

Approval of RD 1183/2020 on access and connection to the electricity grid

On 29 December 2020, the Spanish Government approved Royal Decree 1183/2020 on access and connection to the transmission and distribution electricity grids (“RD 1183/2020”). This new RD was published in Spain’s Official Gazette on 30 December 2020 and entered into force on 31 December 2020.

Below is a summary mainly focused on the impact of RD 1183/2020 and the new access and connection regulations on renewable energy generators. Note, however, that RD 1183/2020 includes other measures that may affect storage and self-consumption. In general, it applies to the access and connection rights to be obtained not only by renewable electricity generators, but by all generators, transmission and distribution companies, consumers and holders of storage facilities.

1) Purpose of RD 1183/2020

Article 33 of Law 24/2013, of 26 December, on Electricity (“LSE”, for its initials in Spanish) regulated access and connection rights to the electricity grid on a general basis and left the development and details of said rights for subsequent regulations to be approved by the Government. The eleventh transitory disposition of the LSE established that article 33 would not be effective until the approval of these developing regulations, meaning that the previous legal regime on access and connection rights (contained in Law 54/1997) remained in force.

RD 1183/2020 develops article 33 so that the legal regime on access and connection rights contained in said article is finally applicable. In a nutshell, RD 1183/2020 establishes: (i) the criteria and procedures to obtain access and connection permits; (ii) the criteria pursuant to which interested parties may ask grid managers for amendments to access and connection permits; and (iii) the objective criteria to determine the inclusion of limits on connection capacity.

However, the rules and procedures established by RD 1183/2020 still require a further “fine-tuning” development to be fully effective. This development must be implemented by the Spanish Commission for Markets and Competition (“CNMC”, for its initials in Spanish) through a Circular Note (the “CNMC Circular Note”) that should be approved in the following days or weeks. The purpose of the CNMC Circular Note will be to regulate matters including: (i) the content of the applications and the permits; (ii) economic efficiency criteria for the sustainability of the electricity system to take into consideration for the granting of an access permit; (iii) criteria to assess grid capacity and the rejection of requests; and (iv) the minimum content of contracts with grid managers.

As stated, the full legal framework on access and connection rights will not be completed until the approval of this CNMC Circular Note.

2) Summary of RD 1183/2020

A. General aspects of the access and connection application procedure

- Procedures for the granting of (i) access and (ii) connection permits have been integrated into a single procedure. Applicants are to directly carry out the procedure with the grid managers (*gestores de red*) and sole node interlocutors (*interlocutores únicos de nudo*) disappear¹.
- RD 1183/2020 establishes an obligation for grid managers to implement web platforms to manage access and connection procedures. These platforms must also provide public information on available capacity in each node.

¹ Except during a transitory period for those access and connection procedures that had started before the entry into force of RD 1183/2020.

- All applications, any amendments, notices from grid managers and, in general, every aspect of the procedure is to be carried out electronically (except for direct requests from individuals), so as to facilitate the traceability of all notices and requests made by applicants and grid managers alike.

B. General aspects of the granting of access and connection rights

- The commencement of access and connection procedures is conditional upon the granting of grid bonds. The amount of grid bonds needed to initiate the access and connection process remains at 40€ per kW of installed capacity.

The deposit of the grid bond with the Spanish Government Depository (*Caja General de Depósitos*) must be notified to the competent energy authorities, who must issue written confirmation of the adequacy of the grid bond. The applicant's notification of deposit of the grid bond must include a request to issue the confirmation of adequacy. This confirmation is mandatory in order for grid managers to admit the application. The term for the administrative authorities to issue this confirmation is three months from the date of the filing of the application (or its amendment, if required). If the term expires and the confirmation has not been issued, the response will be deemed negative.

- Requests for access and connection permits are only to be made:
 - Transmission grid: regarding existing substations or substations included in the current transmission energy planning;
 - Distribution grid: regarding existing facilities or facilities included in the investment plans of the distribution companies as approved by the corresponding administrative authorities.
- Access and connection permits are generally granted on a first-come, first-served basis ("temporal priority"), although RD 1183/2020 establishes exceptions for cases of: (i) hybridization of existing operating facilities; and (ii) capacity tenders in cases in new transmission nodes or nodes where capacity is freed.

Temporal priority is established based on the date of admission of the access and connection permit application. The admission of the application is deemed to take place on either of the following dates: (i) submission of the application to the grid manager; or, if applicable, (ii) submission of corrections to the application.

If more than one application is submitted at the same time, the date considered for priority purposes will be the one on which the deposit of the grid bond is notified to the competent energy authorities.

