

Royal Decree 962/2024: electricity production in offshore renewable energy facilities

Royal Decree 962/2024 establishes the open application procedure to which offshore renewable energy facilities that are not innovative or that are located in ports of national general interest are subject.

ENERGYTEAM

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The Official Journal of Spain of 25 September 2024 has published Royal Decree 962/2024, of 24 September, regulating the production of electricity from renewable sources in offshore facilities, in force from 26 September, thereby marking the starting point for the development and installation of offshore wind power technology in Spain.

This paper provides a summary of Royal Decree 962/2024's main aspects.

1. Subject matter and scope

Title I of Royal Decree 962/2024 regulates the open application procedure to which offshore facilities that produce electricity from

renewable energy sources are necessarily subject for authorisation thereof. As an exception, innovative facilities and those located in ports of national general interest do not take part in the open application procedure, specific provisions being provided for them in Title II of Royal Decree 962/2024.

The scope of application includes offshore renewable energy facilities located in all seawaters under Spanish jurisdiction and those located in zones I and II of ports of national general interest (i.e. in the inner area of port waters - which includes water areas sheltered either naturally or by the effect of seawalls - and in the outer area of port waters, which includes the rest of the waters).

2. Open application procedure

2.1. Main aspects

As pointed out above, only offshore renewable energy facilities that are linked to successful applications in the open application procedure (except in the case of innovative facilities or those located in ports of national general interest) may initiate the processing of a prior administrative authorisation, construction authorisation or operating authorisation provided for in Article 53 of the Electricity Sector Act 24/2013 of 26 December (LSE).

Subject to registration as ‘in operation’ in the electronic register of the renewable energy support scheme (REER), the open application procedure will simultaneously grant the following rights to awardees:

- a) The renewable energy support scheme (REER), regulated in Royal Decree 960/2020¹;
- b) reserved access capacity at a specific node in the transmission grid;
- c) priority in the granting of concession for the occupation of publicly-owned offshore-onshore property.

2.2. Stages in the open application procedure

- a) Ministerial Order approving the application conditions (the “conditions order”).

The conditions order (pending approval) will include fundamental aspects such as the quota of power to be awarded, the area or areas where the facilities will be located² (indicating, in each case, the access capacity and the specific nodes of connection to the transmission grid), the technologies, characteristics and requirements to be met by the facilities linked to the applications submitted, the term of the publicly-owned offshore-onshore property concession, the parameters specifying the applicable renewable energy support scheme, the amount of the collateral for ‘pre-allocation’ registration in this scheme’s register and the requirements applicable to the applicants, as well as the weighting criteria (including the functioning of the technical assessment committee).

Likewise, the conditions order will establish the requirements that may be demanded of the applicants in the open application procedure to

¹ Royal Decree 960/2020, of 3 November, regulating renewable energy’s economic scheme for electricity production facilities, is applicable, except in relation to the auction mechanism in chapter II. In relation to the administrative procedure for registration in said scheme, the provisions of Chapter V of the aforementioned Royal Decree shall apply (except for the provisions of Articles 25.3, 25.4 and 26, which shall not be applicable).

² These areas must be included in the areas of high potential for offshore wind energy development defined in Royal Decree 150/2023, of 28 February, approving the maritime use plans for the five Spanish sea demarcations.

ensure a higher rate of execution of the projects (such as their legal form, technical solvency, size or experience)³ and the objective requirements to be met by the facilities linked to the applications that may succeed related, inter alia, to the design of the facility, its environmental and socio-economic impact, its dismantling or its capacity to contribute to the security of electricity supply or to the appropriate conservation of the publicly-owned offshore-onshore property.

In turn, this conditions order will set out the details of the next stage of public dialogue and the issues it will address (as described below).

b) Public dialogue

The interested parties affected by the offshore renewable energy facilities may send comments or proposals for improvement to the State Secretariat for Energy regarding the aspects to be established in the application conditions; subsequently, it will be the interested developers who will have the opportunity to send their considerations in this regard,

so that the notice order (defined below) may incorporate all or part of the proposals received in this stage of public dialogue⁴.

The aspects or criteria that may be the subject of proposals and comments will be, among others, the areas where the facilities are located, the quota of power to be awarded, the aspects to be considered for the design, construction, operation and decommissioning of the facilities (due to their greater compatibility with other uses such as fishing, port activity, etc.), the requirements imposed on applicants and facilities, the weighting criteria or the socio-economic impact of the facilities.

c) Ministerial Order launching the competitive call for applications (the “notice order”).

