

IV. ANNOUNCEMENT OF APPEAL¹

Case: A-012-2021

Appellant: European Network of Transmission System Operators for Electricity AISBL (“**ENTSO-E**”)

Appeal received on: 27.08.2021

Subject matter: Appeal against ACER Decision No. 08/2021 of 29 June 2021 on the definition of system operations regions

Keywords: Article 36 Regulation 2019/943; system operation regions (**SORs**)

Contested decision Number: No. 08/2021

Language of the case: English

Remedy sought by the Appellant (including procedural requests)

The Appellant requests the Board of Appeal:

1. To rule that the Appellant's appeal is well-founded, and to remit the Contested Decision to the competent body of ACER in accordance with Article 28(5) of Regulation 2019/942, insofar only as it rejects the Appellant’s proposed South West Europe System Operation Region (**SWE SOR**) and includes the proposed SWE SOR in the Central Europe System Operation Region (**Central Europe SOR**), all other parts of the Contested Decision being outside the scope of these proceedings.
2. To provide to the competent body of ACER sufficient reasoning as to the correct interpretation of the relevant provisions of Regulation 2019/943 to enable it to make a new decision in accordance with Article 28(5) of Regulation 2019/942 and Article 21(2) of the Rules of the ACER Board of Appeal.

The Appellant includes the following procedural requests:

1. Confidentiality request
2. Request for oral hearing
3. Request for access to documents/request to permit the Appellant to rely on previously disclosed documents.

¹ 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.

Date of Submission: 26 August 2021	Name: Sonya Twohig, Secretary-General, ENTSO-E	Signature:
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Pleas in law and main arguments

The Appellant contests the Agency's decision. The Appellant's claims and arguments can be summarised as follows:

1. Firstly, ACER has made a manifest error of assessment in the Contested Decision. The inclusion of ENTSO-E's proposed SWE SOR in the Central Europe SOR infringes Article 36(1) of Regulation 2019/943 because it fundamentally misapplies the requirement in that Article to take account of the grid topology, in particular the "interdependency of the electricity system in terms of flows". ACER ignores the fact that the South West region of Europe is recognised as not being interdependent with other regions in terms of flows. ACER wrongly bases its definition on the interdependency of remedial actions between the Capacity Calculation Regions (**CCRs**). In doing so, it applies the wrong test. The evidence on which it relies is also incapable of supporting the argument that it seeks to make. In addition, ACER applies its own test incorrectly.
2. Secondly, ACER has breached its obligation to state its reasons. The Contested Decision does not disclose ACER's reasons for preferring its own flawed assessment over the Appellant's evidence that establishes an absence of interdependency. ACER does not disclose the calculations and results for its Annex IV modelling in sufficient detail to allow ENTSO-E to assess whether ACER's calculations support its conclusions.
3. Thirdly, ACER commits an error of law in the interpretation of Article 36(2) of Regulation 2019/943 in combining the proposed SWE SOR into the Central Europe SOR. In particular, ACER's conclusion that Article 36(2) does not permit a transmission system operator (**TSO**) (in this case RTE) to participate in more than one SOR is not in accordance with the correct interpretation of Article 36(2) of Regulation 2019/943.
4. Fourthly, the definition of a SOR covering the near entirety of the Continental Europe Synchronous Area (**SA**), ie. at a scale manifestly inappropriate to the tasks that are to be coordinated at SOR level, infringes the fundamental EU law principle of proportionality which requires that the content and form of EU action do not exceed what is necessary to achieve the objective of the Treaties and of the EU legislation adopted under them.

Further information

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

https://www.acer.europa.eu/en/The_agency/Organisation/Board_of_Appeal/Pages/Procedural-Documents.aspx

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