

ANALYSIS



Energy

Ministerial Order TED/966/2026 of 15 September: creation of Spain's capacity market

The creation of the capacity market will ensure availability of power in the mainland electricity system by paying providers that undertake to make capacity available during periods of stress, thereby ensuring the security of electricity supply.

ENERGY TEAM

Gómez-Acebo & Pombo

1. Introduction

The Spanish capacity market ('CM') is being created to ensure the security of electricity supply in the mainland power system in the face of coverage issues, stemming primarily from the massive integration of renewable energy, as a regulatory measure to ensure the existence of sufficient backup sources and flexibility to meet demand during times of system stress.

In recent years, Spain has been working on the design of its own CM, a regulatory procedure that has gone through various phases and which, after receiving the European Commission's approval on 29 May 2026, has now culminated in the adoption of Ministry for Ecological Transition and Demographic Challenge Order 966/2026, of 15 September, creating a capacity market in the mainland electricity system (the 'Order'), in force as of 18 September 2026.

The purpose of this paper is to analyse the Order's key content, with a focus on the auction procedures and the eligibility requirements to compete (bid) in such auctions and become a capacity provider (successful bidder).

2. Purpose of the Order

"The purpose of the Order is to create a capacity market in the Spanish mainland power system by establishing the requirements to participate as a capacity provider, the conditions for delivery, the auction procedures, and the payment and financing scheme" (Art. 1).

The *delivery of capacity* consists of providers making available a given firm power output (in accordance with the obligations

established in the Order) upon being awarded a capacity agreement through a competitive bidding procedure (auction) or acquiring rights and obligations in the secondary market for assignments and transfers.

3. Scope of application and bidders

The Order applies to all natural and legal persons that bid in capacity auctions or trade in the associated secondary market and that become capacity providers.

Specifically, the following may bid: a) power producers; b) storage asset owners; c) final electricity consumers; d) demand aggregators (including electricity suppliers) that may participate in all electricity generation markets at the time of the auctions; and e) generation and storage aggregators that may participate in all electricity generation markets at the time of the auctions.

The Order also applies to Red Eléctrica de España, S.A. ('REE') — as system operator — and to the Spanish Markets and Competition Authority ('CNMC').

4. Auction categories

The following capacity auction categories exist, depending on the time horizon for the actual delivery:

a) *Main capacity auctions*

The delivery period shall begin no later than five years after the allocation following the conclusion of the auction. The successful bidder must ensure the availability of the firm power committed to in the auction from the start of the delivery period (this period must

include at least one year in which a coverage problem has been identified).

Notwithstanding that the auction notice will specify the delivery period by reference technology, the Order establishes the following delivery terms:

- 1) for existing generation and storage assets (that have an operating permit issued prior to the auction notice): twelve months;
- 2) for new generation and storage asset investments (that do not have an operating permit prior to the auction notice), the delivery periods will be defined by reference technology to reflect a term equivalent to half of their useful life, without exceeding fifteen years;
- 3) for demand assets, the delivery period may range from one to ten years, with the participant itself deciding which period applies within that range;
- 4) demand aggregations will have only a single delivery period for all the assets comprising them and may only be formed with demand assets having individual firm power of less than one megawatt and that share the same status — whether existing or new;
- 5) for existing generation and storage aggregations: one year;
- 6) for new generation and storage aggregations, the delivery period will correspond to the shorter of the

periods applicable to the technologies comprising them, and such aggregations may only be formed with generation and storage assets having individual firm power of less than one megawatt that share the same status — whether existing or new.

Exceptionally, the auction notice itself may establish a power quota for new investments in pumped-storage hydroelectric or offshore wind technology, applicable up to nine years from the delivery-of-capacity allocation or award to the start of the delivery period (which may be shortened at the developers' discretion depending on progress on new assets).

b) *Adjustment capacity auctions*

These auctions are associated with a 12-month delivery period that will begin no later than 12 months after the award following the conclusion of the auction. The purpose of this category is to resolve any potential shortfalls that will not be covered by the firm power secured in the main capacity auctions. Only assets that are in service prior to the auction notice date may participate in these auctions, and only for the firm power corresponding to the modules in service of that asset.

c) *Transitional capacity auctions*

Transitional capacity auctions will be held from the entry into force of this Order and until the start of the first delivery period resulting from the main capacity auction to ensure that electricity demand is met. In general,

transitional auctions will have the same characteristics as the main auctions; however, unlike the main auctions: 1) one will be held for each calendar year of the specified transitional period; 2) the delivery period will be annual; 3) they may be held simultaneously; and 4) the required firm power curve may include a maximum price on the curve that differs from that established for the main auctions.

Exceptionally, when the coverage analysis indicates the need to hold capacity auctions with different time horizons, REE may request that the Directorate-General for Energy Policy and Mines (DGPEM) organise them.

