

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 03/2018**

of 16 April 2018

**ON THE REQUEST OF THE REGULATORY AUTHORITIES OF DENMARK,
GERMANY, POLAND AND SWEDEN TO EXTEND THE PERIOD FOR
REACHING AN AGREEMENT ON THE PROPOSAL FOR THE COMMON
COORDINATED CAPACITY CALCULATION METHODOLOGY IN THE
CAPACITY CALCULATION REGION HANSA**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to the Treaty on the Functioning of the European Union,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 8(1) thereof,

HAVING REGARD to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Article 9(11) thereof,

HAVING REGARD to the favourable opinion of the Board of Regulators of 28 March 2018, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the ‘CACM Regulation’) laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements also include the development of a capacity calculation methodology (‘CCM’) in each of the capacity calculation regions (‘CCR’) in accordance with Article 20 of the CACM Regulation.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 197, 25.7.2015, p. 24.

- (2) Pursuant to Articles 9(1), 9(7)(a) and 20(2) of the CACM Regulation, the transmission system operators ('TSOs') of each CCR are required to develop a proposal for a common coordinated CCM within the respective region and submit it to the regulatory authorities of the concerned region for approval. Then those regulatory authorities should reach an agreement and take a decision on the proposal for CCM within six months after the receipt of the proposal by the last regulatory authority, according to Article 9(10) of the CACM Regulation, or, if they require the TSOs to amend the proposal, within two months after the receipt of the amended proposal by the last regulatory authority, according to Article 9(12) of the CACM Regulation. When the regulatory authorities fail to reach an agreement within the six-month period or within the two-month period after the resubmission, the Agency, pursuant to Article 9(11) and (12) of the CACM Regulation, is called upon to adopt a decision concerning the TSOs' proposal in accordance with Article 8(1) of Regulation (EC) No 713/2009.
- (3) The present Decision of the Agency follows from the request of the regulatory authorities of the CCR Hansa, i.e. of Denmark, Germany, Poland and Sweden³, to extend the period for reaching an agreement on the TSOs' proposal for CCM in the CCR Hansa by four months pursuant to Article 8(1) of Regulation (EC) No 713/2009.

2. PROCEDURE

- (4) In a letter dated 15 March 2018 and received by the Agency on the same day, the Director General of the Danish regulatory authority submitted, on behalf of all regulatory authorities of the CCR Hansa, a joint request for a four-month extension, according to Article 8(1) of Regulation (EC) No 713/2009, of the period to reach an agreement on which amendments to require for the proposal for CCM submitted by the TSOs of the CCR Hansa.
- (5) According to this letter, the regulatory authorities of the CCR Hansa received from all TSOs of the CCR Hansa the proposal for CCM by 19 September 2017.
- (6) In support of the request for extension, the letter states in particular the following:

'The CCM proposal is made on the basis that advanced hybrid coupling ("AHC") will be applied between CCR Hansa and CCR Nordic and CCR Core. Very late in the process it has become clear to all Regulatory Authorities in CCR Hansa, that the current level of coordination between CCR Hansa and CCR Core is insufficient to carry this. Hansa TSOs want AHC from go-live, while Core TSOs have chosen not to prioritize this. All Regulatory Authorities in CCR Hansa find that AHC would have to be included in all three CCRs' methodologies in order to be legally sound.

³ See Article 4 of Annex I of the Agency Decision No 06/2016 of 17 November 2016 on the electricity transmission system operators' proposal for the determination of capacity calculation regions.

All regulatory authorities in CCR Hansa agree that AHC should be the target for CCR Hansa towards both CCR Nordic and CCR Core. Towards Nordic CCR the TSOs in both CCR Hansa and CCR Nordic have also agreed to coordinate AHC.

Several new issues have arisen, which were not relevant to discuss earlier in the process, as AHC solves these. All Regulatory Authorities in CCR Hansa therefore do not have a common agreement on how to provide guidance to the TSOs on these issues.

For the above reasons, all the Regulatory Authorities in CCR Hansa deem it important to obtain more information about whether there are any real obstacles for coordinating AHC between CCR Core and CCR Hansa in order to include AHC in both regions' methodologies, before all Regulatory authorities in CCR Hansa issue a decision about the CCM proposal.'

