

### **Royal Decree 413/2014, of June 6, 2014 regulating the generation of electricity using renewable energy sources, cogeneration and waste**

Royal Decree 413/2014, of June 6, regulating the generation of electricity using renewable energy sources, cogeneration and waste ("*RD 413/2014*") was published in the Official State Gazette on June 10, 2014.

Its preamble says that RD 413/2014 secures fulfillment of the mandate contained in Royal Decree-Law 9/2013, of June 12, adopting urgent measures to guarantee the financial stability of the electricity system ("*RD-Law 9/2013*") for the government to approve a new legal and economic regime for the existing electricity generation facilities using renewable energy sources, cogeneration and waste.

The preamble also expressly states that RD-Law 9/2013 had come about in a context in which there had been "*made clear the need to guarantee the financial sustainability of the electricity system, to consolidate the continual adaptations made to the legislation to secure, among other elements, the strict and correct application of the principle of fair return, and to undertake a review of the regulatory framework which would allow it to be better adapted to the events that define the actual circumstances of the industry.*"

In that context, RD 413/2014 has implemented the specific principles on which the new regime applicable to the electricity generation facilities using renewable energy sources, cogeneration and waste must be based, according to how they were expressed in RD-Law 9/2013 and subsequently included in the Electricity Industry Law (Law 24/2013, of December 26).<sup>1</sup>

This RD 413/2014, like the other measures concerning the electricity industry approved throughout 2013 and 2014, is also part of the national reform program, submitted by the Spanish government to the European Commission on April 30, 2013, in which the government promised to present a package of legislative measures aimed at guaranteeing the financial stability of the electricity system.

Described below is the most important new legislation introduced by RD 413/2014, composed of 53 articles and divided into six headings, nineteen additional provisions, seventeen transitional provisions, one repealing provision, eight final provisions and seventeen annexes.

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<sup>1</sup> The principal elements of RD-Law 9/2013 and of the Electricity Industry Law were described in our publications entitled "2-2013. Updates Energy" and "1-2014 Updates Energy", please see those publications for further information.

## 1. Purpose and scope of application

The purpose of RD 413/2014 is to regulate the legal and economic regime on electricity generation using renewable energy sources, cogeneration and waste, for both the existing facilities and any new facilities that may be developed in the future, and thus to replace the repealed Royal Decree 661/2007, of May 25, and Royal Decree 1578/2008, of September 26. Nevertheless, certain elements of those royal decrees were kept in force, until the approval of Orden IET/1045/2014, of June 16, 2014, approving the standard facilities' remuneration parameters applicable to certain electricity generation facilities using renewable energy sources, cogeneration and waste ("*Order IET/1045/2014*"), published in the Official State Gazette on June 20.<sup>2</sup>

The Electricity Industry Law did away with the concepts of ordinary and special regimes whereby different economic regimes applied according to the technology and capacity of the generation facilities. Hence, the scope of application of RD 413/2014 reaches to all facilities using renewable energy sources, cogeneration and waste, irrespective of their capacity.

RD 413/2014 thus establishes, for all the mentioned facilities, the set of rights, obligations, the specific provisions on how they operate on the market and the procedures relating to the compulsory registration of electricity generation facilities on the administrative register.

The specific remuneration regime in RD 413/2014, however, will only apply to given facilities from among those included in its scope of application which satisfy further requirements, and those facilities are therefore subject to administrative procedures related to the grant of that regime.

The provisions in RD 413/2014 will also apply to the generation facilities in nonmainland territories, notwithstanding the provisions in the legislation governing the nonmainland electricity systems. As an exception, any new cogeneration facilities, and any facilities using biomass, biogas, geothermal energy or waste as their primary energy sources, which are located in nonmainland territories, cannot be granted the specific remuneration regime under RD 413/2014, but will instead be remunerated under the provisions in the legislation governing the electricity systems in the nonmainland territories and may receive the additional remuneration regime intended for the generation facilities in those systems, provided they fulfill the requirements and procedures established in that legislation, in accordance with article 14.6 of the Electricity Industry Law.

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<sup>2</sup> RD-Law 9/2013 repealed Royal Decree 661/2007 and Royal Decree 1578/2008, in addition to article 4, additional provision number one and point 2 of transitional provision five of Royal Decree-Law 6/2009, of April 30. RD-Law 9/2013 thus secured the repeal of the pieces of legislation which before its entry into force (July 14, 2013), established the legal and economic regime applicable to the existing electricity generation facilities using renewable energy sources, cogeneration and waste with premium-based remuneration, and set out a new remuneration system for these facilities. Nevertheless, it establishes that until the new provisions needed for the new legal and economic regime to be fully applicable to those facilities are approved, the decrees repealed by RD-Law 9/2013 must continue to be applied, with the exception of certain elements.