5. Requirements to bid in auctions

Persons applying to bid in the auctions must meet a series of legal, technical, and economic requirements regarding the owner and the characteristics of each asset, as set out in Article 11 of the Order. In particular, we highlight the following requirements:

a) *General requirements*

- Location within the Spanish mainland electricity system (except in cases of cross-border participation by assets belonging to other bidding zones).
- Possess the appropriate grid access and connection permits.
- In the main auctions, new asset investments may only be in renewable technologies, storage, or demand-side management.

b) *Depending on the nature of the person*

- Owners of end-user assets must be consumers who purchase their energy on the generation market (either directly or through a supplier) and must have a third-party grid access contract; furthermore, when they have associated generation assets covered by the subsidy payments scheme, they must have separate metering equipment.
- Existing generation assets must demonstrate a maximum emissions limit of 550 grams of carbon dioxide from fossil fuels per kilowatt-hour of electricity, calculated on the basis of the efficiency of the generation unit's design (for cogeneration assets, only emissions associated with electricity production will be taken into account).
- Existing generation assets must use a reference technology with a flexibility coefficient above the established flexibility threshold.
- In the case of existing generation and storage aggregations, the constituent assets must belong to a reference technology with a flexibility coefficient that exceeds the flexibility threshold to be established.
- Producer, storage and consumer assets must have a firm power of one megawatt or more during delivery periods.

- Demand aggregations and generation-and-storage aggregations must have a firm power of one megawatt or more during delivery periods; and the individual assets that are part of the aggregations must have an individual firm power of less than one megawatt.

c) Eligibility requirements

- Not receive additional payments through capacity mechanisms, including capacity payments regulated by Order ITC/3127/2011 (though participants may waive these payments prior to prequalification).
- Not receive capacity payments for the same firm power and delivery period.
- Generation assets must not be covered, either in whole or in part, by a payments framework regulated under Article 14 of the Electricity Sector Act 24/2013 of 26 December (that is, neither the subsidy payments scheme ['RRE'] nor the renewable energy support scheme ['REER']).
- If these are generation or storage assets that are granted public aid, they must have fully incorporated the grants into the bids submitted in new markets or mechanisms.
- Not receive payments for the same firm power offered and delivery period for a specific balancing

product in accordance with Regulation (EU) 2017/2795.

- No outstanding debts in the two calendar years preceding the year of the application, whether in connection with the delivery of capacity, adjustment settlements, or costs from previous auctions.

6. Auction procedure: notice, prequalification and award

6.1. Auction notice decision

Capacity auctions, in their various forms, shall be called by way of decision of the State Secretary for Energy. The call shall include the CM auction rules.

Prior to the decision, REE, in its capacity as system operator, shall submit to the Directorate-General for Energy Policy and Mines the firm power curve and the firmness coefficients in accordance with Articles 9 and 10 of the Order, as well as other relevant matters for the purposes of holding the auction.

The proposed decision will be open to responses, and a report on the matter will be requested from the CNMC.

Specifically, the decision will define aspects such as the date and schedule of the auction, the required firm power curve, the power quota for new investment (if applicable), the auction format, the start date of the delivery period, the maximum price of the required firm power curve, the lower reserve price, the firmness coefficients

for each of the reference technologies, the flexibility threshold, the delivery periods by reference technology, and so on.

6.2. *Prequalification as a bidder*

The owner of the asset or aggregation must submit to REE an application to bid in the capacity auction in accordance with the application form published on the system operator's website, specifying the asset or aggregation for which they will bid in the auction and declaring the number of bid blocks of one megawatt of minimum firm power with which they will bid. In any case, the application submission period shall last at least one month, and the deadline for submitting such applications shall be set at least six weeks prior to the auction.

The system operator will prequalify bidders who demonstrate compliance with the requirements and will forward the information on the prequalified bidders to the Directorate-General for Energy Policy and Mines (within a maximum of four weeks after the deadline for submitting applications).

Assets engaged in self-consumption with surplus energy may prequalify to bid in the auction as both a producer and a consumer independently "or as only one of them".

6.3. *Award procedure*

The award procedure will be conducted using a sealed-bid auction method with a payment mechanism based on the bid. The financial bid shall be

expressed in euros per megawatt of firm power per year, without decimals. Bid blocks shall have a minimum size of one megawatt of firm power per asset.

Bids for each block will be selected according to the following methodology:

- a) bids will be ranked from lowest to highest financial value;
- b) bids will be selected starting with the bid with the lowest financial value until the cutoff point on the required firm power curve is reached (the last bid whose inclusion causes that intersection point to be exceeded will not be selected, and bids corresponding to assets for which allocation to the power quota for new investment has been requested — and which cause the value of that quota to be exceeded — will be rejected);
- c) the selected bids will be regarded as successful provided they do not exceed the applicable maximum and minimum reserve price.