Finally, the notice order will be approved, including aspects such as the applicable timetable; the information and documents to be included in the application to participate; the reservation price (a maximum financial offer); if established, the risk price (a minimum financial offer) and the

³ Note that prior authorisation from the Directorate-General for Energy Policy and Mines (DGPEM) will be required for the change of ownership of the rights granted in the open application procedure, without prejudice to taking the appropriate steps for this change of ownership, as required by the applicable rules and regulations in each case (access and connection permits, administrative authorisations, registration in the renewable energy support scheme’s register and the publicly-owned offshore-onshore property).

⁴ Given that this step is in addition to the responses and hearing procedures provided for in the applicable rules and regulations (sectoral, environmental and occupation of the publicly-owned offshore-onshore property), the comments and proposals that are the subject of these procedures will not be taken into account in this dialogue stage, as they will be analysed at the appropriate time by the competent body in each case.

modification, where appropriate, of the aspects that are the subject matter of public dialogue under the conditions order.

2.3. *Main features and award procedure*

Applications must be submitted to the Directorate-General for Energy Policy and Mines within the time limit and in the manner determined by the notice order⁵, accompanied by the receipt from the Government Security Depository certifying the deposit of the financial collateral required for 'pre-allocation' registration in the renewable energy support scheme's register (for the amount specified in the conditions order)⁶.

The provisional list published by the Directorate-General will determine which applications have been accepted and which have been rejected, with the corresponding reasons so that, where appropriate, interested parties may cure application defects within a period of ten days and, after this, the definitive list will be published with the applications that are considered eligible for the evaluation stage or and those that are excluded (for failing to comply with any requirement

or for having offered a price higher than the reservation price or lower than the risk price, if defined).

In the evaluation stage⁷ (carried out by the technical evaluation committee, the functioning and composition of which will be established for this purpose in the conditions order), the Directorate-General will approve a list assigning a provisional score to the eligible applications and, after allowing a period of ten days for responses, the technical evaluation committee will send a list with the definitive score for each application.

It should be noted that, provided that their appropriateness to the objectives pursued is ensured, the procedure may include non-economic criteria up to a maximum of 30% of the weighting (such as, for example, criteria relating to the applicants or to the facilities - design, impacts generated, etc.)⁸.

Lastly, the Directorate-General will issue a resolution of the open application procedure in which the successful applications will be those that have obtained the highest score until reaching the quota of power to be awarded⁹, instructing for this

⁵ Applications shall be submitted exclusively by electronic means (Art. 14(7) RD 962/2024).

⁶ Said financial collateral will be taken into account as part of the definitive deposit required in the processing of the concession for the occupation of the publicly-owned offshore-onshore property.

⁷ If the conditions order establishes it, this evaluation stage may be carried out at two points in time: first, an evaluation of the non-economic criteria, and then of the economic criteria.

⁸ For the assessment of the economic criteria, the price offered per unit of electricity related to the renewable energy support scheme (in €/MWh to two decimal places) will be taken into account.

⁹ The conditions order shall establish the tie-breaking criteria for applications whose joint award exceeds the established power quota.

purpose the pre-allocation registration of the awardees in the renewable energy support scheme's register¹⁰.

This resolution shall include, at least, the identification of the owner, the power awarded to each participant and pre-allocation registration in the renewable energy support scheme's register, the award price (which shall correspond to the financial offer), the reserved access capacity and the specific node where it is reserved, the geographical area where the farms will be located, the technologies used, the minimum and maximum pre-allocated auction power¹¹ and a list with the definitive score of all eligible applications.

2.4. *Renewable energy support scheme (REER)*

The renewable energy support scheme, which is regulated in Chapter III of Royal Decree 960/2020, is granted through the above open procedure. The specific payment corresponding to each facility will be determined on the basis of the award price, the payment parameters of the corresponding technology, the characteristics of the facility and its participation in the electricity market.

However, the conditions order shall at least define parameters such as the following: the facility's availability deadline (and any applicable extensions)¹², the starting date of the maximum delivery period, the maximum delivery period, the minimum and maximum number of equivalent annual operating hours, the market adjustment percentage and the intermediate control milestones and their penalties.

It also establishes the rules for withdrawal from the construction of the facility by the developer - if it is impossible to complete it by the availability deadline - and its consequences¹³, as well as the consequences of cancellation of the pre-allocation registration in the renewable energy support scheme's register in the event of non-compliance (as determined by Article 29 of Royal Decree 960/2020)¹⁴.

2.5. *Access and connection to the grid*

As indicated above, the resolution of the open application procedure and the pre-allocation registration in the renewable energy support scheme's register will mean the reservation of access capacity in favour

¹⁰ For this procedure (contrary to the provisions of Article 28(5) of Royal Decree 960/2020), the power registered in the renewable energy support scheme's register under operation will correspond to the power actually installed, and may not be greater than the power registered under pre-allocation.

