

## III. OTHER PROVISIONS

### NATIONAL MARKETS AND COMPETITION COMMISSION

**18703** *National Markets and Competition Commission Decision, of 11 November 2021, amending the market operation rules to introduce an advance payment mechanism prior to the weekly debit note being issued.*

The Regulatory Supervision Chamber has resolved, in accordance with the function for which provision is made in article 7.1.c of Act 3/2013, of 4 June, setting up the National Markets and Competition Commission, as amended by Royal Decree-Act 1/2019 and implemented by National Markets and Competition Commission Circular 3/2019, of 20 November, establishing the methodologies governing operation of the wholesale electricity market and system operation management, and in fulfilment of the provisions of article 23 of that circular, to issue the following decision:

#### **Factual background**

One.

Under section one of article 7, regarding supervision and control in the electric sector and in the natural gas sector, of Act 3/2013, of 4 June, setting up the National Markets and Competition Commission, as amended by Royal Decree-Act 1/2019, the National Markets and Competition Commission has the power, by means of a circular, to establish the methodologies relating to access to cross-border infrastructures, including capacity allocation and congestion management procedures in the electricity and gas sectors. In addition, this Commission is given the power to determine regulatory organised market rules in connection with aspects to be approved by the national regulatory authority in accordance with EU law rules.

On 2 December 2019, the «Official State Gazette» published National Markets and Competition Commission Circular 3/2019, of 20 November, establishing the methodologies governing operation of the wholesale electricity market and system operation management.

This Commission approved the Electricity Day-Ahead and Intraday Market Operation Rules now in force in a Decision dated 6 May 2021 and a subsequent erratum on 2 June.

Two.

In recent weeks, the gas and electricity energy market price hike is significantly tightening the market activity of purchasing agents, in particular independent free market retailers, to the point that the viability of many of these entities may in some cases be at stake.

Against this backdrop, the National Markets and Competition Commission (CNMC) received on 20 October 2021 a proposal from the market operator to amend rule 55 of the production day-ahead and intraday market for the purpose of including a mechanism allowing agents to bring forward payment of their settlements and thereby reduce the amount of collateral necessary to operate in that market.

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The proposal had previously been submitted to a public consultation by the market operator from 11 to 19 October 2021. The proposal attached an explanatory report and feedback received from stakeholders.

Three.

On 21 October 2021, and in compliance with Transitional Provision ten of Act 3/2013, of 4 June, a hearing procedure was commenced sending the Electricity Advisory Board the «Proposal for a decision approving the electricity production day-ahead and intraday market operation rules to introduce a releasing-collateral advance payment mechanism». In addition, on that same date, in compliance with the public information requirement, the aforementioned Proposal for a Decision was posted at the National Markets and Competition Commission's website.

Four.

On 22 October 2021, the Proposal for a Decision was submitted to the Directorate General for Energy Policy and Mining such that they might provide their observations thereon.

Five.

On 21 October 2021, the Proposal for a Decision was submitted to the Board of Regulators of the Iberian Electricity Market (MIBEL) such that they might provide their observations thereon. That Board expressed its support for the amendment to the day-ahead and intraday market operation rules on 10 November 2021.

## Legal Basis

*One. Authority to approve this procedure.*

Pursuant to article 4 of Circular 3/2019, the National Markets and Competition Commission shall do such things as may be required to achieve a proper functioning and supervision of the criteria and mechanisms provided for in this circular.

In addition, pursuant to article 5 thereof, the market operator shall submit such proposals as may be necessary to ensure that the wholesale electricity market works properly.

Moreover, under article 23 of Circular 3/2019 it is the National Markets and Competition Commission's duty to approve electricity day-ahead and intraday market operation rules.

*Two. Reasoning for a change in the market rules.*

The gas and electricity energy market price hike is significantly tightening the market activity of purchasing agents, in particular independent free market retailers, to the point that the viability of many of these entities may in some cases be at stake.

That is why the market operator, in keeping with the approval procedure described in article 23 of Circular 3/2019 applicable to methodologies, conditions, market operation rules and trading procedures and demonstration projects, proposed an amendment to the Electricity Production Day-Ahead and Intraday Market Rules to include a market mechanism allowing agents to fully or partially bring forward payment of their market settlements, prior to the weekly debit note being issued, releasing their payment obligations before the invoice due date and thereby reducing the amount of collateral necessary to operate in the market.

This measure seeks to partly mitigate the state of affairs described above, and is a solution that must be swiftly implemented without putting at stake the market operator's current collateral and collections and payments processes which are already quite overstressed given the current price situation due to the high exchange of payment collateral that is being handled, and the effects of many agents' liquidity problems on market collections and payments.

### Three. *Summary of the market operator's amendment proposal.*

As explained in the preceding recital, this proposal for a revision of Electricity Production Day-Ahead and Intraday Market Operation Rules is intended to provide debtor agents with a tool allowing them to partly alleviate the pressure they are under due to the current situation of high market prices, and all of this without affecting the other market players or putting the settlement process at risk, for the reduction of collateral is achieved by bringing forward payments.

With this in mind, the following changes are made to Rule 55.5 «Obligations for market agents as buyers»:

- A single partial or full advance payment by debtor agents will be allowed, to be made prior to the weekly debit note being issued. The agent shall notify that the advance payment has been made using the market operator's information system.

