

RDL 17/2019: reasonable rate of return applicable to renewable energy, cogeneration and waste-from-energy power plants

Energy Area

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Finally, the Government has established by royal decree-law the reasonable rate of return applicable in the second regulatory period. Said piece of legislation aims to reduce the litigiousness (or the effects thereof) arising from successive cuts to the subsidy scheme for renewable energy.

On 23 November 2019, Royal Decree-Law 17/2019, of 22 November, adopting urgent measures for the necessary adaptation of remuneration parameters affecting the electricity system and responding to the process of cessation of business of thermal power plants ("RDL 17/2019"), was published in the Official Journal of Spain.

By means of RDL 17/2019, the Government intends to achieve three main objectives:

- (1) Establish, before the start of the next regulatory period (i.e., 1 January 2020), the reasonable rate of return for power generation facilities with a specific remuneration (i.e., subsidy) scheme, and update the financial remuneration rate for production in non-mainland territories.
- (2) Grant legal certainty to the remunerative framework of renewable energy and, in particular, to that of facilities that had 'premium remuneration' (i.e., feed-in premium) recognised at the time of entry into force of Royal Decree-Law 9/2013 ("RDL 9/2013").

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- (3) Adopt measures to ensure the dynamisation of economic activity and associated employment in the geographical areas where thermal coal and thermonuclear power plant closure processes are taking place.

To this end, the following measures have been adopted:

- (1) As regards the **first objective**:

Approval of (a) *a reasonable rate of return of 7.09% for the second regulatory period (i.e., 2020-2025) for power generation facilities with a specific remuneration scheme, and (b) a financial remuneration rate of 5.58% for the production activity in non-mainland electricity systems (single article RDL 17/2019).*

- (2) As regards the **second objective**:

(a) *The maximum time limit for the approval of the ministerial order reviewing the remuneration parameters applicable to the second regulatory period is set for 29 February 2020. Until it is approved, the amounts accrued shall be settled in accordance with the remuneration received, without prejudice to the settlements to be offset once the aforementioned order is approved (single additional provision RDL 17/2019).*

(b) *It is established that the reasonable rate of return of facilities prior to RDL 9/2013 may not be reviewed during the following 2 regulatory periods (i.e., 2020-2031), remaining at 7,398¹. However, this scheme shall not apply:*

- *When these facilities have renounced this possibility and demonstrate it in a reliable manner before 1 April 2020. In this case, the reasonable rate of return established for each regulatory period will be applied in their remuneration.*
- *When any arbitration or judicial proceedings based on the modification of the special remuneration scheme operated after Royal Decree 661/2007, of 25 May, are initiated or have previously been initiated on the rate of return of the facilities.*

However, in this second case, the maintenance of the reasonable rate of return during the following two regulatory periods may be invoked for facilities that *provide proof before 30 September 2020 of: (i) early termination of the proceedings and waiver of resumption or continuation of the proceedings; or (ii) waiver of any indemnity or compensation recognised as a result of the proceedings.* This does not include facilities that in the past initiated unsuccessful judicial proceedings, which have finalised and which cannot therefore be abandoned in advance.

¹ New Third Bis Final Provision of the Electricity Sector Act 24/2013 of 26 December.

For the purposes of this exception, *arbitration and judicial proceedings are understood to include*: (i) proceedings raised by the direct or indirect owner of the facility (if there are several owners, those raised by any of them); (ii) proceedings raised by those claiming to assert their rights as a result of holding an investment in those facilities; and (iii) proceedings raised by third parties by virtue of assignment, subrogation, procedural succession or any other legal instrument with analogous or equivalent effect.

(3) And finally, as regards the **third objective**:

- (a) It is envisaged that the Spanish Ministry for the Ecological Transition may regulate procedures and establish requirements so that, when granting new access to a renewable energy project in nodes where thermal coal or thermonuclear power plants are closed, social and environmental criteria are taken into account².
- (b) Priority to the granting of concessions for exclusive use of water to initiatives and projects in the geographical area where thermal coal or thermonuclear power plants are closed is established, with the exception of use for the supply to the population³. Social and environmental criteria will be considered.

² New Twenty-Second Additional Provision of the Electricity Sector Act: "Granting of access and connection permits to ensure a just transition" (Second Final Provision RDL 17/2019).

³ New Sixteenth Final Provision of the Water Act: "Water concessions for a just transition" (First Final Provision RDL 17/2019).