

I. General provisions

MINISTRY OF THE ECONOMY

3914 *RESOLUTION of February 14, 2003, of the Office of the State Secretary for Energy, Industrial Development and the Small and Medium-sized Enterprise, which modifies Electric Power Production Market Activity Rule 23.*

By virtue of the Resolution of April 5, 2001, issued by the then Office of the State Secretary for Energy, Industrial Development and the Small and Medium-sized Enterprise (published in issue 95 of the Spanish Government Official Gazette, dated April 20), the modification of the Electric Power Market Activity Rules was approved and the term of the contract of adherence to the said Rules extended, as approved earlier in the Resolution issued by the previous Office of the State Secretary for Energy and Mineral Resources of February 15, 1999.

In the light of the proposal by the Spanish Electric Power Market Operator for the modification of Electric Power Market Activity Rule number 23 and the report issued by the National Energy Commission regarding the said proposal;

Whereas the procedure for providing guarantees to the market operator, which is detailed in Rule 23.a, has not been modified since the first Rules went into effect when the electric power market began operations;

Whereas the experience of more than four years of market operation, during which time the numbers of transactions, of transaction options and of market participants have considerably increased, evidences the need to establish a new method of evaluation of the guarantees to be provided by the said market participants, to avoid placing the electric power production market at risk if no such guarantee evaluation method exists;

In view of section 3 of article 27 of Royal Decree 2019/1997, of December 26, which provides for the organization and regulation of the electric power production market;

By virtue of the preceding considerations, this Office of the State Secretary has resolved:

First.—To approve the modification of Electric Power Production Market Activity Rule number 23, which appears in the appendix to this Resolution.

Second.—To repeal Rule 23 as published in the appendix of Resolution of April 5, 2001 of the then Office of the State Secretary for the Economy, Energy and the Small and Medium-sized Enterprise, which provides for the modification of the Electric Power Production Market Activity Rules and the extension of the term of the Contract of Adherence to the said Rules.

Third.—To end, through this Resolution, the administrative procedure in accordance with the provisions of Spanish Law 30/1992, of November 26, governing the Legal System to be Applied by Government Agencies and the Common Administrative Procedure, modified by Law 4/1999, of January 13, and in article 14.7 of Law 6/1997, of April 14, the Act for the Organization and Functioning of the General Administration of the State.

Madrid, February 14, 2003.—The Secretary of State, José Folgado Blanco.

The Honourable Director General of Energy Policy and Mines, and the Honourable President of the Spanish Electric Power Market Operating Company.

APPENDIX

Rule 23: Procedure for the provision of guarantees to the market operator

23.1 Establishment of guarantees.

Those market participants who may become debtors as a result of their purchase transactions in the electric power production market shall furnish the market operator with sufficient guarantee to cover the financial obligations arising from their transactions in such a way as to guarantee their creditors' collection of the entire amount of the electric power supplied, at its final price, as well as the rest of the items included in Rule 22.3.a, and on the same day on which settlement is made for the relevant period.

The failure to provide such guarantee, its non-acceptance by the market operator because the latter considers it insufficient or unsuitable, or the failure to maintain and update it, shall impede the market participant from trading in the production market.

23.2 Maintenance of guarantees.

The market operator shall release the guarantee provided by the purchasing participant in the production market when the latter loses its status as a participant in the said market, if it has fulfilled all the obligations arising from its participation in the market.

23.3 Coverage of the guarantees.

The guarantee that each market participant must furnish shall affirm responsibility, in accordance with these Rules and without any limitation whatsoever, for all obligations the participant may assume by virtue of its purchases of electric power in the production market.

The guarantee furnished shall also cover all taxes in force that may be payable by the participants at the time of their payment for their purchases in the electric power production market.

This guarantee shall not affirm responsibility for obligations acquired with customers, persons or entities apart from the participants that act as sellers in the production market. In particular, it shall not cover the payments that must be made to settle tolls, or payments

corresponding to any physical bilateral contracts that may be entered into outside the cited production market.

23.4 Types of guarantees.

The guarantees that the market participants are required to furnish are the following:

a) A transaction guarantee that shall be determined initially by the market operator, with the approval of the Market Participants Committee, and whose specific terms shall be established and revised according to the evolution of the volume of power traded during the period, and to the maximum hourly purchase and sale power requested, in order constantly to ensure a sufficient level of guarantee. The value of the said guarantee shall not be lower than the value of the participant's maximum possible purchases over a period of nine days, as stipulated in Rule 23.6.5.1.

