

This translation has been carried out with the sole and exclusive purpose of enabling the **RESOLUTION of November 17th, 2009** text to be read in English. The text will in no case and to no effects be considered a binding text for the Auction Administrator. In the event of any discrepancies between this text and the Spanish version, the content of the Spanish version prevails.

RESOLUTION of November 17th, 2009, of the General Secretariat for Energy, whereby approval is granted to the rules and model contract for the tenth auction governed by Order ITC/400/2007, of 26 February, which regulates the bilateral contracts subscribed by distribution companies for the supply at regulated prices on the Iberian peninsula

Law 54/1997, of 27 November, on the Electricity Sector following the amendment made by Royal Decree-Law 5/2005, of 11 March, on urgent reforms for increasing productivity and improving government procurement, in its article 23, section 1, extend to distribution companies the possibility to subscribe bilateral contracts on electricity with physical delivery.

In turn, Royal Decree 2019/1997, of 26 December, which organises and regulates the electricity generation market, amended by Royal Decree 1454/2005, of 2 December, which modifies certain provisions involving the electricity sector, in its article 8, empowers the Ministry of Industry, Tourism and Commerce to regulate the participation of distribution companies in the systems of bilateral contracting with physical delivery.

Order ITC/400/2007, of 26 February, which regulates the bilateral contracts subscribed by distribution companies for the supply at regulated prices on the Iberian Peninsula, specifies the allocation of energy to the sellers and the setting of the price by means of a descending clock auction procedure.

Section 2 of the said Order lays down that the same shall be applied to the purchase of electrical energy by distribution companies (currently last resort retailers).

Point d) of article 4 of the aforementioned Order states that the date for holding each auction is to be approved by a Resolution of the General Secretariat for Energy. Article 6 states that the draft rules are to be approved in the same way. Point c) of article 4 states that public disclosure shall be made solely of those rules to be applied at the auction that are not of a confidential nature.

Additional provision one of the abovementioned Order likewise empowers the State Secretary for Energy to approve by ruling the standard contract which lists the General Conditions as well as the Specific Conditions of the contracts to which participants are obliged to adhere, together with any information of a public nature related to the auction.

Point 6 in the Appendix stipulates that the final draft of these documents is to be approved by a Resolution of the General Secretariat for Energy at least fifteen days before the auction is held.

Article 5 of the aforementioned Order authorises the Spanish Energy Commission (CNE) to draw up a report after each auction on its performance and potential improvements that is to be submitted to the General Secretariat for Energy.

Section 6 of the abovementioned Order assigns the organisation and management of the auctions directly to the Operador del Mercado Ibérico de Energía – Polo Español or through a subsidiary.

Additional provision Four of Order ITC/1659/2009 of 22 June, which lays down the mechanism for transferring customers from the tariffed market to last resort electrical energy supply, and the procedure for calculating and structuring the last resort electrical energy tariffs, stipulates that in CESUR auctions the target load for purchase by each last resort retailer shall be set by the State Secretary for Energy, following a proposal by the last resort retailers, without prejudice to the application in the auction, where appropriate, of the rule for reducing the target load on auction.

Having regard to the reports of the Spanish Energy Commission corresponding to the auctions held,

I therefore decide as follows:

First. Purpose

The present Resolution lays down the amounts to be auctioned for each type of product, the period of negotiation and the date of the auction, as well as the content of the Auction Rules and the Framework Contract for the tenth auction regulated in Order ITC/400/2007, of 26 February.

Second. Products to be auctioned

Four differentiated products are established.