3. ASSESSMENT OF THE REQUEST

3.1 Legal framework

- (7) According to Article 8(1) of Regulation (EC) No 713/2009, the Agency shall decide upon regulatory issues that fall within the competence of national regulatory authorities, where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities. According to the second subparagraph of Article 8(1) of Regulation (EC) No 713/2009, the competent national regulatory authorities may jointly request that the six-month period be extended by a period of up to six months.
- (8) According to Article 9(7)(a) of the CACM Regulation, the proposal for CCM in accordance with Article 20(2) of that Regulation shall be subject to approval by all regulatory authorities of the concerned region.
- (9) According to Article 9(10) of the CACM Regulation, where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement, and they shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6, 7 and 8, within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (10) According to Article 9(11) of the CACM Regulation, where the regulatory authorities have not been able to reach an agreement on the terms and conditions or methodologies within the six-month deadline, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.

3.2 Admissibility

- (11) Article 9(11) of the CACM Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the proposal for CCM within six months from the receipt of the submission but does not explicitly provide for the possibility to extend the six-month period.
- (12) However, Article 9(11) of the CACM Regulation stipulates that the Agency shall take its decision in accordance with Article 8(1) of Regulation (EC) No 713/2009 when the regulatory authorities did not reach an agreement within the six-month deadline.
- (13) Therefore, the transfer of the decision-making competence from the regulatory authorities to the Agency under Article 9(11) of the CACM Regulation may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with Article 8(1) of Regulation (EC) No 713/2009.
- (14) The second subparagraph of Article 8(1) of Regulation (EC) No 713/2009 allows for an extension of the prescribed period within which the competent regulatory authorities have to reach an agreement on a regulatory issue before the decision-making competence is transferred from the regulatory authorities to the Agency. The maximum period of such an extension is six months. The extension may be requested by the competent regulatory authorities. The fact that the requesting authorities need to be competent implies also that the competent regulatory authorities should submit the request before the end of the period for reaching an agreement.
- (15) The present request for extension relates to the proposal for CCM according to Article 20 of the CACM Regulation which was submitted by the TSOs of the CCR Hansa to the regulatory authorities of the countries within the CCR Hansa, i.e. Denmark, Germany, Poland and Sweden. The requesting regulatory authorities of Denmark, Germany, Poland and Sweden are therefore competent to decide on the proposal for CCM in the CCR Hansa according to Article 9(7)(a) of the CACM Regulation. Accordingly, they are also the competent regulatory authorities which may request an extension of the six-month period for reaching an agreement under Article 9(10) and (11) of the CACM Regulation.
- (16) Given the submission of the proposal for CCM on 19 September 2017, the regulatory authorities of Denmark, Germany, Poland and Sweden had to decide on the proposal for CCM, in accordance with Article 9(10) and (11) of the CACM Regulation, by 19 March 2018. The request for extension was received by the Agency on 15 March. Thus, it was received before the expiry of the six-month deadline on 19 March 2018.
- (17) In their request, the regulatory authorities of Denmark, Germany, Poland and Sweden ask for an extension of four months. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 8(1) of Regulation (EC) No 713/2009.

(18) Therefore, the Agency considers the request for extension as admissible.

3.3 Substance

(19) Article 8(1) of Regulation (EC) No 713/2009 does not lay down requirements for the justification of an extension.

(20) The requesting regulatory authorities of Denmark, Germany, Poland and Sweden consider the extension justified as, in their views, their decision on the proposal for CCM in the CCR Hansa can only be taken after more information has been obtained on the necessary and possible coordination, in particular with regard to advanced hybrid coupling, of the CCM in the CCR Hansa with the CCMs in the CCR Core and the CCR Nordic, whose approval is still pending.

(21) The Agency agrees with this assessment.

(22) Furthermore, the Agency cannot detect any inappropriate delays which the requested extension would cause.

(23) Therefore, the Agency considers an extension of four months justified.

3.4 Conclusion

(24) For the above reasons, the Agency accepts the request for an extension submitted by the regulatory authorities of Denmark, Germany, Poland and Sweden, and extends the period for those regulatory authorities to reach an agreement on the proposal for CCM within the CCR Hansa by four months, i.e. until 19 July 2018.

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Denmark, Germany, Poland and Sweden, shall reach an agreement on the proposal for the common capacity calculation methodology within the capacity calculation region Hansa according to Article 20(2) of Commission Regulation (EU) 2015/1222, submitted by the transmission system operators of the capacity calculation region Hansa by 19 September 2017, is extended, in accordance with Article 8(1) of Regulation (EC) No 713/2009, by four months.

Article 2

This Decision is addressed to Energitilsynet (Denmark), Bundesnetzagentur (Germany), Urząd Regulacji Energetyki (Poland) and Energimarknadsinspektionen (Sweden).

In accordance with Article 19 of Regulation (EC) No 713/2009, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

Done at Ljubljana on 16 April 2018.

For the Agency:



Alberto Pototschnig
Director