accordance with art. 7 of the Competition and Markets Authority Act 3/2013 of 4 June.

3. Draft Royal Decree regulating the procedure for the closure of facilities that produce electricity, subject to public consultation until 15 September 2017

In accordance with art. 26(2) of the Government Act 50/1997 of 27 November 1997, prior to drawing up the draft royal decree that will regulate the procedure for the closure of facilities that produce electricity, in order to guarantee the security of supply and the sustainability of the electricity system the Ministry of Energy, Tourism and Digital Agenda opened a public consultation (<http://www.minetad.gob.es/energia/es-ES/Participacion/Paginas/cierre-instalaciones-generacion-electrica.aspx>) asking interested parties the following questions:

- (a) Do you consider it appropriate to keep a plant operational for reasons of security of supply, climate change and price impact?
- (b) What procedure should be followed in the event that the operator requests the closure of a plant which is necessary for the system?

Responses to the public consultation had to be sent before 15 September to the Directorate-General for Energy Policy and Mines, via the e-mail address sgeelectrica@minetad.es with the subject “*Procedimiento de cierre de instalaciones eléctricas*” (Procedure for the closure of power plants).

This piece of legislation will affect the procedures already regulated in Royal Decree 1955/2000, of 1 December, regulating transmission, distribution, marketing and supply activities and the authorisation procedures for power plants, and in Royal Decree 1836/1999, of 3 December, approving the Regulation on nuclear and radioactive facilities, which must be updated.

4. Draft Royal Decree establishing the access and connection procedure and implementing Article 33 of the Electricity Sector Act 24/2013 of 26 December, subject to public consultation until 10 September 2017

The process of public consultation was opened on the Royal Decree establishing the access and connection procedure and implementing art. 33 of the Electricity Sector Act 24/2013 of 26 December, which regulates, among other aspects, those related to access to and connection to the electricity transmission or distribution networks (<http://www.minetad.gob.es/energia/es-ES/Participacion/Documents/proyecto-RD-acceso-conexion.pdf>).

The aforementioned art. 33 of the Electricity Sector Act defines the concepts of “right of access”, “right of connection”, “permission to access” and “permission to connect”, the procedure and requirements for granting such permissions and the persons responsible for granting these under technical and economic criteria to be established by governmental regulation. It also regulates the grounds for refusing a permission to access (which can only be refused due to a lack of capacity), as well as the permission to connect (which can only be refused due to a technical

impossibility, personal safety reasons, the absence of a network installation or lack of adequate physical space to locate the facilities); in both cases, as per the regulation adopted by the Government. In addition, it establishes the bodies for the resolution of conflicts that may arise and points out that the objective criteria for the inclusion of limits to the capacity of nodal connections will be set out in a royal decree.

It is the royal decree submitted for consultation which specifies all these aspects referred to in art. 33 of the aforementioned Act 24/2013, the adoption of which conditions the Act's application in accordance with the eleventh transitional provision of the same.

The aim of the future royal decree is to lay down procedures for applying for and granting permission to access and connect to a point of the transmission or, where appropriate, distribution networks. In addition, it seeks to lay down the criteria that must be met by the different parties involved in these procedures when processing them. These procedures are regulated mainly by Royal Decree 1955/2000, of 1 December, regulating transmission, distribution, marketing and supply activities and the authorisation procedures for power plants, although their content must be updated.

This regulation also sets out an expiry period for access and connection rights already granted prior to the entry into force of Act 24/2013.

Finally, it will elaborate the concept of the single node interlocutor, already provided for in pre-existing legislation, which allows several producers to share a connection point with the transmission network.

The deadline for submission of comments was 10 September 2017; the email address for comments consulta.accesoycone@minetad.es.

5. Proposal for an Order setting out the remuneration of the companies that own electricity transmission facilities for 2017

Art. 14 of the Electricity Sector Act 24/2013, of 26 December, provides that the remuneration methodologies for transmission and distribution activities will be provided by regulation, taking into account the costs necessary to construct, operate and maintain the facilities in accordance with the principle of carrying out the activity at the lowest cost for the electricity system, as stipulated in art. 1(1).

The remuneration methodology has been regulated by Royal Decree 1047/2013, of 27 December, setting out the methodology for calculating the remuneration of transmission activity. Based on the reports of the Spanish Competition and Markets Authority

of 17 November 2016¹ and 20 April 2017², the proposed order revises the remuneration of companies owning electricity transmission facilities for 2017, without including revisions that entail a change in the investment value with the right to remuneration out of the system of assets in service referred to in the second transitional provision of Royal Decree 1047/2013 of 27 December. This is without prejudice to a further modification of remuneration from 2016 onwards, once the *sua sponte* revision procedure has concluded.

Passage of this order is already under way. The deadline for making allegations expired on 23 August 2017 and the same text has been sent to the Spanish Competition and Markets Authority to make it publicly available for objection and to carry out the oral hearing proceedings through the Electricity Advisory Council, in accordance with art. 7 of the Competition and Markets Authority Act 3/2013 of 4 June.

6. Proposal for an Order setting out the remuneration values for the second half of the calendar year 2017, approving standard facilities and setting out the remuneration parameters applicable to power plants

On 28 July 2017, the Ministry of Energy, Tourism and Digital Agenda published in the Ministry of Energy, Tourism and Digital Agenda's website the Proposal for an Order setting out the values of remuneration for operation for the second half of the calendar year 2017, approving standard facilities and setting out the remuneration parameters applicable to certain facilities that produce electricity from renewable energy sources, cogeneration and waste, together with their regulatory impact analysis report, for the purposes provided in art. 26(6) of the Government Act 50/1997 of 27 December (<http://www.minetad.gob.es/energia/es-ES/Participacion/Paginas/proyecto-orden-segundo-semester-2017.aspx>).

Such proposed Order will set out remuneration values for the second half of the calendar year 2017, approve standard facilities, set out remuneration parameters applicable to power plants and update the values of remuneration for the operation of standard facilities whose operating costs depend essentially on the price of fuel, in compliance with the provisions of art. 20 of Royal Decree 413/2014, of 6 June, regulating the production of electricity from renewable energy sources, cogeneration and waste, and of art. 3 of Order IET/1345/2015. Of 2 July, setting out the methodology to update the remuneration for the operation of facilities under the specific remuneration (subsidy payments) scheme. It will regulate the methodology for the adjustment of the remuneration for the operation of standard facilities for which a value of remuneration for the operation other than zero has been approved by a ministerial order and the operating costs of which depend essentially on the price of fuel.

¹ Decision proposing the remuneration to be recognised to the companies that own power plants for 2017. Application of the methodology of Royal Decree 1047/2013.

² Decision responding to the request by the State Secretariat of Energy for a supplementary report to the Report on the Decision of 17 November 2016, proposing the remuneration for electricity transmission for the year 2017.

In addition, and in accordance with the provisions of art. 50 of Royal Decree 413/2014, laying down legal channels for the modification of inaccuracies that the Specific Remuneration Scheme Registry may contain, it will lie with the Directorate-General for Energy Policy and Mines to approve new standard facilities, as well as to set out their remuneration parameters and their equivalence with the relevant category, group and subgroup defined prior to the entry into force of Royal Decree 413/2014 of 6 June.

The same text has been sent to the Spanish Competition and Markets Authority to make it publicly available for objection and to carry out the oral hearing proceedings through the Electricity Advisory Council. The deadline for making allegations expired on 21 August 2017, so it is foreseeable that this Order will shortly be adopted with retroactive effects from 1 July 2017.