- Base-load product for three months for the first quarter of 2010 (Three-month Q1 base product), consisting in the price difference between the adjudication price of the product in the auction and the hourly price of the daily market managed by OMEL for all the hours included in the first quarter of 2010 between 0:00 on 1 January 2010 and 24:00 on 31 March 2010.
- Peak-load product for three months for the first quarter of 2010 (Three-month Q1 peak product), consisting in the price difference between the adjudication price of the product in the auction and the hourly price of the daily market managed by OMEL for all the hours between 8:00 and 20:00 CET on the days from Monday to Friday included in the first quarter of 2010 between 0:00 on 1 January 2010 and 24:00 of 31 March 2010.
- Base-load product for three months for the second quarter of 2010 (Three-month Q2 base product), consisting in the price difference between the adjudication price of the product in the auction and the hourly price of the daily market managed by OMEL for all the hours

included in the second quarter of 2010 between 0:00 on 1 April 2010 and 24:00h of 30 June 2010.

- Peak-load product for three months for the second quarter of 2010 (Three-month Q2 peak product), consisting in the price difference between the adjudication price of the product in the auction and the hourly price of the daily market managed by OMEL for all the hours between 8:00 and 20:00 CET on the days from Monday to Friday included in the second quarter of 2010 between 0:00 on 1 April 2010 and 24:00 of 30 June 2010.

Three. Amounts to be auctioned.

The target load on auction shall be the sum of the amounts to be auctioned of the quarterly base product and of the quarterly peak load for the first and second quarters of 2010.

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The amount of product to be auctioned is as follows:

	Base 1Q10 (1)	Peak 1Q10 (2)	Base 2Q10 (3)	Peak2 Q10 (4)
AMOUNT TO BE AUCTIONED (MW)	7.730	540	5.800	600

The definitive values of the quantity of product to be auctioned shall be set in a ruling by the Secretary of State for Energy when the parameters of the tenth auction referred to in Order ITC/400/2007 of 26 February are approved.

The amount of product contracted by each last resort retailer shall be the result of applying the following percentages to the amounts finally adjudicated in the auction for each product:

COMPANY	Base 1Q10 (1) (%)	Peak 1Q10 (2) (%)	Base 2Q10 (3) (%)	Peak 2Q10 (4) (%)
E.ON COMERCIALIZADORA DE ÚLTIMO RECURSO, S.L	2%	6%	2%	5%
ENDESA ENERGÍA XXI, S.L.	40%	31%	41%	16%
GAS NATURAL S.U.R. SDG, S.A.	16%	15%	16%	16%
HIDROCANTÁBRICO ENERGÍA ÚLTIMO RECURSO, S.A.U.	2%	0%	2%	1%
IBERDROLA COMERCIALIZACIÓN DE ÚLTIMO RECURSO, S.A.U.	40%	48%	39%	62%

- (1) Three-month base product for the first quarter of 2010.
- (2) Three-month peak product for the first quarter of 2010.
- (3) Three-month base product for the second quarter of 2010.
- (4) Three-month peak product for the second quarter of 2010.

The amount of product corresponding to each seller for each product shall be determined by the auction procedure and shall be expressed in 1 MW-blocks.

Four. Starting prices and other aspects related to the auction

The General Directorate for Energy Policy and Mines is empowered to establish by resolution the last going prices of the first round for each product to be auctioned, as well as any other aspect of the said auction which has not been laid down in the present document.

Five. Participating in auctions through representatives.

a) Selling entities shall be entitled to take part in auctions directly or through a representative, these two options being mutually exclusive. The representative shall be obliged to hold a power of attorney which expressly empowers them to act in the auction on behalf of the represented parties. The representative shall likewise be entitled to sign the supply contracts on behalf of the represented parties provided that they hold a power of attorney empowering them to do so.

b) The representative acting in the name of several selling entities shall be obliged to have sufficient powers to bilateralise the commitments taken on in the auction between each one of their represented parties and the last resort retailers companies. The bilateralization proposal shall be communicated to the Administrator of the auction within the 16 hours following the conclusion of the auction.

c) In the case of business groups and for sales by companies in the group, only one of the companies of the said business group shall be entitled to participate in the auction, defined for this purposes as laid down in section 42 of the Commercial Code. Only one entity shall be entitled to act as representative for each business group.

d) The representatives shall not be entitled to act simultaneously in their own name and on someone else's behalf. A representative is understood to act in their own name when they have a direct or indirect stake of over 50% in the corporate capital.

e) The selling entities considered dominant operators, established by the National Energy Commission, shall only be entitled to act as representatives of production facilities in the special regime in which they hold a direct or indirect stake of over 50%. A company is understood to be owned by another when the criteria laid down in section 42 of the Commercial Code are met.