## 2. The specific remuneration regime

### 2.1 New facilities

The Electricity System Law allows to be established in the future on an exceptional basis new specific remuneration regimes to increase the use of energy from renewable energy sources, high efficiency cogeneration and waste to generate electricity, where there is an obligation to meet energy targets under European Directives or other European legislation or where the introduction of these regimes will cut energy costs and reduce dependence on energy from other countries. This specific remuneration regime will be granted by way of competitive procedures.

RD 413/2014 refers to those competitive procedures, although it leaves the conditions, technology or the specific set of facilities that will be able to take part in them to be established in subsequent implementing regulations. Similarly, the specific remuneration parameters that will apply to them will be set by ministerial order, although Title IV of RD 413/2014 has already set the methodology for the specific remuneration regime applicable to those facilities (and to the existing facilities, as we shall see further on).

Thus, the remuneration regime for generation facilities using renewable sources, high efficiency cogeneration and waste will be based on their necessary participation on the market, and will supplement, if need be, the revenues they obtain on the market with a specific regulated remuneration that will allow facilities using these technologies to compete on an equal footing on the market with those using other technologies. This additional specific remuneration will be sufficient to achieve the necessary minimum level to cover the costs which, unlike the facilities using conventional technologies, they cannot recoup on the market, and will secure an adequate return for them by reference to the standard facility in each applicable case.

Fair return will be based, before taxes, on the average yield on the secondary market of 10-year government debt securities plus a suitable spread. The 'regulatory period' concept introduced by the Electricity Industry Law is used to set the remuneration for generation using renewable sources, cogeneration and waste. Six-year regulatory period has been established, and the first regulatory period will run from the date of the entry into force of RD-Law 9/2013 until December 31, 2019.<sup>3</sup>

The facilities will be classified, by ministerial order, into standard facilities (by reference to their technology, installed capacity, age, electricity system, in addition to any segmentation standard deemed necessary for the application of the remuneration regime), and the specific remuneration for each facility will be obtained using the remuneration parameters for the associated standard facility and the characteristics of the facility itself.

Some examples of the remuneration parameters, under article 13 of RD 413/2014, for the specific remuneration are: remuneration for investment per unit of capacity, adjustment rate, remuneration for operation, incentive to investment, regulatory useful life, minimum and maximum number of equivalent operating hours, the operating threshold and the upper and lower limits for the market price.

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<sup>3</sup> In the first regulatory period, the value to which the return on the standard projects taken as reference for the competitive procedures will be tied will be, before taxes, the average yield on the secondary market for the three months before the entry into force of RD-Law 9/2013 (April, May and June 2013) of 10-year government debt securities plus a spread of 300 basis points (additional provision one, point 2, of RD 413/2014).

To determine the remuneration parameters associated with each facility, article 14 of RD 413/2014 establishes the criteria for applying the specific remuneration regime to the various categories of facilities falling within its scope of application. Those criteria will thus be used to determine whether or not a given facility is part of a group.

Thus, in line with what was expressed in RD-Law 9/2013 and later included in the Electricity Industry Law, the calculation of the specific remuneration will take into account for a standard facility the revenues from the sale of its generated electricity valued at the price on the generation market, the average operating costs needed to conduct generation activities and the value of the initial investment in the standard facility, all of the above for an efficient and well managed enterprise. The estimated costs or investments can only be based on those determined by rules or acts applicable throughout Spain, and which refer exclusively to electricity generation activities.

The specific remuneration regime will thus be composed of:

- (a) A remuneration term per installed unit of capacity which will be called remuneration for investment ( $R_{inv}$ ) and will be expressed in €/MW. That parameter will be determined by reference to the standard value of the initial investment as obtained from the competitive procedure that will be conducted to grant the specific remuneration regime to each facility.

The annual revenues from the remuneration for investment in a facility will be calculated by multiplying the  $R_{inv}$  in the associated standard facility by the capacity with the right to the specific remuneration regime (determined from the capacity registered on the register for the specific remuneration regime with operating status), adjusted by reference to the number of equivalent operating hours.