The approval of the Market Participants Committee shall be given within fifteen calendar days, and shall be understood to have been granted if the contrary is not communicated within the said period.

b) An extraordinary guarantee if the settlements applied to the participant were not made with measurements. For the purposes of estimating guarantees as stipulated in Rule 23, the measurements may be firm or provisional.

c) A complementary guarantee, which can be required of participants in those situations where, after consulting the Market Agents Committee, the market operator considers such a guarantee necessary, either because there is a risk that exceeds the coverage of the transaction guarantee or because of other special circumstances that objectively justify requiring complementary guarantees.

In this regard, the market operator may ask a rating company to rate the participant's risk when the latter acts as a purchaser in order to justify objectively the requirement of a complementary guarantee whose cost is to be borne by the affected participant.

This guarantee shall include ten days' purchases in order to cover the working days falling between the provisional suspension as market participant and the notification to the competent authorities, in accordance with Rule 23.6.3.

23.5 Establishment of the guarantees.

23.5.1 The guarantees shall be established in favour of the market operator by means of the following instruments:

a) Cash deposits in the account designated by the market operator for effecting collections and payments, as established in Rule 22.5. Participants may use this means to establish a cash guarantee as a supplement to the guarantee they must furnish to be able to participate in the market, which shall enable the participants to effect the payments they are required to make below a certain threshold against the said guarantees, provided that the balance is sufficient to cover such payments, and after notifying OMEL.

b) A bank guarantee or a joint and several bond furnished by a bank, savings bank or credit cooperative that does not belong to the corporate group of the bonded or

guaranteed entity in favour of the market operator, and deposited in the banking institution where the cash account has been opened in favour of the latter, in which the guarantor or endorser recognizes that its obligation to pay by virtue of the bond or guarantee is on the first demand, completely abstract in nature, and that the guarantor or endorser may not allege any exception in order to avoid payment to the market operator, and particularly any exception derived from the underlying relations between the guarantor or endorser and the guaranteed or endorsed entity.

If the guarantor entity were declared to be in temporary receivership or bankrupt, or if the administrative authorization for the pursuit of its activity were to be declared void, the entity (market participant) required to provide a guarantee shall be obliged to replace the aforementioned guarantee with another of the same type or of a different type contemplated in the present Rule, according to the time limits established for the replacement of guarantees.

The payment charged to the executed guarantee shall be made in such a way that the market operator can make it effective on first demand and within no more than one working day in the Madrid market following the time at which the guarantor or endorser is ordered to pay.

c) Irrevocable authorization of drawdown, up to the maximum amount of the payment obligations contracted in the period to be settled, from one or several lines of credit subscribed by the power purchaser.

The credit lines provided for in this section shall be final in nature, and shall be used exclusively as lines for payment or coverage under guarantee of obligations contracted by virtue of the participant's payment obligations in the production market. Their minimum expendable amount shall at all times be equivalent to the transaction guarantee indicated by the market operator, the extraordinary guarantee, and, when applicable, the additional amount corresponding to the complementary guarantee.

d) Assignment of future collection rights pending payment from the production market, which the participant that proves to be a creditor as the result of its sales of electric power effects in favour of the debtor participants provided such an arrangement, is previously approved by the market operator. Regardless of the amount that the creditor participant may state in the assignment document, the recognized, and therefore valid, amount for establishing the required guarantees shall be the lesser of the amount stated in the document and the maximum established in Rule 23.6.6.

Even in the case of execution of guarantees, the market operator shall always have in its power documents attesting to the establishment of guarantees to cover accrued payment obligations and whose settlement has not yet been effected.

For these purposes, in the execution of guarantees, the market operator shall always keep the originals of the guarantees submitted, whose amount the guarantor may reduce by the portion of the guarantees that has been executed.

If the market participant has, established guarantees by means of cash deposit and formally communicate to the market operator its desire to have such deposit considered as payment on account for payments whose amount is below a certain threshold, the

drawdown effected by the market operator for this purpose shall not be considered executions of guarantees.

