

APPROVAL OF THE ORDER UPDATING THE REMUNERATION PARAMETERS FOR RENEWABLE ENERGY GENERATION FACILITIES WITH A SPECIFIC REMUNERATION REGIME

The BOE of 28 February 2020 published Order TED/171/2020, of 24 February, updating the standard-facility remuneration parameters applicable to certain facilities that produce electricity from renewable energy sources, cogeneration and waste, for the purposes of its application to the regulatory period beginning on 1 January 2020 (the "Order").

The Order has been approved by the Ministry for the Ecological Transition and the Demographic Challenge (the "**Ministry**") pursuant to the provisions of Article 14.4 of Law 24/2013, of 26 December, on the Electricity Sector (the "**Electricity Sector Law**") and Article 20 of Royal Decree 413/2014 of 6 June, which regulates the activity of producing electricity from renewable energy sources, cogeneration and waste ("**RD 413/2014**"). Both regulations provide (i) that at the end of each regulatory period, which will last for six years, the remuneration parameters of the standard facilities may be reviewed, except as regards the regulatory lifespan and the standard value of the initial investment; (ii) that at the end of each regulatory half-period, which will last for three years, the estimates of income from the sale of energy will be reviewed for the rest of the regulatory period, by order of the Ministry; (iii) that the operating remuneration for standard facilities whose operating costs depend essentially on the price of fuel will be reviewed at least annually.¹

This Order completes the process of reviewing the parameters for the second regulatory period. This process began following the approval of Royal Decree Law 17/2019, of 22 November, adopting urgent measures for the necessary adaptation of remuneration parameters that affect the electrical system and providing a response regarding the process of cessation of activity of thermal power stations ("**RDL 17/2019**"). This regulation established the value of reasonable profitability for renewable facilities that are entitled to receive regulated remuneration.

¹ Order IET/1345/2015, of 2 July, which establishes the methodology for updating the remuneration for the operation of facilities with a specific remuneration system, states that this review is to be carried out every six months.

As a general rule, the applicable reasonable rate of return to be used to review and update the remuneration parameters of the standard facilities, during the regulatory period between 2020 and 2025, is **7.09%**. As an exception, for the facilities that had the status of premium remuneration when Royal Decree Law 9/2013, of 12 July ("**RDL 9/2013**") entered into force, the reasonable rate of return will be **7.389%** during the period between 2020 and 2031, provided that the requirements established in the third final provision bis of the Electricity Sector Law are verified.²

Now the reasonable rate of return has been approved, the specific remuneration system has been updated for the second regulatory period that began on 1 January 2020, by means of the Order analysed in this legal briefing. The period for approving the Order ended, in accordance with the sole additional provision of RDL 17/2019, on 29 February 2020.³ The following is an analysis of the essential content of the Order.

I.- Approval of the Standard Facilities

The purpose of the Order is to update the remuneration parameters of the standard facilities (*instalaciones tipo*, "IT") included in its scope, for the regulatory period from 1 January 2020 to 31 December 2025.⁴

It covers all the ITs that have been approved, regardless of the ministerial order which granted such approval, which makes it possible to include the remuneration parameters of all of them in a single provision.⁵

New ITs are established for the assignment of the facilities to which, having had the status of premium remuneration at the entry into force of RDL 9/2013, a reasonable rate of return of 7.389% does not apply, by application of the provisions of the second or third paragraph

² More information is available in the [Legal Briefing on RDL 17/2019](#).

³ Although the Order enters into force the day after its publication in the BOE, in accordance with the provisions of the single additional provision of RDL 17/2019, the values of the remuneration parameters established in the Order are applicable from 1 January 2020.

⁴ Without prejudice to the updates provided for in Article 20 of RD 413/2014 and Article 3 of Order IET/1345/2015 of 2 July.

⁵ Annex I of the Order contains all the IT, and is divided into three sections: (i) Section A, which contains, for information purposes only, the codes identifying the ITs approved in the ministerial orders set out in Article 2 of the Order; (ii) Section B, which contains the new ITs whose operating costs are affected by the costs associated with the acquisition of emissions allowances and which are in sectors or subsectors that are not at risk of carbon leakage; and (iii) Section C, which contains the new ITs for which the third final provision bis.1 does not apply by application of third final provision bis.2 or third final provision bis.3 of the Electricity Sector Law.

of the third final provision bis of the Electricity Sector Law, and therefore, their remuneration parameters must be updated by applying a reasonable rate of return of 7.09%.