C. Non-admission of requests

- Applications for access and connection permits can only be subject to non-admission in the following cases:
 - i. lack of evidence of deposit of the grid bond with the Spanish Government Depository and/or lack of confirmation of adequacy of the grid bond by the competent authority;
 - ii. where the requested connection point is affected by a specific capacity tender, as explained in section G below, or is a "just transition node" (*nudo de transición justa*);
 - iii. failure to provide the required documents;
 - iv. no capacity in the node where access and connection are requested².
- The non-admission of the application will entail the release of the grid bonds within a maximum term of three months from the request for release. Note, however, that in cases where the application is not admitted due to lack of capacity, only 80% of the grid bond will be released unless the applicant proves that at 8:00 AM on the date on which the grid bond was deposited, the relevant grid manager's web platform showed the existence of available capacity³ in the node.

² Not applicable to requests for hybridization purposes.

³ Not reserved for capacity tenders.



D. Rejection of access and connection permits

- The reasons for the rejection of access and connection permits will be those established in the CNMC Circular Note.
- Rejection will require a rationale in any case, and the reasons must be notified to the applicant in the application assessment of. If the rejection is based on a lack of available capacity, the grid managers must include the link to the webpage showing the available capacity in their grids.
- The rejection of an application for causes not directly or indirectly attributable to the applicant will entail the release of the grid bonds within a maximum term of three months from the date of the filing of the rejection notice with the competent energy administrative authority.

E. Stages and terms of access and connection procedure

- Below is a brief summary of the main stages and terms of the access and connection procedure as set forth in RD 1183/2020:

Stage		Comments
1	Grid bond	<ul style="list-style-type: none"> ▪ Granting of grid bond. ▪ Deposit of grid bond with the Spanish Government Depository. ▪ Notice of deposit of the grid bond to the competent energy administrative authority. ▪ Confirmation of adequacy of grid bond by the competent energy administrative authority (within three months following the notice, being the silence from the administrative authorities being deemed a rejection in terms of the adequacy of the grid bond).
2	Filing of application	<ul style="list-style-type: none"> ▪ Once confirmation of adequacy is granted by the competent energy administrative authority, the applicant can file the application requesting access and connection permits with the grid manager.
3	Beginning	<ul style="list-style-type: none"> ▪ Grid manager has up to 20 days to request amendments to the application and may request amendments up to two times. ▪ Applicant has 20 days to amend the request. If not amended in this timeframe, the application will be deemed not admitted. ▪ Grid manager has an additional term of 20 days after the amendment to notify the applicant if the application is admitted or not.
4	Assessment	<ul style="list-style-type: none"> ▪ Once the application is admitted: (i) grid manager is to assess if there is access capacity in accordance with the criteria established in the CNMC Circular Note; (ii) grid holder (<i>titular de la red</i>) is to assess if there is a viable connection in accordance with the criteria established in the CNMC Circular Note. ▪ If the request affects the transmission grid or the distribution grid upstream, grid manager must request an acceptability report within a term of 10 days following admission of the application.

		<ul style="list-style-type: none"> ▪ The term to issue this acceptability report may vary depending on voltage (up to 60 days in cases where the connection point is in the transmission grid). ▪ Once the assessment is made, the request may be accepted (in part or in full) or rejected.
5	Prior proposal	<ul style="list-style-type: none"> ▪ Once the assessment process is completed, if there is available access capacity, the grid manager will issue a prior proposal for the applicant, including technical conditions and requirements, works specifications needed to connect to the grid, and the budget for the works, together with the details of other applicants sharing the connection point in case they all need a prior agreement. ▪ The term to issue this prior proposal may vary depending on voltage (up to 60 days from the date of admission of the application in cases where the connection point is in the transmission grid). ▪ In cases where an acceptability report is needed pursuant to stage 4 above, the term is increased for a period equal to the time it takes to issue the acceptability report.
6	Acceptance	<ul style="list-style-type: none"> ▪ Within 30 days from notice of the prior proposal, the applicant may: <ol style="list-style-type: none"> i. accept the proposal. ii. request a review of the proposal, in which case an answer must be issued within 15 days, and the subsequent acceptance within another term of 30 days. ▪ If applicant receives no response, the proposal will be deemed rejected and grid bonds will be released in accordance with the general terms for release.
7	Issuance of access and connection permits	<ul style="list-style-type: none"> ▪ Within 20 days following acceptance, the grid manager must issue the access and connection permits.
8	Payment for works on transmission and distribution grids	<ul style="list-style-type: none"> ▪ Whenever works in the transmission and distribution grids are necessary at a connection point with a voltage higher than 36 kV, the holders of access and connection permits must: <ol style="list-style-type: none"> i. make relevant payments to the transmission or distribution grid holders (10% of the value of the works within 12 months following issuance of the access and connection permit; and ii. enter into a project contract regulating the remaining payments within 4 months after the latter of the following dates: (i) payment of the 10% installment; or (ii) issuance of the prior administrative authorization of the generation facility.
9	Contracts for technical access to the grid	<ul style="list-style-type: none"> ▪ Within a maximum term of five months following issuance of the access and connection permits and granting of the relevant administrative authorizations (prior administrative authorization, administrative authorization for construction and administrative authorization for exploitation of both the energy facility and the evacuation infrastructures), applicant and grid manager must execute the contract for technical access to the grid ("CTA"), with the content set forth in the CNMC Circular Note. That is, the parties are only to execute the CTA once the applicant has obtained the administrative authorization for exploitation of both the generation facility and the evacuation infrastructures.