23.5.2 Term of the guarantees.

The guarantees and, therefore, the instruments that are signed shall be kept at the market operator's disposal as long as the guaranteed entity remains a market participant. The market operator shall release the guarantee provided by the purchasing participant in the production market when the latter loses its status as a participant in the said market, if it has fulfilled all the obligations arising from its participation in the market.

In any event, when the guarantees are established, their term shall extend to:

- a) For transaction guarantees, at least until the date on which the following quarterly review is presented, plus one month.
- b) For extraordinary guarantees, a minimum of three hundred sixty-four days.

23.6 System for determining the amount of guarantees and method of establishing them.

23.6.1 On the basis of the provisions of Rule 23.4, the amount of the guarantees that each market participant must furnish at any time shall be determined by the market operator, who shall adhere to the following criteria:

- a) The risk period that the transaction guarantee must cover shall correspond to the settlement period plus the increment required including the additional fifteen days until payment is effected plus the following five days needed to establish new guarantees in case of non-fulfilment of the relevant payment obligation, and execution of the previously existing guarantees.
- b) The minimum guarantee that can be required of resellers according to Royal Decree 1955/2000.
- c) Maximum power during the risk period that the guarantee must cover, which, according to the best estimate of its demand, the market participant will purchase in the production market during the said period. The estimated volume cited above shall be updated according to the evolution of settlements.
- d) Physical bilateral contracts shall furnish the guarantees resulting from the use of ancillary services and other benefits in accordance with Royal Decree 2019/1997, as well as the purchases that may be made in the market under such contracts.
- e) The payment obligations that arise as the result of new settlements effected for months in which the previous settlements were not made with measurements.

23.6.2 Purchasers shall give proof, when the market operator so requires, of their fulfilment of the obligation to establish guarantees and keep them updated.

23.6.3 When, as the result of the execution of guarantees, the said guarantees are found to be insufficient according to Rule 23.6.5, due to their expiration, insufficient term, or if, for any other reason, the guarantees are determined not to be valid, the market operator may

require the affected participant to replace its guarantee within nor more than two working days. If, when this time limit has expired, the participant has not replaced the invalid guarantee, the market operator may decide on its provisional suspension as a market participant, in which case the operator shall grant it an additional seven working days to replace the guarantee. When this period has expired, the market operator shall report the incident to the Market Participants Committee, to the Ministry of the Economy and to the market participants, for the purposes provided in the Electric Power Industry Act and its subsequent rules and guidelines.

23.6.4 To calculate the amount of the transaction guarantees that are required at all times, the market operator may verify at any time whether the guarantee furnished by the participant in question covers the amount of the purchases made and not paid for. For this purpose, coinciding with the publication of the daily settlement, the market operator shall put the following information at the participants' disposal by means of the market operator's system computer application:

- a) The percentage value of the payment obligations minus the collection rights accrued to date with respect to the guaranteed amount.
- b) An estimate of the number of days' purchases that the remainder of the guarantee is able to cover (assuming a part of the total guarantee earmarked for the accrued but unpaid payment obligations).
- c) For this purpose, the calculation shall be based on the daily variation of the accrued payment obligations with respect to the guaranteed amount.
- d) If the number of days is less than five or the previous percentage is greater than 80 per cent, the market operator shall urge the participant to increase or replace the guarantee according to the terms stated in Rule 23.6.5.2.

23.6.5 Determination of guarantees.

23.6.5.1 Transaction guarantees.

Before the last working day in the Madrid market of the months of March, June, September and December of each year, the market operator shall calculate the amount that the participants must guarantee for the following quarter, without affecting the daily review it systematically carries out in accordance with the preceding section. The transaction guarantees shall be determined in a general manner for each participant and activity it pursues in the electric power production market, according to the following terms:

- a) To determine the guarantee amounts, the market operator shall take into account the period of two movable years prior to the calculation date, considering full months.
- b) The market operator shall determine the series of the sum of the daily payment obligation and collection right balances of the periods of fifty consecutive days included in the two years cited above.
- c) The transaction guarantee corresponds to the maximum value of the series, after excluding 10 per cent of the maximum values.

