

IV. ANNOUNCEMENT OF APPEAL²

Case	A-003-2019
Appellant	Bundesnetzagentur
Appellant's Address	Tulpenfeld 4, 53113 Bonn, Germany
Appeal received on	23 April 2019
Subject matter	Regional design of day-ahead and intraday CCM
Keywords	Core CCR; DA & ID CCM; CACM
Contested decision Number	Decision No 02/2019
Language of the case	English

Remedies sought by the Appellant

The appellant requests the Board of Appeal

FIRST

- to **annul the following provisions of Decision No 02/2019 of the Agency** for the Cooperation of Energy Regulators of 21 February 2019 on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies:
 - a. Articles 5(5) to (9) of its Annex I,
 - b. Article 10(4) second half sentence, (5) of its Annex I,
 - c. Article 16(2), second sentence, and (3)(d)(vii) of its Annex I,
 - d. Article 5(5) to (9) of its Annex II,
 - e. Article 17(3)(d)(vii) of its Annex II,
 - f. All parts and clauses of its Annexes I and II, which make explicit reference to the paragraphs of the provisions under a. to e.
- or, in the event that the Board of Appeal does not annul the decision partially,**
- to **annul Decision No 02/2019 of the Agency** for the Cooperation of Energy Regulators of 21 February 2019 on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies **entirely**;

² 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.

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SECOND

- to **suspend the application of the following provisions of the Decision No 02/2019 of the Agency for the Cooperation of Energy Regulators of 21 February 2019 on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies:**
 - a. Articles 5(5) to (9) of its Annex I,
 - b. Article 10(4) second half sentence, (5) of its Annex I,
 - c. Article 16(2), second sentence, and (3)(d)(vii) of its Annex I,
 - d. Article 5(5) to (9) of its Annex II,
 - e. Article 17(3)(d)(vii) of its Annex II,
 - f. All parts and clauses of its Annexes I and II, which make explicit reference to the paragraphs of the provisions under a. to e.

or in the alternative,

- to **suspend the application of the entire Decision No 02/2019 of the Agency for the Cooperation of Energy Regulators of 21 February 2019 on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies.**

Pleas in law and main arguments

The contested decision was adopted on 21 February 2019. The Appellant contests the Agency's decision.

The Appellant's claims and arguments can be summarized as follows:

The contested decision is unlawful due to the following:

Infringement of the following principles of Union law:

- Principle of conferred powers (lack of a legal basis),
- Principle of institutional balance,
- Principle of sincere cooperation,
- Principle of legal certainty and
- Principle of proportionality.

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Furthermore,

- Violation of the rights of the European Parliament and of the Council,
- Violation of the rights of the Member States under the new Electricity Regulation to be adopted under the "Clean Energy Package",
- Discrimination on grounds of nationality,
- Infringement of Regulation (EU) 2015/1222 ("CACM") and of Regulation (EC) No 714/2009 and
- Violation of Articles 34 and 35 TFEU.

Infringement of the appellant's procedural rights by virtue of

- Amendment of the TSO's proposal beyond the TSOs' and the NRAs' request,
- Imposition of additional amendment proposal obligations imposed on Core TSOs,
- Infringement of duty to issue the Decision in appellant's official language and
- Infringement of duty to issue the Decision in addressees' official language.

The Agency's decision infringes EU law insofar as it demands that TSOs prospectively reduce the consideration of internal network elements in capacity calculation (Articles 5(5) to (9) of its Annex I and Articles 5(5) to (9) of its Annex II) and as it allows TSOs to apply remedial actions too early in the capacity calculation process (Article 10(4) second half sentence, and (5) of its Annex I, Article 16(2), second sentence, and (3)(d)(vii) of its Annex I and Article 17(3)(d)(vii) of its Annex II). Furthermore, the Agency's decision is unlawful because it was issued to the German Core TSOs and to the appellant only in the English language and not in the German language.

Further information

More information on the appeal procedure can be found on the 'Appeals' section of the Agency's website:

http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Pages/default.aspx

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