

Retroactive revision of the remuneration of special regime facilities

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The Statutory Instrument (Orden Ministerial) IET/1491/2013 of August 1st, revising electricity access charges for implementation from August 2013 and revising certain rates and feed-in tariffs of special regime facilities for the second quarter of 2013, came into force on August 3rd.

As the title indicates, the Statutory Instrument IET/1491/2013 consists of two distinct parts: one relating to the revision of access charges from 3 August 2013 and the other relating to the revision of feed-in tariffs of special regime facilities for the second quarter of 2013. This paper will chiefly address the contents of the statutory instrument relating to the special regime facilities.

Facilities affected

Annex II of the Statutory Instrument IET/1491/2013 contains the quarterly update of remuneration applicable from 1 April 2013 for facilities within subgroups a.1.1 and a.1.2 (**cogeneration plants using natural gas, diesel, fuel oil or LPG**), group c.2 (**waste facilities**) and those covered by the second transitional provision of the Implementing Act (*Real Decreto*) 661/2007 (**cogeneration facilities for waste treatment and reduction**) (cf. sec. 4 and Annex II of the Statutory Instrument IET/1491/2013).

According to the Ministry, the quarterly variations in benchmark indexes used for the update from 1 April 2013 are as follows: the Consumer Prices Index at constant tax excluding unprocessed food and energy products has risen 160.1 basis points, while the prices of the fuels referred to in Annex VII of the Implementing Act 661/2007

have dropped 4.923 percent (natural gas) and 3.311 percent (diesel, LPG and fuel oil).

In particular, solar thermal technology facilities

The aforementioned Statutory Instrument updates the value of the benchmark feed-in tariff and upper and lower limits for determining the values to be applied to the solar thermal plants granted the regime provided in the third additional provision of Implementing Act 1565/2010 (innovative facilities) and corrects errors in the Statutory Instrument IET/221/2013 of February 14th, setting out the access charges from 1 January 2013 and the rates and feed-in tariffs of special regime facilities in relation to updating the values necessary for the calculation of the economic regime applicable to these facilities (elimination of benchmark rates, which were published by mistake in this Statutory Instrument, since only the feed-in tariff and the upper and lower limit values are applicable to these facilities).

The new benchmark feed-in tariffs for determining the values to be applied to the solar thermal technology plants granted the regime provided in the third additional provision of Implementing Act 1565/2010 are 28.1815 € cents /kWh, for the first 25 years, and 22.5452 thereafter (this

feed-in tariff is reduced in relation to the Statutory Instrument IET/221/2013, which quantified it at 23.9097 € cents/kWh).

Retroactive effect and transitional nature

It should be noted that the revision of remuneration in accordance with the Implementation Act 661/2007 has effects for the **second quarter of 2013**, that is, between 1 April and 30 June 2013. However, as of July 13th, the remuneration scheme will be that provided in Order in Council (*Real Decreto Ley*) 9/2013, of July 12th, adopting urgent measures to ensure financial stability in the electricity industry. Remuneration shall be fixed on the basis of the new principles contained in section 30.4 of the Electricity Industry Act (*Ley del Sector Eléctrico*) as worded by the Order in Council 9/2013 (market share, reasonable profitability, efficient and well-managed company). Reasonable profitability shall revolve around the profitability of ten-year Spanish Government Bonds increased by 300 basis points, reviewable after six years (First Additional Provision, Order in Council 9/2013).

The aforementioned Order in Council repeals section 4 of the Order in Council 6/2009, adopting certain measures in the energy industry and approving the social energy tariff, the Order in

Council 661/2007, regulating electrical power production under the special regime and the Order in Council 1578/2008, on the remuneration of electricity production using solar photovoltaic technology for facilities subsequent to the end date of remuneration for such technology under the Order in Council 661/2007. However, other than under some circumstances (section 28 and bonus percentage for performance in the power factor range between 0.995 inductive and 0.995 capacitive set out in Annex V of the Order in Council 661/2007), the provisions of the repealed regulations shall apply provisionally until the new regulation has been approved (Third Transitional Provision, Order in Council 9/2013). Thus, the facilities shall be, where appropriate, subject to provisional settlement under the transitional regime and thereafter, once the necessary regulatory provisions for implementation of the new economic regime have been approved, shall submit to the corresponding regularisation on account of the receivables or payables resulting from the implementation of the new methodology, with effect from the entry into force of the Order in Council 9/2013 (July 14th). Once the delegated legislation has been passed, the arising receivables or payables shall be settled in six subsequent settlements as cost or payable revenue of the system.

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