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## Approval of the regulation for closed electricity distribution networks

The BOE of 26 April 2023 has published Royal Decree 314/2023, of 25 April, which establishes the procedure and requirements for the granting of the administrative authorisation for closed electricity distribution networks. ("**RDL 314/2023**").

In this Legal Briefing, we analyse the main elements of the new regulation, which is primarily aimed at industrial parks and which seeks to reduce the energy costs of connected companies and increase their competitiveness.

### 1. Introduction

(i) **Closed electricity distribution networks ("Closed Networks")** were introduced into European Union ("EU") law for the first time by Article 28 of Directive 2009/72/EC of the European Parliament and of the Council, of 13 July 2009, concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ("**Directive 2009/72/EC**"). Article 28 defined Closed Networks as those distribution networks that **supply electricity to a geographically confined industrial, commercial or shared service area**.

In this context, Article 3 of Royal Decree-law 20/2018, of 7 December, on urgent measures to boost economic competitiveness in the industrial and commercial sector in Spain ("**RDL 20/2018**") established the **basic principles for setting up and authorising Closed Networks** in Spain. It also provided that the Government should carry out the regulatory roll-out of the Closed Networks, in accordance with the principles of economic and financial sustainability of the system, energy efficiency and just transition.

Subsequently, Directive (EU) 2019/944 of the European Parliament and of the Council, of 5 June 2019, on common rules for the internal market for electricity and amending Directive 2012/27/EU ("**Directive (EU) 2019/944**"), which repealed Directive 2009/72/EC, entered into force. Article 38 of Directive (EU) 2019/944 contained essentially the same content as the repealed directive with respect to Closed Networks.

(ii) Therefore, **Royal Decree 314/2023 transposes Article 38 of Directive (EU) 2019/944 into Spanish law**, regulating the **procedure and requirements for the granting of the administrative authorisation** for Closed Networks.

(iii) **According to the explanatory memorandum of RD 314/2023, the regulation of this type of network seeks to reduce the economic costs of electricity for medium and large industries concentrated in small territorial areas, and thus improve their competitiveness** insofar as the implementation of these networks will lead to a **reduction in electricity system tolls**.

This is due to the fact that there will be a shift from a scenario in which there are several consumers connected to the distribution and transmission networks, at different power levels and each with its own connection point, to one in which there will be a single large consumer connected at a higher power level to a single connection point (the private network), with a consequent reduction in the tolls payable by the consumer.

However, it should be noted that this reduction in tolls will result in **lower revenues for the electricity system**, which may be partly offset, according to the explanatory memorandum of the regulation, by a reduction in the investments required from the system, which will have to be made by the owners of these networks, who will be responsible for investing in them, operating them and maintaining them.

## 2. Features and requirements of Closed Networks

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(i) Royal Decree 314/2023 establishes that the **following requirements must be met for the granting of the administrative authorisation** to set up Closed Networks: (i) an electricity network distributing electricity to **industrial consumers** (ii) in an **industrial area not exceeding 8 square kilometres in size**, (iii) provided that such a network distributes electricity to the industrial undertakings located on that site **using its own networks**.

Regarding consumers, the regulation establishes an **exception**, given that the Closed Networks may supply **up to a maximum of 100 non-industrial consumers** provided that they are related to industries, are inside the network or adjacent to it, and do not represent more than 2% of the total electricity consumption<sup>1</sup>.

(ii) Under the provisions of Royal Decree 314/2023, **industrial consumers are defined as** those whose code in the National Classification of Economic Activities ("CNAE") belongs to **groups B or C and those who, while belonging to groups D and E, are considered to be industrial** for the purposes of compiling statistics on the industrial sector<sup>2</sup>.

