

Spanish Government Publishes New Regulation On Renewable Energy Electricity Generation Activity

Regulation eliminates distinction between ordinary and special regime facilities and establishes new remuneration system.

Introduction

As part of the Spanish government's ongoing structural reform of the energy industry, a regulation was passed on June 10, 2014, effectively establishing a new remunerative regime. This new regime will have significant implications for power plants producing electricity from renewable energy sources, cogeneration, and waste.

Background

The Spanish government has completed a structural reform of the energy industry, establishing a new regulatory framework that aims to reduce and control one of the main problems of the Spanish energy sector: the 'tariff deficit.' The reform, which started with the enactment of Royal Decree-Law 9/2013 of July 13, 2013 (**RDL 9/2013**), whereby certain urgent measures were taken to ensure the financial stability of Spain's electrical system, was finally defined by the new Electricity Sector Law 24/2013 of December 26, 2013 (**Electricity Sector Law**).

New Regulation

On June 10, 2014 the new Royal Decree 413/2014, which regulates electricity generation activity using renewable energy sources, cogeneration, and waste (**RD 413/2014**) was published in the Spanish Official State Gazette, entering into force on June 11, 2014. This new regulation definitively eliminates the distinction between special and ordinary regime facilities and establishes a new remuneration system for facilities producing electricity from renewable energy sources, cogeneration and waste, which replaces the former remunerative regime..

Implications

The Electricity Sector Law briefly outlined some broad parameters of the new remuneration regime for electricity generation activity. Article 14 of the Electricity Sector Law stated that the remuneration for electricity generation activities will include the following concepts:

- The correspondent remuneration for the participation in the generation daily and intraday market
- The system adjustment services required to guarantee a suitable supply to the consumer
- When applicable, the remuneration for the capacity mechanism

- When applicable, the additional remuneration for the generation activities carried on in the electricity systems of non-peninsular territories
- When applicable, the specific remuneration for the generation of electricity using renewable energy sources, cogeneration and waste

The RD 413/2014 specifically regulates the new remuneration system for facilities producing electricity generation activity from renewable energy sources, cogeneration, and waste. Thus, power plants producing electricity from renewable energy sources, cogeneration and waste may also receive a specific remuneration, in addition to the electricity market price, composed of (i) “the remuneration to the investment” corresponding to the amount per installed power unit/facility, which covers, where applicable, the investment costs for a standard plant that cannot be recovered from the sale of electrical power; and (ii) “the remuneration to the operation” corresponding to an amount for the operation itself, which covers, where applicable, the difference between operating costs and the revenue obtained from the market by said standard power plant.

This specific remuneration, that allows power plants producing electricity from renewable energy sources, cogeneration and waste to achieve a “reasonable rate of return,” is calculated on the basis of a “standard power plant, over the useful regulatory life thereof and based on the business activity that would be carried out by an efficient and well-managed company.”

The RD 413/2014 defines the concept of “reasonable rate of return” by referencing the pre-tax return on the secondary market average yield on 10-year government bonds for the 24 months prior to May of the previous year as of the beginning of the regulatory period, increased by a differential. Each regulatory period will last for six years, the first starting on July 14, 2013, and lasting until December 31, 2019.

Notwithstanding, those facilities that benefitted from a feed-in tariff regime as of July 14, 2013 will receive a “reasonable rate of return” based on the pre-tax return on the secondary market average yield on the 10-years prior to the entry into force of RDL 9/2013 government bonds, plus 300 basis points. For new renewable cogeneration and waste facilities, the specific remuneration will be granted by a competitive tendering process respecting transparency, non-discrimination and objectivity principles.

Once power plants producing electricity from renewable energy sources, cogeneration and waste have completed their useful regulatory life, they would not be entitled to receive any specific remuneration and would merely obtain the income associated with the participation in the electricity market.

Next Steps

To conclude, the remunerative parameters based on standardized costs and revenues for a standard power plants will be determined by means of a Ministerial Order which is expected to be passed by the Spanish Government in the coming weeks.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Antonio Morales

antonio.morales@lw.com
+34.91.791.5030
Madrid

Leticia Sitges

leticia.sitges@lw.com
+34.91.791.5011
Madrid

Rosa Espin

rosa.espin@lw.com
+34.91.791.5038
Madrid

Natalia Cabeza
natalia.cabeza@lw.com
+34.91.791.5045
Madrid

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to the firm's global client mailings program.