

## Urgent increase in prices of the electricity industry

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*The Statutory Instrument (Orden Ministerial) IET/1491/2013 of August 1<sup>st</sup>, revising electricity access charges for implementation from August 2013 and revising certain rates and premiums of special regime facilities for the second quarter of 2013, published in the Official State Gazette (B.O.E.) of August 3<sup>rd</sup>, brings into effect Final Provision 4 of the Order in Council (Real Decreto Ley) 9/2013, of July 12<sup>th</sup>, adopting urgent measures to ensure financial stability in the electricity industry. Correspondingly, the Official State Gazette of the same date publishes the Directorate General for Energy Policy and Mines Decision (Resolución) of 1 August 2013, revising last resort rates.*

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 premiums of special regime facilities for the second quarter of 2013. This paper will chiefly address the contents of the statutory instrument relating to the revision of prices.

### **1. Pending adoption of a new methodology for calculating access charges**

While the new methodology to calculate the portion of grid access charges corresponding to the costs of electricity transmission and distribution is being approved in accordance with the Order in Council 13/2012, of March 30<sup>th</sup>, transposing directives on internal electricity and gas markets and on electronic communications, and adopting measures to correct deviations due to mismatches between the costs and revenues of the electricity and gas industries, pursuant to section 17 of the Electricity Industry Act 54/1997 (Fourth Transitional Provision of the Order in Council 13/2012) the revision of access charges falls under the purview of the Spanish Department of Industry, Energy and Tourism.

Although last May 17<sup>th</sup> the National Energy Commission (*Comisión Nacional de Energía*, hereinafter, CNE) referred to the Members of the Electricity Consultative Council for comment a draft Circular establishing the methodology for calculating electricity transmission and distribution charges, the planned circular has not yet been approved. Therefore, the changes within the aforementioned statutory instrument should be without prejudice to the powers of the CNE (soon to be replaced by the National Markets and Competition Commission) in the establishment of the methodology for calculating the portion of grid access charges corresponding to the costs of electricity transmission and distribution, as well as other changes that may arise thereof.

### **2. Upward revision of access charges, greater weight of capacity**

The Statutory Instrument IET/1491/2013 and the Directorate General for Energy Policy and Mines Decision of August 1<sup>st</sup>, revising last resort rates, reflect the undertaking assumed by the Government of Spain vis-à-vis the European Commission in the context of the National

Reform Programme, put forward last 30 April 2013, and embodied in the Order in Council 9/2013, of July 12<sup>th</sup>, adopting urgent measures to ensure financial stability in the electricity industry, which involved the distribution amongst companies (2,700 million Euros), the State (900 million Euros) and consumers (900 million Euros) of the 4,500 million euro mismatch between revenue and cost projections for 2012 not covered through previously taken actions. The upward revision of access charges and last resort rates being the instrument for consumers to contribute their fair share to cover the shortfall between revenues and costs of the electricity system

As of 3 August 2013, coming into force date of the Statutory Instrument IET/1491/2013, **there is a revision of the prices of capacity and active energy for charges on access to electricity transmission and distribution grids applicable to all categories of consumers**, in order to **change the weighting of capacity and active energy billing** resulting from applying the above prices. Correspondingly, last resort rates must be revised as a result of the revision of access charges with effect from 3 August 2013.

Annex I of the Statutory Instrument IET/1491/2013 sets the new capacity and active energy prices of the access charges defined in Chapter VI of the Statutory Instrument ITC/1659/2009 (consumers covered by last resort rates), in the Order in Council 647/2011 (manager of system loads for conducting energy recharge services) and in the Order in Council 1164/2001 (rates of access to electricity transmission and distribution grids). According to the CNE's report, the statutory instrument on access charges lays down increases in capacity between 12.35% and 151.45 %. Table no. 13 of the CNE's Report 14/2013 on the proposed statutory instrument revising electricity access charges<sup>1</sup> provides a comparison of the amount of access charges (capacity and energy) set out in February's statutory instrument and the proposed statutory instrument submitted to the CNE. Although, the finally adopted text slightly increases the initially proposed figures, according to this comparative, in some cases

the increase in capacity reaches 151.4 % (e.g. 3.0 charge); 76.5 % for low voltage consumers with contracted power less than or equal to 10 kW (2.0A, 2.0 DHA and 2.0 DHS); 12.3 % in the case of the capacity of low voltage consumers with contracted power greater than 10 kW and less than or equal to 15 kW (2.1A, 2.1 DHA and 2.1 DHS).