New ITs are also established for the allocation of facilities which are not in sectors considered to be at risk of carbon leakage, with the aim, as stated in the explanatory part of the Order, "*of correctly allocating the costs associated with the acquisition of emission allowances, taking into account the existing difference in the allocation of free allowances in sectors considered to be at risk of carbon leakage in relation to the rest of the sectors*".

II.- Update of the IT remuneration parameters for the second regulatory period

The Order establishes the values of the return on investment ("RI")⁶, and, where appropriate, the values of return on operation ("RO")⁷ for the regulatory half-period 2020-2022.

The values of the investment incentive for the reduction of the generation costs for the ITs approved by Annex II of Order ET/1459/2014 of 1 August and Order IET/2735/2015 of 17 December, applicable to the years 2020, 2021 and 2022, are also set in the Order.⁸

Nevertheless, the remuneration parameters are not updated for ITs whose facilities have exceeded their regulatory lifespan before 1 January 2020 and are not entitled to receive the specific remuneration regime.

The calculation assumptions set out in Annex V and the parameters set out in Annex VI are used to update the remuneration parameters.

III.- Reallocation procedures

- (i) The Order regulates the reallocation procedure for facilities that are not in sectors deemed to be at risk of carbon leakage.

Applications for facilities to be allocated to ITs which are not in sectors considered to be at risk of carbon leakage, with the same technical and economic

⁶ Annex II of the Order sets the "*Remuneration parameters of standard facilities applicable to the years 2020, 2021 and 2022: return on investment, number of equivalent minimum operating hours, operating threshold and other remuneration parameters*".

⁷ Annex III of the Order sets the "*Return on operation and maximum number of operating hours for the receipt of the return on operation applicable to the years 2020, 2021 and 2022 or to the first semester of 2020, as appropriate*". In particular, section A refers to ITs whose operating costs do not depend essentially on the price of fuel and section B refers to ITs whose operating costs depend essentially on the price of fuel.

⁸ Annex IV of the Order.

characteristics as at the time of the entry into force of the Order, must be made to the Directorate General for Energy Policy and Mines ("DGPEM") by 30 June 2020.

If the decision is favourable, the IT allocation will be effective from 1 January 2020.

- (ii) The Order regulates the reallocation procedure applicable to facilities affected by the third final provision bis of Electricity Sector Law ("DF 3^a bis").

The facilities affected by DF 3^a bis of the Electricity Sector Law are those that had the status of premium remuneration when RDL 9/2013 entered into force. For these facilities, the reasonable rate of return is 7.389% if the requirements established in the DF 3^a bis are verified, or 7.09% otherwise. This distinction entails the approval of two different ITs, and requires facilities to undergo a reallocating procedure, either due to the application of the value of 7.389% being waived, or as the result of a failure to comply with the legal requirements for this value to apply.

If the value of 7.389% is waived for two regulatory periods, the DGPEM will, at the request of an interested party, decide on the application by allocating the facilities to the corresponding IT to which the value of 7.09% will apply.

If there is a failure to comply with the requirements, the DGPEM, upon receiving the appropriate communication from the State Attorney's office identifying the facilities that are initiating or have previously initiated any of the arbitral or legal proceedings referred to in DF 3^a bis of the Electricity Sector Law, will allocate the facilities to the corresponding IT to which the reasonable return rate of 7.09% will be applicable with effect from 1 January 2020.⁹

Facilities that prove to the DGPEM, before 30 September 2020, that the arbitral or legal proceedings have been terminated early and the possibility of restarting or continuing has been credibly waived, or that any compensation awarded as a result of those proceedings has been waived, will be allocated to the corresponding IT to which the reasonable return value of 7.389 % will be applicable.

⁹ In the event that the communication from the State Attorney's Office refers to the identification of facilities that have received the compensation or indemnification referred to in section 5 of the DF 3^a bis of the Electricity Sector Law, the DGPEM will allocate the facilities to the corresponding IT to which the reasonable rate of return of 7.09% will be applicable, but with effect from 1 October 2020, as provided for in the aforementioned section 5 of the DF 3^a bis of the Electricity Sector Law.

In the settlement immediately following the decision that concludes the procedure for reallocating facilities, the payment applications or, where appropriate, the applicable collection rights, will be settled.

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The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This Legal Briefing was prepared on 2 March 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

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