F. Simplified procedure and exemptions

- A simplified procedure involving the halving of timeframes is established for certain facilities, mainly for producers with an installed capacity below 15 kW.
- In accordance with the existing provisions of RD Law 15/2018, the following producers are exempt from obtaining access and connection permits: (i) self-consumption facilities without surplus (*autoconsumo sin excedentes*); and (ii) self-consumption facilities with surplus (*autoconsumo con excedentes*) with an installed capacity of less than 15 kW and located on urban land with all endowments and services required by corresponding planning law.

G. Capacity tenders

- RD 1183/2020 establishes a discretionary power (but not an obligation) for the Ministry to carry out capacity tenders in certain cases and when certain requirements are met (e.g., requests at certain nodes have been above particular thresholds over available capacity):
 - i. new nodes included in the energy planning; or
 - ii. nodes where a certain amount of capacity is freed (for example, due to closure of old generation plants or any project losing its access and connection rights).

In these cases, the criteria for granting capacity may be different to temporal priority (criteria may include project maturity and efficiency, for example, at the discretion of the Ministry). Capacity tenders cannot be used for available capacity in existing nodes, or for nodes qualifying as a just transition node.

- Capacity tenders may be announced by means of a Ministerial Order, which will establish a maximum deadline for the relevant facilities to be injecting energy to the grid, as well as the daily penalties for not meeting deadlines in this respect. Those penalties will be not lower than 25% of the estimated costs of the energy not produced. A guarantee must be deposited with the administrative authorities in order to cover these potential penalties.
- If there are existing capacity requests in respect of nodes where a capacity tender has been announced, these request procedures will be suspended. The applicants may withdraw their request and obtain the release of the guarantees. In this case, withdrawal will be deemed not to be directly attributable to the applicant and a full release will be granted. Any withdrawal may not prevent the applicant from participating in the relevant capacity tender.
- Once the capacity has been awarded through the capacity tender, the procedure for granting access and connection permits will follow the general criteria (except for temporal priority) and the stages and terms described in section D above.

H. Expiry of access and connection permits

- The access and connection permits shall be deemed expired if:
 - i. the facilities have not been granted the administrative authorization for exploitation within 5 years following the granting of the permit. In the case of access and connection permits granted before the entry into force of RDL 23/2020, this five-year period will start to run on the date of entry into force of RDL 23/2020;
 - ii. the administrative milestones established in RDL 23/2020 are not met; or
 - iii. for reasons attributable to the applicant, other than temporary closure, the facility fails to inject energy to the grid for a period of more than three years.

I. Hybridization of existing facilities

- Pursuant to RD 1183/2020, the holders of existing electricity generation facilities with access and connection permits that have already been granted, and which provide for the hybridization of said facilities with renewable technologies or with storage facilities, may inject energy into the grid at the same connection point. For these purposes, it is necessary to request an update of the access and connection permits (rather than applying for new access and connection permits).

- This request will not be affected by temporal priority criteria, although if the administrative deadlines set forth in RDL 23/2020 are not met, the access and connection permit will be restored to its original situation and the relevant grid bonds deposited for the amendment will be enforced (in this case, the amount of the grid bonds to be deposited will be reduced by 50%).

J. Transitory Dispositions

- In order to request grid access and connection permits, grid bonds must be granted and deposited after the entry into force of RD 1183/2020 (31 December 2020). In other words, grid bonds granted before 31 December 2020 will not be valid even if said guarantees are amended to fulfil the requirements of RD 1183/2020.
- A new definition of installed capacity for photovoltaic facilities (the lowest between the peak power and the inverter) will apply to facilities that have already started the administrative process but have not yet been granted the final start-up certificate (*autorización de explotación definitiva*). This new definition of installed capacity is intended to stimulate bifacial panel technology, among other aims.

Note that for the purposes of the specific remuneration regime established under RD 413/2014, the applicable definition of installed capacity will be the one in force on the date the specific remuneration regime was implemented, and not the new definition established in RD 1183/2020.

Grid managers have a term of three months to develop and have in operation the web platforms needed to manage access and connection procedures and provide information on available capacity. Until information on available capacity has been published on said platforms, grid managers may not admit any new access and connection request made after the entry into force of RD 1183/2020. This is an important point because, in practice, it may imply an extension of the moratorium for requesting access and connection rights established in RDL 23/2020, provided that the CNMC Circular Note is published before the end of the aforementioned three-month period (i.e., if the CNMC Circular were published on 31 December 2020, the moratorium would be extended until the web platforms were ready or until the expiry of the three-month deadline).

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