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Analysis of the energy measures contained in Royal Decree-law 17/2022

On 21 September 2022, Royal Decree-law 17/2022, of 20 September, adopting urgent measures in the field of energy, in the application of the remuneration system for cogeneration facilities and temporarily reducing the rate of Value Added Tax applicable to deliveries, imports and intra-Community acquisitions of certain fuels (“**RDL 17/2022**”) was published in the Official State Gazette.

This Legal Briefing analyses the key aspects of the main energy measures contained in RDL 17/2022.

1. Measure related to cogeneration facilities

(i) Waiver of the specific remuneration scheme regulated in Royal Decree 413/2014 of 6 June (“**RD 413/2014**”).

A new type of voluntary waiver of the specific remuneration scheme is regulated for cogeneration facilities, so that they may request inclusion in the adjustment mechanism regulated in Royal Decree-law 10/2022, of 13 May, which temporarily establishes a production cost adjustment mechanism to reduce the price of electricity on the wholesale market (“**RDL 10/2022**”), with the following particularities:

- Electricity production facilities located on the Spanish mainland belonging to group a.1 defined in article 2 of RD 413/2014, as well as those covered by the first transitory provision of RD 413/2014 that have been covered by the second transitory provision of Royal Decree 661/2007, of 25 May, which regulates the activity of electricity production under the special scheme, can waive the application of the specific remuneration scheme.
- The period of application of this waiver will be the period between the first day of the month following the date of communication of the waiver to the body responsible for making the settlements and the end date of the adjustment mechanism contained in RDL 10/2022.
- The waiver must be communicated to the body responsible for making the settlements. Once the waiver has been communicated, an application must be made to the market operator and the system operator for the facility to be included in the mechanism provided for in article 4 of RDL 10/2022. This new mechanism can in no case be applied prior to the first day of the month following the date of submission of the application to the market operator and the system operator.
- During the period of application of the waiver, the facilities will not be part of the specific remuneration scheme and, therefore, will not be required to comply with the energy efficiency conditions or the fuel consumption limits established in RDL 413/2014. Likewise, it will be considered that the facility does not have any of the remuneration frameworks regulated in article 14 of Law 24/2013, of 26 December, on the Electricity Sector (“**LES**”).
- For facilities that submit a waiver, the calculation of the number of hours equivalent to the minimum operating hours and the operating threshold of the corresponding standard facility will be made proportionally to the period in which the mechanism regulated in RDL 10/2022 has not been in force.

- Facilities may request the non-application of the mechanism regulated in RDL 10/2022. In this respect, once the request for non-application has been submitted to the market operator and the system operator, the facilities may apply to the body responsible for making the settlements for early termination of the period in which the waiver of the specific remuneration scheme is applicable. This will take effect on the first day of the month following the date of the request, provided that it is submitted at least two working days before the end of the month.
- At the end of the period in which the waiver is applicable, the facility will recover the right to be part of the specific remuneration scheme with effect from the first day of the month following the end of the period.

2. Measures with an impact on the processing of renewable generation projects

The following changes are introduced:

- (i) The requirement thresholds that make it necessary to initiate a new procedure in the event of modification of facilities have been amended:
 - a. With regard to the conditions that determine that a facility that has obtained a prior administrative authorisation (“PAA”) may obtain an administrative authorisation for construction (“AAC”) without needing a new PAA, paragraph c) of article 115.2 RD 1955/2000¹ has been amended to include as a condition, among others, that the installed power, after the modifications, does not exceed by more than 15% the power defined in the original project, as opposed to the 10% established in the original wording².
 - b. With regard to the characteristics that determine that a modification should be considered non-substantial and should only require an operating permit (“OP”), paragraph b) of article 115.3 RD 1955/2000 is amended to require, among other characteristics, that the modification should not involve an alteration of the basic technical characteristics (power, transformation or transmission capacity, etc.) of more than 10% of the power of the facility, as opposed to the 5% established in the original wording.
- (ii) In relation to the report to be issued by the CNMC in cases of authorisations for new facilities with respect to the assessment of the legal, technical and economic capacity of the applicant company, article 127 is amended to limit its issuing period to fifteen days, to attribute a positive meaning to the lack of a report, and to limit the content of the analysis in certain cases.
- (iii) With regard to the processing of the AAC, the period for consulting the various administrations, bodies or public service or general interest service companies affected, with assets and rights under their responsibility, is reduced to 15 days, provided that they are not processed jointly with the specific declaration of public utility or with a modification of the PAA.
- (iv) With regard to the prior registration of facilities in the Administrative Register of Electricity Production Facilities, slight discrepancies are allowed in relation to the power installed in the different documents needed to carry out the registration.

In this regard, a new paragraph is introduced in section 1 of article 39 of RD 413/2014 which establishes that, for prior registration, the following discrepancies may be admitted without requiring modification of the same:

¹ Royal Decree 1955/2000 of 1 December, which regulates the activities of transmission, distribution, commercialisation, supply and authorisation procedures for electricity facilities (“RD 1955/ 2000”).

² Note that this is understood to be “without prejudice to the implications that, where applicable, in accordance with the provisions of the fourteenth additional provision, this excess power may have for the purposes of access and connection permits”.

- A variation in access capacity of up to 5% compared to that stated in the granted access and connection permit.
- A variation in the installed capacity of up to 5% compared to that stated in the construction authorisation and provided that a new construction authorisation is not required.

However, such documentation is required to be completed prior to obtaining the final operational notification (“FON”), which is necessary for definitive registration.

3. Reduction of the applicable rate of Value Added Tax on the supply, import and intra-Community acquisition of certain fuels

From 1 October 2022 until 31 December 2022, the 5% VAT rate will be applied to supplies, imports and intra-Community acquisitions of natural gas, briquettes and pellets from biomass and wood for firewood.

4. Active demand response service

An active demand response service of the electricity system has been regulated to deal with situations in which there is a depletion of the balancing energy to be provided by the standard manually activated balancing services. The service is organised by means of an annual auction in which the needs of the specific active demand response product are contracted, based on the reserve requirements detected by the system operator for each period of application of the service, and in which all those demand scheduling units connected to the Spanish mainland electricity system that meet the established requirements may participate. The procedure provides for the following aspects:

- Publication of the active demand response power requirement, service provision periods and service activation forecast.
- Allocation of service provision through an annual auction mechanism.
- Activation, control and measurement of service provision.
- Criteria for the payment for the service provision.

5. Allocation of the Electricity Sector Surplus in the 2021 financial year

It is established that, exceptionally, if at the close of the 2021 financial year a surplus of revenue is generated in the electricity system, the whole of this surplus will be applied to cover temporary imbalances and transitory deviations between revenue and costs in the 2022 financial year. The above applies notwithstanding the provisions of article 19 of Law 24/2013 of 26 December.

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