

Renewable energy auction: results, disputes and new proposals

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Publication of the Decision of the Spanish Directorate-General for Energy Policy and Mines, of 19 May 2017, deciding on the call for applications ('auction') for subsidy payments ('allocation of the specific remuneration scheme') pursuant to Royal Decree 359/2017, of 31 March, and Order ETU/315/2017 of 6 April¹.

1. Holding of the auction

The auction for allocation of the specific remuneration scheme open to new Spanish mainland facilities that produce electricity from renewable energy sources was held on 17 May 2017. The maximum power initially called for was 2,000 MW, albeit without prejudice to the clause of the auction announcement decision wherefore said limit could be extended to 3,000 MW. In other words, 2,000 MW of renewable power were auctioned, extendable an additional 1,000 MW if the result of the auction offered competitive prices.

The call was addressed to new Spanish mainland facilities that produce electricity from renewable energy sources included in category *b* (wind energy, photovoltaic and other) within the classification provided in art. 2 of Royal Decree 413/2014 of 6 June.

¹ Resolución de 19 de mayo de 2017, de la Dirección General de Política Energética y Minas, por la que se resuelve el procedimiento de subasta para la asignación del régimen retributivo específico al amparo de lo dispuesto en el Real Decreto 359/2017, de 31 de marzo, y en la Orden ETU/315/2017, de 6 de abril.

The auction used a sealed-bid method under a marginal reduction scheme, catering to those bids that offered the greatest reduction in the initial investment against the parameters set as a reference for each standard facility. The auction resulted in the power awarded to each bidder and the percentage reduction in the standard initial investment value of each of the regulated standard facilities.

Once security has been given, the awarded power will be entered on the specific remuneration scheme register as pre-allocated.

The Spanish electricity market operator, OMIE, is in charge of the management of the auction, whereas the Spanish Competition and Markets Authority, CNMC, oversees the process.

2. Regulatory framework

The specific regulatory framework of the auction is formed by Royal Decree 359/2017, of 31 March, providing for a call for applications for subsidy payments open to new Spanish mainland facilities that produce electricity from renewable energy sources²; Order ETU/315/2017, of 6 April, regulating the award of subsidy payments in the call for applications open to new facilities that produce electricity from renewable energy sources pursuant to Royal Decree 359/2017 of 31 March and approving the parameters of said payments³; Decision of the State Secretariat of Energy, of 10 April 2017, laying down the procedure and rules of the call for applications for subsidy payments open to new facilities that produce electricity from renewable energy sources pursuant to Royal Decree 359/2017 and Order ETU/315/2017 of 6 April⁴; and Decision of the State Secretariat of Energy making a call for applications for subsidy payments open to new facilities that produce electricity from renewable energy sources pursuant to Order ETU/315/2017⁵.

² *Real Decreto 359/2017, de 31 de marzo, por el que se establece una convocatoria para el otorgamiento del régimen retributivo específico a nuevas instalaciones de producción de energía eléctrica a partir de fuentes de energía renovables en el sistema eléctrico peninsular.*

³ *Orden ETU/315/2017, de 6 de abril, por la que se regula el procedimiento de asignación del régimen retributivo específico en la convocatoria para nuevas instalaciones de producción de energía eléctrica a partir de fuentes de energía renovables, convocada al amparo del Real Decreto 359/2017 y se aprueban sus parámetros retributivos.*

⁴ *Resolución de 10 de abril del 2017, de la Secretaría de Estado de Energía, por la que se establece el procedimiento y las reglas de la subasta para la asignación del régimen retributivo específico a nuevas instalaciones de producción de energía eléctrica a partir de fuentes de energía renovables, convocada al amparo de lo dispuesto en el Real Decreto 359/2017 y en la Orden ETU/315/2017, de 6 de abril.*

⁵ *Resolución de 10 de abril del 2017, de la Secretaría de Estado de Energía, por la que se convoca una subasta para la asignación del régimen retributivo específico a nuevas instalaciones de producción de energía eléctrica a partir de fuentes de energía renovables, al amparo de lo dispuesto en la Orden ETU/315/2017.*

3. Result of the auction

The Decision of the Spanish Directorate-General for Energy Policy and Mines, of 19 May 2017 (“**Decision of 19 May**”), decides on the auction for the allocation of the specific remuneration scheme. According to the information furnished by OMIE and validated by the CNMC, said Directorate-General decides on the auction and determines the remuneration parameters of the standard facilities in accordance with Royal Decree 413/2014. All of the 3,000 MW of installed power available have been awarded, with the maximum standard value reduction in the initial investment of each regulated standard facility.

(a) Reduction percentages

As a result of the auction, we have the following percentage reductions in the standard initial investment value of the regulated standard facilities for each of the technologies:

- For wind energy technology (ITR-0103): 63.43%
- For photovoltaic technology (ITR-0104): 51.22 %
- For remaining technologies other than wind energy and photovoltaic (ITR-0105): 99.98%

These percentages match the discounts initially set as maximums, which makes it possible to state that this award carries no cost for consumers.

(b) Successful bidders

Schedule I to the Decision of 19 May, corrected on the Official Journal of Spain (“**BOE**”) of 31 May, publishes the name of the successful applicants (‘bidders’) and the awarded power. As foretold by photovoltaic companies (see section below), most of the power has been awarded to wind energy facilities.

