

New rules for obtaining electricity generation permits when request capacity exceeds grid capacity

March 12 2018 | Contributed by [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

Introduction

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Introduction

The 2018 state budget (approved by Law 114/2017 of December 29, which entered into force on January 1 2018) amended Article 33-F of Decree-Law 172/2006 of August 23, which establishes the relevant criteria that must be fulfilled by applicants which aim to generate electricity under the special regime (ie, via renewable and non-renewable endogenous resources) on a market basis (ie, with no guaranteed remuneration) in order for the licensing authority to grant a generation licence or accept a prior notification.

The amendment's main focus is to establish new rules for situations in which the relevant network has insufficient capacity to support the additional load that results from requests submitted to the licensing authority.

Licensing of special regime generation power plants

Special regime generation without a feed-in tariff depends on the acceptance of a prior notification made by the applicant or the receipt of a generation licence. The latter applies when the power plant:

- has a connection power higher than one mega volt amp;
- is subject to an environmental impact or incidence assessment procedure; or
- is located in a maritime area.

The approval of a notification or licence request is subject to the fulfilment of the criteria listed on the abovementioned Article 33-F, in particular:

- the required technical conditions to connect the power plant to the grid;
- the impact of the power plant's construction and operation on the national electric system's financial costs; and
- the power plant's contribution to the reduction of greenhouse gas.

Generation licence requests can be submitted from January 1 to 15, May 1 to 15 and September 1 to 15 each year.

Before the amendment came into force, the law established that when the existing or estimated reception capacity of the transmission or distribution grid was insufficient to allow all requests to be approved, the Directorate General for Energy and Geology (DGEG) would select projects by weighing the criteria listed in Article 33-F and considering the requests' submission date.

As of January 1 2018, if requests submitted during any of the abovementioned periods exceed the

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reception capacity in a grid area, the generation licence shall be granted and notifications shall be accepted upon selection of the projects by draw up to the limit of that area's available capacity.

Pursuant to Ministerial Order 62/2018 of March 2, this procedure shall apply exclusively to requests that have been duly submitted and that have already been analysed by the DGEG.

The DGEG must publicise the draw on its website at least 10 days before it takes place and identify on such notice the projects that shall participate in the draw.

The requests are divided by grid area and subdivided by date of submission and are then drawn by a jury designated by the member of government responsible for energy matters.

The selected projects are granted the relevant permit immediately and automatically, while the projects that are not selected shall be ranked and wait for the grid to be developed in that particular area. The DGEG has a five-day period to issue a digital certificate stating the applicants' situation following the draw.

The first draw will occur pursuant to a notice to be published within 10 days counted as of the entry into force of the referred ministerial order (March 3 2018) and will apply to the requests pending and duly filed on December 31 2017.

Comment

Surprisingly, the law did not revoke the provision referring to the existing selection mechanism implemented at present by the DGEG when the combined capacity of the requests submitted on a given period exceeds the available grid capacity. Additionally, while it is positive that the requests' submission date is not overlooked by the procedure approved by Ministerial Order 62/2018, it is unclear whether the existing mechanism – that values the projects' impact on the National Electricity System and determines that the selection must be based on such assessment – is being replaced by a draw that merely considers the requests' date of submission and grid area.

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