

# EXPERT GUIDE

CORPORATE *LiveWire*

JULY 2015

## ENERGY & NATURAL RESOURCES 2015



**KarimSyah**  
Law Firm



**KHAITAN  
& CO**  
Advocates since 1911

ABOGADOS

**ARAOZ & RUEDA**

**C/M/S/**



**Francisco Solchaga**

solchaga@araozyrueda.com  
+34 91 319 02 33

A B O G A D O S

**ARAOZ & RUEDA**

## Spanish Government Announces a New Regulation on Electric Self-Consumption

By Francisco Solchaga

On 5 June 2015, the Ministry of Industry sent to the National Markets and Competition Commission (CNMC –*Comisión Nacional de los Mercados y de la Competencia*–) the draft royal decree regulating the self-consumption that assures to “*allow the establishment of such facilities where it is efficient for the whole electrical system, not individually to a consumer*” (the “Draft RD”)

The purpose of the Draft RD is establishing of the administrative, technical and economic conditions of **electric power self-consumption facilities**. Thus, the Draft RD classifies the **electric power self-consumption facilities as:**

Firstly, the structure of supply with self-consumption type a), by which consumers with a contracted power not exceeding 100 kW, install in his internal electric network one or several generation facilities, whose sum is equal to or less than the contracted power.



This structure (i) implies just one subject –as producer and consumer-, (ii) will not generate surplus energy to be fed into the grid and, therefore, (iii) does not require the authorisation to sell electricity and its administrative regime will be easier.

Secondly, the structure of generation with self-consumption type b). This type includes (i) generation facilities of any technology whose sum of installed power also does not exceed 100 KW or (ii) cogeneration facilities with an installed capacity exceeding 100 KW. Under this structure,

there are two subjects, the consumer and the producer and, therefore, the surplus of electricity can be fed into the grid. The production facility must be duly registered before the relevant administrative registry.

Finally, the structure of a consumer connected through a direct line to a generation facility type c). There is no limit regarding the installed capacity of this type of facilities. As the previous structure, there are two

subjects, the consumer and the producer linked by a direct lines and the production facility must be duly registered before the relevant administrative registry. This third structure does not imply a limitation of power generation, so that, is the only alternative for solar self-consumption facilities of more than 100 kW.

The Draft of the RD is not applicable to (i) emergency generating facilities used only in case of a supply disruption and (ii) completely isolated but, for preventing any type of fraud, the Government has expressly include a definition of a facility connected to the network, considering as included those facilities which can be connected and disconnected alternatively by virtue of any type of switches.

One of the most eagerly awaited questions of the Draft RD has been the previous so called “back-up toll” which has been replaced by the new “**charges** for other system services”. Even though the Government has renamed this “toll”, both concepts are based on and justified by the same arguments, that is, in accordance to the Draft that “*the consumers ben-*

*efiting from self-consumption structures have to face, like other consumers, the electricity system costs, including those needed to fund support technologies”.*

These charges for other system services consist of two different components:

- a variable component (€ / kWh) which multiplies the self-consumption per hour, and
- a fix component (€ / kW and year) which multiplies to the contracted power.

The fix component will apply only to the structure of production of a consumer connected through a direct line to a production facility, that is, it is not applicable to type a) and b) provided that they have not accumulation systems and are of wind or photovoltaic technology.

It is remarkable that, in comparison with the previous draft of royal decree circulated (i) the figures of the variable component have decreased by 25% approximately, but, in contrast, (ii) the figures of the fix component have increased by 66% ap-

A B O G A D O S

## ARAOZ & RUEDA

proximately. Consequently, this fix component of the charges for other system services implies the lack of economic viability of this type of facilities.

Additionally to the charges for other system services, another difference from the previous draft of RD is the calculation of the contracted power. In this regard, the power of the facilities must be considered as the sum of the maximum capacities of the solar facilities according to RD413/2014, that is, the installed power shall be the power of solar modules and not of the inverter as considered until now in accordance with the RD 1699/2011.

This implies a reduction of the facilities that can be developed under RD1699/2011 (type a and type b), which in accordance with the Draft of the RD have to be considered as larger facilities, with the subsequent modification of its applicable legal regime.

It also draws attention to the measure included by the Third Transitional Provision of the Draft RD which es-

tablishes the requirement that all facilities legalised prior to the approval of the Royal Decree must be adapted to new conditions within a term of six months since the approval thereof.

Furthermore, it is worth mentioning that, by contrast to the rest of the territory, the Draft benefits the installation of self-consumption facilities on the islands. To this end, the Draft establishes a reduction of the charges for other system services until 2019 to encourage the participation of renewable energy, high efficiency cogeneration and the decrease in generation costs in said territories.

Additionally, it is very important in relation to the Draft RD that a draft Royal Decree regulating net metering has not simultaneously circulated.

Due to the versatility, flexibility and climate conditions of Spain, self-consumption is a suitable and efficient technology for generating electricity in Spain. However, the new toll announced by the Spanish Government avoids the economic feasibility of this technology and its development.



The Draft RD has found a strong opposition in the market and among its main operators. Subject to changes in the amount of said toll and the approval of a good regulation regarding net metering, self-consumption could be a great success in Spain, may substantially change the Spanish electric market and offer a future for renewable energy.

*Francisco Solchaga is a partner at Araoz & Rueda since 2007. He joined the firm as an associate in 2000 after two years as an associate at Uría Menéndez.*

*Francisco is specialised in energy, advising on numerous projects relating to the promotion, acquisition, construction and financing of energy projects in all its contractual and regulatory related matters.*

*For over a decade he has focused on the renewable energy sector, having a deep knowledge of the regulation affecting this sector, especially of that approved in the last few years greatly affecting the regulatory and benefits frame of the renewable plants. He advises all kind of players involved such as project promoters, contractors, financing banks, project purchasers and/or sellers, managers of the installations, etc.*