The entity managing the auction will be REE, and the supervisor will be the CNMC, which will verify that the procedure has been objective, transparent, non-discriminatory, and competitive.

The cost of the auction will be borne by the successful bidders based on the amount of firm capacity awarded

(this cost will be approved by the decision concluding the auction).

7. Delivery of capacity, providers' obligations and payments

Capacity providers must comply with the obligations set out in the Order.

In particular, producer, storage and consumer (when acting as a provider) assets must guarantee their availability during the delivery period on the defined stress hours of the mainland electricity system. Likewise, generation and storage aggregators must ensure their availability under the conditions detailed in the capacity market operating procedure. System stress hours may not exceed 10% of the hours in a calendar year and will be known to providers before the start of each year of the delivery period.

For their part, consumer assets and demand aggregators must comply with the activation request issued by the system operator during the delivery period, for a power quantity that may be, at most, equal to the firm power allocated in the capacity auctions for the defined system stress hours.

In this regard, a decision issued by the State Secretary for Energy will approve an operating procedure applicable to the delivery of capacity, detailing aspects such as the technical, documentary, and operational requirements for participation in the capacity market; the procedure for qualification as a capacity provider; the obligations applicable to capacity providers; verification of compliance with these obligations and the CM testing scheme, the CM settlement and financing, and so on.

Likewise, capacity providers must comply with the following obligations (without prejudice to any additional obligations that may be established in the CM operating procedure):

- a) additional obligations regarding the reporting of scheduled and unscheduled outages of assets for each delivery period, in accordance with the provisions of the applicable operating procedure;
- b) reporting obligations to the system operator to enable the provision, monitoring, control, settlement, and billing of the service, and to the Directorate-General for Energy Policy and Mines regarding generation, electricity consumption, storage asset parameters, billing, or conditions related to delivery, in the prescribed manner and within the prescribed time limit.

The asset owner or the capacity providers shall be entitled to receive a fixed monthly payment (one-twelfth of the amount resulting from multiplying the volume of firm power awarded at auction — expressed in firm megawatts — by the award price expressed in euros per firm megawatt per year) and, where applicable, payment obligations arising from noncompliance with the requirements.

8. Secondary market: assignment and transfer of rights and obligations associated with the delivery of capacity

Capacity providers may assign or transfer the rights and obligations associated with the delivery of capacity when certain conditions are met, in accordance with the operating procedure applicable to

the delivery. Specifically, the assignment or transfer may under no circumstances result in a reduction of the allocated firm power and will not take effect until the system operator has approved such a transaction, after verifying compliance with the requirements of the Order and the applicable operating procedure in this regard.

The transfer of a capacity provider's rights and obligations entails a change in ownership of the asset and, consequently, the transfer of the rights and obligations associated with the delivery of capacity to the new owner, to whom all invoices for collection rights and payment obligations related to non-compliance with the commitments associated with the delivery and the testing scheme will be settled and issued.

Provided that the requirements of Article 21(6) of the Order are met, the assignment of a capacity provider's rights and obligations entails their transfer to one or more separate assets or aggregations, with the new owner assuming the collection rights and payment obligations arising from the breach of commitments related to the delivery and the testing scheme.

In any case, the assignment or transfer of rights and obligations related to the delivery shall not preclude bidding in subsequent auctions held within the framework of the capacity market.

9. Breach of commitments related to delivery and disqualification

When capacity providers fail to meet their delivery obligations in accordance with the provisions of the Order and the applica-

ble operating procedure, or in the event of non-compliance detected by REE during the testing scheme to verify the availability of firm power, they shall be subject to payment obligations.

Specifically, such payment obligations may arise from breaches related to: a) the availability of the allocated firm power; b) the activation of the delivery; and c) the activation of the delivery during testing.

To calculate the payment obligations applicable to non-compliant providers, the formulas set out for each case in Article 27 of the Order shall be applied.

Furthermore, the following shall constitute grounds for disqualification from delivery:

- 1) failure to comply with the reporting obligations set out in Article 26(1) and (2) of the Order;
- 2) failure to pass the third activation of the delivery referred to in Article 27(b) and (c) of the Order;
- 3) failure to disclose to the system operator that a capacity-providing asset is unavailable;
- 4) repeated failure to submit, or incorrect submission of, the market schedule breakdown to the system operator.

Such disqualification shall result in the loss of payments for the allocated power as of the date of disqualification and the enforcement of the financial guarantees submitted for qualification as a capacity provider.

Furthermore, withdrawal from the delivery of capacity will result in the loss of payments, the enforcement of guarantees,

and the possible loss of the right to bid in subsequent auctions held within the framework of this capacity market.