

ANNOUNCEMENT OF APPEAL*

Case	A-009-2022
Appellant:	Swissgrid AG
Appeal received on	1 December 2022
Subject matter	Appeal against ACER Decision No 16/2022 of 30 September 2022 on the Amendment to the Implementation framework for a European platform for the imbalance netting process
Keywords:	Electricity Balancing Regulation; INIF; definition of “member TSO”; lack of legal basis, ACER’s competences, ACER’s power of revision, right to be heard; duty to state reasons
Contested decision Number:	16/2022
Language of the case	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)(k) INIF (formerly Article 2(1)(j) of Annex I to Decision 13/2020);
 - b) recital 134 of the Contested Decision, to the extent it refers to amending the definition of “member TSO” in Article 2(1)(k) INIF (formerly Article 2(1)(j) of Annex I to Decision 13/2020); 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 22 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (“EBR”), as ACER lacks the competence to exclude

* 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.

- the Appellant from being a member of, and a participant in, the Imbalance Netting Platform (“IN Platform”).
2. The Contested Decision infringes Article 5(6) of Regulation (EU) 2019/942 of the European Parliament and 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) EBR.
 3. ACER lacks the competence to approve an amendment to the definition of “member TSO” in the INIF in the absence of a proposal from the TSOs to this effect.
 4. ACER unlawfully exercised its power to revise All TSOs’ proposal of 31 March 2022 for amendments to the INIF (the Proposal) because it failed to consider whether introducing an amendment to the definition of “member TSO” meets the standard of necessity imposed by Article 5(6) ACER Regulation and 5(1) EBR.
 5. 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.
 6. 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”).
 7. 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.
 8. 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.