- The market operator will accept that request provided that the deadlines for request and acceptance are met. These deadlines will be specified in the agent request times and deadlines document.

- That payment will release collateral upon the market operator accepting the request.

- The advance payment shall be included on the weekly debit note reducing the payment to be made the payment date.

- The market operator will pass on the cost charged by the financial institution on the market operator's settlement account credit balances to the agents making advance payments, pro rata to the amounts of those payments and to the days elapsed from payment being made to the payment date.

The date of this new tool to take effect is established at no later than fifteen days after this decision amending the market rules is published in the «Official State Gazette», thereby giving the market operator sufficient time to adapt its processes and undertake the necessary testing.

### Four. *Considerations regarding the introduction of an advance payment mechanism releasing market operator collateral.*

Given that the measure adopted will allow buyers to address the high market price episode but will not be detrimental to other players or put the market operator's settlement process at risk, the view is that it should be implemented as soon as practicable. As a result, this amendment to the rules has been processed on an urgent basis by both the market operator and the CNMC.

The proposal has received broad-ranging support from market players. Indeed, although not all parties have provided feedback in the hearing procedure, a great many agents, in particular independent retailers and direct consumers, are all for the proposal for amendment. Additionally, some parties have asked in this connection that the possibility be weighed up of introducing other supplementary measures designed, on the one hand, to enhance market player liquidity and, on the other, to minimise defaults on tolls and charges, and also to streamline the system for the early detection of defaults. Although those measures would remain outside the scope of this decision, their inclusion shall be analysed in other adaptations to regulations.

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This decision approving the revision of the day-ahead and intraday market operation rules contains in schedule I the amendment to market rules submitted by the market operator which, based on the above considerations, has not been significantly changed by this Chamber.

Accordingly, the National Markets and Competition Commission hereby decides as follows:

One.

That the amendment to the Day-Ahead and Intraday Market Operation Rules contained in schedule I be approved.

Two.

This decision shall be effective from the date after it is published in the «Official State Gazette», notwithstanding which the amendment to rule 55 may not be effective until the market operator adapts its systems, which shall occur within not more than fifteen business days after the effective date of the decision.

This decision shall be published in the «Official State Gazette», in fulfilment of the provisions of the final paragraph of article 7.1 of Act 3/2013, of 4 June, setting up the CNMC, and shall be notified to the market operator and to the system operator.

Madrid, 11 November 2021.– The Secretary to the Board of the National Markets and Competition Commission, Miguel Bordiu García-Ovies.

## SCHEDULE I

### Day-Ahead and Intraday Market Operation Rules

Rule 55.5 is hereby amended, henceforth to have the following wording:

«55.5 Obligations for market agents as buyers.

The market agent shall pay in the amount it is required to pay, including Value Added Tax at the rate in force from time to time. In addition, it shall pay any other tax or surcharge whatsoever levied on the agent by law and, in particular and as appropriate, the Special Electricity Tax for which provision is made in the Rule on “Applicable fees and taxes”. Any expenses resulting from these payments shall be borne by the agent.

The deadline for payment may not extend beyond ten a.m. on the payment date P specified in the Rule on “Collections and payments”. Payment will be made into the market operator’s designated account.

The market operator may put in place other payment processes, such as direct debit or debit card payment, provided these solutions ensure payment security. The details of these processes shall be implemented, as applicable, by means of an instruction.

Agents accept that any payment issued to cover the obligations incurred in each settlement time horizon is irrevocable.

Buyers shall not be released from their payment obligation until it has been paid into the market operator’s account. The amount due, if any, shall result in a pro rata reduction of the sellers’ collection rights, and the market operator shall proceed to make the relevant adjustment once the debt has been settled.

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In the absence of default, the payment obligation shall be released by no later than the time specified in the Rule on "Times and deadlines for agent requests".

Debtor agents may make a single partial or full interim payment prior to the aggregate debit and credit note being issued, although in order for this advance payment to be taken into account by the market operator upon issuing such note, the agent shall notify payment using the Market Operator's Information System. The agent's notice shall be accepted once it has been verified that the payment has been made into the market operator's account, and it shall be included on the aggregate debit and credit note, releasing the agent's relevant payment obligations upon acceptance.

The market operator's acceptance and processing of the agent's notice shall be subject to the deadlines established in the Rule on "Times and deadlines for agent requests".

In order that they may be swiftly identified, debtor agents instructing bank transfers shall:

- Include in those transfers the business-activity code as recorded in the market operator's database.

- Make the weekly payment by means of a single transfer for ease of bank reconciliation (or by means of two transfers where the agent has chosen to make an advance payment prior to the weekly aggregate debit and credit note being issued). An agent failing to meet that requirement shall be required to pay the market operator 25 Euros for every additional transfer made. That charge may be included on the credit or debit note.

The Market Operator shall pass on to market agents the negative interest or other charges applied by the bank on the account balances resulting from, and pro rata to, advance payments made from the date on which they are made until the next payment date.

The relevant charges to agents may at most include interest charged to the account over a six-month period, and the charge will be made within 60 calendar days following receipt by the Market Operator of the bank information for the period settled.

In order to benefit from that advance payment option, an agent must have a sufficiently large cash collateral deposit to meet those charges. These charges may be deducted from the agent's cash collateral and may be taken to the weekly credit or debit note.

The market operator will publish the maximum rates applicable to cash payments and the applicable terms and any change in due course to the same.»