However, the participants shall be required to notify the market operator of the changes projected in their power purchases for the quarter, if their projected average daily purchases exceed the purchases linked to the fifty days corresponding to the value obtained in the previous paragraph. In this case, the required guarantees shall increase with respect to those calculated in the general manner in the same proportion in which the purchases increase.

A similar procedure would be followed if the participant were to notify projected changes in its power purchases for the quarter and in its maximum purchase powers entailing a reduction with respect to the maximum values considered when calculating the previous guarantees.

The market operator shall never consider purchases forecast by the participant in a period of fifty consecutive days that are less than the sum of the maximum powers of the participant's purchasing units for twenty-four hours and for nine days.

If there were only "d" days, where the value of "d" is less than fifty, in which the participants had made power purchases, the projected purchases would be valued at the average final price of the movable year prior to the calculation date, including full months.

Those participants that have entered into bilateral contracts assuming the purchaser's settlement shall provide a guarantee that shall be calculated by valuing the maximum purchases forecast in fifty days at 10 per cent of the average final price of the movable year prior to the calculation date, including full months.

Owner-participants, producers or resellers of production units in the electric power production market and those participants who act as selling participants, must all furnish guarantees for whatever debit balance they may have as the result of their purchases in markets or technical transaction processes taking place after the daily market matching.

In this case, the guarantees shall be calculated according to the general method, where the minimum is a coefficient K applied to the maximum sale power multiplied by nine days, by twenty-four hours, valued at 10 per cent of the average final price of the movable year prior to the calculation date, including full months.

The value of K shall be calculated according to the following formula:

$$K = (\text{STDEV}(P))/(\text{AVERAGE}(P)*N^2) + \text{MAX}(0,(6-N)/5)$$

Where:

STDEV (P) is the standard deviation of the series of installed powers of the participant's production units = $\text{SQRT}(\sum(P-\text{AVERAGE}(P))^2 / (N-1))$.

AVERAGE (P) is the average value of the series of installed powers of the participant's production units.

N is the number of the participant's production units.

If $K > 1$, it will then take the value of 1.

The results for production units undergoing trials shall not be taken into account when calculating the guarantees once the said units have entered into commercial production.

Those participants that have entered into bilateral contracts assuming the seller's settlement shall provide a guarantee that shall be calculated by valuing the maximum sales forecast in fifty days at the average final price of the movable year prior to the calculation date, including full months, after applying a coefficient of 1.1.

23.6.5.2 Review of transaction guarantees because of the daily tracking of the said guarantees.

If the daily tracking of the participant's guarantees provided in Rule 23.6.4 reveals the existence of the circumstances that justify requesting the participant to increase or replace its guarantees, the increased or new guarantees shall be calculated according to the following formula:

a) If the insufficiency is due to increased purchases, the new volume of maximum projected purchases shall be taken for fifty consecutive days.

b) If the insufficiency is due to a price increase with respect to the price considered for the period, the monetary value of the purchases made the previous week under similar conditions shall be taken.

The new guarantees shall be calculated in compliance with Rule 23.6.5.1.

23.6.5.3 Extraordinary guarantees.

With each provisional settlement effected without a participant's measurements, because the market operator has not received the measurements from the system operator, the participants affected shall give proof of having established sufficient extraordinary guarantees to cover the payment obligations derived from future settlements. Otherwise, the said amount shall be included for these participants in the relevant settlement as an ordinary payment, once the amount has been collected, and shall be given the accounting treatment of a guarantee provided by the participant in the form of a cash deposit.

a) If the market operator has the information corresponding to a participant's measurements from a given month before the seventh calendar day of the following month, and this information cannot be included in the settlements in progress, the operator shall calculate the guarantees for the relevant settlements according to the calculated deviations and their estimated price. For this calculation, the operator shall take the power deviation multiplied by the hourly marginal price in the daily market, plus the absolute value of the power deviation assessed as a percentage of the hourly marginal price in the daily market, which shall be:

I. 10 per cent, if the participant has requested final settlement.

II. The average historical value of the overcosts due to deviations from the daily market price, in all other cases.

b) If the market operator does not have the information corresponding to a participant's measurements before the seventh calendar day of the following month, one of the following two courses of action shall be followed:

I. If the market participant owns production units, it shall furnish a guarantee for the amount of the collections assigned to its production units in order to receive the corresponding sums.

