

## ANNOUNCEMENT OF APPEAL\*

<b>Case</b>	A-008-2022
<b>Appellant:</b>	<b>Swissgrid AG</b>
<b>Appeal received on</b>	1 December 2022
<b>Subject matter</b>	Appeal against ACER Decision No 15/2022 of 30 September 2022 on the Amendment to the Implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation
<b>Keywords:</b>	Electricity Balancing Regulation; aFFRIF; definition of “member TSO”; lack of legal basis, ACER’s competences, ACER’s power of revision, right to be heard; sound administration; duty to state reasons
<b>Contested decision Number:</b>	15/2022
<b>Language of the case</b>	English

### Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- declare the Appeal admissible and well-founded;
- find that the following provisions of the Contested Decision are illegal and, therefore, remit them to the competent body of ACER:
  - a) the part of Article 1(b) of Annex I to the Contested Decision that amends the definition of “member TSO” in Article 2(1)(m) aFFRIF (formerly Article 2(1)(l) of Annex I to Decision 02/2020);
  - b) recital 134 of the Contested Decision, to the extent it refers to amending the definition of “member TSO” in 2(1)(m) aFFRIF (formerly Article 2(1)(l) of Annex I to Decision 02/2020); and
  - c) any other recital of the Contested Decision referring to the amendment to the definition of “member TSO”;
- provide to the competent body of ACER sufficient reasoning, direction and explanation as to the correct application and interpretation of the relevant provisions of the relevant legislation to enable it to issue a new and valid decision.

The Appellant makes a request for an oral hearing.

### Pleas in law and main arguments

The Appellant’s claims and arguments can be summarised as follows:

1. The Contested Decision infringes Article 5(6) of Regulation (EU) 2019/942 of the European Parliament and

\* Announcement published in accordance with Article 9 of Decision BoA No1-2011 Laying down the rules of organisation and procedure of the Board of Appeal of the Agency for the Cooperation of the Energy Regulators.

of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) (“ACER Regulation”) and Article 5(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (“EBR”)

2. ACER lacks the competence to approve an amendment to the definition of “member TSO” in the aFRRIF in the absence of a proposal from the TSOs to this effect;
3. ACER unlawfully exercised its power to revise All TSOs’ proposal of 31 March 2022 for amendments to the aFRRIF (“the Proposal”) because it failed to consider whether introducing an amendment to the definition of “member TSO” meets the standard of necessity imposed by Articles 5(6) ACER Regulation and 5(1) EBR;
4. ACER acted outside its competence to “revise” by supplementing the Proposal with an element that is not related to the subject-matter of the Proposal;
5. The Contested Decision is vitiated by ACER’s failure to afford the Appellant the right to be heard pursuant to Article 14 ACER Regulation and Article 41(2)(c) of the Charter of Fundamental Rights of the EU (“CFREU”);
6. The Contested Decision infringes Articles 1(6) and 1(7) EBR as ACER lacks the competence to adopt or amend the aFRRIF in a manner that causes the non-participation of the Appellant or Switzerland in the aFRR Platform;
7. The Contested Decision is vitiated by ACER’s failure to observe the principle of sound administration enshrined in Article 41 CFREU in taking steps to exclude the Appellant or Switzerland from participating in the aFRR Platform without due regard to the action pending before the General Court of the European Union in Case T-127/21, *Swissgrid v Commission*;
8. The Contested Decision infringes Article 14(7) ACER Regulation, Article 296 of the Treaty on the Functioning of the European Union, and Article 41(2)(c) CFREU by failing to provide an adequate statement of reasons;
9. The Contested Decision contravenes the principle of protection of legitimate expectations as it constitutes the retroactive withdrawal of a measure which had conferred individual rights or similar benefits on the Appellant.