¹¹ According to Article 26(3) of Royal Decree 960/2020.

¹² In accordance with the provisions of the conditions order, the availability deadline (without in any case extending beyond the date of the fifth milestone for obtaining the definitive administrative authorisation for operation provided for in Article 1 of Royal Decree Law 23/2020 of 23 June) and, where appropriate, the strike-off date at the reasoned request of the developer may be extended.

¹³ Cancellation of a pre-allocation registration, enforcement of collateral, waiver of the publicly-owned offshore-onshore property concession, etc. It also envisaged that the conditions order establishes other withdrawal events (Art. 27 RD 962/2024).

¹⁴ Article 29 of Royal Decree 962/2024.

of the awardees in a specific node of the transmission grid for the access capacity that has been defined in the call for applications.

Without prejudice to this, awardees must apply for the relevant access and connection permits, in accordance with Royal Decree 1183/2020 of 29 December, but without the temporal priority criterion being applicable to them¹⁵. Likewise, facilities linked to successful applications in the open application procedure will be exempt from offering the collateral required for the processing of access and connection procedures for production facilities¹⁶ provided that two conditions are met: 1) they have provided a copy of the receipt of collateral for pre-allocation registration in the renewable energy support scheme's register, and 2) they maintain this collateral at least until the final operation authorisation for the facility is obtained.

Note that the nodes reserved for applications may be used for the evacuation of electricity produced by offshore renewable energy facilities¹⁷.

2.6. Administrative procedures

The owners of the facilities linked to successful applications must subsequently

process the administrative authorisations that may be required (in particular, the prior administrative authorisation, the construction authorisation and the operating authorisation provided for in Article 53 of the Electricity Sector Act) and the concession for the occupation of the publicly-owned offshore-onshore property, in accordance with Act 22/1988 of 28 July and the General Coastal Regulations¹⁸.

3. Offshore renewable energy facilities that do not take part in the open application procedure: innovative facilities located in ports of national general interest

Innovative offshore renewable energy facilities that are located outside the areas of high potential for the development of offshore wind energy (as provided for in Royal Decree 150/2023) and that are offshore wind facilities with an installed capacity not exceeding 50 MW or non-wind offshore renewable energy facilities with an installed capacity not exceeding 20 MW may initiate the processing of the administrative authorisations that may be required (see the prior administrative authorisation and those for construction and operation provided for in Article 53 of the Electricity Sector Act, as well as the concession for occupation of the publicly-owned offshore-onshore property) without the need to be linked

¹⁵ The conditions order may establish a maximum time limit for awardees to apply to the transmission system operator to obtain access and connection permits, as well as the consequences of non-compliance.

¹⁶ Article 23 of Royal Decree 1183/2020 of 29 December and Article 124 of Royal Decree 1955/2000 of 1 December.

¹⁷ In accordance with Chapter V of Royal Decree 1183/2020 of 29 December. Likewise, the non-awarded or non-called capacity will be reserved for another future application at the node (and will not be free for awarding in accordance with the principle of temporal priority).

¹⁸ For the purposes of the fee for occupation of the publicly-owned offshore-onshore property, the facilities linked to successful applications are declared to be electricity infrastructure of general interest and are considered to be intended for the exploitation of energy resources, Article 84(3)(1d) of Act 22/1988 of 28 July 1988 being applicable.

to successful applications in the open application procedure¹⁹.

The same will occur for facilities located in zones I and II of the ports of national general interest²⁰, although for their processing it must be taken into account that the concession for the occupation of the port publicly-owned property can only be granted a) when the facility is located on a site that does not affect port activities and operations and b) when it is for experimental or test uses or for the consumption of port users.

4. Other provisions

Lastly, Royal Decree 962/2024 repeals Royal Decree 1028/2007 of 20 July 2007, and sets out the transitory arrangements applicable to applications or procedures already initiated under the repealed rules²¹; it also includes provisions relating to the rules applicable to facilities located in non-mainland territories, as well as amendments to Royal Decree 413/2014 of 6 June 2014 and Royal Decree 960/2020²².

¹⁹ The innovative nature will be proven by means of reports from the Ministry of Science, Innovation and Universities and the Institute for Energy Diversification and Saving (IDAE), with the exception of offshore renewable energy facilities that apply for administrative authorisation for a maximum period of five years.

²⁰ That is, in the inner harbour waters area (which shall comprise the water spaces sheltered either naturally or by the effect of seawalls) and in the outer harbour waters area, which includes the rest of the waters.

²¹ Second additional and single transitory provisions of Royal Decree 962/2024.

²² First additional and second final provisions of Royal Decree 962/2024; and first and third final provisions of Royal Decree 962/2024.