- (b) A remuneration term for operation, which will be called remuneration for operation ( $R_o$ ), will be expressed in €/MWh and will be calculated so that added to the estimate of operating income per unit of energy generated equals the estimated costs of operating unit of energy generated by the corresponding type of installation.

The revenues from the remuneration for operation of a facility will be calculated by multiplying, for each settlement period, the  $R_o$  for the associated standard facility by the electricity sold on the generation market in any of the types of electricity trading transactions in that period, attributable to the fraction of capacity with the right to a specific remuneration regime<sup>4</sup>, adjusted by reference to the number of equivalent operating hours.

For the facilities that only use thermal processes to transform solar energy, as the primary energy source, into electricity (subgroup b.1.2) the electricity attributable to the use of other fuels will be excluded from the electricity mentioned above notwithstanding the provisions of Article 25 for hybrid installations.

Exceptionally, in the systems in the nonmainland territories, the remuneration regime may also include an incentive to investment and to completion in a specific period where the facility will cut generation costs of such systems significantly.

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<sup>4</sup> The energy attributable to the fraction of capacity with the right to a specific remuneration regime will be calculated by multiplying the relevant amount of electricity by the ratio calculated by dividing the capacity with the right to a specific remuneration regime by the installed capacity.

Once beyond their regulatory useful life, facilities will stop receiving the remuneration for investment and remuneration for operation. Those facilities may be kept in operation but will only receive the remuneration they obtain from the sale of electricity on the market.

Any changes to the remuneration parameters must be made in line with the following rules:

1. In the review relating to each regulatory period all the remuneration parameters may be modified and, among them, the value on which fair return will be based for the remaining regulatory life of the standard facilities, which will be set by law.

Once the regulatory useful life or the standard value for the initial investment in a facility has been recognized, these values can never be reviewed.

2. Every three years, a review will be conducted, for the remaining regulatory period, of the estimated revenues from the sale of generated electricity, valued at the price on the generation market, in addition to the remuneration parameters directly related to them.
3. At least once a year, the values of remuneration for operation will be updated for those facilities whose operating costs basically depend on the price of fuel.
4. An adjustment mechanism is provided for the annual revenues from the specific remuneration regime for a facility in respect of the number of equivalent operating hours of the facility.

RD 413/2014 also regulates entitlement to, and settlement of, the specific remuneration regime, along with the inspections that might take place and the consequences of breaches of the energy efficiency conditions or of the limits on the use of fuel.

Another important feature is the temporary waiver of the remuneration regime, applicable to cogeneration and to facilities defined in the articles of the decree (points 2, 3 and 4 of article 33) which are required to meet certain limits on the use of fuel. In the waiver period, those facilities will not be required to meet the energy efficiency conditions or any limits on the use of fuel, and the only revenues they will receive will be those from their participation in the generation market in any of the types of electricity trading transactions.

## **2.2 Existing facilities**

A specific remuneration regime is also established in RD 413/2014 for the generation facilities using renewable energy sources, cogeneration and waste that had been granted premium-based remuneration on the entry into force of RD-Law 9/2013 (i.e., on July 14, 2013). The methodology for the specific remuneration regime applicable to those facilities is that set out in Title IV of RD 413/2014, with the principal characteristics described in point 2.1 above.

The existing facilities are therefore governed by the articles of RD 413/2014, with the specific provisions set out in additional provisions two, six, seven, and eight and in transitional provisions one and nine of the new decree.

On the terms that had already appeared in RD-Law 9/2013 and the Electricity Industry Law, RD 413/2014 establishes that the fair return over the regulatory life of the facilities mentioned will be based, before taxes, on the average yield on the secondary market for the ten years before the entry into force of RD-Law 9/2013, of 10-year government securities plus a spread of 300 basis points, all of which is subject to the reviews in each regulatory period.

The provisions in annex XIII to RD 413/2014 apply to the calculation of the net value of assets and of the adjustment rate for the standard facilities associated with the existing facilities that are granted the specific regime.

The new decree also specifies that where, under the new methodology, zero remuneration is obtained for any standard facilities before the end of their regulatory useful lives<sup>5</sup>, any remuneration for operation that might be established for those facilities will apply from the entry into force of RD-Law 9/2013.

It must not be forgotten that any supplementary remuneration that might be applicable to existing facilities, in each case, will not be known until the government approves, by ministerial order, the remuneration parameters for the application of this specific remuneration regime to those facilities.

