

IV. ANNOUNCEMENT OF APPEAL²

Case: A-009-2020

Appellant: Polskie Sieci Elektroenergetyczne S.A.

Appeal received on: 22.12.2020

Subject matter: Appeal against ACER Decision No 25/2020 of 23 October 2020 on sharing costs incurred to ensure firmness and remuneration of long-term transmission rights

Keywords: Congestion income, remuneration of long-term transmission rights

Contested decision Number: No 25/2020

Language of the case: English

Remedy sought by the Appellant (including procedural requests)

The Appellant requests the Board of Appeal:

- 1) to annul Article 1 of the Contested Decision and Article 3 of FRC Methodology, insofar as the remuneration costs of eligible LTTRs on a given bidding zone border and market time unit that were not covered by the day-ahead congestion income pursuant to Article 3(2) of FRC Methodology are covered:
 - in capacity calculation regions which apply the flow-based approach in the day-ahead capacity calculation, by all bidding zone borders issuing LTTRs in the respective capacity calculation region with the use of the remaining income and in proportion to the remaining income on these bidding zone borders,

or

- in capacity calculation regions which apply the coordinated net transmission capacity approach in the day-ahead capacity calculation, by all interdependent bidding zone borders issuing LTTRs in the respective capacity calculation region with the use of the remaining income and in proportion to the remaining income on these interdependent bidding zone borders,
- 2) to remit the case to the competent body of ACER to replace Decision No. 25/2020 with a new decision in accordance with Article 28(5) of Regulation 2019/942.

The Appellant submits the following procedural requests:

1. In case and to the extent the Chairperson acting on behalf of the Board of Appeal finds it would be required by the principle of Appeal proceedings, the Appellant - pursuant to Article 20 of the Rules of the Board of Appeal - respectfully requests the Chairperson of the Board of Appeal to seek an expert opinion on the correctness of numerical evidence presented by the Appellant, provided by an independent expert chosen by the Chairperson of the Board of Appeal. Pursuant to Article 29 of the Rules of the Board of Appeal, the Appellant obliges itself to cover cost of an expert opinion in an agreed manner and in the amount pre-approved by the Appellant.
2. Pursuant to Article 18(1) of the Rules of the Board of Appeal, the Appellant requests an oral hearing, in order to be able to present its arguments effectively, to answer questions from the Board of Appeal and to present its numerical evidence.

Pleas in law and main arguments

The contested decision was adopted on 23 October 2020.

The Appellant contests the Agency's decision. The Appellant's claims and arguments can be summarised as follows:

1. The application of the FRC Methodology, adopted by the Contested Decision, in connection with rules prescribed in the CID-FCA methodology and CID-CACM methodology, reduces in certain cases the congestion income arising from the single day-ahead coupling collected on a given bidding zone border due to the allocation of LTTRs on other bidding zone borders. Since the aforementioned reduction in the congestion income arising from the single day-ahead coupling on the bidding zone border in question is not compensated by congestion income arising from allocation of LTTRs on these other bidding zone borders, the primary distribution of congestion income, i.e. from the single day-ahead coupling, is distorted by the allocation of FTRs in quantities which are inadequate to the rules of guaranteeing FTRs' firmness in the context of long-term congestion income distribution. The aforementioned distortion of congestion income distribution imposed by the Contested Decision infringes: (I) article 61(3) of Regulation 2016/1719 because it is not consistent with the CID-FCA methodology, (II) article 3(g) of Regulation 2016/1719 as well as article 19(1) of Regulation 2019/943 because the Contested Decision does not contribute to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union and its Member States, as well as it provides a disincentive to reduce congestion.
2. The decision on FRC Methodology was not supported by a sufficient analysis of its correctness and consequences for affected parties. Assuming that the contested decision does not infringe the EU law, *quod non*, ACER did not provide adequate statement of reasons for the Contested Decision, thus infringing upon its obligation prescribed in Article 14(7) of Regulation 2019/942, as well as upon the rights of the Appellant stemming from Article 41(2)(c) of the Charter of Fundamental Rights, as well as Article 296(2) of the Treaty on the Functioning of the European Union.