(iii) In addition, at least one of the following conditions must be met:

- For **specific technical or safety reasons, the operation or production processes of the users of such a network must be integrated**. Applicants must justify the existence of such specific technical and/or safety requirements by providing a report from an independent third party stating that these requirements relate to a number of businesses representing at least 50% of the total annual consumption of consumers connected to the distribution system.
- The **Closed Networks must primarily supply electricity to the owner or operator of the networks or their related undertakings**. This will be deemed to be the case when at least 50% of the consumption connected to the Closed Networks belongs to the owner or operator of the network, or to companies in which the owner or operator holds a stake of more than 50%.

(iv) The **owners of the Closed Networks must build or, where appropriate, acquire them**, and shall be responsible for managing them, investing in their maintenance and billing for tolls, charges and other costs incurred by the consumers connected to them.

(v) Accordingly, **the owners of the Closed Networks will be the managers and operators** of these networks, and, therefore, will have the same functions as the managers of the electricity distribution networks.

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<sup>1</sup> Article 5 of RD 314/2023 establishes that the conditions to be fulfilled simultaneously are that:

a) They are located in the same geographical area referred to in Article 3.1 of this Royal Decree.

(b) Employment or business relationships exist or have existed with the owners or partners of that network or with other industrial consumers connected to that network.

(c) They represent less than 2% of the total annual consumption of consumers connected to the Closed Networks.

(d) Consumers are located on parcels of land adjacent to those of industrial consumers or only separated by rivers, streams, railways, roads or public roads.

<sup>2</sup> As provided in Section III of Annex II to Regulation (EC) No. 295/2008 of the European Parliament and of the Council, of 11 March 2008, concerning structural business statistics.

### 3. Billing

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- (i) The **supply companies will bill** their customers connected to the Closed Networks **only for the energy consumed** as recorded by their individual metering equipment, with the corresponding increase in losses, but **under no circumstances**, except in those cases in which they have the right to use the Voluntary Price for Small Consumers (using its Spanish acronym, "PVPC") or the social tariff, **will they pass on any tolls or charges in their bills to their customers connected to the Closed Networks**.
- (ii) The **owners of the Closed Networks must pay the tolls and charges that apply to them at the connection points** with the networks to which they are connected under the same terms that are established by regulation by the Government and by the National Markets and Competition Commission for consumers.

Tolls and charges shall be billed monthly by the distribution system operator to which the closed network is connected. Therefore, the owners of the Closed Networks shall be accountable to the regulations as if they were final consumers.

- (iii) **The operators of the Closed Networks shall invoice all consumers connected to their networks**, except those covered by the PVPC or the social tariff, the amounts necessary to (i) **meet the payment of tolls and charges**, as well as (ii) **meet all other costs incurred** and passed on to users by the owners of the Closed Networks.

Tolls, charges and other costs to be paid by customers connected to the Closed Networks must be agreed in advance by the owner of the network and the network users and must be based on objective, transparent and non-discriminatory methodologies for all users connected to their networks.

### 4. Generators

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- (i) It should be noted that RD 314/2023 expressly includes the possibility for **electricity generators to participate in the Closed Networks**.
- (ii) In this respect, it establishes that generators must obtain the applicable access and connection permits and, where appropriate, sign the corresponding access contracts with the owners of the Closed Networks. These contracts must take account of the special features that apply to them as a result of the fact that they are networks of this type.

### 5. Other issues

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- (i) RD 413/2023 also establishes the **obligations and rights of the owners, consumers and generators** of the Closed Networks. In addition, it also regulates the obligations and rights of the distribution or transmission companies to which the Closed Networks are connected.
- (ii) It also establishes the **requirements for companies that are set up in Closed Networks**, among which the most important is to have certifications that verify: (i) their legal capacity, (ii) their technical capacity and (iii) their economic capacity.
- (iii) In addition, it establishes the **administrative authorisation procedure for Closed Networks**.
- (iv) It also sets out the **system of inspections and penalties**. Regarding penalties, reference is made to the provisions of Title X of Law 24/2013, of 26 December, on the Electricity Sector.

- (v) Finally, a **new section** is created **in the Administrative Register of Distributors** with the intention of including the companies that own the Closed Networks.

## CONTACTS



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