Moreover, for the facilities entitled to receive the premium-based economic regime on the entry into force of RD-Law 9/2013 and which, until the ministerial order setting the actual new remuneration parameters was approved, were receiving the special economic regime, established in Royal Decree 661/2007 and Royal Decree 1578/2008, as a prepayment, transitional provision eight of RD 413/2014 sets out the specific provisions on certain settlements under their specific remuneration regime. It should be noted that they are given the option to net any potential payment obligations from settlements already made since July 14, 2013 against the amounts relating to the participation of the facilities on the market.

### 3. Revamp of administrative procedures

A notable feature of the new legislation is that besides amending the remuneration regime for the facilities within its scope, it revamps the related administrative procedures. It thus defines the procedures associated with the administrative register of electricity generation facilities, and those associated with the register for the specific remuneration regime, since registration on this second register is a necessary condition for these facilities to receive that remuneration.

#### 3.1 Administrative register of electricity generation facilities

In line with the provisions in the Electricity Industry Law, RD 413/2014 retains the obligation for the electricity generators using renewable energy sources, cogeneration and waste to be registered on the administrative register for electricity generation facilities.

The authority over the registration of facilities, and over modifying or removing entries, on the register lies with the central government, through the Directorate-General for Energy Policy attached to the Ministry of Industry, Energy and Tourism, or the competent body of the autonomous community government, according to the type of facility concerned.

Thus, for the facilities previously known as 'special regime' facilities, namely, facilities using renewable energy sources, cogeneration and waste whose installed capacity is no greater than 50 MW, the authority to grant their registration on the administrative register of electricity generation facilities continues to lie with the competent body of the autonomous community government.

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<sup>5</sup> For the existing facilities, the start date for their regulatory useful life is January 1 of the year following the year of the final authorization for operation of the facility.



That register is divided into two sections, and facilities with an installed capacity over 50 MW must be registered in section one, and those whose installed capacity is no greater than 50 MW, in section two. The registration procedure continues to consist of a preliminary registration phase and a final registration phase.

In addition to the registration procedure, RD 413/2014 also defines the procedures for removing and revoking registration.

### **3.2 Register for the specific remuneration regime**

For the grant and proper monitoring of the specific remuneration of generation facilities using renewable energy sources, cogeneration and waste, a register for the specific remuneration regime will be kept at the Ministry of Industry, Energy and Tourism, which will set out the remuneration parameters applying to those facilities.

Facilities will be registered on the register for the specific remuneration regime with either preallocation status or operating status. A facility must first have been registered with preallocation status before it can be registered with operating status.

Their registration with operating status on the register for the specific remuneration regime will be a necessary condition for the facilities to be able to benefit from the specific remuneration regime. If the facilities are not entered on that register they will only receive the market price.

The authority for registering facilities on the register for the specific remuneration regime lies exclusively with the Directorate-General for Energy Policy attached to the Ministry of Industry, Energy and Tourism.

RD 413/2014 defines the registration procedures on the register for the specific remuneration regime with each of the statuses we have mentioned, together with the procedures and grounds for removal from the register.

In line with the Electricity Industry Law, RD 413/2014 also defines an opt-out or, if need be, modification procedure for the specific remuneration regime applicable to generation facilities using renewable energy sources, high efficiency cogeneration and waste, if it is identified that, before the end of the period that will be established in each case: (i) the facilities have not been fully completed; or (ii) their technical characteristics do not match the facilities' planned characteristics.

Lastly, a description is needed of the specific provisions on the registration of existing facilities on the register for the specific remuneration regime. Transitional provision one of RD 413/2014 defines the registration of those facilities on the register, whereby they will be registered automatically on the date that will be determined in an order by the Ministry of Industry, Energy and Tourism. In anticipation, it provides the option to request the modification of any inaccuracies in registration particulars following that automatic registration.

Facilities will be registered on the register for the specific remuneration regime with preallocation or operating status, as applicable, determined as follows:

- (a) They will be registered with preallocation status if on their registration, they are not registered for the settlement system, or have not been granted premium-based remuneration.<sup>6</sup>
- (b) They will be registered with operating status if on their registration, they are registered for the settlement system.

The necessary information for automatic registration on the register for the specific remuneration regime will be taken from the information included in the settlement system when the registration is made or, if the facilities are not registered in that system, the information on the register for preallocation of remuneration.

The Directorate-General for Energy Policy and Mines will nevertheless check whether the particulars contained on the register for the specific remuneration regime are valid, and will review in particular any values that have been modified in the settlement system after the entry into force of RD-Law 9/2013.