The successful bidders have 45 business days as of said publication in the BOE to submit their application for registration with the specific remuneration scheme register as pre-allocated, accompanied by the appropriate security. Said submissions will be made online through the electronic gateway of the Ministry of Energy, Tourism and Digital Agenda.

(c) *Remuneration parameters*

The remuneration parameters of standard facilities applicable to the regulatory half period 2017-2019 are those set out in Schedule II of the Decision of 19 May:

Technology	ID code of the Regulated Standard Facility	ID Code of the Standard Facility	Year of Final Authorisation to Operate	Standard Value of the Initial Investment (€/MW)	Remuneration for Investment Rinv (€/MW) 2017-2019
Wind energy	ITR-0103	IT-04013	2017	438.840	0
		IT-04014	2018	438.840	0
		IT-04015	2019	438.840	0
Photovoltaic	ITR-0104	IT-04016	2017	585.360	0
		IT-04017	2018	585.360	0
		IT-04018	2019	585.360	0
Remaining technologies other than wind energy and photovoltaic	ITR-0105	IT-04019	2017	400	0
		IT-04020	2018	400	0
		IT-04021	2019	400	0

According to art. 5 of Order ETU/315/2017, the values of remaining remuneration parameters of standard facilities with a final authorisation to operate in a given year will be identical to the values of the remuneration parameters of the associated regulated standard facility for said year contained in the schedule to said Order.

These parameters will be revised and updated in accordance with the provisions of art. 14(4) Act 24/2013 and of Royal Decree 413/2014. Neither the regulatory lifespan nor the standard value of the initial investment of the standard facility will be the subject of revision.

4. **Guaranteed litigiousness**

In all certainty, the Decision of 19 May will be disputed. The auction announcement decision and remaining provisions forming the described regulatory framework have already been impugned by *Unión Española Fotovoltaica* (UNEF, the Spanish photovoltaic association), which made an application for judicial review before the Supreme Court. Said application is accompanied by an ex parte application for interim relief consisting in the suspension

of pt. 15(4)(c)(a)(i) of Schedule I to the Decision, of 10 April 2017, laying down the procedure and rules of the auction and which states the following: “It will be ordered from the highest to the lowest number of equivalent hours of operation of the regulated standard facility”. UNEF believes that the rules of the auction discriminate against photovoltaic facilities as compared to wind energy facilities because, owing to Order ETU/315/2017 setting a number of operating hours of 3,000 for wind energy and 2,367 for photovoltaic (para. 1(1) of Schedule I), such order will always benefit wind energy facilities to the prejudice of photovoltaic technologies. Thus, UNEF contends that the principles of equality and non-discrimination under art. 14 of the Spanish Constitution are breached inasmuch as, despite the order stating that the auction is technologically neutral, open to all renewable energy technologies (photovoltaic, wind energy and others), the execution of the auction, taking into consideration the first criterion of order, unjustifiably harms and discriminates against photovoltaic facilities compared to wind energy facilities. UNEF concludes that the photovoltaic companies know in advance that their efforts to bid at the auction may be futile if the companies apply the maximum discounts, since in that case the award will be in favour of companies engaged in wind energy. This may have a discouraging effect wherefore it has requested the interim suspension of the criterion in dispute.

UNEF acknowledges that it is at the Government’s discretion to opt for a quota system for the distribution of allocations based on technologies (wind energy, photovoltaic and other) or even to provide for a greater distribution to one or another technology on the basis of economic or energy policy reasons. But what is objectionable is to hold an auction that is allegedly competitive and technologically neutral, stating that all bidders will be treated on an equal footing, only to lay down, subsequently and without the required justification, a criterion that benefits one technology (wind energy) over another (photovoltaic).

Despite doubts as to its competence, since it would fall to the Judicial Review Division of the *Audiencia Nacional* to hear actions contesting the Decision of 10 April 2017 (arts. 12(1)(a) and 11(1)(a) of the Judicial Review Proceedings Act (“**LJCA**”)), for reasons of urgency, the Supreme Court made a pronouncement on the interim relief applied for. In its Order of 8 May 2017, the Judicial Review Division of the Supreme Court rejected the ex parte application for suspension on the grounds that the need to determine the suspension applied for with such urgency and without hearing the other party (art. 135 LJCA) had not been sufficiently justified. The Supreme Court believes such a claim must be determined as a separate issue within the ordinary procedure, hearing the National Administration as defendant. It acknowledges that the holding of the auction involves the award of entitlements to third parties and the consolidation of a given legal status, but the harm derived from the holding of the auction would not be irreparable or irreversible to the extent that, in the event of a judgment for the applicant, the harm caused to the latter could be repaired by means of compensation.

5. Next auction

The Ministry of Energy, Tourism and Digital Agenda, given the positive result of the auction of 17 May, believes it is a matter of special interest to lay down a new quota of installed power to which it can award entitlements to the specific remuneration scheme by means of auctions in addition to that held on 17 May. The new quota would focus on wind energy and photovoltaic technologies, technologies that have proven in this first auction a greater capacity to compete with conventional technologies in the market, not only in terms of price but also on account of the high volume of power offered.

Hence, said Ministry has published a draft royal decree laying down a new quota of power reaching a maximum of 3,000 MW for a new call for applications for subsidy payments open to new Spanish mainland facilities that produce electricity on the basis of wind energy and photovoltaic technologies (<http://www.minetad.gob.es/energia/es-ES/Participacion/Documents/subasta-tecnologias-renovables/20170524-RD-Subasta-Tecnologias-Renovables.pdf>). The time limit to submit responses ends on 5 June.