

To:
ACER
Danish Energy Regulatory Authority

1 October 2017

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ACER/ENTSO-E FCA Coordination Group

CCR Nordic hereby initiate article 4(4) of the FCA Regulation (Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation) in relation to Article 31(3) of the FCA Regulation, delivering a regional design of long-term transmission rights.

On 8 of September 2017 the relevant TSOs (Energinet) received a letter¹ from the relevant National Regulatory Authority (Danish Energy Regulatory Authority (DERA)), as an answer to the letter² send by CCR Nordic TSOs on 6 July 2017 where DERA is stating:

“However, the legal interpretation of Article 31(3) as communicated by the NordREG FCA TF on 29 June 2017 still stands. As a consequence of this, DERA cannot approve a proposal submitted after the legal deadline of 17 April 2017.”

The CCR Nordic TSOs are of a different opinion, as written in the letter from 6 July 2017, but will in order to facilitate a solution invoke the Article 4(4) process of the FCA Regulation.

The proposal for regional design of long-term transmission rights (Hereafter referred to as “LTTR Proposal”)³ is attached to this letter. The proposal has been in consultation with two consultation answers⁴, and the attached version is amended according to the consultation answers. Further, an explanatory document⁵ is attached. The amended legal and explanatory document for regional design of LTTR have been approved by the Steering Committee in CCR Nordic and from the TSOs point of view the proposal is finalised and ready for submission to the relevant NRAs.

In order to proceed, the CCR Nordic TSOs request a new submission date, and the CCR Nordic TSOs suggest this date to be the 17 November 2017.

Background:

On 2 March 2017 CCR Nordic TSOs send an e-mail informing the CCR Nordic NRAs (NordREG FCA TF) of the TSOs’ intention of submitting the LTTR Proposal pursuant to Article 31(3) on 17 October 2017.

¹ Letter from DERA received on 8 September 2017, Annex 1

² Letter from CCR Nordic TSOs send on 6 July 2017, Annex 2

³ Proposal for regional design of LTTR from CCR Nordic, Annex 3

⁴ Consultation answer on Proposal for regional design of LTTR in CCR Nordic, Annex 4

⁵ Explanatory document for regional design of LTTR in CCR Nordic, Annex 5

The CCR Nordic TSOs did not receive any information from the NordREG FCA TF that this intention was not acceptable so taking this into account, CCR Nordic TSOs prepared the respective work plan for the development and submission of the LTTR Proposal. In line with the CCR Nordic TSOs' timeline, the LTTR Proposal was submitted for public consultation on the ENTSO-E consultation platform from 30 June to the 28 August 2017.

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On 1 June 2017, the CCR Nordic TSOs further send an e-mail informing the NordREG FCA TF that the deadline interpreted by the TSOs of CCR Nordic for the LTTR Proposal would be the 17 November 2017 based on the last NRA decision pursuant to Article 30 in the FCA Regulation.

The CCR Nordic NRAs have in their e-mail of the 30 June 2017⁶ responded to the TSOs e-mail that the deadline for submitting the LTTR Proposal was the 17 April 2017. This information is given more than 3 months after the first e-mail sent by the CCR Nordic TSOs and 1 month after the second e-mail sent by the TSOs. Based on the response on the 30 June 2017, the NRAs of CCR Nordic expect the CCR Nordic TSOs to follow the procedure outlined in Article 4(4) of the FCA Regulation.

The CCR Nordic TSOs do not agree with the decision of the CCR Nordic NRAs due to the following reasons:

- In a meeting held on 31 January 2017, ACER and ENTSO-E FCA Coordination Group agreed, under agenda point 5⁷, that: “*Regional design of LTRs to be delivered on regions in April 2017 where LTRs are offered on all BZ borders*”. All other proposals for the regional design of LTTRs should be delivered by October 2017, following the NRAs' decisions under Article 30 of the FCA Regulation.

As in the CCR Nordic, LTTRs were only offered at the DK1-DK2 bidding zone border at the entry into force of the FCA Regulation, the LTTR Proposal should await the NRAs' decision under Article 30 of the FCA Regulation^{8,9}. The NRAs' decisions was received during April and May 2017, with the last decision received from the DERA on 17 May 2017, thus a submission deadline of 17 November 2017 should apply to CCR Nordic TSOs on the LTTR Proposal.

- As mentioned above, the CCR Nordic NRAs have not responded to the e-mail from the CCR Nordic TSOs on 2 March 2017. Thereby silently accepting the ACER and ENTSO-E interpretation of Article 31(3) of the FCA Regulation on the deadline for submission. Further accepting a submission of the LTTR Proposal for the CCR Nordic by 17 November 2017. The CCR Nordic NRAs lack an explanation of the sud-

⁶ E-mail from CCR Nordic NRAs to CCR Nordic TSOs on 30 June 2017: Annex 6

⁷ Minutes of meeting, ACER-ENTSO-E coordination group meeting 31 January 2017: Annex 7

⁸ Decision on Regional design from Danish NRA: Annex 8

⁹ Decision on Regional design from Swedish NRA: Annex 9

denly changed interpretation of this Article 31(3), which may compromise the mutual trust necessary during the Guideline implementation.

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- Taking the ACER opinion 10/2107 into account, it can be followed/argued/concluded that the shift of deadlines according to the approval of the CCRs by ACER decision No 06/2016 safeguards the purpose of the FCA Regulation. The purpose: *“cannot be to deprive the regulatory authorities of the full six-month period for their decision-making process and as the establishment of the CCRs after the entry into force of Regulation (EU) 2016/1719 could not be anticipated, Article 30(2) can be interpreted to the effect that the period of six months for the decisions on long-term transmission rights, including the consultation with the regulatory authorities of the relevant CCR, is available in its entirety to the competent regulatory authorities”*.

The same should apply to the TSOs respectively. Shortening deadlines caused by unforeseen delayed preconditions must not lead to a deprivation of the time frames granted to the TSOs in the FCA Regulation.

After taking the above mentioned arguments into consideration, the CCR Nordic TSOs are unfortunately unable to share the CCR Nordic NRAs' interpretation of Article 31(3) of the FCA Regulation which entails that the TSOs are late in submission of the LTTR Proposal.

The CCR Nordic TSOs would like to emphasise that they have, throughout the entire process, been transparent and ensured that information was given to the NordREG FCA TF in due time. The CCR Nordic NRAs have at no point indicated that the timeline presented by the TSOs of CCR Nordic was not acceptable.

On behalf of Energinet and the CCR Nordic TSOs
Randi Kristiansen