

ANNOUNCEMENT OF APPEAL¹

Case:	A-001-2025
Appellant:	Swissgrid AG
Appeal received on:	28 March 2025
Subject matter:	Appeal against ACER's decision 01/2025 of 29 January 2025 on the amendment to the harmonised cross-zonal capacity allocation methodology (the 'HCZCA methodology').
Keywords:	Electricity Balancing Regulation; harmonised cross-zonal capacity allocation methodology; third country TSOs; lack of legal basis, ACER's competence and power of revision; legitimate expectations; right to be heard; duty to state reasons
Contested decision Number:	No. 01/2025
Language of the case:	English

¹ Announcement published in accordance with Article 9 of Decision BoA No 1-2023 Laying down the rules of organisation and procedure of the Board of Appeal of the Agency for the Cooperation of the Energy Regulators.

Remedy sought by the Appellant (including procedural requests)

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, to remit them to the competent body of ACER:
 - a) the part of Article 11 of Annex I to the Contested Decision that replaces the term ‘country’/‘countries’ with that of ‘Member State’/‘Member States’ in Article 28(5), (6) and (9) of the HCZCA methodology, thereby precluding third-country TSOs from sharing in the common costs resulting from coordinated activities of all market-based application TSOs of all balancing capacity platforms in accordance with Article 28(3) of the HCZCA methodology, and of a balancing capacity platform in accordance with Article 28(4) of the HCZCA methodology;
 - b) the part of Article 5 of Annex I to the Contested Decision that introduces a new Article 15(4) to the HCZCA methodology, in so far as it precludes third-country TSOs from sharing in the costs incurred for the implementation of change requests in relation to the market-based cross zonal capacity allocation optimisation function software (‘Software’) (points (a) and (b) are collectively referred to as ‘First amendment’);
 - c) Article 6(n) of Annex I to the Contested Decision inserting an Article 16(14) in the HCZCA methodology, in so far as it precludes third-country TSOs from exercising voting rights in the steering committees of the balancing capacity platforms (‘Second amendment’); and
 - d) recital (98) to the Contested Decision.
- provide the competent body of ACER with 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 requests an oral hearing and that its witnesses are heard by the Board of Appeal in order to be able to present its arguments effectively and to answer any questions.

Pleas in law and main arguments

The Appellant contests ACER’s decision No. 01/2025. The Appellant's claims and arguments can be summarised as follows:

1. *First plea*: the Contested Decision infringes Article 38(1)(b) of Regulation (EU) 2017/2195 as ACER lacks the competence to effectively exclude the Appellant from the balancing capacity platforms, and, by extension, the market-based allocation method.
2. *Second plea*: the Contested Decision infringes Article 5(6) of Regulation (EU) 2019/942 and Article 5(1) of Regulation (EU) 2017/2195:
 - a) First branch: ACER lacks the competence to adopt the First and Second amendments in the absence of a proposal from the EU TSOs to this effect;
 - b) Second branch: ACER unlawfully exercised its power to revise all TSOs proposal of 31 July 2024 on the amendment of the HCZCA methodology because the Contested Decision’s amendments to Articles 28(5), (6) and (9), 15(4) and 16(14) of the HCZCA methodology do not meet the standard of necessity imposed by Articles 5(6) of Regulation (EU) 2019/942 and 5(1) of Regulation (EU) 2017/2195;
 - c) Third branch: 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.
3. *Third plea*: the Contested Decision contravenes the principle of protection of legitimate expectations since it contradicts a situation previously created by ACER and the European

Commission which gave rise to a legitimate expectation of the Appellant, since it constitutes the retroactive withdrawal of a measure which had conferred individual rights or similar benefits on the Appellant.

4. *Fourth plea*: the Contested Decision infringes the fundamental principles set out under Article 23(3) of Regulation (EU) 2017/2195, and ACER, therefore, exceeded its competence by precluding the Appellant from sharing in the common costs of the balancing capacity platforms and the Software.
5. *Fifth plea*: the Contested Decision is vitiated by ACER's failure to afford the Appellant the right to be heard pursuant to Article 14 of Regulation (EU) 2019/942 and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('CFREU').
6. *Sixth plea*: the Contested Decision infringes Article 14(7) of Regulation (EU) 2019/942, Article 296 of the Treaty on the Functioning of the European Union (TFEU) and Article 41(2)(c) CFREU by failing to provide an adequate statement of reasons.

Further information

More information on the appeal procedure can be found on the 'Appeals' section of the Agency's website: [Procedural Documents | www.acer.europa.eu](https://www.acer.europa.eu/Procedural-Documents)