ACER
European Union Agency for the Cooperation of Energy Regulators

IV. ANNOUNCEMENT OF APPEAL[1]

Case:	A-003-2021
Appellant:	TransnetBW GmbH
Appeal received on:	
Subject matter:	Cost Sharing for Remedial Actions in Capacity Calculation - Core Region
Keywords:	Cost Sharing; Cross-border relevance
Contested decision Number:	ACER Decision No. 30/2020; ACER Decision No. 33/2020; ACER Decision No. 35/2020
Language of the case:	English

Remedy sought by the Appellant (including procedural requests)

The Appellant requests the Board of Appeal to:

annul the contested decisions in accordance with Article 28(4) ACER Regulation and refer them back to the competent body of the Agency for new decisions in compliance with the legal opinion of the Board of Appeal.

The Appellant includes the following procedural requests:

- Request for a hearing pursuant to Article 18 (1) and (7) of the Rules of Procedure of the Board of Appeal.

Pleas in law and main arguments

The contested decisions were adopted as follows:

- ACER Decision No. 30/2020 on 30 November 2020;
- ACER Decision No. 33/2020 on 4 December 2020;
- ACER Decision No. 35/2020 on 4 December 2020.

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

[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.

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1. It is unlawful to include costs from remedial actions into the cost sharing mechanism to the extent that these remedial actions were exercised on internal critical network elements and on all other transmission network elements and lead to a cost sharing for costs on network elements outside a transmission system operator's own bidding zone as foreseen in Article 7(1) and (6) RDCT Cost Sharing Methodology in conjunction with Article 5(1)(a) and (b) of RDCT Methodology. Hence, after mapping, only costs from remedial actions exercised to remedy congestions on actual cross-border network elements (interconnectors) can be distributed based on contributing flows. Therefore, Articles 3(4), 7(1) and (6) of the RDCT Cost Sharing Methodology in conjunction with Article 5(1)(a) and (b) RDCT Methodology violate Article 74(2) CACM in conjunction with Article 16(13) of the Electricity Regulation and are therefore unlawful;
2. Art. 5 RDCT Methodology is identical to Article 5 of the ROSC Methodology and thus Article 5 of the ROSC Methodology and the respective ROSC Decision are also subject to appeal in order to avoid inconsistencies;
3. The determination of a common loop flow threshold at a level of 10% as set out in Article 7(3) RDCT Cost Sharing Methodology has no legal basis, cannot be done by the Agency and is set too low; it is therefore unlawful;
4. The prioritization of loop flows above threshold when allocating costs for cross-border relevant remedial actions as foreseen in Article 7(6) of the RDCT Cost Sharing Methodology violates Article 35 and 74 of the CACM and Article 16(13) of the Electricity Regulation.

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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