Apart from the increase in the average prices of consumer access, the main novelty is the new weighting of capacity and active energy billing. More weight is given to the billing of capacity (raising it) and less weight to energy (reducing it) compared to the values of the Statutory Instrument IET/221/2013. According to the preamble, said adjustment is justified by the cost structure of the electricity system and the pursuit of the objective of reducing the impact the current context of falling demand is having on the system's revenues. In other words, unable to increase revenues due to the drop in consumption, grid access costs are raised. The CNE has welcomed the greater weight of the transmission and distribution costs, but has recommended conducting information campaigns on the appropriate choice of the contracted capacity as well as consumer training action in choosing the capacity really needed and differentiation of capacities on the basis of rate periods. Moreover, to avoid an increase in complaints and inquiries from consumers (in particular, those with low usage of the contracted capacity), the CNE recommended the establishment of a transitional period for the implementation of the new rate structure (cf. CNE Report 14/2013). None of the recommendations have been embraced by the aforementioned statutory instrument which came into force on the day of its publication.

### 3. Additional insular costs

Given that the State Budget for 2014 cannot assume all of the amounts corresponding to expected additional insular and peninsular system costs for 2013, the Order in Council 9/2013 has repealed the first additional provision of the Order in Council 6/2009 (Repealing Provision of the Order in Council 9/2013) and has established State General Budget funding of

<sup>1</sup> [http://www.cne.es/cne/doc/publicaciones/cne80\\_13.pdf](http://www.cne.es/cne/doc/publicaciones/cne80_13.pdf)

only 50% of the additional cost of generation within the insular and extra-peninsular regime. Thus, reduced to 50 %, each year's additional cost will be included in the General Budget Act of the following year (Fourth Additional Provision of the Order in Council 9/2013). The aforementioned statutory instrument provides that fifty percent of the insular and extra-peninsular compensation expected for 2013 (1,806,000,000 Euros) will be funded by the State General Budget of 2014. The remaining 50% will be included as a payable cost for the year 2013. This is without prejudice to the settlement mechanism acting, where appropriate, as a subsidiary funding mechanism, under the terms set forth by the fourth additional provision of the Order in Council 9/2013.

#### 4. Revenue shortfalls for 2013

Under the twenty-first additional provision of the Electricity Industry Act 54/1997, and without prejudice of the annuities appropriate to pay the electricity system's receivables outstanding upon entry into force of the new statutory instrument, section 2 sets out the expected amounts to settle such entitlements in 2013, amounting to a total of € 2,668,038,090 that, for purposes of settlement and collection, are considered regulated activity costs.

#### 5. Meter rental rates awaiting the CNE

The Supreme Court judgment of 9 May 2013 (Spanish Law Reports [*Repertorio de Jurisprudencia - RJ*] 2013, 4221) has quashed the second additional provision of the Statutory Instrument ITC/2452/2011 of September 13<sup>th</sup>, revising certain rates and premiums of special regime facilities, arguing that the Administration had set without sufficient reasoning the rental price of Time of Use (TOU) meters that allow for remote management by domestic consumers. The Administration

based itself on a 2008 CNE report and failed to justify the reasons that led it to assume those prices, even though more than three years had elapsed. The Supreme Court considered that this period of time was broad enough to warrant from the Administration an explanation in the drafting of the statutory instrument as to the reasons for the validity of said prices with no update of any kind.

According to the CNE ("Report 14/2013"), compliance with the Supreme Court judgment requires a precise meter price update value. To this end, the CNE (or, if applicable, the National Markets and Competition Commission) has been charged with the preparation, in the shortest time possible and, in any event, before 15 December 2013, of a report containing a detailed analysis of the cost of renting electronic TOU meters that allow for remote management by domestic consumers, together with a price proposal for the various types of meters. Once issued, price adjustment can proceed.

Temporarily, until the adoption of the aforementioned CNE report and with effect from 3 August 2013, the rental prices of electronic TOU meters that allow for remote management by domestic consumers are:

- a) Single-phase electronic TOU meters that allow for remote management by domestic consumers, considering not only the price of the equipment itself but also the costs associated with its installation and operation and maintenance (including costs associated with verification): 0.81 Euros / month;
- b) Three-phase electronic TOU meters that allow for remote management by domestic consumers, considering not only the price of the equipment itself but also the costs associated with its installation and operation and maintenance (including costs associated with verification): 1.36 Euros / month.