If any inaccuracies in the particulars on that register are identified by any means, the Directorate-General for Energy Policy and Mines will modify them itself or, if it is evidenced that the facility is not eligible to receive that remuneration regime, it will remove its registration entry. The consequences of, and procedure for, that removal are set out in transitional provision one, point 6.

Along the same lines, point 11 of transitional provision one provides that, if there is any evidence of a misrepresentation in the statements made in the documents filed by the applicants in the procedures under that provision, the facility's right to receive the specific remuneration regime will be revoked and it will be removed from the register for the specific remuneration regime, after conducting the relevant procedure.

Note that article 14 will also apply for the purpose of determining the remuneration parameters for each existing facility. In the Order IET/1045/2014, the equivalent values between the new standard facilities that will be defined and the classification formerly in force will be established for the purposes of determining the applicable remuneration regime, and thus each existing facility will have an associated standard facility with remuneration parameters.

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<sup>6</sup> Once the facilities have been registered on the register for the specific remuneration regime with preallocation status, they must carry out the procedure for registration on that register with operating status which is established in additional provision six of RD 413/2014. That provision determines that for a facility to be registered on the register for the specific remuneration regime with operating status it must, as an essential requirement, have been registered on a final basis on the administrative register of electricity generation facilities and have started feeding electricity before the granted time limit. In this connection, additional provision seven and additional provision eight of RD 413/2014 each provide procedures for revocation of economic rights for those facilities which while registered on the registers for preallocation of remuneration regulated in Royal Decree 1578/2008 and in Royal Decree-Law 6/2009, respectively, have not fulfilled the above requirements within the granted period.



#### 4. Other important provisions

- A new definition of installed capacity is provided in article 3 of RD 413/2014. For existing facilities, the value to be taken for installed capacity, for the purposes of the specific remuneration regime, continues to be the nominal capacity value that would be determined for them under article 3 of the disappeared Royal Decree 661/2007.
- The scope of application of the obligation to be part of a generation control unit has been broadened and is now also required for facilities with an installed capacity higher than 5 MW, or for facilities with a capacity higher than 0.5 MW in nonmainland territories. The new facilities affected by this provision have until May 31, 2015 to come into compliance with that obligation.<sup>7</sup>
- It is provided that all the facilities within the scope of application of RD 413/2014 may participate in the markets associated with the adjustment services in the system, although to do so they will need prior authorization from the system operator, and the minimum value for bids relating to these services will be 10 MW, which may be attained by aggregating the values of more than one facility.

The secretary of state will establish in the future the criteria and the necessary tests to be able to participate in the adjustment services. According to transitional provision 13 of RD 413/2014, until the secretary of state provides the definition of the criteria and tests, the facilities in groups b.1, b.2 and b.3, and the generation facilities using hydropower from flowing water in groups b.4 and b.5, will not be deemed fit for the provision of these services.

- There is an article devoted to defining the role of representative (article 53). According to that article, the owners of generation facilities using renewable energy sources, cogeneration and waste will be able to operate themselves or through a representative for the purposes of participating on the generation market and of collecting and paying fees, and for the purposes of the specific remuneration regime, and, where applicable, of the charges. The chosen representative must be the same for all the above purposes and the form of representation must necessarily be the same for the purposes of the settlements of the market operator and of the specific remuneration regime.
- Additional provision four (in line with additional provision fourteen of the Electricity Industry Law) establishes a specific remuneration regime for any facilities, or any modifications to facilities, using technology other than wind, or thermoelectric and photovoltaic solar technology, which have not been registered on the register for preallocation of remuneration or in section one of the register of electricity generation facilities and are in any of the circumstances described in that provision. This regime, based on the new remuneration methodology for generation facilities using renewable energy sources, high efficiency cogeneration and waste will be granted at a maximum of 120 MW.
- Additional provision five relates to the establishment of a specific remuneration regime for new wind and photovoltaic facilities and to the modifications to existing facilities in the electricity systems of the nonmainland territories.

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<sup>7</sup> Readers are reminded that under Royal Decree 661/2007, the limit previously stood at 10 MW or 1 MW in the nonmainland territories.

- The new legislation expressly repeals i) Royal Decree 1565/2010, of November 19, 2010 regulating and amending certain elements related to the generation of electricity under the special regime; and ii) Royal Decree 1614/2010, of December 7, 2010, regulating and amending certain elements related to the generation of electricity using solar, thermoelectric and wind technology.

## 5. Entry into force

As provided in final provision eight, RD 413/2014 came into force on the day following its publication date in the Official State Gazette (on June 11, 2014).

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