Six. Date of the auction.

The tenth auction shall take place on 15 December 2009, after 9 am, and shall be carried out over two sessions, as laid down in the Auction Rules.

Seven. Framework contract and Auction Rules.

The Auction Rules to which the qualified participants shall be obliged to adhere are those included in Annexe I of the present ruling.

The Framework contract to which the qualified participants shall be obliged to adhere is that included in Annexe II of the present ruling

Eight. Default manager of guarantees, settlement, invoicing, collection and payment.

The auction administrator shall perform the functions of default manager of guarantees, settlement, invoicing, collection and payment of the Framework Contract, except in the event that there is an express agreement between the parties establishing a different way of managing guarantees, invoicing, settlement, collection and payment.

Nine. Transfer of contract.

The Seller shall be entitled to transfer their position and the rights and liabilities deriving from the Framework Contract to third parties, in accordance with what is laid down in the Contract itself. The transfer shall be approved beforehand by means of a ruling by the General Directorate of Energy Policy and Mines and shall be communicated to the National Energy Commission. For this purpose, the transferring party and transferee shall be obliged to submit any documentation required for approval of said transfer to the said General Directorate, in the terms and conditions contemplated in the Framework Contract.

Ten. Representatives of the supervising body.

The National Energy Commission shall appoint two representatives who shall act on behalf of the said institution, with full powers, in the function of supervising the auction and, particularly, for the purpose of confirming that the process has been carried out in an objective, competitive and non-discriminatory fashion and to validate the results in the time established in the section 4 of Order ITC/400/2007, of 26 February

Eleven. Payment of the Cost of the Auction.

Such selling participants as, following the auction, are successful bidders for a certain amount of the product shall be obliged to pay the Entity Managing the Auction the cost attributable to the organisation of the same in proportion to the amount of product adjudicated to it, within the 30 days following the auction.

The attributable cost for the auctions of the base and peak products of each quarter has been set at 150,000 euros. In the event that they are declared void, the said costs shall be considered a cost payable from the electricity system.

Twelve. Resolving disputes.

Those disputes that may arise before, during or after the auction and until the subscription of the contracts, regarding the application of the appendices hereto, shall be resolved by the delegates of the Spanish Energy Commission (appointed in pursuance of article five of the Resolution of the General Secretariat for Energy whereby the specifications are laid down for the auction),

consistent with the role entrusted by article 5 of Order ITC/400/2007, of 26 February, following the proposal made by the auction administrator.

Thirteen. Reference price to be applied to the special regime participating in the Cesur auctions.

For the purpose specified in section 27.2 of Royal Decree 661/2007, of 25 May, which regulates the electrical energy production activity in the special regime, the reference market price to be applied to each holder of special regime facilities participating in CESUR auctions shall be calculated for each hour, as the average of the prices of each product resulting in the corresponding auctions, weighted by the amounts of each product assigned to the each holder at the said hour.

Fourteen. Publication.

This Resolution shall be published in Spain's Official Gazette (Boletín Oficial del Estado), with the exception of its appendices.

Appendices I and II shall be posted on the Spanish Energy Commission's website.

Likewise, the auction administrator shall post said appendices on the public information website for CESUR Auctions (www.subastasesur.omel.es).

Fifteen. Entry into force.

This Resolution shall become effective as of the day following that of its publication in Spain's Official Gazette.

In Madrid, on November 17th, 2009.

The Secretary General for Energy,

Pedro Luis Marín Uribe.