II. If the participant holds title to purchasing units, the market operator shall calculate the guarantee on the basis of the percentage of the values of the participant's historical deviations in the cited units in the months in which their settlements have been effected with measurements, and on the basis of the percentage represented by the amount settled for overcosts of the deviated power divided by the total amount of the settlement without measurements. If there are measurements but no settlements have been made, the guarantees shall be calculated according to the historic deviations by applying the valuation calculated in paragraph a).

The guarantee shall be determined by multiplying the amount of the participant's settlement in each of the months of the period pending settlement with measurements by the sum of the previously calculated percentages, including the applicable fees and taxes and deducting, where appropriate, the amount previously settled on account.

If there are no more than six months of historical values, the average values of the deviations of the participants recorded in the same register and section for the owners of purchasing units shall be applied.

If the market operator receives the information regarding a participant's measurements from the system operator, and if thirty calendar days elapse without the operator's having effected the settlements with measurements, it shall review the guarantees for the relevant settlements as provided in section a).

The participant that, because of these estimates, has a credit balance need not furnish guarantees.

When the market operator has made a participant's settlements with measurements and the collections and payments have been effected, the participant's extraordinary guarantees shall be released.

Any market participant may assign to another participant the collection rights corresponding to a resettlement effected solely to cover the payment obligations in the same resettlement; however, such an assignment shall not serve as an instrument for the establishment of the extraordinary guarantee that may be requested.

23.6.6 Assignment of collection rights.

Market participants may assign their production market collection rights as a guarantee of any market participant's payment obligations, as provided in Rule 23.5.1.d).

Guarantees may be established by means of a document attesting to the assignment of another participant's collection rights. For this purpose, the participant that assigns its

collection rights must indispensably have a credit balance in previous settlements, according to the provisions of the following point.

23.6.6.1 Calculation of the collection rights that may be assigned to third parties.

The market operator shall calculate the collection rights that a market participant can assign to another participant and that will be considered valid for establishing guarantees on the same dates and for the same period as the guarantees that debtor participants must furnish in the following manner:

a) If a participant notifies OMEL of its desire to assign collection rights to another participant, the market operator shall calculate the maximum amount that the granting participant can assign as the sum of its collection rights and its daily payment obligations, with the daily limit of the value of the power purchases made during that same day by the receiving participant, in the period of fifty consecutive days during which the value of the purchases was given, which period is used for the calculation in accordance with Rule 23.6.5.1, obtained from the settlements.

b) If a participant notifies OMEL of its desire to assign collection rights to several participants, once the market operator has individually calculated the guarantees that the participants are required to provide, it shall calculate the guarantees corresponding to the agents targeted to receive the payment rights assignment as a group, determining the amount and the relevant fifty-day period, in the manner indicated in Rule 23.6.5.1. The payment rights that the participant may assign as a guarantee to the receiving participants as a group shall be calculated, for the period determined in the preceding point, as if the group were an individual participant.

If the collection rights to be assigned were not to cover the sum of the transaction guarantees calculated individually for each of the receiving participants, these participants would be required to furnish whatever guarantee were lacking by means of any of the other instruments stipulated in Rule 23.5.1.

If the participant assigning collection rights were to have registered in the market after the fifty-day period considered for the receiving participants as a group, or if the participant were not to convey to the market operator to whom it wished to assign its collection rights, the recognized collection rights that could be assigned to third parties would be determined for each participant by selecting the value of the sum of the balances of its collection rights and its daily payment obligations for fifty consecutive days, obtained from the relevant settlements, which has been surpassed 90 per cent of the times since the date of its registration in the market.

The results for production units undergoing trials shall not be taken into account when calculating the guarantees once the said units have entered into commercial production.

In the daily guarantee tracking procedure, in order to ensure that the collection rights resulting from a participant's production market settlements may be considered as a valid instrument that is effective as a guarantee to a third party, it shall be obligatory for the participant to have reported the relevant units' measurements.

23.6.6.2 Assignment of collection rights as the consequence of daily guarantee tracking.

If the daily tracking of a participant's guarantees provided in Rule 23.6.4 reveals the existence of the circumstances that justify requesting the participant to increase or replace its guarantees, and another participant notifies its desire to assign its collection rights to the first participant, those rights shall be calculated by taking the rights that are found to be authorized to the latter and pending collection in the current period. For this purpose, the said rights shall be recognized only if the participant has contributed the measurements from the relevant units.

23.6.7 Guarantee review.

The guarantees furnished may be reviewed quarterly in the months of January, April, July and October.

The market participants may revise, by agreement with the market operator, the amounts of the transaction guarantees furnished.

The market participants shall modify the guarantees they furnish during the two working days following the date on which each month's settlements are paid, once the process of collections and payments corresponding to the previous months is completed.

23.6.8 Calculation of the amounts of guarantees in case of changes in assets and changes in regulated values.

When changes occur in selling agents' assets, or regulatory changes arise that affect purchase or sale prices, transaction guarantees shall be reviewed in the light of these new conditions, and historic values shall be corrected to reflect the new scenario so that they faithfully represent expected future conditions.

23.7 Guarantee management.

The market operator shall be responsible for the management of all guarantees furnished, in the interests of the market participants and for the purposes of supervising the obligations to establish guarantees and keep them updated, and for the purposes of the ordinary asset management to which this could give rise, or, when applicable, of the disposal of the amounts required to cover guaranteed obligations. The market operator shall keep a register in which it shall record, under separate headings, the rights and obligations related with the cited guarantees.

23.8 Criteria for action to be taken in cases of non-fulfilment.

If a participant in the electric power production market were to fail to fulfil, entirely or in part, any of its payment obligations derived from the transactions carried out in the electric power market, the market operator would execute, with the greatest diligence and in the briefest possible time span, the established guarantees in order to ensure the fulfilment of the non-compliant market participant's obligations.

Moreover, for the purposes of the provisions of article 50 of Law 54/1997, of November 27 (Spain's Electric Power Industry Act), if the non-performing participant is a qualified consumer, the market operator shall immediately notify its non-performance to the Ministry

of Industry and Energy, the National Energy Commission and to the area distributor corresponding to the said consumer.

23.9 Delay in payment and penalty interest.

In case of non-payment, the non-performing purchasing participant in the electric power production market shall be obligated to pay a penalty. The unpaid amounts owed shall accrue penalty interest from the date on which the payment was due but not verifiably effected, until the date on which the amount due has effectively been paid.

The penalty interest rate applicable shall be the rate resulting from applying the interbank interest rate, using the average rate published daily by the Bank of Spain for overnight deposits (EONIA) plus three percentage points.

The amounts owed shall be computed according to the following formula:

$$D = E * (1 + i * P / 360)$$

Where:

D: Amount owed, including penalty interests.

E: Amount owed and not paid, excluding penalty interests.

i: EONIA + three points in as much by one.

P: Interest settlement period.

Independently of the preceding provisions, the non-performing purchasing participant in the electric power production market shall be responsible for all damages caused by the delay in payment.

23.10 Prolonged failure to pay.

If there is a prolonged non-performance of payment obligations on the part of a market participant, and the unpaid obligations are not covered by the guarantees furnished by the said participant, the market operator shall take legal action against the participant, or shall use any other means that is accepted by the legal system, on behalf and in representation of the sellers in the market. The non-performing participant shall remain obligated to pay the overdrafts, with their accrued interest, and all the damages caused, which shall be distributed among the selling participants in proportion to the collection rights of each seller in the market. The market operator shall deliver the monetary results of the cited claim to the sellers in proportion to the losses experienced by each one of them.

For the purposes of this rule, it is considered that a prolonged failure to fulfil payment obligations by a participant has occurred if more than three days pass after the date on which the payment fell due but has not been verifiably effected.

23.11 Failure to establish or failure to update guarantees.

The failure by any participant in the electric power production market to establish, replace or update any of the guarantees stipulated in these Market Activity Rules shall be interpreted as an order to settle all the operations in which the non-compliant participant itself has intervened, for all intents and purposes; the market operator shall, therefore, proceed to close in the market all the transactions effected to which the non-performing participant has been a party.

To this end, as soon as its firm measurements are in hand, the monthly settlement of the months pending final settlement shall be effected. If all the participants' firm measurements were not in hand, the settlement method described in Rule 21.14.3 would be applied, with the proviso that the overcost of the deviations would be a percentage of the daily market marginal price calculated as the average historical value of the overcosts due to deviations with respect to the daily market price.